

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

**Document archive
Vol. 4**

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

June 1999

Table of contents

INTRODUCTORY MATERIALS, CHRONOLOGIES & TABLE OF ARCHIVED DOCUMENTS

Acknowledgements	Page i
Introduction: political and legal developments leading to the enactment of Hong Kong's equal opportunity legislation	Page 1
List of abbreviations used	Page 7
Summary information on equal opportunity legislation	Page 9
Dates of gazette publication & Legco proceedings	Page 11
Chronology of equal opportunity legislation, 1990–1995 Legislative Council	Page 13
Chronology of 1994–1995 Legco Bills Committee meetings	Page 25
Chronology of equal opportunity legislation, 1995–1997 Legislative Council	Page 31
Chronology of 1997 Legco Bills Committee meetings	Page 40
Table of archived documents	Page 43

DOCUMENT ARCHIVE

Volume 1 documents [1] through [78]	Page 1
Volume 2 [79] through [180]	Page 573
Volume 3 [181] through [260]	Page 1068
Volume 4 [261] through [328]	Page 1596
Volume 5 [329] through [392]	Page 2093
Volume 6 [393] through [463]	Page 2667

LEGCO BILLS COMMITTEE PROCEEDINGS — NOTES OF MEETINGS

Table of contents	Page i
Notes of meetings, 1994–1995	Page 1
Notes of meetings, 1997	Page 381

PRESS RELEASE

Reinstatement & Limit on Damages
Sex Discrimination Ordinance

Legislative Councillor, Christine Loh Kung-wai, demanded from the Administration at the Home Affairs Panel meeting on 23 November 1995 why the Administration rejected an amendment to provide for reinstatement as an available remedy under the Sex Discrimination Ordinance, but supported another amendment to impose a HK\$150,000 limit on damages in the same Ordinance.

Home Affairs Branch responded in a paper dated 14 December that reinstatement is not available as a remedy because the Administration holds the view that reinstatement is not applicable to cases relating to discrimination only and that the applicability should be considered in a wider context.

"I am unhappy with this response because it does not tell us why the Administration believes that reinstatement is not applicable, also it does not say anything about what is meant by in a "wider context"', said Ms Loh, "I am concerned that the Administration cannot really explain its stance and it is just trying to buy time by asking the Labour Department to study the subject of unfair dismissal and will lump discrimination there", she added.

On the issue of limit on damages, Home Affairs Branch said that the Administration supported the HK\$150,000 cap proposed by a LegCo member during the debate of the Sex Discrimination Ordinance because anti-discrimination legislation is "a new area of law" and that Home Affairs Branch said that the Administration "appreciate the views of those LegCo Members who voted for the amendments that it would be prudent to impose a limit on the maximum amount of damages".

Ms Loh remains disappointed with the response. "The Administration has once again refused to explain its own stance on the matter. If one needs to be prudent on issue of employment related discrimination and sexual harassment because these are new areas of law, then for the Administration to be consistent, it should have included such an amendment in the Disability Discrimination Ordinance to limit damages for those who discriminate against disable persons; or for that matter, in many other new areas of law, such as the environment", she said.

"My concern is that the Administration has a particularly negative view of women, believing that women could abuse the law to obtain an advantage, otherwise, there is no good reason for limiting damages in sex discrimination", Ms Loh added.

Ms Loh and fellow legislator Emily Lau Wai-hing will be moving an amendment bill to the Sex Discrimination Ordinance in the New Year to add reinstatement and remove the cap on damages to it.

For Enquiries: Christine Loh 2537-2485/72239508 or Adam Mayes 2521-6820
18 December 1995

1596



For discussion

Paper for LegCo Manpower Panel
Age Discrimination in Employment

PURPOSE

The purpose of this paper is to inform Members of progress so far in the Administration's study on age discrimination in employment. It follows on from the paper presented to Members at the last Manpower Panel meeting on 20 November 1995. It also serves to answer the three points made in the paper presented by the Movement Against Discrimination on Age Discrimination, and the points raised by Dr the Hon TSE Wing-ling.

BACKGROUND

2. In the debate at the end of the last legislative session on Ms. Anna Wu's "Equal Opportunities (Family Responsibility, Sexuality and Age) Bill" the Administration agreed to conduct studies in respect of age, sexual preference and family status. The study would include an assessment of the problems as well as thorough public consultation on the measures that would be needed to tackle the problems that were identified. The public consultation part of the exercise would cover the extent of the problem in relation to discrimination on the grounds of age, sexual preference and family status, as well as possible measures to

deal with them. The need for legislation would be one of the options for consideration.

3. Public perception is that the problem of age discrimination exists predominantly in the field of employment. The current study concentrates therefore on age discrimination in employment. That is not to say however that the Administration is unaware of the possibility that there may be age discrimination in other areas. During the public consultation exercise on this subject, the community will be invited to comment on any other aspects of age discrimination about which they are concerned. The Administration will then consider how to deal with any issues that are identified.

WORKING GROUP ON AGE DISCRIMINATION IN EMPLOYMENT

4. A Working Group on Age Discrimination in Employment (the working group) was set up under the chairmanship of the Deputy Secretary for Education and Manpower (1), with representatives from Education and Manpower Branch, Financial Services Branch, Home Affairs Branch, Census and Statistics Department and Labour Department. The terms of reference of the working group are:

“In so far as employment matters are concerned,

- (a) to ascertain the extent to which age discrimination is a problem in HK; and

- (b) to consider what Government measures, if any, should be adopted to tackle the "problem" of age discrimination.

5 Progress on the issues considered by the working group is discussed in paragraphs 6 to 12 below.

WORKING GROUP ISSUES

- (a) Statistics

6. The working group examined the statistics for unemployment and underemployment for 1994 and the first two quarters of 1995 and noted that:

- (i) the pattern of unemployment and underemployment rates by age were similar in all the quarters;
- (ii) by referring to the tables on unemployment rates by age and previous industry, there was no evidence to support any discrimination against more elderly persons. The unemployment rates were generally higher in the lowest age group, with the exception of the manufacturing industry which showed different results in some of the quarters under consideration;
- (iii) the overall unemployment rates in the four quarters of 1994 were broadly similar, except for a rise in the third quarter when many graduates joined the labour market; and

(iv) there was no apparent age bias from comparing the statistics for 1994 and the first two quarters of 1995.

7 At the last meeting of the Manpower Panel on 20 November, some Members asked about the sex and age profile of the unemployed population. Relevant data in this respect is attached at Annex A.

(b) Fact-finding survey

8. The working group will commission a fact finding survey to collect information on whether and if so how age discrimination exists in the major areas of employment, i.e. recruitment, dismissal, remuneration, promotion and training. A number of academics familiar with this kind of work have expressed interest in carrying out the proposed survey, and they have been invited to present their proposals to EMB. Once an academic is appointed, he will be invited to start work on the survey as soon as possible.

(c) Overseas legislative and administrative measures

9. The working group has examined available information on administrative and legislative provisions relating to age discrimination in the following jurisdictions:

- (i) Australia (New South Wales),
- (ii) Canada

- (iii) European Union
- (iv) New Zealand, and
- (v) USA

As a related exercise, we have sought information from Japan, Malaysia, the Republic of Korea and Singapore, as well as the European Union, as to whether any of these countries has been able to deal with the issue of age discrimination by non-legislative means. Earlier on we have received information from Japan on their "Law concerning Stabilization of Employment of Older Persons."

(d) Fact-finding visit

10. After studying the overseas legislation received so far, the Administration believes the provisions that are most relevant to the Hong Kong situation are those that have been adopted by Australia (New South Wales) and New Zealand. To find out how these provisions work in practice, and to have an opportunity to talk to the people responsible for their preparation and implementation, as well as to representatives of employers and employees, several members of the working group will visit Sydney, Auckland and Wellington towards the end of January 1996. Depending on the results of the working group's enquiries, additional visits may also be made to one or two countries where age discrimination in employment is dealt with by non-legislative means.

(e) Survey of advertised vacancies

11. The Commissioner for Labour carried out two surveys of newspaper job advertisements to find out what percentage of these mentioned age as a job requirement. The first survey was carried out in July, and 83% of the 20,810 job vacancies examined had no age requirement. When the second survey was carried out in October, the figure had increased to 86.3% of the 25,986 surveyed vacancies.

12. Some Members have expressed doubts about the reliability of the survey results. The Administration believes that the surveys are useful in that the findings provide an indication of the prevalence of age discrimination in open staff recruitment through the medium of the local news media. We intend to conduct a series of such surveys to see if there is a discernible trend. While the surveys are accurate in the information they set out to collect, they should not be construed or projected as giving a general picture of the extent to which age discrimination exists in the employment market. The fact-finding survey mentioned earlier is a more appropriate means of obtaining such information.

OTHER ACTIVITIES

13. We continue in our efforts to encourage employers to adopt non-restrictive recruitment practices. We have already made appeals to several companies which are perceived to be practising age discrimination, and we shall continue with our endeavours in this respect.

CIVIL SERVICE POLICY ON AGE DISCRIMINATION

14. The paper prepared by the Movement Against Discrimination on Age Discrimination says that Government should take the lead to exclude age requirements from job advertisements. This is indeed what we have done. Back in August 1994 all government departments were asked to remove all age requirements for appointment purposes, and in particular to delete references to age requirements from job advertisements. Age can only be included as an appointment requirement in very exceptional circumstances, and with very strong justifications on the grounds of safety or health. Even then the age requirement will be reviewed regularly to see if it can be removed. Normally only general attributes, e.g. degree of physical fitness, mature personality, should be stipulated in job advertisements. In compliance with this policy of non-discrimination, virtually all civil service grades at present do not specify age in their recruitment advertisements.

15. The particular advertisement referred to in the paper has been criticized as age discriminatory. It was in fact broadcast for recruitment of D.J. trainees for Radio 2, an RTHK channel for youngsters. Based on practical and operational considerations, it was believed that people in the age range from 18 to 30 would be more suitable for a channel for young people. Nevertheless, after the matter was brought to their attention, the RTHK have publicly accepted the criticism and acted swiftly to remedy the situation by dropping the age requirement in the recruitment trailers concerned.

THE WAY AHEAD

16. Once the survey has been carried out, and the fact-finding visits completed, we would expect to be able to consult the public on this subject late in March or in April 1996. The consultation paper will deal with, and seek views on possible ways of solving the issue of age discrimination. The Administration is committed to dealing with the issue and does not exclude the option of legislation. Bearing in mind the results of the survey, information received from overseas, and public opinion, we shall make a report to the Legislative Council before the end of the second quarter of 1996 on the most appropriate way to proceed.

Education and Manpower Branch

Government Secretariat

December 1995

c:\francis\legcolage.doc

Unemployment by Age and by Sex

AGE GROUP	Q1 1994		Q2 1994		Q3 1994		Q4 1994		Q1 1995		Q2 1995	
	No. ('000)	Rate (%)	No. ('000)	Rate (%)	No. ('000)	Rate (%)	No. ('000)	Rate (%)	No. ('000)	Rate (%)	No. ('000)	Rate (%)
15-19	6.3	7.6	5.3	6.5	8.3	9.8	9.1	9.8	6.9	9.1	7.4	9.5
20-29	19.8	2.4	17.9	2.1	28.7	3.4	18.7	2.2	27.4	3.3	30.0	3.6
30-39	12.6	1.3	11.6	1.2	15.4	1.6	12.7	1.3	19.6	2.0	21.7	2.1
40-49	10.9	1.8	8.2	1.3	8.1	1.3	8.7	1.3	14.8	2.3	20.1	2.9
50-59	6.2	2.0	4.1	1.3	5.4	1.8	5.8	1.9	8.8	2.9	9.6	3.1
60 or above	1.2	0.9	1.0	0.7	1.6	1.2	1.5	1.1	1.3	1.0	1.9	1.4
Overall	56.9	1.9	47.9	1.6	67.4	2.3	56.5	1.9	78.8	2.6	90.6	2.9
SEX												
Male	39.4	2.1	32	1.7	42.9	2.3	39.5	2.1	53.6	2.9	61.2	3.2
Female	17.5	1.6	15.9	1.4	24.5	2.2	17	1.5	25.2	2.2	29.5	2.5
Overall	56.9	1.9	47.9	1.6	67.4	2.3	56.5	1.9	78.8	2.6	90.6	2.9

Ref FP/P/18
Tel 2869 9246
Date 21 December 1995
From Chief Assistant Secretary (Panel) 3
Legislative Council Secretariat
To Hon HO Chun-yan (Chairman)
Hon LO Suk-ching (Deputy Chairman)
Hon Allen LEE Peng-fei, CBE, JP
Hon LAU Wong-fat, OBE, JP
Hon Emily LAU Wai-hing
Hon LEE Wing-tat
Hon James TO Kun-sun
Hon Zachary WONG Wai-yin
Hon Christine LOH Kung-wai
Hon LEE Cheuk-yan
Hon CHEUNG Hon-chung
Hon CHOY Kan-pui, JP
Hon LAU Hon-chuen, 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

LegCo Panel on Home Affairs

Members may recall that at the meeting on 24 November 1995, the Administration was requested to provide a copy of the questionnaire in respect of the opinion survey on sexuality.

2. A copy of the questionnaire in both English and Chinese has been received and is enclosed for Members' retention.

3. The Administration has advised that pending the release of the consultative documents, the questionnaire should be restricted for Members' reference only.

(Miss Polly YEUNG)
Chief Assistant Secretary (Panels) 3

Encl

檔 號：FP P'18
電 話：2869 9246
日 期：一九九五年十二月二十一號
發文者：立法局秘書處
 總主任(事務委員會)(三)
受文者：何俊仁議員(主席)
 羅叔清議員(副主席)
 李鵬飛議員
 劉皇發議員
 劉慧卿議員
 李永達議員
 涂謹申議員
 黃偉賢議員
 陸恭蕙議員
 李卓人議員
 張漢忠議員
 蔡根培議員
 劉漢銓議員
 羅致光議員
 顏錦全議員
 謝永齡議員
 黃錢其濂議員

立法局民政事務委員會

議員諒會記得，在一九九五年十一月二十四日舉行的會議上，議員要求政府當局提供性傾向歧視調查的問卷。

2. 秘書處已收到有關問卷的中英文本，現謹隨附於後，供議員備悉。
3. 政府當局表示，在有關諮詢文件公布前，該問卷應只限議員閱覽。

總主任(事務委員會)(三)楊少紅

連附件

SURVEY RESEARCH HONGKONG LTD

Tel. No. 2880-3388 (DAY TIME)
2880-3393 (NIGHT TIME)

Name of Respondent: _____

Tel no.: _____ Tel code: _____

Address: _____

Add. code: _____

Interviewer No.: _____

Date of interview: _____

Time started: _____

Time ended: _____

Study ID: (101-105)

(106-109)

Resp. No.: (110-111)

(110-111)

Card No.: (112-116)

Interviewer No.: (117-118)

(117-118)

Interview Length: (119-120)

(119-120)

No. of Queries: (121-124)

(121-124)

Reference No.:

50702B OPINION SURVEY ON SEXUAL ORIENTATION

INTRODUCTION

Good morning/evening. I'm _____, an interviewer from Survey Research Hongkong Ltd. We do surveys on a wide range of topics. Today we are conducting an opinion survey on behalf of the Hongkong Government. The interview will not be long. Thank you for your cooperation.

SCREENING

S1. Can you tell me how many family members in your household are aged between 15 and 64? By family members who are now living in your household, I mean people sharing the meals and sleeping _____ in the household for at least five nights a week. ()

S2. Can you tell me, how old these family members are and their relationship with you? (Start from the eldest.)

ALL THE RESPONDENTS, WHO AGED BETWEEN 15 AND 64 SHOULD BE INCLUDED IN THE LIST

ADD CODE: _____

1608

No.	List H/H Members between 15 and 64	Age	Last Digit of Address Code										
			1	2	3	4	5	6	7	8	9	0	
1.			1	1	1	1	1	1	1	1	1	1	1
2.			2	1	2	1	2	1	2	1	2	1	2
3.			2	3	1	2	3	1	2	3	1	2	3
4.			3	4	1	2	3	4	1	2	3	4	1
5.			5	1	2	3	4	5	1	2	3	4	5
6.			5	6	1	2	3	4	5	6	1	2	3
7.			3	4	5	6	7	1	2	3	4	5	6
8.			6	7	8	1	2	3	4	5	6	7	8
9.			8	9	1	2	3	4	5	6	7	8	9
10.			9	10	1	2	3	4	5	6	7	8	9

CHOOSE ONE RESPONDENT BY USING THE ADDRESS CODE AND ASK TO SPEAK TO THE
SELECTED RESPONDENT

MAIN QUESTIONNAIRE

Mr/Miss/Ms.

We are conducting an opinion survey on behalf of the Hong Kong Government. The survey aims to understand the public's views on different forms of sexual orientation (like heterosexuality, homosexuality or bisexuality). All the information provided will be treated in the strictest confidence. Questionnaires will be processed by computer and they will be destroyed once the data are processed. Thank you for your cooperation.

1. Have you heard about:

	Yes	No
Heterosexuality	1 ()	2
Homosexuality	1 ()	2
Bisexuality	1 ()	2

(According to our definitions, heterosexuality means sexually attracted to people of the opposite sex; homosexuality means sexually attracted to people of the same sex; and bisexuality means sexually attracted to both people of the opposite and the same sex.)

2. The following are the views some people have regarding homosexuality and bisexuality. Do you agree or disagree with their views? (You can choose any score between 0 to 10 to represent your views, with "0" meaning *Totally disagree* and "10" *Totally agree*)

- a. homosexuality/bisexuality are acceptable (X)
- b. only heterosexuality is normal..... (X)
- c. homosexuality/bisexuality are behaviour of personal choice (X)
- d. homosexual/bisexual behaviour affects other people (X)
- e. the behaviour of homosexuals/bisexuals are the same as ordinary people..... (X)
- f. homosexuality/bisexuality corrupts young people (X)

3. Please tell me whether you would mind or wouldn't mind:

If respondents answer 'Depends', interviewer please probe 'in what situation'

	Yes	No	Depends	Don't know
shaking hands with homosexuals/bisexuals..... _____ _____ () - ()	1 ()	2	3	4
seeing movie with them _____ _____ () - ()	1 ()	2	3	4
singing Karaoke with them _____ _____ () - ()	1 ()	2	3	4
dining out with them _____ _____ () - ()	1 ()	2	3	4
going swimming with them _____ _____ () - ()	1 ()	2	3	4

1611

Please tell me whether you would mind or wouldn't mind.

If respondents answer 'Depends', interviewer please probe 'in what situation'

	Yes	No	Depends	Don't know
subletting a room in your apartment to a homosexual/bisexual..... () - ()	1()	2	3	4
letting your apartment to a homosexual/bisexual..... () - ()	1()	2	3	4
staying in a hotel which would also accommodate guests who are homosexual/bisexual..... () - ()	1()	2	3	4
employing a homosexual/bisexual as a domestic helper..... () - ()	1()	2	3	4
being a member of a club which would not refuse homosexuals/bisexuals as members of the club..... () - ()	1()	2	3	4

If respondents ask the meaning of 'Club', interviewer please tell them: "Club" means an association of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes. They may own their facilities or accommodations.

5 Please tell me whether you would mind or wouldn't mind:

If respondents answer 'Depends', interviewer please probe 'in what situation'

	Yes	No	Depends	Don't know
working in the same office with a homosexual/bisexual..... () - ()	1 ()	2	3	4
working in the same team with a homosexual/bisexual..... () - ()	1 ()	2	3	4
sharing the tenancy of an apartment with a homosexual/bisexual..... () - ()	1 ()	2	3	4
being in the same class with a homosexual/bisexual at school..... () - ()	1 ()	2	3	4

6. Will you accept or not the following situations? You can choose any score between 0 to 10 to represent your views, with "0" meaning *Totally unacceptable* while "10" meaning *Totally acceptable*.

- a homosexual/bisexual works as a teacher in primary/secondary school..... (X)
- a homosexual/bisexual works as a lecturer in tertiary education institute..... (X)
- a homosexual/bisexual occupies an important position in public service..... (X)
- a lesbian adopts a child..... (X)
- a gay adopts a child..... (X)
- lesbian makes use of reproductive technology..... (X)
- gay makes use of reproductive technology..... (X)
- two lesbians get married..... (X)
- two gays get married..... (X)

If respondents ask the meaning of "reproductive technology", interviewer please tell them: "reproductive technology" means any medical treatment or scientific intervention directed at assisting human reproduction.

7a. If there exists somebody discriminating homosexuals or bisexuals, do you think the following measures are effective or not in lessening the discrimination on the ground of sexuality? You can choose any score between 0 to 10 to represent your views, with "0" meaning *Very ineffective* and "10" meaning *Very effective*

- a. strengthen the school curriculum of civic education in this respect..... () ()
- b. enhance public's knowledge of the different kinds of sexual orientation () ()
- c. the government sets up a responsible department to handle complains for people who are of different sexual orientations..... () ()
- d. the government sets up a responsible department to take into account the needs of people who are of different sexual orientations () ()
- e. introduce legislation to outlaw discrimination on the ground of sexual orientation () ()
- f. strengthen public's concept on equal opportunities for all () ()

7b. Are there any other measures you can think of?

() - ()

DEMOGRAPHICS

D1. Could you please tell me your age?

- 15-191()
- 20-242
- 25-293
- 30-344
- 35-395
- 40-446
- 45-497
- 50-548
- 55-599
- 60-640

D2. Could you please tell me your marital status?

- Single1()
- Married2
- Others (including divorced, separated etc.) 3

D3. Record sex

- Male1()
- Female.....2

D4. Have you had any formal education? If yes, up to what level?

- No formal education
(including private tuition).....1()
- Primary education2
- Lower secondary
(F1 to 3 or Middle 1 to 3)3
- Upper secondary
(F4 to 7 or Middle 4 to 6)4
- Post-secondary or above5
- Others (SPECIFY).....1()

What is your occupation/position?

OFFICE CODE

Occupation: _____

Position: _____

- Professional/managers1()
 - Services/clerical/sales2
 - Craft/unskilled workers3
 - Housewife4
 - Retired.....5
 - Student.....6
 - Unemployed..7
 - Unclassifiable/refusal8
 - Others (PLEASE SPECIFY)1()
-

What is your monthly income?

- HK\$3,999 and below1()
- HK\$4,000-HK\$5,9992
- HK\$6,000-HK\$7,9993
- HK\$8,000-HK\$9,9994
- HK\$10,000-HK\$14,9995
- HK\$15,000-HK\$19,9996
- HK\$20,000-HK\$29,9997
- HK\$30,000 and above8
- No income.....9

SURVEY RESEARCH HONGKONG LTD

(101-105)

TEL. NO. : 2880 3388 (DAY TIME)
2880 3393 (NIGHT TIME)

STUDY ID :

--	--	--	--	--

(106-109)

NAME OF RESPONDENT : _____

RESP. NO. :

--	--	--	--

TEL. NO. : _____ TEL CODE : _____

(110-111)

INTERVIEWER NO. : _____

CARD NO. :

--	--

DATE OF INTERVIEW : _____

(112-116)

TIME STARTED : _____

INTERVIEWER NO. :

--	--	--	--	--

(117-118)

TIME ENDED : _____

INTERVIEW LENGTH :

--	--

(119-120)

.NO. OF QUERIES :

--	--

(121-124)

REFERENCE NO. :

--	--	--	--

50702B OPINION SURVEY ON SEXUAL ORIENTATION

請問呢啲電話係唔係 : _____

INTRODUCTION

早晨/午安! 你好, 我叫 _____ 係香港市場研究社嘅訪問員, 我哋公司做好多唔同類型嘅市場研究, 今日我哋幫香港政府做緊一項民意調查。個訪問唔會阻你好耐, 多謝你嘅合作。

SCREENING

--	--

(125) (126)

S1. 請問府上有幾多位15歲至64歲嘅家庭成員呢？家庭成員嘅意思係一星期有5晚係嘍住嘅。

S2. 請你將的家庭成員由年紀最大嘅數起，講我知佢係你邊個同佢嘅年紀。

如被訪者亦為15歲至64歲的居民。
此被訪者亦應列在表上

ADD. CODE : _____

NO.	LIST H/H MEMBERS AGED 15 AND 64	AGE	LAST DIGIT OF ADDRESS CODE										
			1	2	3	4	5	6	7	8	9	0	
1			1	1	1	1	1	1	1	1	1	1	1
2			2	1	2	1	2	1	2	1	2	1	2
3			2	3	1	2	3	1	2	3	1	2	3
4			3	4	1	2	3	4	1	2	3	4	1
5			5	1	2	3	4	5	1	2	3	4	5
6			5	6	1	2	3	4	5	6	1	2	3
7			3	4	5	6	7	1	2	3	4	5	6
8			6	7	8	1	2	3	4	5	6	7	8
9			8	9	1	2	3	4	5	6	7	8	9
10			9	10	1	2	3	4	5	6	7	8	9

從表中揀出受訪者要求同佢傾吓

MAIN QUESTIONNAIRE

先生／小姐／女士：

我而家係幫緊香港政府做一項民意調查，目的係想了解市民對不同性傾向（包括：異性戀、同性戀同雙性戀）嘅睇法。你俾我哋嘅答案係會絕對保密，問卷經電腦處理後，就會即刻被毀掉，請放心。

Q.1 請問你有冇聽過 ...

	有	冇
異性戀	1 (127)	2
同性戀	1 (128)	2
雙性戀	1 (129)	2

(根據我哋嘅解釋：異性戀係指鍾意異性，同性戀係指鍾意同性別嘅人，而雙性戀係指對同性同異性都咁鍾意)

Q.2 以下係一啲人對同性戀和雙性戀嘅睇法。你對佢哋嘅睇法同意抑或唔同意呢？你可以用0至10分裏面揀任何一個分數，0分表示「完全唔同意」，而10分表示「完全同意」。

- 同性戀／雙性戀係可以接受 (130) (131)
- 祇有異性戀至正常 (132) (133)
- 同性戀／雙性戀嘅行為係個人嘅選擇 (134) (135)
- 同性戀／雙性戀嘅行為會影響其他人 (136) (137)
- 同性戀／雙性戀者行為舉動同普通人一樣 (138) (139)
- 同性戀／雙性戀會敗壞年青人 (140) (141)

P.3

Q.3 請你話俾我知，你介意抑或唔介意同一個同性戀／雙性戀者 ...

如被訪者答“視乎情況”，請追問視乎乜嘢情況

	介意	唔介意	視乎情況	不知道
握手	1(142)	2	3	4
_____ (143)-(152)				
一齊去睇戲	1(153)	2	3	4
_____ (154)-(163)				
一齊去唱卡拉OK	1(164)	2	3	4
_____ (165)-(174)				
一齊去食飯	1(225)	2	3	4
_____ (226)-(235)				
一齊去游水	1(236)	2	3	4
_____ (237)-(246)				

Q.4 請問你介意抑或唔介意 ...

如被訪者答“視乎情況”，請追問視乎乜嘢情況

skip 269-280

	介意	唔介意	視乎情況	不知道
將你屋企嘅一間房租俾同性戀/雙性戀者 . _____ (248)-(257)	1 (247)	2	3	4
租間屋俾同性戀/雙性戀者 _____ (259)-(268)	1 (258)	2	3	4
人住一間會租房俾同性戀/雙性戀者嘅酒店 _____ (36)-(35)	1 (35)	2	3	4
請一個同性戀/雙性戀者俾屋企做工人 ... _____ (337)-(346)	1 (336)	2	3	4
加入唔拒絕同性戀/雙性戀者做會員嘅會所 (CLUB) _____ (348)-(357)	1 (347)	2	3	4

191

如果被訪者唔明白會所的定義，訪問員請讀出會所嘅意思係指不少於30人嘅合法組織，佢哋可能從事社會體育運動、文化或政治等活動。佢哋可能有自己嘅會所，或有可能供應酒類飲品！

Q.5 請你話俾我知，你介意抑或唔介意 ...

如被訪者答“視乎情況”，請追問視乎乜嘢情況

p 369-380

	介意	唔介意	視乎情況	不知道
同一個同性戀／雙性戀者係同一寫字樓做嘢 _____ _____ (359)-(368)	1(358)	2	3	4
同一個同性戀／雙性戀者係埋同一組工作 . _____ _____ (426)-(435)	1(425)	2	3	4
同一個同性戀／雙性戀者一齊分租一間屋 . _____ _____ (437)-(446)	1(436)	2	3	4
同一個同性戀／雙性戀者係同一班讀書 ... _____ _____ (448)-(457)	1(447)	2	3	4

Q.6 你會唔會接受以下嘅情況呢？請你用0至10分俾分，0分表示「完全唔接受」，10分表示「完全接受」。

- | | | | |
|---------------------------|----------------------|----------------------|-------------|
| 同性戀／雙性戀者係中小學做教師 | <input type="text"/> | <input type="text"/> | (458) (459) |
| 同性戀／雙性戀者係專上學院或大學做講師 | <input type="text"/> | <input type="text"/> | (460) (461) |
| 同性戀／雙性戀者係公共事務擔任要職 | <input type="text"/> | <input type="text"/> | (462) (463) |
| 女同性戀者領養子女 | <input type="text"/> | <input type="text"/> | (464) (465) |
| 男同性戀者領養子女 | <input type="text"/> | <input type="text"/> | (466) (467) |
| 女同性戀者利用醫學技術去傳宗接代 | <input type="text"/> | <input type="text"/> | (468) (469) |
| 男同性戀者利用醫學技術去傳宗接代 | <input type="text"/> | <input type="text"/> | (470) (471) |
| 兩個女同性戀者結婚 | <input type="text"/> | <input type="text"/> | (472) (473) |
| 兩個男同性戀者結婚 | <input type="text"/> | <input type="text"/> | (474) (475) |

如被訪者問醫學技術的定義，訪問員請讀出「醫學技術係指種人工手段嘅醫療處理而成孕」

Skip 476-480

Q.7a 如果冇人歧視同性戀／雙性戀者，你認為以下辦法對減輕歧視有無效呢？你可以用0至10分裏面揀任何一個分數，0分表示「非常無效」，而10分表示「非常有效」。

- | | | | |
|------------------------------|----------------------|----------------------|-------------|
| 加強學校課程中係這方面嘅公民教育 | <input type="text"/> | <input type="text"/> | (525) (526) |
| 加強市民對不同類型嘅性心理嘅認識 | <input type="text"/> | <input type="text"/> | (527) (528) |
| 對有不同性傾向嘅人，政府設立一個專責部門去處理有關嘅投訴 | <input type="text"/> | <input type="text"/> | (529) (530) |
| 對有不同性傾向嘅人，政府設立一個專責部門去顧及佢哋嘅需求 | <input type="text"/> | <input type="text"/> | (531) (532) |
| 立例禁止歧視有不同性傾向嘅人 | <input type="text"/> | <input type="text"/> | (533) (534) |
| 加深市民對人人都有平等機會嘅意識 | <input type="text"/> | <input type="text"/> | (535) (536) |

Q.7b 請問你認為還有冇其他辦法呢？

_____ (537) - (538)

DEMOGRAPHICS

Q.D1 請問你今年幾多歲呢？

15 - 19	1 (557)
20 - 24	2
25 - 29	3
30 - 34	4
35 - 39	5
40 - 44	6
45 - 49	7
50 - 54	8
55 - 59	9
60 - 64	0

Q.D2 請問你依家嘅婚姻狀況係？

未婚	1 (558)
已婚	2
其他 (離婚, 分居等)	3

Q.D3 性別：

男	1 (559)
女	2

Q.D4 你讀書讀到邊個班級／程度
呢？

冇正式教育 (包括私人補習)	1 (560)
小學程度	2
初中 (中一至中三)	3
高中 (中四至中六／中七) ..	4
大專或以上	5
其他 (請註明)	1 (561)

OFFICE CODE

Q.D5 職業同職位係：

職業： _____

職位： _____

- PROFESSIONAL/MANAGERS 1 (562)
 - SERVICES/CLERICAL/SALES .. 2
 - CRAFT/UNSKILLED WORKERS .. 3
 - HOUSEWIFE 4
 - RETIRED 5
 - STUDENT 6
 - UNEMPLOYED 7
 - UNCLASSIFIABLE/REFUSAL ... 8
 - OTHERS (PLEASE SPECIFY) .. 1 (563)
-

Q.D6 你平均一個月嘅收入係？

- \$3,999或以下 1 (564)
- \$4,000 - \$5,999 2
- \$6,000 - \$7,999 3
- \$8,000 - \$9,999 4
- \$10,000 - \$14,999 5
- \$15,000 - \$19,999 6
- \$20,000 - \$29,999 7
- \$30,000或以上 8
- 無收入 9

❁ 多謝你嘅合作 ❁

27 December, 1995

Mr. Tony Y H Yen
Law Draftsman
Law Drafting Division
Legal Department
8th and 9th Floors, High Block,
Queensway Government Offices,
66 Queensway, Hong Kong.

Dear Mr. Yen,

I enclose the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, with explanatory memorandum attached, for your certification pursuant to Standing Order 39(1). The Bill reproduces, with several technical changes, the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill gazetted on 30 June 1995. It also incorporates many of the proposed Committee Stage Amendments. A Chinese language draft of the Bill will follow next week.

I have attempted to comply with Hong Kong drafting standards so far as I am aware and able. If any problem does arise in this respect, please let me know at your earliest convenience so that it can be rectified.

Should you have any queries, please contact my assistant, Mr. Eric Chow, at 2367-7632. Thank you very much.

Yours sincerely,

Lau Chin-shek

Encl.



*Office of Hon Elizabeth Wong CBE ISO JP
Legislative Councillor*

Tel 2537 2102 Fax 2537 2101 Pager 7901 0781 or Pager 7112 8632-9068

*Executive Adviser
Mr Michael C Luke
Office Assistant
Mr Ken Kwok Ka Wai
Outreach Social Convenor
Ms Angel Chan*

*Room 314
Central Government Offices
West Wing
11, Ice House Street, Hong Kong*

22 January, 1996

*Mr. T. Y. H. Yen
Law Draftsman
Attorney General's Chambers
Law Drafting Division
High Block
Queensway Government Offices
Hong Kong.*

Dear Mr. Yen,

Request for certification of the Equal Opportunities(Race)Bill

I attach the captioned Bill for your examination and certification pursuant to Standing Order 39(1A). Both the English and Chinese versions are attached, together with explanatory memoranda in each language.

Thank you for your assistance.

Yours sincerely,

Elizabeth Wong

立法局議員陸恭蕙辦事處
OFFICE OF CHRISTINE LOH . LEGISLATIVE COUNCILLOR

22nd January, 1996

Mr. Tony Y. H. Yen
Law Draftsman
Attorney General's Chambers
Law Drafting Division
High Block
Queensway Government Offices
Hong Kong

Dear Mr. Yen,

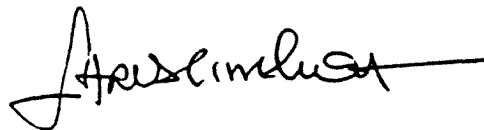
Request for certification of the
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

The captioned Bill and its explanatory memorandum are attached for your examination and certification pursuant to Standing Order 39(1A). I will forward the Chinese language version as soon as it is ready.

It may be useful to know that most of the Bill's clauses are based on the committee-stage amendments that the Hon. Dr. Leong Che-hung moved last June to the Sex Discrimination Bill and the Disability Discrimination Bill. Substantially new amendments are included, however, at clauses 4, 5, 6 and 27 (indirect discrimination); 14 and 32 (power to obtain information); 16 and 24 (proceedings in respect of equal pay); and 17 and 33 (binding undertakings).

Thank you for your assistance.

Yours sincerely,



Christine Loh Kung-wai

1628



Legislative Council Brief

GOVERNMENT'S PROGRAMME OF ACTION IN PROMOTING EQUAL OPPORTUNITIES

Introduction

This paper informs Members of the publication of two consultative documents on Discrimination on the Grounds of Family Status and Sexual Orientation (at the Annexes) for public consultation, the timetable for issuing the consultative document on age discrimination, and the Government's undertaking to conduct a study on the issue of racial discrimination, which will include a public consultation exercise.

BACKGROUND AND ARGUMENT

Background

2. In response to calls from the community to adopt further measures to tackle discrimination, we undertook in July 1995 to conduct studies on the issues of discrimination on the grounds of family status, sexual orientation, and age. Each study would include an assessment of the issues and thorough public consultation on possible measures to tackle the problems identified. We also undertook to report the findings of the studies to the Legislative Council within the 1995/96 legislative session.

Consultative Document on Discrimination on the ground of Family Status

3. The consultative document examines the issue of discrimination on the ground of family status in both overseas and local contexts. Chapter II of the document sets out overseas experience in tackling this form of discrimination. Our research indicated that few countries have enacted

legislation against discrimination on the ground of family status. They include Australia, New Zealand, and Canada. Other jurisdictions such as the United Kingdom and the United States have taken steps to accommodate the needs of those with family responsibilities mainly through an improved provision of support services.

4. Chapter III of the document outlines our discussions with interested groups to assess local circumstances. We have met with over 30 groups including employer and employee organisations, social service groups, religious groups, educational bodies, financial institutions, women's groups, and academics. Consultees have focused on problems faced by persons (usually women) who have to take care of young children and those faced by single parent families. These are the two groups which consultees considered as being most likely to be discriminated against due to their family status. According to them, such discrimination occurs predominantly in the area of employment and in the provision of accommodation.

5. Measures which the Government has adopted to improve support services for persons with a particular family responsibility or family status have been set out in Chapter III. These include a variety of welfare and support services, retraining schemes, and legislative initiatives (e.g. the Sex Discrimination Ordinance and the Parent and Child Ordinance).

Possible Measures to Enhance Equal Opportunities

6. We have dedicated two chapters of the consultative document to set out possible measures to enhance equal opportunities for persons of different family statuses. Possible legislative and non-legislative measures are described in Chapters IV and V respectively.

7. The legislative option describes the various aspects which possible legislation may need to address. These include the definition of “family status”, areas of activity or concern to be covered, and the enforcement mechanism of any such legislation. In soliciting public views on the scope of possible legislation, reference has been made to the Sex Discrimination Ordinance as well as the Equal Opportunities Bill of the 1994/95 legislative session.

8. Consultees have also identified a number of non-legislative measures, which are set out in Chapter V of the document. These include:

- Public Education (paragraphs 105-106): as a key tool bringing about changes in social values to eliminate discrimination, by promoting a better public understanding of different family statuses and addressing negative attitudes towards persons of a particular family status.
- Employment-related Incentives (paragraphs 107-110): flexible working hours, parental leave systems, and child care support by employers have been suggested by some consultees as ways to assist employees in balancing the demands of work and the family.
- Social Services (paragraphs 111-121): Consultees pointed out that improved provision of child care, elderly care and family services would help address the needs of those with family responsibilities. They nevertheless agreed that the provision of social support services should be treated separately from the issue of discrimination on the ground of family status.

Consultative Document on Discrimination on the ground of Sexual Orientation

9. The consultative document includes an examination of overseas experience in addressing discrimination on the ground of sexual orientation and an assessment of local circumstances drawing on discussions with interested parties and the results of a public opinion survey. Possible legislative and non-legislative measures to enhance equal opportunities between persons of different sexual orientations are also set out in the document.

10. To better understand local circumstances, a series of meetings were held with over 30 groups and interested parties. These include homosexual groups, employer and employee organisations, educational bodies, religious groups, financial institutions, and social service groups. Homosexual groups indicated that the major areas of discrimination are in employment and in the provision of accommodation and services. Other problems encountered by homosexuals, such as self-stigmatisation, concealment of sexual orientation, and public misconceptions about homosexuality are also highlighted in the document. While some groups advocated legislation to safeguard the rights of persons of different sexual orientations, others have expressed concerns on legislation which seeks to regulate social values. Issues raised during the discussions are set out in Chapter II of the document. Existing services available for persons of a different sexual orientation are also outlined in the chapter.

11. To ascertain public attitude towards persons of different sexual orientations, we also commissioned an opinion survey in October 1995. Chapter III of the consultative document summarises the major findings of the survey.

12. Chapter IV of the document provides an overview of experience overseas in addressing the issue of discrimination on the ground of sexual orientation. Only a few overseas jurisdictions including Canada and New Zealand have legislated against such discrimination. The nature of the legislation varies significantly from one country to another. Some legislation only covers discrimination in employment matters while others encompass a comprehensive range of activities such as education, provision of goods and services, housing and accommodation, and partnerships. Non-legislative measures that have been undertaken by some countries include fair employment policies, domestic-partner benefits, and special programmes to assist persons who have doubts about their sexual orientation.

Possible Measures to Enhance Equal Opportunities

13. Chapters V and VI of the consultative document describe possible legislative measures and non-legislative measures to promote equal opportunities for persons of different sexual orientations.

14. The legislative option is examined with reference to overseas experience, the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, and the Equal Opportunities Bill of the 1994/95 legislative session. Various aspects of possible legislation including: the definition of "sexual orientation", the areas of activities that could be covered, possible areas of concerns, and the enforcement mechanism are described.

15. Among the possible non-legislative measures outlined in Chapter VI of the document, public education and school education are cited by some interested groups as important measures to enhance acceptance of persons of different sexual orientations and to improve public awareness of the issues involved. Other non-legislative measures which were proposed by consultees include financial assistance to homosexual groups, provision of services for

persons of a different sexual orientation, training for service providers, and recognition of homosexual relationships by employers.

16. As any action to further equal opportunities for persons of different family statuses and those of different sexual orientations may have wide implications on the community, it is imperative that the public should express their views on the need for action and the appropriate measures to address the issues.

Study on Age Discrimination

17. The study on age discrimination has focused on the employment field as this is where the public predominantly perceive such discrimination to exist. The study involved an examination of unemployment statistics as well as overseas legislative and administrative measures in dealing with the issue. Included in the study is an overseas visit to find out more about the circumstances leading to the legislative approach and how the relevant legislation works in practice. In addition, a fact-finding survey will be conducted to ascertain whether and, if so, how age discrimination exists in the major areas of employment. A consultation paper will also be prepared to consult the public on relevant issues. The opportunity will be taken to invite public views on age discrimination in other areas. A report on the most appropriate way to proceed will be made to the Legislative Council before the end of June 1996.

Study on Racial Discrimination

18. After the completion of the three studies on discrimination on the grounds of family status, sexual orientation, and age, we will conduct a study on racial discrimination. The study on racial discrimination will follow a similar approach as the studies outlined above. It will include an assessment of the problem and thorough public consultation on the measures, including

legislative and non-legislative measures, to tackle the issues identified. We will also report to the Legislative Council on the findings of the study.

FINANCIAL AND STAFFING IMPLICATIONS

19. No additional financial and staffing resources are required for the studies on discrimination on the grounds of family status, sexual orientation, and age.

PUBLIC CONSULTATION

20. The consultative documents on discrimination on the grounds of family status and sexual orientation will be published for public consultation before the end of January 1996. Members of the public will be invited to express their views. Copies of the consultative documents will be available for distribution at District Offices. The consultation period will last for two months.

21. A public consultation paper concerning age discrimination in employment will be issued in April 1996 by the Education and Manpower Branch.

PUBLICITY

22. A press conference will be held on 24 January 1996 to announce the publication of the two consultative documents on discrimination on the grounds of family status and sexual orientation. The timetable for public consultation on age discrimination and our undertaking to study racial discrimination will also be announced. Briefings will be arranged for the relevant Legislative Council Panels.

ENQUIRIES

23. For enquiries on this brief, please contact Ms CHANG King-yiu, Principal Assistant Secretary for Home Affairs, at 2835 1373. Enquiries related to the study on age discrimination should be directed to Mr Tony Reynolds, Principal Assistant Secretary for Education and Manpower, at 2810 3036.

Home Affairs Branch

File Ref: HAB/CR/1/2/34 Pt.I

Public Consultation on Discrimination Starts Today

The Secretary for Home Affairs, Mr Michael Suen, urged members of the public to express their views on the two consultation documents on discrimination on the grounds of family status and sexual orientation released today (Wednesday).

Speaking at a press conference to launch a two-month public consultation on these two areas of discrimination, Mr Suen said the documents summarised the issues identified in the studies undertaken by the Home Affairs Branch (HAB), and also set out possible measures to address the issues concerned.

Calling on members of the public to actively participate in the discussions, Mr Suen pointed out that the possible measures outlined in the documents only serve as a basis to invite comments.

"We have no preconceived ideas on these measures and welcome other suggestions on these issues. The public response will guide us in mapping out the future course of action in these two areas where discrimination may exist," Mr Suen said.

He said each of the measures outlined carried with it particular implications which would have a direct effect on members of the community. "It is therefore imperative that the public should consider these issues thoroughly and make their views known."

All submissions received concerning the issues raised in the two consultative documents will be made available for public information.

"Findings of the studies will be reported to the Legislative Council after we have analysed all submissions from the public," he said.

On the format of the consultation papers, Mr Suen said both adopted a similar approach. Each document summarised HAB's research into overseas experience in handling the respective area of discrimination and carried an assessment of local circumstances through meetings with various non-government organisations (NGOs) and interested parties.

"We have met with over 30 groups, including women's groups, homosexual groups, employer and employee organisations, religious groups, social service groups, educational bodies, financial institutions and academics.

"In respect of the study on sexual orientation, an opinion survey has been conducted to gauge public attitude towards different forms of sexual orientation," he said.

Turning to the findings of the study on discrimination based on an individual's family status, Mr Suen said discussions with various groups indicated that persons, more often women, who were taking care of young children and those of single parent families were the two categories most likely to be discriminated against.

"Such discrimination is found to occur predominantly in the areas of employment and in the provision of accommodation," he said.

At present, a variety of welfare and support services, retraining schemes and legislative initiative, such as the Sex Discrimination Ordinance and the Parent and Child Ordinance, are available to offer assistance to persons concerned, Mr Suen noted.

Should the community feel that more should be done to enhance equal opportunities for persons of different family status, a number of possible legislative and non-legislative measures were listed in the document.

On the legislative option, Mr Suen invited members of the public to air their views particularly on the definition of "family status", areas of activity or concern to be covered, and the enforcement mechanism of any such legislation.

As for non-legislative measures, the following have been suggested by the interested groups in the course of their discussions with HAB:

- * Strengthening social services through improved provision of child care, care for the elderly and family services and through better co-ordination of these services to meet the needs of those with family responsibilities;
- * Introducing employment-related incentives, such as flexible working hours, parental leave systems and child care support, by employers to assist employees in balancing the demands of work and family;

- * Stepping up public education to promote a better understanding of different family status and to minimise negative attitudes towards persons of a particular family status.

Turning to sexual orientation, Mr Suen said divergent views had been expressed on the issue of discrimination in this area.

He said homosexual groups, in their discussions with the Branch, indicated that the major areas of discrimination were in employment and in the provision of accommodation and services.

"Related problems including self-stigmatisation, concealment of sexual orientation and public misconceptions about homosexuality are also set out in the document to enable a better understanding of the issues faced by homosexuals," he said.

Meanwhile, other groups have expressed reservations on accepting homosexuality as a normal form of sexual orientation.

They are concerned about the possible effects of the community's general acceptance of homosexuality on young people in particular.

Mr Suen pointed out that similar to the study on family status, the option to outlaw discrimination was examined with reference to overseas experience, and covered the issues to be considered in the definition of "sexual orientation", the areas of activity or concern to be addressed, and the enforcement mechanism.

As for non-legislative measures, the following have been suggested by the interested parties:

- * Strengthening public and school education to improve public awareness of different forms of sexual orientation and to instil in the public the necessary respect for the rights of a person of a different sexual orientation;
- * Enhancing counselling and support services for homosexuals to alleviate problems such as self-rejection and self-stigmatisation, and providing more training to service providers;

- * Encouraging employers to extend employees' benefits for married couples to same-sex partners so as to enhance equal treatment for persons of different sexual orientations.

Mr Suen said in addition to these two studies, the Education and Manpower Branch was conducting another one on age discrimination.

"After the completion of the three studies, the Government will carry out a study on racial discrimination," he said.

"This study will follow a similar approach as the studies on discrimination on the grounds of family status and sexual orientation.

Reiterating the Government's firm commitment to promoting equal opportunities for all, Mr Suen said given the complexity of the issues, a measured and prudent approach is required for Hong Kong's circumstances.

"This will minimise possible drawbacks of hasty action," he added.

Copies of the consultation papers are now available at District Offices. Members of the public are invited to submit their views in writing to the HAB on 31st floor, Southorn Centre, 130 Hennessy Road, Wanchai by March 31.

Note to Editors:

Copies of the consultation papers on discrimination on the grounds of family status and sexual orientation will be boxed at GIS.

Wednesday, January 24, 1996

NNNN

Equal Opportunities

**A study on Discrimination
on the Ground of
Sexual Orientation**



A Consultation Paper

Equal Opportunities:

**A Study on Discrimination on the
ground of Sexual Orientation**

A Consultative Paper

**EQUAL OPPORTUNITIES: A STUDY ON DISCRIMINATION ON
THE GROUND OF SEXUAL ORIENTATION
A CONSULTATIVE PAPER**

Chapter		Page(s)
I.	Introduction	1-3
II.	Local Circumstances	4-11
III.	Survey on Sexual Orientation	12-17
IV.	Overseas Experience	18-23
V.	Possible Measures to Enhance Equal Opportunities for Persons of Different Sexual Orientation: the Legislative Option	24-31
VI.	Possible Measures to Enhance Equal Opportunities for Persons of Different Sexual Orientation: the Non-legislative Option	32-37
VII.	Invitation of Public Comments	38
Appendix I.	Meeting with Non-governmental Organisations and Interested Parties - List of Organisations and Individuals	
Appendix II.	Cases on the Problems Encountered by Homosexuals	
Appendix III.	Report of the Survey on Sexual Orientation	

CHAPTER I

INTRODUCTION

With the development of a more open society, people nowadays feel less inhibited to discuss the various forms of sexual orientation¹ and the problems faced by persons who are homosexual. With increased public attention accorded to the protection of the rights of the individual, there have been calls for the elimination of discrimination on the ground of sexual orientation. This study concentrates on discrimination against homosexuals. It is however noted that some people who are homosexual are also bisexual and the problems they encounter are largely similar.

2. In the early days, understanding of homosexuality was confined to sexual activities between people of the same sex. Medical scientists later focused on the homosexual as an individual. Theories were developed that regarded homosexuality as an inherited disorder or a result of psychological disturbances. In the 1970s, a new concept emerged which looked upon homosexuality as a normal variation in sexual preference. Another school of thought regards homosexuality as a social product of heredity, environment, and personal choices.

3. Some scholars have developed a theoretical framework setting out the contemporary views regarding homosexuality. This consists of essentially four competing concepts, ranging from regarding homosexual acts as immoral and wrong to accepting same-sex acts and relationships as not materially different from the opposite sex ones.² These conceptions reflect the sharply conflicting and divided attitudes towards homosexuality which are found in our society today.

¹ The term "sexual orientation" is generally denoted to mean heterosexuality (sexually-inclined to the opposite sex), homosexuality (sexually-inclined to the same sex), and bisexuality (sexually-inclined to the same and opposite sexes).

² Developments in the Law - Sexual Orientation and the Law, Harvard Law Review, Vol. 102:1508. The four conceptions of homosexuality include:

- (a) The "sin" conception views homosexual acts as immoral and wrong and does not ascribe to the view of homosexuality as an intrinsic part of identity;
- (b) The "illness" conception sees homosexuality negatively as part of the affected individual's personality, albeit a potentially curable component;
- (c) The "neutral difference" conception embraces the concept of sexual orientation as an identity but views it merely as a difference that should not be a basis for discriminatory treatment; and
- (d) The "social construct" conception rejects categorising individuals by sexual orientation and views same-sex acts and relationships as not materially different from the opposite-sex ones.

4. In Hong Kong, public debate on the issue of homosexuality came to the surface in 1980 when the Law Reform Commission (LRC) examined laws governing homosexual conduct. In its report, the LRC recommended that the law should not prohibit sexual conduct in private between males over 21 years of age.³ This was based on the view that it should not be a function of the law to enforce moral judgement in areas where there is no need to protect others.⁴ A public consultation exercise was held in 1988 on the laws regulating homosexual acts. In 1990, the Legislative Council passed a motion in favour of removing criminal penalties relating to homosexual acts committed in private by consenting men who had reached the age of 21 and extending to men and boys the protection from sexual exploitation afforded by the Crimes Ordinance (Cap. 200) to women and girls. The Crimes (Amendment) Bill was enacted in July 1991 to give effect to these proposals.

5. The Equal Opportunities Bill (EOB), a Private Member's Bill introduced in the 1994-95 legislative session, revived public discussion on the issue of sexual orientation. The EOB contained provisions outlawing discrimination on the ground of "sexuality". This resulted in a public debate on the extent to which legal protection should be afforded to persons from discrimination due to their sexual orientation.

6. During the examination of the EOB, the Legislative Council Bills Committee received a number of submissions. Some groups advocated the introduction of equal opportunities legislation to safeguard the rights of sexual minorities. Others voiced concerns over controversial issues such as marriage between homosexuals and adoption of children by homosexual couples.

7. The divergent views expressed on homosexuality have highlighted the need for an in-depth study on the issue of sexual orientation and a thorough public debate to identify the problems and possible measures to address them. In order to foster equal opportunities for all individuals in society, it is necessary to enhance public awareness and obtain broad community support. The Government is committed to the principle of equal opportunities for all and is determined to eliminate discrimination. However, it is important to recognise that discrimination is closely associated with personal beliefs and social values. In this respect, the Government believes that a step-by-step approach is the best way of tackling the problem of discrimination. Accordingly, the Sex Discrimination Ordinance and the Disability Discrimination Ordinance were enacted in July and August 1995 respectively.

³ The criminal provisions did not apply to women.

⁴ The LRC Report, "Report on Laws Governing Homosexual Conduct", paragraph 12.11.

Together these prohibit discrimination on the grounds of sex, marital status, pregnancy and disability.

8. As part of our step-by-step approach and in response to calls from the community, the Government undertook in July 1995 to conduct studies on discrimination based on age, sexual orientation, and family status. Each study includes a public consultation exercise on possible measures to tackle the problems identified. The Government also undertook to report the findings of each study to the Legislative Council within the 1995-96 legislative session.

9. This consultation document covers discrimination on the ground of sexual orientation. As part of our study, we have researched into overseas experience in handling this type of discrimination. Problems encountered by homosexuals and bisexuals, and public views on the issues concerning sexual orientation in the local context have also been examined through a series of discussions with a variety of interested organisations and individuals. In addition, a survey on public attitudes on this subject was conducted in October 1995. The document summarises the outcome of the discussions and survey. It also sets out possible legislative and non-legislative measures to address the issues identified.

10. To assist us in deciding the appropriate measures for addressing discrimination on the ground of sexual orientation, members of the public are invited to express their views on the issues raised in this document. Details on doing this are set out in Chapter VII of this document.

CHAPTER II

LOCAL CIRCUMSTANCES

11. To gain a better understanding of the local situation concerning the issue of sexual orientation, a series of discussions with various organisations and interested parties were held in October and November 1995. These consultees included homosexual groups, religious and social service organisations, employer and employee organisations, educational establishments, human resources organisations, representatives of financial institutions, women's groups and academics. The organisations and individuals who offered their views are set out in Appendix I. In addition, submissions to the Legislative Council Bills Committee that studied the Equal Opportunities Bill (EOB) and the Sex Discrimination Bill (SDB) in the 1994-95 legislative session concerning discrimination on the ground of sexuality have also been reviewed. A summary of the local situation is outlined in the following paragraphs.

Problems Encountered by Homosexuals in Hong Kong

12. There is no reliable data on the size of the homosexual community in Hong Kong. Overseas studies⁵ and small-scale local studies cited by academics, however, suggest that the proportion of homosexuals ranges from 6% to 10% of the total population.

13. In the course of our discussions with representatives of homosexual groups and counsellors who render direct services to homosexuals, we have identified a number of problems encountered by homosexuals in Hong Kong. These problems can be grouped into 4 categories which include -

- (a) self-rejection and self-stigmatisation;
- (b) concealment of sexual orientation;
- (c) public misconceptions about homosexuality; and
- (d) discrimination in certain areas of activities.

14. In addition, representatives of local homosexual groups have described a number of cases that illustrate the problems encountered by homosexuals in the local context. A synopsis of some of these cases is attached at Appendix II.

⁵ "Recognising Sexual Orientation is fair and not Costly", *HRMagazine*, June 1993.

Self-rejection and Self-stigmatisation

15. Experienced professional counsellors who provide direct services for homosexuals indicated that many homosexuals seek counselling assistance for identity problems. Many have doubts about their sexual orientation and reject their homosexual inclination.

16. Counsellors mentioned that the lack of role models in developing and maintaining homosexual relationships in Hong Kong makes it difficult for homosexuals to establish a clear perspective of their sexuality. They consider that a low level of self-acceptance, together with biased information regarding homosexuality in the local media and traditional moral values in Chinese culture, have resulted in self-rejection or even self-stigmatisation among homosexuals. This state of mind deters them from seeking assistance and leads to a higher level of psychological stress. Counsellors also said that they have come across a number of cases in which homosexuals have indicated an intention to commit suicide as a result of self-rejection.

Concealment of Sexual Orientation

17. Academics and counsellors who have expertise in the issue of sexual orientation share the view that one of the greatest problems faced by homosexuals and bisexuals is the process of "coming out".

18. In the context of homosexuality, the term "coming out" is often used to mean disclosing one's sexual orientation to other people. It is still uncommon in Hong Kong for homosexuals and bisexuals to disclose their sexual orientation to others. Consultees indicated that the fear of social stigma, family rejection, ridicule, blackmail and other related problems associated with being known to be a homosexual or bisexual has inhibited them from exposing their sexual orientation, even to friends and family.

19. Furthermore, representatives of homosexual groups stated that there is a non-accommodating social environment for forms of sexual orientation other than heterosexuality and that this imposes great pressure on sexual minorities. They indicated that pressure is derived from various sources, such as family, peers, colleagues, and in the context of religion. In addition, they consider that the lack of public understanding and acceptance of homosexuals has created an even stronger resistance within themselves to disclose their sexual orientation.

Public Misconceptions about Homosexuality

20. Some consultees take the view that homosexual relationships are generally portrayed negatively as abnormal, unacceptable, morally deficient and inferior to heterosexual relationships. Representatives of homosexual groups said that many of these stereotypes are based on public misconceptions about homosexuality.

Homosexuality and Promiscuity

21. Representatives of homosexual groups stated that without supporting evidence, homosexuals and homosexual behaviour are more associated with promiscuity by the community than heterosexuality. They also claimed that the social environment is generally hostile to homosexuals and that this allows little room for the development of stable long-term relationships.

22. Representatives of homosexual groups also asserted that some people have a misconception that all homosexual individuals have a tendency to molest and seduce young people. They consider this view to be entirely unfounded and discriminatory against homosexuals.

Homosexuality and AIDS

23. Some consultees stated that another fundamental public misconception is the equation of homosexuality with the spreading of the Acquired Immune Deficiency Syndrome (AIDS). Since the condition was first recognised as a global health problem, there has been world-wide concern about the means by which it is passed from one person to another. Any group that is thought to have accelerated the spreading of AIDS is expected to be shunned by the public. However, it is now clear that there is no special linkage between homosexuality and AIDS. The transmission of AIDS occurs through unsafe sexual behaviour whether of a heterosexual or homosexual nature.⁶

Stereotypical Images Conveyed by the Mass Media

24. Representatives of homosexual groups took the view that the mass media has a significant adverse effect on the public's perception of

⁶ Cumulative HIV/AIDS Statistics in Hong Kong published by the AIDS Unit of the Department of Health show that, as at 30 September 1995, 161 confirmed AIDS cases were reported in Hong Kong. Out of these, 139 cases were infected through sexual contacts in which 60 are homosexuals, 18 are bisexuals and 61 are heterosexuals. In respect of HIV infection, 475 out of the 602 reported cases are contracted through sexual contacts. Most of these (267) are heterosexuals while 167 and 41 are homosexuals and bisexuals respectively. Other transmission routes include intravenous transfusion among drug users, blood transfusion and perinatal transfusion.

homosexuality by conveying stereotypical images about homosexuals and homosexuality. They claimed that the mass media tends to focus on sensational issues and unorthodox behaviour such as "gay bashing" and sexual acts in public lavatories, instead of seeking to provide factual information and neutral analysis for the public. Such representatives consider that biased reports which vilify homosexuality will continue to aggravate the problem of public misconceptions about homosexuals, especially when society has little other information and knowledge about the issue.

25. Self-stigmatisation, concealment of sexual orientation, and public misconceptions are all inter-related. According to the representatives of homosexual groups, the problem of self-stigmatisation reinforces the decision to conceal one's sexual identity. This lack of openness may intensify public misconceptions about homosexuality and bisexuality, resulting in stereotyping, which in turn leads to low self-confidence and self-acceptance among homosexuals. Such representatives consider that this vicious cycle hinders a positive development in public understanding of different sexual orientations.

Discrimination in Certain Areas of Activity

26. Representatives of homosexual groups said that homosexuals in Hong Kong suffer from discrimination mainly in the area of employment, in the provision of accommodation, and in the provision of services. They said that as most homosexuals in Hong Kong are reluctant to reveal their sexual orientation, it is difficult to identify whether there are other areas of activity where homosexuals may have experienced discriminatory treatment.

Employment

27. In the area of employment, representatives of homosexual groups claimed that discrimination occurs in job promotions and dismissals. Unlike other grounds of discrimination such as gender and disability, one's sexual orientation is not normally apparent during the process of job application. Such representatives said that since most homosexuals conceal their sexual orientation when applying for jobs, discrimination against homosexual does not surface in the recruitment process.

28. Once a person has worked in an establishment for some time, colleagues and employers may have a chance to learn about his/her sexual orientation. Representatives of homosexual groups stated that once this occurred, homosexuals would find themselves subject to dismissal or being passed over for promotion. They said that in most cases, employers would use reasons other than an employee's sexual orientation as an excuse to dismiss the employee concerned, or to withhold opportunities for promotion.

29. According to these representatives, homosexuals are subject to harassment in the area of employment. They say that colleagues at work often create an unfriendly working environment for the homosexual co-workers. As a result, some homosexuals resign from their jobs "voluntarily".

Accommodation and Provision of Services

30. Representatives of homosexual groups also stated that they face problems in renting accommodation and in the provision of services if they disclose their sexual identity.

31. In the provision of accommodation, they said that potential landlords often refuse to let premises to homosexual couples. In terms of the provision of services, one homosexual group said that it had experienced difficulties in securing premises for organising activities. One case quoted by representatives concerned a venue for gatherings by homosexuals. Upon a change of ownership of the premises, the new owner refused to continue letting the venue to the group.

Views Against Homosexuality

32. The above discussion covers the problems encountered by homosexuals in Hong Kong as presented by representatives of homosexual groups. Other organisations have expressed views against homosexuality. These are set out in the following paragraphs.

Issue of Morality

33. Representatives of some religious organisations and educational bodies take the view that homosexuality is immoral. Although they agreed that the homosexual as an individual should be respected, they consider that homosexual behaviour is sinful and conflicts with the doctrines of the major religions.

34. Representatives of some educational bodies asserted that homosexuality is immoral as it goes against "the natural law" of sexual behaviour between the opposite sexes. They regard same-sex sexual behaviour as abnormal. Such representatives also expressed concern that the promiscuous behaviour of homosexuals may have an adverse effect on the overall moral standards of society.

Traditional Values and the Family

35. According to some consultees, the traditional concept of the family is characterised by a sustained relationship between two persons of the opposite sex. They said that homosexual activities distort social values and threaten the institution of marriage and traditional family life.

36. Representatives of educational bodies and some religious organisations claimed that a same-sex couple cannot fulfil the roles necessary to create a "mother-father-child" rearing unit, i.e. that this can only be done by a heterosexual couple. Such representatives further claimed that child development is likely to be hindered if the child is brought up in a household in which either a male taking the role of a father or a female taking the role of a mother is absent.

Nature vs. Nurture

37. Although there has been an increasing amount of research on the subject of homosexuality, no conclusive theory has been formulated on what determines that a person will have a homosexual inclination. Some academics claim that genetic or biological factors may play a part; others assert that environmental factors play a role in the development of homosexual and bisexual tendencies.

38. Some opponents of homosexual behaviour argue that whether a person is heterosexually-oriented or homosexually-oriented is a matter of choice. They are of the view that sexual orientation is acquired rather than in-born. Based on this view, some consultees said that people with homosexual tendencies should be given assistance and rehabilitation treatment in order to help them "reform" themselves.

39. Representatives of educational bodies expressed concerns over the effect of homosexuality on young people. They consider that young people are particularly susceptible to external influence. They took the view that it would be dangerous to expose young people in their formative years to the concept of homosexuality as there is a chance that young people's sexual orientation will be unduly influenced. Such representatives indicated that they would not employ homosexuals as teachers since teachers are role models who have a significant effect on the development of attitudes and values among students.

Existing Services For Homosexuals

40. In the course of our discussions with homosexual groups, professional counsellors and academics, a range of self-help services have been identified as being available to homosexuals. Existing services provided for the homosexuals are set out in the following paragraphs.

41. One homosexual group, **HORIZONS**, provides a phone line counselling service for individuals who have doubts about their sexual orientation. A number of counselling and support groups have been set up under the organisation to provide a secure and friendly environment for participants to share and learn from various issues such as the experience of "coming out", forming a relationship with the same sex, and maintaining a long-term same-sex relationship. Through the provision of such support systems, they aim to strengthen the self-identity and confidence of homosexuals.

42. **Satsanga** is another non-profit making organisation dedicated to serving homosexuals. It offers professional counselling on issues such as sexual identity, relationships, family and job stress. It also organises courses to enhance the self awareness of homosexuals, and promote healthy, intimate relationships among homosexual couples.

43. Other groups such as the **Ten Percent Club** and **Isvara** have joined together to hold regular meetings to discuss issues of common concern among persons of different sexual orientations. **The Family Planning Association of Hong Kong** also provides counselling to people of different sexual orientations.

44. **AIDS Concern** provides information and emotional practical support to people affected by HIV/AIDS. Representatives of AIDS Concern stated that homosexuals and bisexuals are one of three major groups of clients served by the organisation. The group offers assistance to people suffering from HIV/AIDS through a variety of services. These include a phone line service which answers enquiries concerning HIV and provides information to assist people in making informed choices, organising outreach preventive education programmes, and providing a "Buddy Service" in which a carer is paired up with an HIV positive person to offer practical help to their friends and family. **St John's Cathedral** also provides services for those suffering from HIV/AIDS, including homosexuals and bisexuals.

45. A comprehensive range of preventive and curative health services, medical treatment, rehabilitation services, and support and welfare services are provided by the **Government** through various departments such as

the Department of Health and the Social Welfare Department. All these services are made accessible to the general public, no matter whether they are heterosexual, homosexual, or bisexual. No distinction is made on the basis of a person's sexual orientation regarding the provision of such services. In addition, the AIDS Unit of the Department of Health works closely with many of the homosexual groups through the joint production of safer sex and AIDS education materials and by providing a referral system for those at risk or infected with HIV.

CHAPTER III

SURVEY ON SEXUAL ORIENTATION

46. In spite of the public debate concerning the decriminalisation of homosexual acts between consenting male adults in the 1980s, public attitudes towards issues concerned with sexual orientation have never been systematically surveyed. To obtain a clearer perspective of the extent of the problem of discrimination on the ground of sexual orientation, the Government commissioned an independent opinion survey, "The Survey on Sexual Orientation". The survey was conducted by Survey Research Hongkong Ltd. in October 1995.

The Survey

47. The objectives of the opinion survey were to gauge public perception of different forms of sexual orientation, to study people's willingness to accept persons of a different sexual orientation in different areas of activities, and to assess public perception of the effectiveness of various possible measures to lessen discrimination on the ground of sexual orientation.

48. To achieve these objectives, the survey investigated a number of key areas. These include -

- public awareness of different sexual orientations;
- public acceptance of homosexual/bisexual behaviour;
- public acceptance of homosexuals/bisexuals in different spheres of social interaction;
- public acceptance of homosexuals/bisexuals in teaching posts and public affairs;
- public acceptance of homosexuals/bisexuals in forming a family unit; and
- public perception of the effectiveness of possible anti-discrimination measures.

49. A total of 1535 telephone interviews were successfully conducted for the purpose of the survey. All respondents were randomly selected. The findings have been weighted to represent the total population. Major findings of the survey are outlined in the following paragraphs. The report of the survey, together with the survey questionnaire, are attached at **Appendix III**.

Profile of the Respondents

50. The ratio of male to female respondents was 51:49. All respondents were aged between 15 and 64. In terms of educational attainment,

a majority (63%) have attained secondary education. An analysis by occupation shows that 20% of the respondents were professional/managers; 23% were engaged in the services/sales/clerical sector; 22% were craft/unskilled workers; 19% were homemakers and 11% were students. The remaining 5% were either retired or unemployed at the time of the survey.

Public Acceptance of Homosexual/Bisexual Behaviour

51. The survey found that public acceptance of homosexuality and bisexuality is on the low side. The acceptance level for homosexuality/bisexuality scored 3.4 on a rating scale of 0 (totally unacceptable) to 10 (totally acceptable). Public acceptance of the view that heterosexuality is the only "normal" form of sexual orientation was found to be much higher. This is reflected by a significantly higher mean score of 8.7 for the statement "only heterosexuality is normal".

52. On the other hand, the survey showed that the public has an ambivalent attitude towards issues such as whether homosexual/bisexual behaviour affects others, whether the behaviour of homosexuals/bisexuals is the same as ordinary people, and whether homosexuality/bisexuality corrupts young people. Mean scores for these issues range from 5.0 to 5.6.

Social Interaction with People of a Different Sexual Orientation

53. In respect of social interaction with homosexuals/bisexuals, the public consider that contacts on social occasions such as shaking hands, going to movies, dining out and swimming are acceptable. A majority of the public (over 80%) would not mind working or studying together with homosexual/bisexual individuals.

54. Table 3.1 below shows that more people have reservations about interacting with homosexuals/bisexuals as the intensity of personal contacts increases. Results of the survey indicate that the three situations in which the public has the strongest resistance to such interaction are subletting a room to homosexuals/bisexuals, sharing a flat with them, and employing them as domestic helpers. The percentages of people who indicated that they would mind interacting with homosexuals/bisexuals in the above situations are 74%, 72% and 69% respectively.

Table 3.1 Social Interaction with Homosexuals/Bisexuals

	<i>People (%)</i>			
	<i>Mind</i>	<i>Don't mind</i>	<i>Depends</i>	<i>Don't know</i>
<i>Subletting a room</i>	74	22	3	1
<i>Sharing an apartment</i>	72	25	2	1
<i>Employing as domestic helper</i>	69	29	1	1
<i>Letting your apartment</i>	53	45	1	1
<i>Joining the same club</i>	49	49	1	1
<i>Living in the same hotel</i>	37	61	1	1
<i>Going swimming</i>	35	63	1	1
<i>Singing Karaoke</i>	30	67	2	1
<i>Watching movie</i>	30	67	2	1
<i>Dining out</i>	28	69	2	1
<i>Shaking hands</i>	21	77	1	1
<i>Working in the same team</i>	19	80	1	*
<i>Studying in the same class</i>	18	81	*	1
<i>Working in the same office</i>	14	85	1	*

* *Less than 0.5%.*

Teaching Positions and Public Affairs

55. The results of the survey indicate that there is no distinctly positive or negative attitude among the public towards homosexuals/bisexuals taking up teaching positions in tertiary education institutes or playing an important role in public affairs. Mean scores (which ranged from 5.1 to 5.2 on a rating scale of 0 {totally unacceptable} to 10 {totally acceptable}) for the relevant questions in this respect cluster round the middle of the rating scale. On the other hand, acceptance level of homosexuals/bisexuals taking up teaching post in primary or secondary schools are shown to be lower (with a mean score of 4.3)

56. The findings indicated that the group with the lowest level of acceptance of homosexuals/bisexuals working as teachers are homemakers. On the other hand, students have the highest level of acceptance in this respect. Mean scores on the acceptance levels of different groups of people are shown in Table 3.2.

*Table 3.2 Homosexuals/Bisexuals in Teaching Posts and Public Affairs **

	<i>Mean Scores</i>				
	<i>Total</i>	<i>Employed</i>	<i>Homemakers</i>	<i>Students</i>	<i>Retired or Unemployed</i>
<i>A homosexual/bisexual works as a teacher in primary or secondary schools</i>	4.3	4.3	3.7	5.3	4.4
<i>A homosexual/bisexual works as a lecturer in tertiary education institutes</i>	5.2	5.3	4.6	5.8	5.4
<i>A homosexual/bisexual occupies an important position in public service</i>	5.1	5.2	4.6	5.7	5.4

* Based on a rating scale of 0 to 10. "0" denotes "Totally Unacceptable" and "10" denotes "Totally acceptable".

Forming a Family Unit

57. The lowest level of acceptance was found when respondents were asked about issues relating to homosexuals/bisexuals forming a family unit. The highest score obtained was in the case of a female homosexual adopting a child. Even so, the mean score was only 3.9 (based on a rating scale of 0 {totally unacceptable} to 10 {totally acceptable}). The mean scores of levels of acceptance in this area are shown in Table 3.3.

Table 3.3 Homosexuals/Bisexuals Forming a Family Unit

	<i>Mean Scores of Level of Acceptance</i>
<i>A lesbian⁷ adopts a child</i>	3.9
<i>A gay⁸ adopts a child</i>	3.2
<i>A lesbian makes use of reproductive technology</i>	3.7
<i>A gay makes use of reproductive technology</i>	2.8
<i>Two lesbians get married</i>	3.7
<i>Two gays get married</i>	3.3

* Based on a rating scale of 0 to 10. "0" denotes "Totally unacceptable" and "10" denotes "Totally acceptable".

⁷ A term commonly used for female homosexuals.

⁸ A term commonly used for male homosexuals.

58. Another phenomenon concerning the formation of families by homosexual/bisexual couples shown by the survey is that the public have a higher acceptance of female homosexual couples than male homosexual couples in all three areas of surveyed activity in relation to the formation of a family unit: adoption, marriage, and access to human reproductive technology.

Perceived Effectiveness on the Possible Measures to Tackle Discrimination

59. The survey also examined public perception on the effectiveness of a number of possible anti-discrimination measures. Results indicated that educational tools are considered to be the most effective means in tackling the problem of discrimination.

60. Strengthening the public's concept of equal opportunities for all (a mean score of 7.2), enhancing public knowledge of different forms of sexual orientation (a mean score of 6.9), and strengthening civic education programmes within the school curricula (a mean score of 6.7) all ranked highly on a rating scale of 0 (very ineffective) to 10 (very effective). On the other hand, legislation to outlaw discrimination on the ground of sexual orientation is regarded as a less effective measure (a mean score of 4.0) in addressing the issues in question.

General Observations

61. An analysis based on the demographic factors of the respondents reveals that the level of acceptance tends to be lower among those in the older age brackets. For instance, in respect of the acceptance of homosexuality/bisexuality, the mean score of acceptance level for respondents aged between 45 and 64 is only 2.4 (on a rating scale of 0 {totally unacceptable} to 10 {totally acceptable}). This is significantly lower than a mean score of 4.6 for those aged between 15 and 24. A similar pattern is observed in respect of the acceptance level on other aspects such as acceptance of homosexuals/bisexuals forming a family or holding teaching positions.

62. Women are generally found to have a higher level of acceptance of homosexuality/bisexuality than men, except in matters concerning family and children. For example, on questions concerning social interaction with homosexuals/bisexuals, less women respondents would mind engaging in social occasions such as singing karaoke (26%) and seeing movies (27%) than men (whose respective acceptance percentages were 34% and 33%). However, on questions like adoption of a child and use of reproductive technology, the levels of acceptance by women are consistently lower than those of men. (For example, women's acceptance levels of a lesbian adopts a child and makes use

of reproductive technology were 3.6 and 3.3. The respective acceptance levels by men were 4.2 and 4.0.)

Concluding Remarks

63. The survey provides an overview of public attitudes towards homosexuality and bisexuality. The levels of acceptance vary among individuals. The results of the survey show that the public tends to have an ambivalent attitude towards a number of issues covered, such as the impact of homosexual/bisexual behaviour on others, contacts with homosexuals/bisexuals on social occasions, and homosexuals/bisexuals engaging in the teaching profession. A lower level of acceptance is clearly observed in areas such as same-sex marriage, adoption of children by homosexual/bisexual couples, use of reproductive technology by homosexuals, and contacts with homosexuals/bisexuals in private settings. These findings seem to suggest that the public is likely to have greater concern about behaviour that may be considered contrary to traditional values and contact in more private spheres of life.

CHAPTER IV OVERSEAS EXPERIENCE

64. A number of overseas jurisdictions, including New Zealand, and Canada, have legislation that directly addresses discrimination on the ground of sexual orientation. The state of development of such anti-discrimination laws in this respect varies significantly from country to country. Some jurisdictions have adopted measures other than anti-discrimination legislation to promote equal rights of treatment for homosexual and heterosexual couples. They include Denmark and the United States.

65. The experience of a number of countries are outlined in the following paragraphs. To give a reasonably concise overview, emphasis is given to legislation at federal level in situations where federal systems are involved.

New Zealand

66. The New Zealand Human Rights Act 1993 (the Act) was enacted in February 1994 to replace the Human Rights Commission Act 1977 and the Race Relation Act 1971. The Act provides for a number of prohibited grounds of discrimination, including sexual orientation.

67. The Act defines sexual orientation to mean heterosexuality, homosexuality, lesbianism, or bisexuality. Under the Act, it is unlawful to discriminate against a person based on the person's sexual orientation. It is also unlawful to discriminate against a person because the person's relative or associate is of a particular sexual orientation. Discrimination that relates to past circumstances and discrimination on the basis of an assumption or belief about another person are also unlawful.

68. The legislation covers various areas of activity, including employment, education, access to public places, provision of goods and services, housing and accommodation, partnerships, vocational training bodies, qualifying bodies, and industrial and professional associations.

69. Table 4.1 shows the number of formal complaints opened by the Commission in the years 93/94 and 94/95. As the Act only took effect in February 1994, the figures for 1993/94 do not represent a full year's total of complaints for the new grounds of unlawful discrimination it introduced, such as sexual orientation. In the first full year of operation of the Act, there were 22 complaints based on the ground of sexual orientation, which constituted 7% of all complaints in that year. It should be noted that the Commission defines as a

formal complaints only a matter which is clearly within jurisdiction and involves significant input from a complaints officer. All other matters are recorded as enquiries.

Table 4.1 Complaints opened by the Commission in the years 93/94 and 94/95

<i>Grounds</i>	<i>1 July 1993 to 30 June 1994</i>	<i>1 July 1994 to 30 June 1995</i>
<i>Age</i>	<i>26</i>	<i>45</i>
<i>Disability</i>	<i>32</i>	<i>67</i>
<i>Sex</i>	<i>133</i>	<i>59</i>
<i>Marital Status</i>	<i>13</i>	<i>29</i>
<i>Sexual Orientation</i>	<i>7</i>	<i>22</i>
<i>Family Status</i>	<i>9</i>	<i>35</i>
<i>Others</i>	<i>49</i>	<i>72</i>
<i>TOTAL</i>	<i>269</i>	<i>329</i>

Notes:

- 1. Comparisons of statistics may be difficult because the Human Rights Act 1993, containing new grounds of unlawful discrimination such as sexual orientation, family status, and disability, came into effect from 1 February 1994.*
- 2. The numbers of actual complaints received by the Commission in 93/94 was 235 and that of 94/95 was 257. Since each complaint received may involved more than one ground of the Act, the totals of 269 and 329 exceeds the number of actual complaints opened.*

Australia

70. Australia does not have legislation outlawing discrimination on the ground of sexual orientation at the federal level. Some Australian states have statutes prohibiting such discrimination.⁹ However, in response to Australia's obligation to implement the principle of non-discrimination in employment and occupation pursuant to the International Labour Organisation Convention No. 111 (ILO 111)¹⁰, the Human Rights and Equal Opportunities Commission (HREOC) Act empowers the HREOC to investigate complaints of discrimination in employment and occupation on various grounds,¹¹ including

⁹ Examples of such legislation in the state level are the New South Wales Anti-Discrimination Act 1977, the Australian Capital Territory Discrimination Act 1991, and the Northern Territory Anti-Discrimination Act 1991.

¹⁰ The International Labour Convention No. 111 concerns discrimination in employment and occupation.

¹¹ With effect from 1 January 1990, the HREOC is able to deal with complaints of discrimination in employment and occupation on the following grounds: race, colour, sex, religion, political opinion, national extraction, social origin, age, medical record, criminal record, impairment (including

sexual preference, and to resolve such complaints by conciliation. "Sexual preference" became one of the additional grounds governed under the HREOC Act in 1 January 1990. The HREOC may handle complaints on discrimination based on one's sexual preference, the past existence of a particular sexual preference, or a belief about a person's sexual preference.

71. It is important to note that such discrimination is not rendered unlawful under the HREOC Act. The HREOC is merely empowered to conciliate between parties to complaints relating to discrimination specified under the Act. Where conciliation is unsuccessful or is deemed inappropriate, and the Commission is of the opinion that the act complained of is discriminatory, the Commission may report the matter to the federal Attorney-General and recommend actions to be taken.

72. Table 4.2 shows the number of complaints handled by the HREOC since the inclusion of "sexual preference" as one of the additional grounds specified under the HREOC Act.¹²

Table 4.2 Number of complaints handled by the HREOC

<i>Period</i>	<i>Total Number of Complaints</i>	<i>Complaints lodged under ILO 111</i>	<i>Complaints on the ground of sexual preference</i>
<i>1.7.90-30.6.91</i>	<i>216</i>	<i>202</i>	<i>6</i>
<i>1.7.91-30.6.92</i>	<i>209</i>	<i>195</i>	<i>18</i>
<i>1.7.92-30.6.93</i>	<i>129</i>	<i>119</i>	<i>5</i>
<i>1.7.93-30.6.94</i>	<i>71</i>	<i>66</i>	<i>9</i>

Canada

73. At the federal level, the Canadian Human Rights Act (the HRA) renders discrimination unlawful on a number of grounds. Sexual orientation is not expressly covered by the HRA. However, it was implicitly added to the HRA through a ruling of the Ontario Court of Appeal in 1992. The Court of Appeal held that sexual orientation was an analogous ground of discrimination under section 15 of the Canadian Charter of Rights and Freedoms (the Charter), which guaranteed equal benefits of the law. The Court ordered that the Act should be interpreted, applied and administered as though it contained "sexual orientation" as a prohibited ground of discrimination. This interpretation of

HIV/AIDS status), disability (including mental, physical, intellectual and psychiatric disability), nationality, sexual preference, and trade union activity.

¹² Human Rights and Equal Opportunities Commission Annual Reports, Australian Government.

section 15 of the Charter has recently been upheld by the Supreme Court of Canada.

74. The HRA deals with discrimination in its various forms. These include differential treatment of an individual or a group of individuals, "indirect or *de facto*" discrimination¹³, as well as harassment. Discriminatory practices covered by the Act include discrimination in the provision of goods, services, facilities or accommodation, and matters related to employment.¹⁴ The Act applies to all federal government departments, agencies, Crown corporations, and business and industry under federal jurisdiction such as banks, airlines, and railway companies. The Canadian Human Rights Commission deals with complaints it received from individuals or groups concerning discriminatory practices as covered in the HRA. The Commission handled 100 cases relating to sexual orientation in 1993 and 64 cases in 1994, which represent 8% and 5% of the total number of cases in each year respectively.

75. At the provincial level, discrimination on the ground of sexual orientation is prohibited in human rights legislation in a number of provinces.¹⁵ In May 1994, legislation was proposed in Ontario to amend all Ontario statutes to provide for the equal treatment of persons in same-sex spousal relationships. The bill was however defeated in a free vote in June 1994.

The United States

76. In the United States, there is no legislation at the federal level prohibiting discrimination on the ground of sexual orientation.¹⁶ While some states have legislation in this area, the scope of such legislation is restricted to

¹³ Indirect or *de facto* discrimination is a seemingly neutral policy or practice which is in fact discriminatory.

¹⁴ These include recruitment, referral, hiring, promotion, transfer, employment applications, advertisements, membership in employee organisations, etc.

¹⁵ Discrimination on the ground of sexual orientation is specifically prohibited in the human rights legislation of British Columbia, Manitoba, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskatchewan, and the Yukon Territory.

¹⁶ In June 1995, the Employment Non-Discrimination Act (ENDA) was proposed by Senators Ted Kennedy and John Chafee to prohibit employment discrimination on the basis of sexual orientation. Under the bill, sexual orientation is defined as homosexuality, bisexuality, or heterosexuality, whether such orientation is real or perceived. The ENDA seeks to prohibit employers, employment agencies, and labour unions from using an individual's sexual orientation as the basis for employment decisions such as hiring, firing, promotion, or compensation. The bill proposes a number of exemptions, such as for small business with less than 15 employees and for religious organisations including educational institutions substantially controlled or supported by religious organisations. The Bill had not been passed at the time of the preparation of this consultative document.

employment matters.¹⁷ In most cases, the relevant legal provisions are embodied in laws dealing with fair employment practices as part of Human Rights Acts.

77. As regards non-legislative measures, some companies have adopted fair employment policies to encourage equal treatment for all individuals. These include equal opportunities in employment for persons of different sexual orientations. In addition to providing benefits for the legal spouse, some companies have also offered voluntary domestic-partner benefits. Some plans cover only heterosexual partnership while others may cover both homosexual and heterosexual partnerships. These benefits may include fringe benefits to the partner living in the same household, or soft cost benefits such as health and life insurance. Various forms of leave arrangements such as bereavement or dependent care leave for employees with domestic partners are also available in some companies.

78. In addition, there are special programmes designed to help young people who have doubts about their sexual orientation and to enhance their self-acceptance as homosexuals.¹⁸ These programmes serve to provide a social support network for young people in need. They perform a vital function in providing a safe place where homosexual and bisexual adolescents can meet others who are in a similar situation to themselves.

Denmark

79. In Denmark, the Commission to Elucidate the Social Circumstances of Homosexuals (the Commission) was set up by the Danish Parliament in 1984 to work towards equality between people of different sexual orientations. The objectives of the Commission include examining the legal, social and cultural circumstances of homosexuality in society, proposing measures aimed at removing existing discrimination within all sectors of society, and creating a public debate on homosexuality.

¹⁷ Since 1982, nine states have introduced civil rights laws prohibiting employment discrimination based on sexual orientation. They are Connecticut, Hawaii, Massachusetts, Minnesota, New Jersey, Rhode Island, Vermont, Wisconsin, and the District of Columbia.

¹⁸ For example, Project 10 is a pioneering counselling programme for gay, lesbian and bisexual teenagers in Los Angeles. One of the aims of the project is to educate these adolescents about homosexuality so as to prevent problems such as self-stigmatisation. Informal discussion groups, one-to-one counselling sessions, and training for teachers on issues relating to various forms of sexual orientation are available under the Project. Another example is the Hetrick-Martin Institute, which is a major source of support and service for lesbian and gay youth in New York City. It provides a range of programmes such as counselling services, HIV/AIDS education, and an after-school drop-in centre which provides a safe place for young people to socialise.

80. The Commission has initiated research into the social dimension of homosexuality and produced a number of publications on gay and lesbian culture, the major problems faced by homosexuals, and trends in the gay and lesbian movement. These publications have succeeded in starting a public debate on the issue of homosexuality in Denmark.

81. The Commission has had direct influence on a number of legislative initiatives through its interim reports. Most importantly, the scope of the Danish anti-discrimination legislation was extended in 1987 to include "sexual orientation" as one of the prohibited grounds of discrimination.

82. In addition to extending the grounds of discrimination in its anti-discrimination legislation to include sexual orientation, the Danish Parliament passed the Act on Registered Partnership which came into effect on 1 October 1989. The Act provides that a couple consisting of two persons of the same sex may enter into a "registered partnership". Such registration carries essentially the same legal recognition as marriage. With this system of registration for homosexual couples, some of the issues concerning the rights of homosexual co-habitees such as automatic full rights of inheritance and the right to retain the undivided possession of an estate have been addressed. However, registered homosexual couples are not entitled to adopt or bring up children and the status of "registered partnerships" in Denmark is not recognised by other countries.

United Kingdom and other countries

83. In the United Kingdom (UK), there is no legal provision against discrimination on the ground of sexual orientation. The UK Equal Opportunities Commission established under the UK Sex Discrimination Act 1975 handles complaints of discriminatory acts or practices on the grounds of sex, marriage, and pregnancy in specified areas of activity, but not those in relation to sexual orientation. In 1983, a private member's bill on Sex Equality, which would have outlawed employment discrimination based on homosexuality, was rejected in parliament. Other countries like Singapore, Japan, Italy, Greece and Spain do not have any legal provisions outlawing discrimination in respect of sexual orientation.

CHAPTER V

POSSIBLE MEASURES TO ENHANCE EQUAL OPPORTUNITIES FOR PERSONS OF DIFFERENT SEXUAL ORIENTATIONS: THE LEGISLATIVE OPTIONS

84. As indicated in Chapter II, the discussions held with interested parties on the problems faced by homosexuals point to a lack of understanding of homosexuality among the public. Representatives of homosexual groups indicated that this lack of understanding is resulting in discriminatory treatment of homosexuals in various spheres of their life. To address this, some groups have advocated legislation to outlaw discriminatory practices on the ground of sexual orientation.

85. Supporters of the legislative option argue that such legislation would safeguard the rights of sexual minorities and serve as an effective means of educating the public on the principle of equal opportunities for all, irrespective of a person's sexual orientation. Furthermore, they say that there is no reason to suggest that legislation against discrimination on the ground of sexual orientation would mean condoning or encouraging homosexual acts.

86. On the other hand, it is important to acknowledge that individual choice will inevitably be restricted by any anti-discrimination legislation. Therefore, any such legislation would need to strike a balance between freedom of choice and freedom from discrimination. For such legislation to be acceptable, it is imperative that the community should be fully aware of its implications. Otherwise, the law may not achieve its intent of helping to eliminate discrimination.

87. Possible legislative measures that could be taken to enhance equal opportunities for persons of different sexual orientations are set out in this chapter. In examining possible legislative measures, references are made to the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO), and the Equal Opportunities Bill (EOB), the Private Member's Bill introduced by Ms Anna Wu into the Legislative Council in the 1994/95 legislative session.

Definition of "Sexual Orientation"

88. In examining possible legislation against discrimination on the ground of sexual orientation, it is first necessary to consider the definition of "sexual orientation".

89. The definition of "sexual orientation" varies in different jurisdictions. The New Zealand Human Rights Act 1993 defines "sexual orientation" to cover heterosexuality, homosexuality, lesbianism and bisexuality. Some legislation adopts a wider definition which includes transsexuality.¹⁹ In the local context, the EOB defines "sexuality" to mean heterosexuality, homosexuality (including lesbianism) and bisexuality.

90. In the course of our discussions, some representatives of homosexual groups suggested that there are other forms of sexual orientation, such as transsexuality (change from one sex to the opposite sex) and transvestism (cross-dressing). Other than transsexuality, overseas legislation surveyed in Chapter IV have not included other forms of sexual inclination in their definition of "sexual orientation". Moreover, in discussing problems faced by persons of different sexual orientations in the local context, homosexuality and bisexuality were the main areas of concern.

91. Another aspect of the definition which needs to be addressed is whether such a definition should cover only actual sexual orientation, or whether it should be extended to include perceived and past sexual orientation. Both the New Zealand Human Rights Act 1993 and the Australian Human Rights and Equal Opportunities Commission Act 1986 cover discrimination in relation to past existence of a particular sexual orientation and belief about a person's sexuality.

92. Unlike gender and disability in which objective characteristics are normally present, there may not be any discernible characteristics of a particular sexual orientation. It may also be possible for a person who is not a homosexual to receive discriminatory treatment because of certain characteristics which are imputed to this group. In examining possible legislation, therefore, consideration will need to be given to the belief aspect in defining the scope of "sexual orientation". The issue of past existence of the characteristic concerned may also be more significant to sexual orientation than other grounds of discrimination. In this respect, it should be noted that the DDO covers discrimination on the ground of a disability that previously existed or is imputed to a person.

Areas of Activities to be covered

93. Chapter II has indicated that the main areas of concern with regard to discrimination against homosexuals are in the areas of employment, the provision of accommodation, and the provision of services. As these have

¹⁹ For example, the Australian Northern Territory Anti-Discrimination Act 1991 includes "transsexuality" as a form of sexual orientation.

been identified by homosexual groups as the problem areas, one option would be for possible legislation to cover only these three areas.

94. Another option would be for possible legislation to cover a wider range of activities as provided under SDO and DDO. In addition to the three areas identified in the preceding paragraph, the SDO and the DDO cover discrimination in areas such as education, provision of goods and facilities, activities of clubs, and activities of Government.

95. A third option would be for possible legislation to draw reference from the EOB, which has a still wider scope. It covers employment, education, access to places and vehicles, provision of goods, services and facilities, accommodation, land, clubs, application forms, and administration of laws and government programmes.

96. As indicated in Chapter II, representatives of homosexual groups indicated that some homosexuals have experienced harassment and vilification in certain areas of activity. In addition to outlawing discrimination on the ground of sexuality, the EOB contains provisions which prohibit harassment and vilification on such a ground. The DDO has similar provisions prohibiting harassment and vilification on the ground of disability. It is for consideration, therefore, whether any possible anti-discrimination legislation on the ground of sexual orientation should also cover these aspects.

97. In considering the areas of activity to be covered in possible legislation to outlaw discrimination on the ground of sexual orientation, it is necessary to assess carefully the impact of such legislation on the community so as to ensure that it would command public support while addressing the main concerns of the affected groups.

Possible Areas of Concerns

98. Representatives of various groups, including those who argue for legislation, have expressed a number of concerns about the possible adoption of a legislative approach. These are set out in the following paragraphs.

Marriage Between Homosexuals

99. There is much controversy over the issue of marriage between homosexuals. Even in western countries that have legislation protecting the rights of homosexuals and bisexuals, only a few provide for arrangements which give same-sex couples rights similar to married heterosexual couples. In most cases, the argument that the family is a social unit based inherently on the union of a man and a woman prevails. In Hong Kong, the Marriage Ordinance

(Cap. 181) stipulates that marriage is “a formal ceremony recognised by the law as involving the voluntary union for life of one man and one woman to the exclusion of all others”.

100. Homosexual groups claim that the lack of recognition of legal rights for same-sex partnerships contributes to the difficulties of maintaining long-term relationship between same sex partners. They also consider that it adds to public misconceptions about the level of promiscuity among homosexuals. They say that same-sex partners are deprived of a number of rights including the right to inherit the partner’s estate in the case of intestacy, to apply for public housing as a married couple and to give consent for the partner to undergo surgery.

101. However, as indicated from the findings of the survey in Chapter III, the levels of public acceptance of male and female homosexual marriages are only 3.3 and 3.7 respectively on a scale of 0 (totally unacceptable) to 10 (totally acceptable). Even some representatives of local homosexual groups acknowledge that it would be difficult to give legal recognition to same-sex marriage in the near future. As seen in Chapter IV, with the exception of Denmark, none of the countries covered by our research provides for such legal recognition at the federal or unitary state level.

Adoption of Children

102. The important role played by a healthy family environment on the growth and development of children is well recognised by society. Consultees who do not favour the adoption of children by same-sex partners argue that a child would grow up confused about gender differences if cared for by parents of the same sex. Moreover, they claim that allowing homosexual couples to adopt a child without broad community acceptance could have adverse effects on the child. In particular, the possibility of “social condemnation” of the homosexual parents may affect the child’s relationship with other children and with the community.

103. On the other hand, equal opportunities advocates argue that it is an infringement of human rights not to allow homosexual couples to adopt a child. They say that there is insufficient evidence to identify any difference in development, including sexual orientation, between children brought up by homosexual parents and those by heterosexual parents. They consider that it is the love and care of the parents, not their gender or sexual orientation, which ensures a healthy and supportive environment for the growth and development of a child.

104. Findings of the survey in Chapter III indicate that there is low public acceptance of adoption by homosexual couples. The mean scores for acceptance of male and female homosexual couples adopting a child are 3.2 and 3.9 respectively on a scale of 0 (totally unacceptable) to 10 (totally acceptable).

Reproductive Technologies

105. Access to human reproductive technologies is another area which indicates a reservation expressed by some in the community. The survey indicates that the acceptance levels for male and female homosexual couples to make use of reproductive technologies are 2.8 and 3.7 respectively on a scale of 0 (totally unacceptable) to 10 (totally acceptable).

106. Having regard in particular to the divergent views expressed on these issues and the findings of the survey, it is necessary to consider whether exceptions from its anti-discriminating provisions should be provided in any possible legislation for the areas identified above.

Religious and Educational Bodies

107. The concerns of religious and educational bodies have been described in Chapter II. Religious organisations have expressed concerns over "reverse discrimination" if the legislative route is to be adopted. Some religions include teachings that may suggest that a particular sexual orientation is "sinful". They may also have difficulties selecting or appointing individuals of a particular sexual orientation who actively engage in homosexual acts since such acts do not conform with the doctrines, tenets or beliefs of the religion concerned.

108. Some educational bodies have also expressed concern about the employment of homosexual teachers. Such consultees pointed out that people are most susceptible to outside influence in their formative years. Since there is yet no conclusion as to whether a person's sexual orientation is inherent or acquired, they are concerned that teachers who are homosexual may tend to influence their students to adopt this sexual orientation where they would not otherwise have done so.

109. The EOB provides exceptions for religious bodies in connection with the performance of religious duties, and in areas such as the training and appointment of persons to perform such duties. In addition, the EOB also allows religious schools to discriminate in employment and educational matters to avoid injury to the religious susceptibilities of adherents of the religion. However, it does not provide for a general exemption from its anti-

discrimination provisions on the ground of sexual orientation for the teaching profession.

Small Businesses

110. Employers with small businesses have expressed concerns about the cost implications of complying with anti-discrimination legislation, and the possible problems which may arise from frivolous complaints. They are of the view that they should be given an opportunity to learn from the experience of their larger business counterparts as well as to better understand the operation of such legislation. To address such concerns, the SDO and the DDO provide for a transitional period of three years to allow business establishments with not more than five employees to comply with the provisions of the Ordinance. On the other hand, the EOB did not provide for any such transitional period.

Employment of Domestic Helpers

111. The EOB allows for an exception in respect of employment in a private household setting. Under the Bill, a person may discriminate against another person on the ground of the other person's sexuality in connection with employment to perform domestic duties on the premises on which the employer resides. Findings of the survey in Chapter III indicate that a lower proportion of the public is willing to interact with homosexuals/bisexuals in situations involving private spheres of life such as employing homosexuals/bisexuals as domestic workers, as compared to other social interactions with homosexuals/bisexuals.²⁰

Accommodation and Property

112. Some representatives of homosexual groups have said that they face a particular problem in renting accommodation. The survey also found that more people have reservations over sharing an apartment with homosexuals/bisexuals and subletting a room to homosexuals/bisexuals when compared to other social interaction with homosexuals/bisexuals.²¹ This raises the issue of the extent which the right to control one's private domestic setting should override the right of others not to be discriminated against.

113. The EOB allows for an exception in the area of accommodation. The provisions against discrimination on the ground of sexuality do not apply if the landlord (or a near relative) resides on the premises and the accommodation

²⁰ Paragraphs 53 to 54 of Chapter III.

²¹ Paragraph 54 of Chapter III.

provided on those premises are for no more than three persons other than the landlord (or the near relative). A similar exception for small premises which are shared by the landlord (or a near relative) and the tenant is also provided for in the SDO and the DDO. The EOB also exempts from its application accommodation provided by a religious body.

114. In matters concerning the disposal of property, the EOB provides another exemption to allow for discrimination on the ground of sexuality in the disposal of an estate or interest in land if it is by will or by way of gift. It is for consideration whether exemptions such as these should be provided for in possible anti-discrimination legislation in this area.

Special Measures

115. There may be cases where measures are in place to cater for the special needs of persons of a particular sexual orientation. The EOB provides a general exception for acts that are done to afford a person of 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. A similar exception on the ground of gender or disability is provided in the SDO and the DDO respectively. It is for consideration whether such an exemption should be provided for in possible anti-discrimination legislation on the ground of sexual orientation.

Charities and Voluntary Bodies

116. The EOB provides for general exceptions for charities and voluntary bodies. Under the exceptions, donors to charities may lawfully discriminate in identifying a class of persons eligible to receive the charitable benefit of their gifts, and voluntary bodies may lawfully discriminate in admission to membership and in the provision of benefits, facilities or services to members. It is for consideration whether such exemptions should be provided for in possible legislation in respect of sexual orientation.

Enforcement Mechanism

117. Effective enforcement is the key to the successful implementation of any possible legislation. In examining possible legislation against discrimination on the ground of sexual orientation, consideration needs to be given to the possible mechanism to enforce it.

118. The EOB provides that the District Court is empowered to hear and determine alleged cases of discrimination on the ground of sexuality. The

aggrieved person may also bring claims of unlawful discrimination under the Bill directly to the court .

119. On the other hand, the SDO provides for the establishment of an Equal Opportunities Commission (EOC) to oversee the implementation of the Ordinance. With the enactment of the DDO, the EOC has also been made responsible for cases of alleged discrimination on the ground of disability. Under the SDO and the DDO, the EOC is tasked with providing assistance to persons who have experienced discrimination on the grounds of gender and disability respectively. It is specifically empowered to investigate complaints and conciliate between the parties in dispute. In addition, the EOC may also provide assistance in court proceedings for those who wish to take their case to court. It is for consideration which of these approaches, or whether some other approaches, would be appropriate for enforcement of possible legislation against discrimination on the ground of sexual orientation.

Concluding Remarks

120. Before deciding whether further anti-discrimination legislation in this area should be prepared, we need to be sure that it commands reasonably broad support from the community based on clear understanding of the statutory obligations proposed. In enacting anti-discrimination legislation, the rights of one group have to be balanced against the rights of other groups. Any anti-discrimination legislation on the ground of sexual orientation would need to strike an acceptable balance between the rights of all individuals and groups in society..

CHAPTER VI

POSSIBLE MEASURES TO ENHANCE EQUAL OPPORTUNITIES FOR PERSONS OF DIFFERENT SEXUAL ORIENTATIONS: NON-LEGISLATIVE OPTIONS

121. Since the enactment of the Crimes (Amendment) Ordinance in July 1991 which removed criminal penalties for homosexual acts between male adults, homosexual groups have been advocating greater protection of their rights. Some groups have called for anti-discrimination legislation to address the issue of discrimination on the ground of sexual orientation.

122. Others point out that problems such as public misconceptions and moral condemnation of sexual minorities are closely related to personal attitudes and social values. They feel that legislation can neither force people to change their attitudes and values, nor remove the apprehension felt by those who object to homosexuality on moral grounds. They consider that not only is such legislation not effective in changing attitudes but also that it over regulates individual behaviour and may lead to unnecessary litigation. Such parties consider that non-legislative measures are more appropriate in fostering equal opportunities for persons of different sexual orientations. Representatives of employer organisations are concerned that further anti-discrimination legislation would tend to detract from the competitiveness of the economy by introducing additional burdensome regulation. They argue that Hong Kong's economic success has come from its adaptiveness and flexibility in response to change and that such legislation tends to diminish the ability of business to respond in this way. Even those groups that advocated the legislative approach recognise that legislation is not a complete solution to the problem of discrimination. Accordingly, they advocate the implementation of non-legislative measures as well.

123. Possible non-legislative measures that may be taken to assist those who suffer disadvantages due to their sexual orientation and to enhance equal opportunities for persons of different sexual orientations are set out in the following paragraphs.

Public Education

124. Consultees all agree that public education is an important tool to address the problem of discrimination based on sexual orientation. They consider that sustained public education in various forms should instil the necessary respect for the rights of persons of a different sexual orientation as equal members of the community.

125. Findings of the survey confirm this view. The measures which respondents considered most effective in addressing the problem of discrimination against homosexuals/bisexuals all relate to public education as follows -

- strengthening the public's concept of equal opportunities for all;
- improving the public's knowledge of different kinds of sexual orientation; and
- strengthening the civic education programmes within the school curricula in this respect.

The Committee on the Promotion of Civic Education

126. Cultivating public acceptance of the principle of equal opportunities for persons of different sexual orientations is a continuing process. The Committee on the Promotion of Civic Education has earmarked \$20 million over the next three years to organise various civic education programmes, on-going publicity activities and promotion campaigns. Equal opportunities will be one of the themes featured in these programmes. More emphasis could be given to promoting equal opportunities for persons of different sexual orientations.

The Mass Media

127. As indicated in Chapter II, representatives of homosexual groups say that the problem of "homophobia" is due to a general lack of understanding of different kinds of sexual orientation. Furthermore, they consider that condemnation of homosexuality is the result of prejudice caused by people associating undesirable or deviant behaviour with homosexual behaviour. Representatives of homosexual groups suggested that public awareness on differences in sexual orientation should be promoted to help remove bias and cultivate a balanced attitude toward homosexuals. They noted that a phone-in radio programme has helped to raise public awareness of different sexual orientations by inviting medical professionals to render advice to callers on sex-related issues, including issues on homosexuality and bisexuality. They believe that the mass media could play an important educational role by providing balanced information on different forms of sexual orientation.

General Health and Sex Education

128. Some consultees consider that a more understanding social environment would ensure that individuals facing problems with their sexual orientation have the courage to seek help and to be taken care of sympathetically. They suggested that more research should be undertaken, and that general health education, sex education or other specialised programmes

should be developed and targeted at agents of change such as teachers, social workers and psychologists.

Schools Curricula

129. Apart from public education which is directed to the population at large, some consultees suggested that the formal and informal school curricula should be strengthened to cultivate a sense of respect for equal rights of all individuals in the community, including those of a different sexual orientation.

130. The survey findings in Chapter III shows that respondents consider that strengthening the civic education programmes within the school curricula is an effective means in addressing the issue of discrimination on the ground of sexual orientation.²² The survey also revealed that the younger generation has a higher level of acceptance of persons of a different sexual orientation.²³ Some consultees consider that an early cultivation of the concept of anti-discrimination may help to foster public acceptance of and respect for persons of differing sexual orientation.

131. The formal curriculum in Hong Kong has already made provision in various subjects²⁴ to cultivate a sense of respect for equal rights of all individuals in the community, including those of a different sexual orientation.

132. The Education Department issued the "Guidelines on Sex Education in Secondary Schools" in 1986 to provide a curriculum guide on issues related to sex. Sexual orientation is one of the aspects covered in the guidelines. The teaching objectives of the guide are to provide students with a basic understanding of different sexual behaviour in our society; to develop students' skills in analysing sex-related issues put forward by the media; and to cultivate correct attitude of accepting the rights of individuals to have different values in society. The Education Department also encourages teachers to discuss with students controversial issues including homosexuality.

133. The Education Department will issue revised Guidelines on Civic Education in Schools in 1996. The Guidelines will incorporate the concepts of the rights of the individual, equity and anti-discrimination in the civic education programmes in schools.

²² Paragraphs 59 to 60 of Chapter III.

²³ Paragraph 61 of Chapter III.

²⁴ These subjects include Social Studies, Government and Public Affairs, Liberal Studies, and Ethics and Religious Studies.

Financial Assistance for Homosexual Groups

134. Some representatives of homosexuals groups state that they are facing a very tight budget in their provision of services for homosexuals/bisexuals in Hong Kong. They suggest that groups which provide counselling and other support services should be granted status as charitable organisations and benefit from taxation allowances.²⁵

135. Furthermore, representatives are of the view that homosexual groups should be allowed to seek subvention from the Government similar to other voluntary agencies.²⁶ By strengthening the financial status of these groups, the representatives consider that they will be able to improve existing services and introduce new programmes to best serve the needs of homosexuals.

Provision of Services

136. A number of voluntary organisations provide services specifically designed for persons of a particular sexual orientation. The Government also provides a comprehensive network of services for individuals and families with social welfare needs. Such services are available to homosexuals and bisexuals on an equal basis with other groups and individuals.

Counselling Services

137. As indicated in Chapter II, a number of homosexual groups provide phone-line counselling services for individuals who have doubts about their sexual orientation and offer professional counselling on various issues of concern to homosexuals. Such consultees are of the view that counselling services that provide advice and emotional support to homosexuals alleviate the problem of self-rejection and self-stigmatisation. They suggest that these services should be improved to assist those who have problems concerning their sexual identity.

²⁵Tax exemption is granted to charitable bodies under section 88 of the Inland Revenue Ordinance (Cap. 112). In addition, the Governor in Council is also empowered under §7 of the Ordinance to grant tax exemption to non-profit-making organisations carrying on activities for the general benefit of the community. Applications are considered on their individual merits and on a case by case basis.

²⁶ The general subvention principles for social welfare are that a group needs to establish itself as a bona-fide non-profit-making organisation registered as a charitable institution under section 88 of the Inland Revenue Ordinance. The group also needs to apply for recurrent subvention to support activities which contribute to the policy objectives of the Five Year Plan for Social Welfare Department. Whether a group is eligible to seek subvention from Government depends on its ability to meet the above criteria.

Support Services

138. A number of homosexual groups have also set up counselling and support groups to allow homosexuals to share and learn from the experience of others. Representatives of homosexual groups take the view that such services provide an effective support network for homosexuals. They propose that consideration be given to stepping up similar kinds of support services and developing new programmes along similar lines.

Self-help Courses

139. Psychological courses are organised by some homosexual groups with the objective of enhancing self-awareness among homosexuals and promoting healthy intimate relationships. Consultees suggest that more workshops and seminars on topics related to self-empowerment such as handling identity crisis and managing stress should be arranged to enhance the self-esteem of homosexuals.

Training for Service Providers

140. Counsellors who have rendered direct services to homosexuals say that many individuals who try to seek help from social workers or psychologists often fail to receive appropriate assistance. They say that this is because in many cases the social workers and psychologists concerned do not understand the special needs and concerns of these individuals. Counsellors claim that the inability of some service providers to understand the problems faced by homosexuals may aggravate the levels of stress and frustration among such individuals.

141. Such consultees propose that training of service providers should be strengthened so as to improve existing services for homosexuals. The training could encompass various aspects of sexual orientation including different forms of sexual orientation, typical problems encountered by persons of different sexual orientations, and their psychology and culture.

142. The Lady Trench Training Centre of the Social Welfare Department has organised training for social workers and clinical psychologists on working with homosexuals over the past few years. The training programmes include sessions on topics such as different forms of sexual orientations, sex-related problems, counselling skills and workshop on adolescent sexuality. This training will be strengthened in the future. Training institutions will also be requested to include this subject in the curriculum.

Recognition by Employers

143. Some groups note that a number of companies overseas have recognised homosexual relationships by extending employees' benefits to same-sex partners. These may include benefits such as health and insurance coverage, and leave for illness and bereavement. They are of the view that local employers should be encouraged to provide similar benefits for homosexual couples. They consider that this would be an effective way to enhance equal treatment for persons of different sexual orientations.

144. On the other hand, some consultees point out that it may be very difficult to gain public recognition of same-sex relationship without legal recognition. Nevertheless, they hope that through public education, the community can gradually become more sympathetic in considering such issues relating to same-sex relationships.

Concluding Remarks

145. There are diverging views on the use of legislative against non-legislative measures to address the issue of discrimination on the ground of sexual orientation. While some groups consider that legislation would serve to guarantee a basic right to protection for sexual minorities, other groups maintain that legislation would not solve the problems faced by persons of a different sexual orientation. Notwithstanding these polarised views, all consultees agree that non-legislative measures, in particular public education, would be an important means through which equal opportunities for persons of different sexual orientations may be enhanced.

CHAPTER VII

INVITATION OF PUBLIC COMMENTS

146. Measures that may be adopted to promote equal opportunities in Hong Kong in respect of persons of different sexual orientations could have wide implications for the community. The implications of each alternative would have to be carefully considered. It is imperative that members of the public should express their views on this subject.

147. Members of the public who wish to comment on the consultation document and the issues raised therein are invited to submit their comments in writing or by fax to -

Home Affairs Branch
31st Floor, Southorn Centre,
130 Hennessy Road,
Wanchai, Hong Kong
(Fax number: 2591 6002)

by 31 March 1996.

Meeting with Non-governmental Organisations and Interest Parties
List of Organisations and Individuals

Banks and Financial Institutions

Hong Kong Deposit-Taking Companies Association
The Hong Kong Association of Banks
The Hong Kong Federation of Insurers

Educational Establishments

Caput Schools Council
Grant Schools Council
Hong Kong Association of Sponsoring Bodies of Schools
Hong Kong Prevocational Schools Council
Hong Kong Special Schools Council
Subsidised Primary Schools Council
Subsidised Secondary Schools Council

Employee Organisations

Hong Kong & Kowloon Trade Union Council
Hong Kong Confederation of Trade Unions
Hong Kong Women Workers' Association
The Federation of Hong Kong & Kowloon Labour Unions
The Hong Kong Federation of Trade Unions

Employer Organisations/Human Resources Organisations

Hong Kong Institute of Human Resource Management
Hong Kong Management Association
The Chinese General Chamber of Commerce
The Chinese Manufacturers' Association of Hong Kong
The Hong Kong General Chamber of Commerce

Homosexual Groups

Contacts Magazine
Hong Kong Ten Percent Club
HORIZONS
Isvara
Queer Sisters
The Satsanga

Social Service/Religious Groups

AIDS Concern
Christian for Hong Kong Society
Hong Kong Christian Council
Hong Kong Christian Institute
Hong Kong Council of Social Service
Hong Kong Women Christian Council
Justice & Peace Commission of the Hong Kong Catholic Diocese
Student Christian Movement of Hong Kong

Women's Groups

Hong Kong NGO Liaison Group on Women Concerned Issues
Hong Kong Women's Coalition

Academics

Professor Ng Mun-lun, University of Hong Kong
Ms Choi Po-king, The Chinese University of Hong Kong
Mr Chou Wah-shan, University of Hong Kong
Mr Tse Wing-ling, The City University of Hong Kong
Mr Mak Hoi-wah, The City University of Hong Kong

Other Individuals

Mr Frederick Tong, Chief Executive, Hong Kong AIDS Foundation
Ms Anna Cheung, Counsellor, The Satsanga
Ms Lily Kwok, Counsellor, The Satsanga
Mr James Cheung, Principal, Alliance Bible Seminary

Problems Encountered by Homosexuals
Case Analyses by Counsellors and Volunteers of Homosexual Groups

	<i>Description of Cases</i>	<i>Implications analysed by Counsellors and Volunteers of Homosexual Groups</i>
1.	A male homosexual who has two children was forced into marriage ten years ago due to family pressure. He has continued to look for same-sex partners while maintaining a heterosexual relationship with his wife.	Family is one of the sources of pressure imposed on homosexuals. Family pressure has often led to forced marriages. The case shows that the man, his wife, and children could all become the victims in this scenario.
2.	A male homosexual could not accept his own sexual orientation. He felt guilty of being a homosexual and concealed his sexual orientation from his teachers, friends and family. He said that he wanted to commit suicide.	There were several implications arising from this case - <ul style="list-style-type: none"> • traditional moral standards are so firmly embedded that homosexuals themselves may not be able to accept their own sexual orientation; • teachers fail to project an open and friendly image for their students to share their personal problems; and • a low self-worth and low self-acceptance have inhibited homosexuals from seeking external assistance.
3.	A teenager felt sexually excited when he saw the nude body of a male person. He doubted whether he was a homosexual. He had no knowledge of homosexual behaviour and wondered what it was.	This is a typical case reflecting that sex education and education concerning different forms of sexual orientation is insufficient at school.

	<i>Description of Cases</i>	<i>Implications analysed by Counsellors and Volunteers of Homosexual Groups</i>
4.	A married man in his 30s was forced to offer sex service to his male boss due to the fear of being dismissed. After engaging in homosexual behaviour for a few times, he lost interest in his wife and became sexually-inclined to the same-sex.	Victims of homosexual harassment usually fail to resort to police for assistance. This is because they probably felt shameful and embarrassed.
5.	A man fell in love with his colleague but had no means to know whether the colleague is homosexual or not.	The non-acceptance attitude of the public on issues concerning homosexuality had inhibited homosexuals to confess love to a person of the same sex. This results in difficulties in developing and maintaining a long-term homosexual relationship.
6.	An university student whose sexual orientation was disclosed was shunned by other students at the university.	Acceptance of homosexuality at university, which was regarded as a more liberal and open environment, is still very low.
7.	A vice-principal of a Christian school was withheld from promotion to Principal after his sexual orientation was exposed.	Educational and religious bodies are generally very hostile towards homosexuals. Discrimination against homosexuals undermines their potentials and ignores their contribution to the community.

	<i>Description of Cases</i>	<i>Implications analysed by Counsellors and Volunteers of Homosexual Groups</i>
8.	An active participant in gay and lesbian voluntary work was isolated by his colleagues after he displayed an AIDS Concern educational poster at his office. He later resigned from his job due to the hostile working environment.	There is still public misconceptions on the issues of AIDS and homosexuality.
9.	A homosexual group's request to place an advertisement in a newspaper to publicise its counselling hotline was declined.	Homosexuality is stereotyped as something negative and homosexuals are not accepted in many aspects of life by members of the public.

PRESS STATEMENT

Legislative Councillor Christine Loh

To: News Editors
24 January 1996

Release of consultative papers on family status and sexuality discrimination

These two consultative documents thoroughly canvas the issues relevant to legislation against family status and sexuality discrimination. Virtually without exception, however, these issues were raised, researched and publicly discussed last year in the Bills Committee that studied Anna Wu's Equal Opportunities Bill.

There is no need for these documents.

Once again the question to ask is: why must the Government continue to insist on its own rigid, inflexible and interminably slow timetable?

Nothing has been gained by the delay since last year. No one should be in any doubt that, if Government had participated at all in last year's legislative process, the issues raised in these documents would have been settled by now.

The pattern established last year was one of long stretches of delay, followed by short bursts of sabotage. I am sad to see at least the first part of that pattern still running on now as if no one were at the helm.

There are also some significant omissions in the documents that give cause for worry.

The Government often appears before UN committees in Geneva to reaffirm its commitment to its long-standing obligations under various human rights treaties. Recently it has particularly emphasised progress in fighting discrimination, namely the enactment of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance.

Now, back home, the Government's documents conspicuously fail to make a single reference to those obligations. It is absolutely clear that enactment of legislation against these two forms of discrimination would represent further progress under those treaties. This fact is obviously relevant in deciding whether to legislate. Its glaring absence from the documents suggests that the Government regards the treaty obligations it talks up in Geneva as irrelevant in actual practice to its decision-making here.

It is also striking that the document on sexuality contains no simple, straightforward statement of principle on the matter. The document should be seeking views on *how* to combat sexuality discrimination, by legislative means or otherwise -- but it seems to leave

open the conclusion that there should be no fight at all. It appears that Government is unsure whether homosexuals, like everyone else, have a right to work, to seek lodging, and to live their lives without harassment.

The Government should state clearly whether it opposes discrimination against homosexuals or not. Government needs to be perfectly clear about its position on sexuality discrimination, because its record is abysmal. Last year this Government stooped to inviting and using prejudice against homosexuals in its no-holds barred efforts to de-rail Anna Wu's Equal Opportunities Bill.

Despite these reservations, the substance of the document on sexuality discrimination is encouraging in certain respects.

The document suggests no reason not to take a legislative approach. It only canvasses social issues wider than legislation on the one hand, and details on the other. Most of the "areas of concern" it highlights, like homosexual marriage and adoption, are genuinely controversial but also clearly outside the scope of any legislation that has been proposed. Other objections are matters of detail that can easily be met by exceptions. All were already considered by the Bills Committee last year.

The way forward to legislate seems clear -- the only thing still needed is the will to go forward.

The survey results also indicate that, with the support of a good civic education campaign, people are ready for equal opportunity legislation. The survey shows that many people have uncertainties and concerns about homosexuality in general. But it also shows that there is relatively less prejudice precisely in those areas that are relevant to anti-discrimination legislation, such as the workplace, access to public places, etc.

— end —

Legislative Assistant to
Christine Loh: Adam Mayes,
2521-6820 or 78996896 x777

**OPINION SURVEY ON
SEXUAL ORIENTATION**

- REPORT -

Prepared for

**GOVERNMENT SECRETARIAT
HOME AFFAIRS BRANCH**

by

**SRH
SURVEY RESEARCH HONGKONG LTD**

7/F , Warwick House
East Wing
Taikoo Place, 979 King's Road
Quarry Bay
Hong Kong

50702B HL/TY

DEC 1995

CONTENTS

	<i>Pages</i>
INTRODUCTION AND SURVEY OBJECTIVES	1
AREAS OF INVESTIGATION	2
SURVEY METHODOLOGY	3
SUMMARY AND CONCLUSION	4-5
MAIN FINDINGS	6-14
TABLES	
APPENDIX I - PROFILE OF THE RESPONDENTS	
APPENDIX II - ENUMERATION EXPERIENCE	
APPENDIX III - QUESTIONNAIRES	

INTRODUCTION

This report contains the findings of the Opinion Survey on Sexual Orientation conducted on behalf of Home Affairs Branch by Survey Research Hongkong Ltd.

SURVEY OBJECTIVES

The key objectives of the survey are:

1. to gauge public perception of the different forms of sexual orientation;
2. to study people's willingness to accept persons with a different sexual preference in different areas of activity; and
3. to study possible measures to lessen discrimination on the ground of sexual orientations that may exist.

AREAS OF INVESTIGATION

The major areas of investigation can be summarized as follows:

1. **Awareness of different sexual orientations;**
2. **Level of acceptance of homosexual/bisexual behaviour;**
3. **Level of acceptance of homosexuals/bisexuals in different spheres of social interaction;**
4. **Level of acceptance of homosexuals/ bisexuals in teaching posts and public service;**
5. **Level of acceptance of homosexuals/ bisexuals in setting up families; and**
6. **Perceived effectiveness of the possible anti-discrimination measures.**

1. Pilot Test

A pilot test of 30 successfully enumerated cases using telephone interview was conducted before the main survey on 2 October 1995 to test out the questionnaire.

2. Main Survey

A total of 1,535 telephone interviews were conducted between 3 October 1995 and 26 October 1995. The sample was randomly selected in two stages. Firstly, the sample households was generated randomly from the updated Hong Kong residential telephone directories. Secondly, a respondent within the sampled household was chosen randomly using a Kish Grid table for interview. The profile of the respondents is given in Appendix I.

At least three attempts were made to contact the households and another three attempts or more were made to contact the selected respondents for interview in order to ensure a high response rate. The enumeration experience is given in Appendix II.

All figures in this report were weighted to represent the total population under study.

SUMMARY AND CONCLUSION

The main findings of this survey can be summarized as follows:

1. The prevalent attitude among Hong Kong people is very much that only heterosexuality is normal. While the public is quite ambivalent about whether the behaviour of homosexuals/ bisexuals affects other people, the acceptance level for these individuals is on the low side.
2. Social interaction with homosexuals/ bisexuals is acceptable to a certain extent.
3. Interacting with homosexuals/ bisexuals in social occasions such as shaking hands, going out to movies, Karaoke, dinner and swimming do not pose a problem for the majority of people.
4. Also, the majority of Hong Kong people would not mind working or studying together with homosexuals/ bisexuals.
5. However, people are likely to shun homosexuals/ bisexuals in situations which will involve closer personal contacts such as :
 - letting a room to homosexuals/ bisexuals;
 - sharing a flat with them; and
 - employing homosexuals/ bisexuals as domestic helpers.
6. The public seems to be ambivalent about homosexuals/ bisexuals in taking up teaching position or even engaging in public service. However, attempts of the homosexuals/ bisexuals to set up a family through marriage, adoption or reproductive technologies are less accepted

SUMMARY AND CONCLUSION

7. Different segments of the public harbour different views towards the issues of homosexuality/bisexuality. However, people in the older (45 to 64) age group are less likely to accept homosexuals/bisexuals.
8. While women are more likely than men to accept homosexuals/bisexuals, but overall speaking, the difference between the sexes is not very significant.
9. Home-makers seem to be less likely than the others to accept homosexuals/bisexuals on issues concerning family and children.
10. People with higher education (post-secondary or above) and personal income (\$15,000+) are more likely to accept homosexuals/bisexuals.
11. On the possible anti-discrimination measures, civic education is perceived to be more effective than legislative measures.

MAIN FINDINGS

AWARENESS OF DIFFERENT SEXUAL ORIENTATIONS

Overall speaking, the awareness of different forms of sexual orientation is very high. Ninety-six percent (96%) of Hong Kong people have heard of homosexuality vis-à-vis 87% for heterosexuality. Among the three sexual orientations cited, the awareness of bisexuality is the lowest, at 76%. (Table 1)

LEVEL OF ACCEPTANCE OF HOMOSEXUAL BEHAVIOUR

The acceptance level for homosexuals/bisexuals is on the low side (mean score of 3.4 on a rating scale of 0 (totally unacceptable) to 10 (totally acceptable)). The prevalent attitude is very much that only heterosexuality is normal (score 8.7). On the issue of the behaviour of homosexuals/bisexuals being the same as ordinary people, the opinion of the public tend to be rather neutral (score 5.0) which means that public attitude towards the behaviour of these individuals is very ambivalent. They acknowledge however that homosexuality/bisexuality are behaviour of personal choice (score 6.3). (Table 2)

Men's acceptance level for homosexuals/bisexuals (score 3.2) is lower than that of women (score 3.6). However, on the issues that such behaviour is of personal choice, being the same as ordinary people, and that it affects other people, views are quite similar between the sexes. (Table 2)

MAIN FINDINGS

Comparatively, people in different age groups have different opinions towards the behaviour of homosexuals/bisexuals. Although the acceptance level for homosexuals/bisexuals is on the low side (score 3.4), younger people are found to have higher acceptance than the older ones. The acceptance level for those aged between 45 and 64 (score 2.4) is significantly lower than those aged between 15 and 24 (score 4.6). However, on the issues that such behaviour is the same as ordinary people, and that it affects other people, the difference among various age groups is not very significant. They all have an ambivalent attitude. (Table 2)

For people with different marital status, it is observed that the acceptance level for single people are higher than that of married persons on various issues. (Table 2)

Comparatively, students, people with higher income (\$15,000+) and better education (post-secondary or above) are more likely than the others to accept homosexuals/bisexuals. (Tables 2,3 and 4)

MAIN FINDINGS

SOCIAL INTERACTION WITH HOMOSEXUALS/ BISEXUALS

Overall speaking, social interaction with homosexuals/ bisexuals is considered acceptable to a certain extent.

The majority (over 80%) of people would not mind working or studying together with these individuals. (Tables 5,6,7 and 8)

In general, interacting with homosexuals/ bisexuals in social occasions such as shaking hands, going out to movies, Karaoke, dinner and swimming do not pose a problem for the majority. Only 21% of people would mind shaking hand with homosexuals/bisexuals, followed by dining out (28%), watching movies (30%), singing Karaoke (30%) and going swimming (35%). Similarly, less than half of the people would mind staying in a hotel which would also accommodate or joining a club which would not refuse homosexuals/bisexuals. (Tables 5,6,7 and 8)

However, people are likely to shun homosexuals/ bisexuals in situations which involve closer contacts.

MAIN FINDINGS

It is observed that the level of resistance tends to increase steadily as the sphere of social interaction gets closer to personal contacts. While less than one-fifth of people would mind working in the same office or in the same team, or studying in the same class with homosexuals/bisexuals, a noticeable increase in the level of resistance is observed when people were asked about employing homosexuals/bisexuals as domestic helpers, sharing an apartment or subletting a room to them. About three-fourths (74%) of people would mind subletting a room to homosexuals/bisexuals, followed by 72% mind sharing a flat, and 69% would mind employing homosexuals/bisexuals as domestic helpers. (Tables 5,6,7 and 8)

Compared to men, women have a lower acceptance of subletting a room to homosexuals/ bisexuals (77% of women would mind vis-à-vis 72% of men), sharing an apartment with these individuals (74% women vis-à-vis 71% men) and employing them as domestic helpers (72% women vis-à-vis 67% men). (Table 6)

In respect of issues concerning social interaction with homosexuals/ bisexuals, women less likely than men would mind singing Karaoke (26% of women would mind vis-à-vis 34% of men), watching movies (27% women vis-à-vis 33% men), and dining out (26% women vis-à-vis 31% men) with homosexuals/bisexuals. (Table 6)

MAIN FINDINGS

In general, people aged 45+ tend to have a lower acceptance of homosexuals/bisexuals than those in the 15-24 age group. (Table 6)

Generally speaking, people of higher education (post-secondary or above) and personal income (\$15,000+) are more likely than the others to accept homosexuals/bisexuals in various spheres of social interaction. (Tables 6 and 8)

Home-makers tend to have a lower acceptance of homosexuals/bisexuals in situations that involve closer contacts with their families such as subletting a room (86% of the housewives would mind), sharing an apartment (83% would mind) or employing them as domestic helper (81% would mind). Otherwise, their responses to issues on general social interaction with homosexuals/bisexuals are very similar to other people. (Table 7)

Comparatively, students tend to have a higher acceptance of homosexuals/bisexuals than the others. They (93%) would not mind studying in the same class with homosexuals/bisexuals. For those who work as professionals/managers, services/clerical/sales workers, craft/unskilled workers, their level of acceptance seems to be lower than that of the students, but higher than that of the home-makers. (Table 7)

LEVEL OF ACCEPTANCE OF HOMOSEXUALS/ BISEXUALS IN TEACHING POSTS AND PUBLIC SERVICE

Generally speaking, the public seems to be ambivalent about homosexuals/bisexuals in taking up teaching position or engaging in public service. On the issue that a homosexual/ bisexual works as a teacher in primary/ secondary school, the public's level of acceptance (mean score of 4.3 on a rating scale of 0 (totally unacceptable) to 10 (totally acceptable)) is lower than those on working as a lecturer in a tertiary education institute (score 5.2) and occupying an important position in public service (score 5.1). This may reflect a concern of people on the possible effect of homosexual/ bisexual behaviour on younger people. (Tables 9,10 and 11)

Analyzed by sex, male and female are of similar opinions towards these issues. (Table 9)

Across different age groups, elderly people seem to have a lower level of acceptance of homosexuals/bisexuals. (Table 9)

On the contrary, people with higher education (post-secondary or above) and personal income (\$15,000+) seem to have a higher level of acceptance than the others on these issues. (Tables 9 and 11)

Homosexuals/bisexuals working as a teacher in primary/ secondary school or even tertiary education institute is least accepted by home-makers than other people. The corresponding scores for home-makers are 3.7 and 4.6 respectively. On the other hand, students are more likely to accept their teachers being a homosexual/ bisexual in primary/secondary school (score 5.3) and in tertiary education institute (score 5.8). Overall speaking, the professionals/managers have a level of acceptance higher than that of craft/unskilled workers. (Table 10)

MAIN FINDINGS

LEVEL OF ACCEPTANCE OF HOMOSEXUALS/ BISEXUALS IN SETTING UP FAMILIES

Attempts of the homosexual/ bisexual couples to set up families through marriage, and have children through adoption or reproductive technology are less accepted. The levels of acceptance are low, and the corresponding scores range from 3.9 in the case of a lesbian adopting a child, to 2.8 for a gay making use of reproductive technology to have children.

Overall speaking, people seem to accept lesbians' attempt in setting up family more than the gays'. In terms of adopting a child or making use of reproductive technology to have a child, the level of acceptance for lesbian (scores 3.9 and 3.7 respectively) is higher than that of gay (scores 3.2 and 2.8 respectively). Similarly, people are more likely to accept two lesbians getting married (score 3.7) than two gays (score 3.3). (Tables 12,13 and 14)

On issues concerning children, women's acceptance level of homosexuals/bisexuals is lower than that of men. However, on the issue of two homosexual individuals getting married, women's acceptance level is higher than that of men. It may reflect women's greater concern about issues where children are involved. (Table 12)

Younger people tend to have a comparatively higher acceptance level of homosexuals/bisexuals than the elderly, although the differences are not quite significant. (Table 12)

Likewise, for people who are of higher education (post-secondary or above) and personal income (\$15,000+), they tend to accept homosexuals/bisexuals more than others but the differences are not very significant. (Tables 12 and 14)

MAIN FINDINGS

Home-makers seem more unlikely to accept homosexuals/bisexuals to set up families. Their acceptance level for a lesbian or a gay to adopt a child is very low (scores 2.4 and 2.0 respectively). Similarly, they are less likely to accept lesbian or gay in making use of reproductive technology to have a child (scores 2.9 and 2.3 respectively). In terms of two gays or two lesbians getting married, the acceptance level among home-makers is again lower than the others. The respective scores are 2.9 and 3.1. (Table 13)

MAIN FINDINGS

EFFECTIVENESS OF ANTI-DISCRIMINATION MEASURES

People think that the most effective measure in tackling the issue of discrimination on the ground of sexual orientations is to strengthen public's concept on equal opportunities for all (mean score of 7.2 on a rating scale of 0 (very ineffective) to 10 (Very effective)). (Tables 15,16 and 17)

Besides civic education on equal opportunities, education which enhances people's awareness of the different forms of sexual orientation (score 6.9) is perceived to have similar effectiveness. The effective level of strengthening the school curriculum of civic education (score 6.7) is looked upon as another effective means.

In addition, it is also considered effective for the government to set up a responsible department to handle complaints (score 6.3) and to take into account the needs of people who are of different sexual orientations (score 5.6).

Introduction of legislation to outlaw discrimination on the ground of sexual orientation (score 4.0) is perceived to be less effective than civic education.

In general, people of different sex, age, marital status, occupation, education or personal income tend to hold similar views on the various degree of effectiveness of anti-discrimination measures.

TABLES

AWARENESS OF DIFFERENT SEXUAL ORIENTATIONS

	Sex		Age					Marital Status	
	Male	Female	15-24	25-34	35-44	45-64	Single	Married	
	%	%	%	%	%	%	%	%	
Heterosexuality	87	88	92	93	88	78	93	84	
Homosexuality	96	97	99	99	97	91	99	95	
Bisexuality	76	76	82	86	76	61	85	70	
Base: All respondents ('000)	4288	2199	851	1189	1134	1115	1543	2673	
Unweighted Base:	1535	782	372	478	475	210	630	881	

(Ref: Q1)

Note: Figures are percentages of persons who are aware of the different forms of sexual orientation.

LEVEL OF ACCEPTANCE OF HOMOSEXUAL/BISEXUAL BEHAVIOUR - I

	Sex		Age				Marital Status		Education			
	Total	Male	Female	15-24	25-34	35-44	45-64	Single	Married	Primary Or Below	Secondary Or Above	
Homosexuality/Bisexuality Are Acceptable	3.4	3.2	3.6	4.6	3.9	3.0	2.4	4.4	2.8	2.3	3.6	4.0
Only Heterosexuality Is Normal	8.7	8.8	8.6	7.4	8.5	9.1	9.3	7.8	9.2	9.4	8.6	8.0
Homosexuality/Bisexuality Are Behaviour Of Personal Choice	6.3	6.2	6.3	7.3	6.9	6.0	5.0	7.2	5.7	5.0	6.4	7.3
Homosexual/Bisexual Behaviour Affects Other People	5.1	5.2	5.1	4.7	5.1	4.9	5.7	4.9	5.3	5.3	5.0	5.6
The Behaviour Of Homosexuals/Bisexuals Are The Same As Ordinary People	5.0	5.0	4.9	5.4	5.3	4.8	4.4	5.4	4.7	4.4	5.0	5.3
Homosexuality/Bisexuality Corrupts Young People	5.6	5.4	5.8	5.0	5.5	5.7	6.1	5.1	5.9	6.1	5.5	5.5
Base: All respondents ('000)	4288	2199	2089	851	1189	1134	1115	1543	2673	851	2692	745
Unweighted Base:	1535	782	753	372	478	475	210	630	881	244	1033	258

LEVEL OF ACCEPTANCE OF HOMOSEXUAL/BISEXUAL BEHAVIOUR - II

Occupation

	Occupation							Unemployed /Retired
	Total	Employed Persons	Professionals /Managers	Services /Clerical /Sales	Craft /Unskilled Workers	Home-Makers Students		
Homosexuality/Bisexuality Are Acceptable	3.4	3.3	3.6	3.7	2.7	2.9	4.6	3.6
Only Heterosexuality Is Normal	8.7	8.7	8.6	8.5	9.1	9.2	7.2	9.0
Homosexuality/Bisexuality Are Behaviour Of Personal Choice	6.3	6.3	6.8	6.7	5.5	5.6	7.3	5.5
Homosexual/Bisexual Behaviour Affects Other People	5.1	5.2	5.4	5.0	5.2	5.2	4.9	5.2
The Behaviour Of Homosexuals/Bisexuals Are The Same As Ordinary People	5.0	4.9	5.2	5.0	4.6	4.6	5.6	5.2
Homosexuality/Bisexuality Corrupts Young People	5.6	5.5	5.5	5.7	5.4	5.9	5.0	6.1
Base: All respondents ('000)	4288	2761	833	994	934	804	461	240
Unweighted Base:	1535	977	299	359	319	261	229	60

(Ref: Q2)

Note: Figures are mean scores based on a scale with values between "0" and "10", where "0" means "Totally disagree" and "10" means "Totally agree"

Employed persons include the Professionals/ Managers, Services/ Clerical/ Sales and Craft/ Unskilled Workers.

LEVEL OF ACCEPTANCE OF HOMOSEXUAL/BISEXUAL BEHAVIOUR - III

	<i>Personal Monthly Income</i>				
	<i>Total Below \$4,000</i>	<i>\$4,000-7,999</i>	<i>\$8,000-14,999</i>	<i>\$15,000 Or Above</i>	<i>No Income</i>
Homosexuality/Bisexuality Are Acceptable	3.4	2.3	2.5	3.5	3.5
Only Heterosexuality Is Normal	8.7	9.9	9.1	8.8	8.6
Homosexuality/Bisexuality Are Behaviour Of Personal Choice	6.3	4.8	5.3	6.5	6.1
Homosexual/Bisexual Behaviour Affects Other People	5.1	4.1	5.1	5.1	5.1
The Behaviour Of Homosexuals/Bisexuals Are The Same As Ordinary People	5.0	3.5	4.2	5.1	5.0
Homosexuality/Bisexuality Corrupts Young People	5.6	5.8	5.5	5.5	5.7
Base: All respondents ('000)	4288	42	532	1276	1499
Unweighted Base:	1535	16	176	454	333

(Ref: Q2)

Note: Figures are mean scores based on a scale with values between "0" and "10", where "0" means "Totally disagree" and "10" means "Totally agree"

Table 5

SOCIAL INTERACTION WITH HOMOSEXUAL/BISEXUAL INDIVIDUALS - I

	Mind %	Don't Mind %	Depends %	Don't Know %
Subletting A Room	74	22	3	1
Sharing An Apartment	72	25	2	1
Employing As Domestic Helper	69	29	1	1
Letting Your Apartment	53	45	1	1
Joining The Same Club	49	49	1	1
Living In The Same Hotel	37	61	1	1
Going Swimming	35	63	1	1
Singing Karaoke	30	67	2	1
Watching Movie	30	67	2	1
Dining Out	28	69	2	1
Shaking Hands	21	77	1	1
Working In The Same Team	19	80	1	*
Studying In The Same Class	18	81	*	1
Working In The Same Office	14	85	1	*

(Ref: Q3-5)

* Less than 0.5%

1709

SOCIAL INTERACTION WITH HOMOSEXUAL/BISEXUAL INDIVIDUALS - II

	Sex		Age					Marital Status			Education		
	Total	Female	15-24	25-34	35-44	45-64	Single	Married	Primary Or Below	Secondary	Or Above	Post-Secondary	
	%	%	%	%	%	%	%	%	%	%	%	%	
Subletting A Room	74	77	60	69	82	83	62	81	83	73	70	70	
Sharing An Apartment	72	74	60	69	80	78	62	78	79	70	71	71	
Employing As Domestic Helper	69	72	52	66	79	76	55	78	78	68	66	66	
Letting Your Apartment	53	54	40	47	61	62	43	59	69	51	43	43	
Joining The Same Club	49	49	29	40	60	62	33	58	60	47	42	42	
Living In The Same Hotel	37	37	32	35	42	40	31	42	39	38	35	35	
Going Swimming	35	36	20	26	44	46	20	43	49	33	27	27	
Singing Karaoke	30	26	13	22	40	43	15	39	45	28	22	22	
Watching Movie	30	27	11	22	40	44	14	39	44	28	23	23	
Dining Out	28	26	12	22	38	38	14	37	39	27	20	20	
Shaking Hands	21	19	9	15	25	34	10	28	37	19	14	14	
Working In The Same Team	19	16	9	13	25	26	10	24	26	17	18	18	
Studying In The Same Class	18	15	8	11	24	27	8	23	29	16	12	12	
Working In The Same Office	14	12	7	9	18	21	7	18	20	12	15	15	
Total	4288	2199	851	1189	1134	1115	1543	2673	851	2692	745	745	
Base: All respondents ('000)	1535	782	372	478	475	210	630	881	244	1033	258	258	

Unweighted Base:

SOCIAL INTERACTION WITH HOMOSEXUAL/BISEXUAL INDIVIDUALS - III

Occupation

	Total		Professionals /Managers		Services /Clerical/Sales /Unskilled Workers		Craft Makers		Students		Unemployed /Retired	
	%		%		%		%		%		%	
Subletting A Room	74		74		72		76		60		70	
Sharing An Apartment	72		75		69		72		62		65	
Employing As Domestic Helper	69		72		67		70		53		61	
Letting Your Apartment	53		49		49		55		44		62	
Joining The Same Club	49		47		48		54		24		56	
Living In The Same Hotel	37		37		35		43		37		23	
Going Swimming	35		33		30		40		16		34	
Singing Karaoke	30		29		22		40		14		32	
Watching Movie	30		30		22		39		11		35	
Dining Out	28		29		22		35		12		24	
Shaking Hands	21		21		16		28		7		24	
Working In The Same Team	19		22		14		25		8		18	
Studying In The Same Class	18		17		12		26		7		17	
Working In The Same Office	14		18		11		16		6		15	
Base: All respondents ('000)	4288		833		994		934		461		240	
Unweighted Base:	1535		299		359		319		229		60	

(Ref: Q3-5)

Note: Figures are percentages of persons who indicate that "they would mind"

SOCIAL INTERACTION WITH HOMOSEXUAL/BISEXUAL INDIVIDUALS - IV

	Personal Monthly Income					
	Total	Below \$4,000	\$4,000-7,999	\$8,000-14,999	\$15,000 Or Above	No Income
	%	%	%	%	%	%
Subletting A Room	74	87	79	72	71	75
Sharing An Apartment	72	80	74	70	72	74
Employing As Domestic Helper	69	79	69	69	71	69
Letting Your Apartment	53	78	56	50	48	57
Joining The Same Club	49	73	59	48	46	46
Living In The Same Hotel	37	39	44	38	35	36
Going Swimming	35	43	41	33	32	36
Singing Karaoke	30	38	34	31	27	30
Watching Movie	30	43	32	30	28	30
Dining Out	28	38	33	27	27	28
Shaking Hands	21	38	25	22	19	21
Working In The Same Team	19	6	21	19	21	17
Studying In The Same Class	18	19	22	18	16	17
Working In The Same Office	14	6	18	12	16	13
Base: All respondents ('000)	4288	42	532	1276	911	1499
Unweighted Base:	1535	16	176	454	333	548

**LEVEL OF ACCEPTANCE OF HOMOSEXUAL/BISEXUAL INDIVIDUALS
IN TEACHING POSTS AND PUBLIC SERVICE - I**

	Sex		Age				Marital Status		Education	
	Male	Female	15-24	25-34	35-44	45-64	Single	Married	Primary Or Below	Secondary Or Above
Total	4.3	4.3	4.3	4.6	3.9	3.6	5.2	3.8	3.7	4.4
A Homosexual/Bisexual Works As A Teacher In Primary/Secondary School	4.3	4.3	4.3	4.6	3.9	3.6	5.2	3.8	3.7	4.4
A Homosexual/Bisexual Works As A Lecturer In Tertiary Education Institute	5.2	5.2	5.2	5.6	4.8	4.6	5.9	4.8	4.6	5.1
A Homosexual/Bisexual Occupies An Important Position In Public Service	5.1	5.0	5.3	5.5	4.8	4.7	5.7	4.9	4.5	5.2
Base: All respondents ('000)	4288	2199	2089	1189	1134	1115	1543	2673	851	2692
Unweighted Base:	1535	782	753	478	475	210	630	881	244	1033

(Ref: Q6)

Note: Figures are mean scores based on a scale with values between "0" and "10", where "0" means "Totally unacceptable" and "10" means "Totally acceptable"

SRH

LEVEL OF ACCEPTANCE OF HOMOSEXUAL/BISEXUAL INDIVIDUALS IN TEACHING POSTS AND PUBLIC SERVICE - II

Occupation

	Total Persons		Employed Persons		Professionals /Managers		Services /Clerical /Sales		Craft /Unskilled Workers		Home-Makers Students		Unemployed /Retired	
A Homosexual/Bisexual Works As A Teacher In Primary/Secondary School	4.3	4.3	4.3	4.3	4.3	4.6	4.0	3.7	5.3	4.4				
A Homosexual/Bisexual Works As A Lecturer In Tertiary Education Institute	5.2	5.3	5.3	5.7	5.3	4.8	4.6	5.8	5.4					
A Homosexual/Bisexual Occupies An Important Position In Public Service	5.1	5.2	5.6	5.3	4.6	5.7	4.6	5.7	5.4					
Base: All respondents ('000)	4288	2761	833	994	934	804	461	240						
Unweighted Base:	1535	977	299	359	319	261	229	60						

(Ref: Q6)

Note: Figures are mean scores based on a scale with values between "0" and "10", where "0" means "Totally unacceptable" and "10" means "Totally acceptable"

Employed persons include the Professionals/ Managers, Services/ Clerical/ Sales and Craft/ Unskilled Workers.

LEVEL OF ACCEPTANCE OF HOMOSEXUAL/BISEXUAL INDIVIDUALS IN TEACHING POSTS AND PUBLIC SERVICE - III

	<i>Personal Monthly Income</i>					
	<i>Total</i>	<i>Below \$4,000</i>	<i>\$4,000-7,999</i>	<i>\$8,000-14,999</i>	<i>\$15,000 Or Above</i>	
A Homosexual/Bisexual Works As A Teacher In Primary/Secondary School	4.3	3.3	4.1	4.4	4.3	4.3
A Homosexual/Bisexual Works As A Lecturer In Tertiary Education Institute	5.2	5.1	4.8	5.1	5.6	5.1
A Homosexual/Bisexual Occupies An Important Position In Public Service	5.1	5.5	4.8	5.0	5.5	5.1
Base: All respondents ('000)	4288	42	532	1276	911	1499
Unweighted Base:	1535	16	176	454	333	548

(Ref: Q6)

Note: Figures are mean scores based on a scale with values between "0" and "10", where "0" means "Totally unacceptable" and "10" means "Totally acceptable"

LEVEL OF ACCEPTANCE OF HOMOSEXUAL/BISEXUAL INDIVIDUALS IN SETTING UP FAMILIES - I

	Sex		Age				Marital Status			Education	
	Male	Female	15-24	25-34	35-44	45-64	Single	Married	Below	Secondary	Post-Secondary Or Above
Total	4.2	3.6	4.8	4.2	3.4	3.3	4.7	3.4	2.9	4.0	4.6
A Lesbian Adopts A Child	3.9	4.2	3.6	4.8	4.2	3.4	3.3	4.7	2.9	4.0	4.6
A Gay Adopts A Child	3.2	3.3	3.0	4.3	3.5	2.4	2.7	4.0	2.3	3.2	3.9
Lesbian Makes Use Of Reproductive Technology	3.7	4.0	3.3	4.3	4.0	3.3	3.2	4.2	2.7	3.8	4.4
Gay Makes Use Of Reproductive Technology	2.8	3.0	2.7	3.6	3.1	2.5	2.4	3.4	2.0	2.9	3.7
Two Lesbians Get Married	3.7	3.6	3.8	4.3	4.1	3.5	3.1	4.4	2.9	3.8	4.4
Two Gays Get Married	3.3	3.1	3.5	3.9	3.7	3.0	2.6	4.0	2.5	3.3	4.1
Base: All respondents ('000)	4288	2199	2089	851	1189	1134	1115	1543	851	2692	745
Unweighted Base:	1535	782	753	372	478	475	210	630	244	1033	258

Note: Figures are mean scores based on a scale with values between "0" and "10", where "0" means "Totally unacceptable" and "10" means "Totally acceptable" (Ref: Q6)

LEVEL OF ACCEPTANCE OF HOMOSEXUAL/BISEXUAL INDIVIDUALS IN SETTING UP FAMILIES - II

Occupation

	<i>Total</i>	<i>Employed Persons</i>	<i>Professionals /Managers</i>	<i>Services /Clerical /Sales</i>	<i>Craft /Unskilled Workers</i>	<i>Home-Makers</i>	<i>Students</i>	<i>Unemployed /Retired</i>
A Lesbian Adopts A Child	3.9	4.2	4.4	4.3	3.8	2.4	5.0	3.7
A Gay Adopts A Child	3.2	3.3	3.6	3.5	2.8	2.0	4.5	2.9
Lesbian Makes Use Of Reproductive Technology	3.7	3.7	4.3	3.4	3.6	2.9	4.5	3.4
Gay Makes Use Of Reproductive Technology	2.8	2.8	3.4	2.8	2.4	2.3	3.9	2.6
Two Lesbians Get Married	3.7	3.8	4.2	4.0	3.2	3.1	4.2	4.0
Two Gays Get Married	3.3	3.3	3.6	3.5	2.8	2.9	4.0	3.2
Base: All respondents ('000)	4288	2761	833	994	934	804	461	240
Unweighted Base:	1535	977	299	359	319	261	229	60

(Ref: Q6)

Note: Figures are mean scores based on a scale with values between "0" and "10", where "0" means "Totally unacceptable" and "10" means "Totally acceptable"

Employed persons include the Professionals/ Managers, Services/ Clerical/ Sales and Craft/ Unskilled Workers.

**LEVEL OF ACCEPTANCE OF HOMOSEXUAL/BISEXUAL
INDIVIDUALS IN SETTING UP FAMILIES - III**

	<i>Personal Monthly Income</i>					
	<i>Total Below \$4,000</i>	<i>\$4,000-7,999</i>	<i>\$8,000-14,999</i>	<i>\$15,000 Or Above</i>	<i>No Income</i>	
A Lesbian Adopts A Child	3.9	3.6	3.8	4.1	4.4	3.4
A Gay Adopts A Child	3.2	1.5	3.1	3.3	3.4	2.9
Lesbian Makes Use Of Reproductive Technology	3.7	3.0	3.1	3.6	4.5	3.5
Gay Makes Use Of Reproductive Technology	2.8	1.9	2.3	2.8	3.4	2.8
Two Lesbians Get Married	3.7	2.5	3.3	3.7	4.3	3.6
Two Gays Get Married	3.3	2.2	3.1	3.1	3.8	3.3
Base: All respondents ('000)	4288	42	532	1276	911	1499
Unweighted Base:	1535	16	176	454	333	548

(Ref: Q6)

Note: Figures are mean scores based on a scale with values between "0" and "10", where "0" means "Totally unacceptable" and "10" means "Totally acceptable"

EFFECTIVENESS OF THE POSSIBLE ANTI-DISCRIMINATION MEASURES - I

	Sex		Age				Education		Post-Secondary Or Above
	Total	Female	15-24	25-34	35-44	45-64	Primary Or Below	Secondary	
Strengthen Public Concept On Equal Opportunities For All	7.2	7.0	7.3	7.3	7.2	6.9	6.8	7.3	7.1
Enhance Public Knowledge Of The Different Kinds Of Sexual Orientation	6.9	6.9	7.3	7.2	6.9	6.3	6.2	7.0	7.4
Strengthen The School Curriculum Of Civic Education In This Respect	6.7	6.8	7.1	6.9	6.4	6.5	6.3	6.8	7.0
The Government Sets Up A Responsible Department To Handle Complaints For People Who Are Of Different Sexual Orientations	6.3	6.1	6.4	6.3	6.1	6.3	6.2	6.4	5.9
The Government Sets Up A Responsible Department To Take Into Account The Needs Of People Who Are Of Different Sexual Orientations	5.6	5.4	5.9	6.1	5.7	5.3	5.7	5.6	5.5
Introduce Legislation To Outlaw Discrimination On The Ground Of Sexual Orientation	4.0	4.0	4.2	3.8	3.8	4.3	3.9	4.1	3.9
Base: All respondents ('000)	4288	2199	2089	851	1189	1134	851	2692	745
Unweighted Base:	1535	782	753	372	478	475	244	1033	258

(Ref: Q7A)

Note: Figures are mean scores based on a scale with values between "0" and "10", where "0" means "Very Ineffective" and

"10" means "Very effective"

SRH

EFFECTIVENESS OF THE POSSIBLE ANTI-DISCRIMINATION MEASURES - II*Occupation*

	<i>Occupation</i>							
	<i>Total Persons</i>	<i>Employed Persons</i>	<i>Professionals /Managers</i>	<i>Services /Clerical /Sales</i>	<i>Craft Workers</i>	<i>Unskilled Home-Makers</i>	<i>Students</i>	<i>Unemployed /Retired</i>
Strengthen Public Concept On Equal Opportunities For All	7.2	7.2	7.1	7.3	7.2	7.0	7.1	7.1
Enhance Public Knowledge Of The Different Kinds Of Sexual Orientation	6.9	7.0	7.1	7.1	6.8	6.5	7.2	6.6
Strengthen The School Curriculum Of Civic Education In This Respect	6.7	6.8	6.8	6.8	6.7	6.4	6.9	6.5
The Government Sets Up A Responsible Department To Handle Complaints For People Who Are Of Different Sexual Orientations	6.3	6.2	6.0	6.2	6.4	6.4	6.4	6.1
The Government Sets Up A Responsible Department To Take Into Account The Needs Of People Who Are Of Different Sexual Orientations	5.6	5.5	5.6	5.4	5.5	5.9	6.1	5.2
Introduce Legislation To Outlaw Discrimination On The Ground Of Sexual Orientation	4.0	3.9	3.8	3.7	4.3	4.0	4.4	4.5
Base: All respondents ('000)	4288	2761	833	994	934	804	461	240
Unweighted Base:	1535	977	299	359	319	261	229	60

Note: Figures are mean scores based on a scale with values between "0" and "10", where "0" means "Very Ineffective" and "10" means "Very effective"

Employed persons: Professionals/Managers, Services/Clerical/Sales and Craft/Unskilled Workers

EFFECTIVENESS OF THE POSSIBLE ANTI-DISCRIMINATION MEASURES - III

Personal Monthly Income

	Total	Below \$4,000	\$4,000-7,999	\$8,000-14,999	\$15,000 Or Above	No Income
Strengthen Public Concept On Equal Opportunities For All	7.2	6.7	7.2	7.2	7.3	7.1
Enhance Public Knowledge Of The Different Kinds Of Sexual Orientation	6.9	6.4	6.4	7.0	7.3	6.7
Strengthen The School Curriculum Of Civic Education In This Respect	6.7	5.3	6.7	6.8	6.9	6.6
The Government Sets Up A responsible Department To Handle Complaints For People Who Are Of Different Sexual Orientations	6.3	6.9	6.2	6.3	6.0	6.4
The Government Sets Up A responsible Department To Take Into Account The Needs Of People Who Are Of Different Sexual Orientations	5.6	4.9	5.6	5.5	5.5	5.9
Introduce Legislation To Outlaw Discrimination On The Ground Of Sexual Orientation	4.0	4.3	4.5	3.9	3.6	4.2
Base: All respondents ('000)	4288	42	532	1276	911	1499
Unweighted Base:	1535	16	176	454	333	548

Note: Figures are mean scores based on a scale with values between "0" and "10", where "0" means "Very Ineffective" and "10" means "Very effective"

APPENDIX I - PROFILE OF THE RESPONDENTS

Profile Of The Respondents**Sex:**

Male:	51%
Female:	49%

Age:

15-24	20%
25-34	28%
35-44	27%
45-64	25%

Marital Status:

Single	36%
Married	62%
Others	2%

Education:

No formal education	5%
Primary education	15%
Secondary	63%
Post-secondary or above	17%

Occupation:

Professional/ Managers	20%
Services/ Clerical/ Sales	23%
Craft/ Unskilled workers	22%
Home-makers (Female)	19%
Retired	2%
Students	11%
Unemployed	3%

Personal Income:

Below \$4000	1%
\$4000 - \$7999	13%
\$8000 - \$14999	30%
\$15000 or above	21%
No income	35%

APPENDIX II - ENUMERATION EXPERIENCE

Enumeration experience

The response rate of the study is 70.4% and the details of the fieldwork results are as follows:

Main sample:	3,034	
<u>Non-effective sample:</u>	855	
Non-residential:		90
Telephone not operating:		449
Different languages:		105
(Other than Cantonese & English)		
Non contact after 3 calls:		56
(household)		
Refused from household:		115
Line busy:		40
<u>Effective sample:</u>	2,179	
Non-contact after 3 calls:		174
(individual)		
Refused:		221
On trip:		30
Half Way Refused:		70
Others:		8
No. of questionnaires rejected:		141
(by QC & Fieldwork)		
Successful interviews:		1535
Response rate:	70.4%	

APPENDIX III - QUESTIONNAIRES

SURVEY RESEARCH HONGKONG LTD

Tel. No.: 2880-3388 (DAY TIME)
2880-3393 (NIGHT TIME)

Name of Respondent: _____

Tel no.: _____ Tel code: _____

Address: _____

Add. code: _____

Interviewer No.: _____

Date of interview: _____

Time started: _____

Time ended: _____

Study ID: (101-105)

Resp. No.: (106-109)

Card No.: (110-111)

Interviewer No.: (112-116)

Interview Length: (117-118)

No. of Queries: (119-120)

Reference No.: (121-124)

50702B OPINION SURVEY ON SEXUAL ORIENTATION

INTRODUCTION

Good morning/evening. I'm _____, an interviewer from Survey Research Hongkong Ltd. We do surveys on a wide range of topics. Today we are conducting an opinion survey on behalf of the Hongkong Government. The interview will not be long. Thank you for your cooperation.

SCREENING

- S1. Can you tell me how many family members in your households are aged between 15 and 64? By family members who are now living in your household, I mean people sharing the meals and sleeping in the household for at least five nights a week. (X)
- S2. Can you tell me, how old these family members are and their relationship with you? (Start from the eldest.)

ALL THE RESPONDENTS, WHO AGED BETWEEN 15 AND 64 SHOULD BE INCLUDED IN THE LIST.

ADD CODE: _____

No.	List H/H Members between 15 and 64	Age	Last Digit of Address Code									
			1	2	3	4	5	6	7	8	9	
1.			1	1	1	1	1	1	1	1	1	1
2.			2	1	2	1	2	1	2	1	2	1
3.			2	3	1	2	3	1	2	3	1	2
4.			3	4	1	2	3	4	1	2	3	4
5.			5	1	2	3	4	5	1	2	3	4
6.			5	6	1	2	3	4	5	6	1	2
7.			3	4	5	6	7	1	2	3	4	5
8.			6	7	8	1	2	3	4	5	6	7
9.			8	9	1	2	3	4	5	6	7	8
10.			9	10	1	2	3	4	5	6	7	8

**CHOOSE ONE RESPONDENT BY USING THE ADDRESS CODE AND ASK TO SPEAK TO
SELECTED RESPONDENT**

MAIN QUESTIONNAIRE

Mr/Miss/Ms,

We are conducting an opinion survey on behalf of the Hong Kong Government. The survey aims to understand the public's views on different forms of sexual orientation (like heterosexuality, homosexuality or bisexuality). All the information provided will be treated in the strictest confidence. Questionnaires will be processed by computer and they will be destroyed once the data are processed. Thank you for your cooperation.

1. Have you heard about:

	Yes	No
Heterosexuality	1 ()	2
Homosexuality	1 ()	2
Bisexuality	1 ()	2

(According to our definitions, heterosexuality means sexually attracted to people of the opposite sex; homosexuality means sexually attracted to people of the same sex; and bisexuality means sexually attracted to both people of the opposite and the same sex.)

2. The following are the views some people have regarding homosexuality and bisexuality. Do you agree or disagree with their views? (You can choose any score between 0 to 10 to represent your views, with "0" meaning *Totally disagree* and "10" *Totally agree*)

- a. homosexuality/bisexuality are acceptable (X)
- b. only heterosexuality is normal (X)
- c. homosexuality/bisexuality are behaviour of personal choice (X)
- d. homosexual/bisexual behaviour affects other people..... (X)
- e. the behaviour of homosexuals/bisexuals are the same as ordinary people..... (X)
- f. homosexuality/bisexuality corrupts young people..... (X)

3. Please tell me whether you would mind or wouldn't mind.

If respondents answer 'Depends', interviewer please probe 'in what situation'

	Yes	No	Depends	Don't know
shaking hands with homosexuals/bisexuals..	1()	2	3	4
_____ () - ()				
seeing movie with them.....	1()	2	3	4
_____ () - ()				
singing Karaoke with them.....	1()	2	3	4
_____ () - ()				
dining out with them	1()	2	3	4
_____ () - ()				
going swimming with them.....	1()	2	3	4
_____ () - ()				

Please tell me whether you would mind or wouldn't mind:

If respondents answer 'Depends', interviewer please probe 'in what situation'

	Yes	No	Depends	Don't know
subletting a room in your apartment to a homosexual/bisexual..... _____ _____ () - ()	1()	2	3	4
letting your apartment to a homosexual/bisexual..... _____ _____ () - ()	1()	2	3	4
staying in a hotel which would also accommodate guests who are homosexual/bisexual..... _____ _____ () - ()	1()	2	3	4
employing a homosexual/bisexual as a domestic helper..... _____ _____ () - ()	1()	2	3	4
being a member of a club which would not refuse homosexuals/bisexuals as members of the club..... _____ _____ () - ()	1()	2	3	4

If respondents ask the meaning of 'Club', interviewer please tell them: "Club" means an association of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes. They may own their facilities or accommodations.

5. Please tell me whether you would mind or wouldn't mind:

If respondents answer 'Depends', interviewer please probe 'in what situation'

	Yes	No	Depends	Don't know
working in the same office with a homosexual/bisexual..... _____ () - ()	1 ()	2	3	4
working in the same team with a homosexual/bisexual..... _____ () - ()	1 ()	2	3	4
sharing the tenancy of an apartment with a homosexual/bisexual..... _____ () - ()	1 ()	2	3	4
being in the same class with a homosexual/bisexual at school..... _____ () - ()	1 ()	2	3	4

6. Will you accept or not the following situations? You can choose any score between 0 to 10 to represent your views, with "0" meaning *Totally unacceptable* while "10" meaning *Totally acceptable*.

- a homosexual/bisexual works as a teacher in primary/secondary school (X)
- a homosexual/bisexual works as a lecturer in tertiary education institute..... (X)
- a homosexual/bisexual occupies an important position in public service..... (X)
- a lesbian adopts a child..... (X)
- a gay adopts a child..... (X)
- lesbian makes use of reproductive technology (X)
- gay makes use of reproductive technology (X)
- two lesbians get married..... (X)
- two gays get married..... (X)

If respondents ask the meaning of "reproductive technology", interviewer please tell them: "reproductive technology" means any medical treatment or scientific intervention directed at assisting human reproduction.

If there exists somebody discriminating homosexuals or bisexuals, do you think the following measures are effective or not in lessening the discrimination on the ground of sexual orientation? You can choose any score between 0 to 10 to represent your views, with "0" meaning *Very ineffective* and "10" meaning *Very effective*.

- a. strengthen the school curriculum of civic education in this respect (X)
- b. enhance public knowledge of the different kinds of sexual orientation (X)
- c. the government sets up a responsible department to handle complaints for people who are of different sexual orientations (X)
- d. the government sets up a responsible department to take into account the needs of people who are of different sexual orientations (X)
- e. introduce legislation to outlaw discrimination on the ground of sexual orientation (X)
- f. strengthen public concept on equal opportunities for all (X)

Are there any other measures you can think of?

()-()

DEMOGRAPHICS

D1. Could you please tell me your age?

- 15-19 1
- 20-24 2
- 25-29 3
- 30-34 4
- 35-39 5
- 40-44 6
- 45-49 7
- 50-54 8
- 55-59 9
- 60-64 0

D2. Could you please tell me your marital status?

- Single 1
- Married 2
- Others (including divorced, separated etc.) 3

D3. Record sex

- Male 1
- Female 2

D4. Have you had any formal education? If yes, up to what level?

- No formal education
(including private tuition) 1
- Primary education 2
- Lower secondary
(F1 to 3 or Middle 1 to 3) 3
- Upper secondary
(F4 to 7 or Middle 4 to 6) 4
- Post-secondary or above 5
- Others (SPECIFY) 1

D5. What is your occupation/position?

OFFICE CODE

Occupation: _____

Position: _____

Professional/managers	1()
Services/clerical/sales	2
Craft/unskilled workers	3
Home-makers	4
Retired	5
Student	6
Unemployed	7
Unclassifiable/refusal	8
Others (PLEASE SPECIFY)	1()

D6. What is your monthly income?

HK\$3,999 and below	1()
HK\$4,000-HK\$5,999	2
HK\$6,000-HK\$7,999	3
HK\$8,000-HK\$9,999	4
HK\$10,000-HK\$14,999	5
HK\$15,000-HK\$19,999	6
HK\$20,000-HK\$29,999	7
HK\$30,000 and above	8
No income	9

Equal Opportunities

A Study of Discrimination

on the Grounds of
Race, Religion

DOCUMENT

A Consultation Paper

TABLE OF CONTENT

**EQUAL OPPORTUNITIES: A STUDY ON DISCRIMINATION ON
THE GROUND OF FAMILY STATUS
A CONSULTATION PAPER**

Chapter		Page(s)
I.	Introduction	1-2
II.	Overseas Experience	3-10
III.	Local Circumstances	11-20
IV.	Possible Measures to Enhance Equal Opportunities for Persons of Different Family Status - The Legislative Option	21-27
V.	Possible Measures to Enhance Equal Opportunities for Persons of Different Family Status - Non-legislative Measures	28-32
VI.	Invitation of Public Comments	33
Appendix		34-35

CHAPTER I

INTRODUCTION

Equality of opportunities means that members of society are given the same chances and choices to exercise their rights in all areas of activity. It is a social ideal which all societies should strive to achieve. Hong Kong is no exception. The Hong Kong Government fully supports the spirit and the laudable principle of equal opportunities for all. Our commitment is reflected in the recent enactment of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. These Ordinances seek to ensure that individuals are not discriminated against on account of gender or disability. They give the people of Hong Kong a similar or better level of legal protection, in respect of equal opportunities between the sexes and between those with and without a disability, as exists in other advanced societies.

2. The decision to adopt a legislative approach in tackling the problems of discrimination on the grounds of gender and disability was taken following thorough research and wide consultation. As part of our study of those areas, we conducted an in-depth analysis of the policy options and implications of the legislative approach. The objective of the two pieces of anti-discrimination legislation is to guarantee that affected persons would have the opportunity to make the most of their abilities to participate fully in various areas of activity.

3. It is important to acknowledge that the issue of discrimination is closely associated with personal beliefs and social values. In order to achieve success in promoting equal opportunities, it is necessary to obtain broad support from the community. Government believes that a step-by-step approach is the best way of tackling the problem of discrimination and mobilising public support for the practice of equal opportunities. 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. Before we come to a conclusion on the appropriate measures to address a particular form of discrimination, it is necessary to identify the problems in respect of the area of discrimination concerned and thoroughly consult the public on the issue and possible measures to be taken.

4. In line with our step-by-step approach and in response to calls for further measures to be taken to combat discrimination, we undertook in July 1995 to conduct studies on discrimination based on age, sexual orientation, and family status¹. Each study includes a public consultation exercise on possible

¹ Unless the context makes clear, otherwise the term family status is used in this document to mean both family status and family responsibility.

measures to tackle the problems identified. The Administration also undertook to report the findings of each study to the Legislative Council within the current legislative session.

5. This consultation document concerns the issue of discrimination on the ground of family status. So far, our study of this issue has included research into overseas experience in handling this type of discrimination and an assessment of local circumstances through meetings with various organisations and interested parties. The outcome of this research is set out in the following two chapters. Possible legislative and non-legislative measures to tackle this form of discrimination are described in Chapters IV and V of this document respectively. In describing the legislative option, reference has been made to the Sex Discrimination Ordinance and the Equal Opportunities Bill, a Private Members' Bill introduced into the Legislative Council in the 1994-95 legislative session.

6. To assist us in deciding what action is required to address discrimination on the ground of family status and foster equality of opportunities in this area, it is important for members of the community to express their views on the matters dealt with in this document. Members of the public are invited to submit their views in writing. Details are set out in Chapter VI of this document.

CHAPTER II

OVERSEAS EXPERIENCE

7. Research into overseas jurisdictions indicates that not many countries have enacted legislation against discrimination on the ground of family status. The main ones which have done so are Australia, New Zealand, and Canada. Other jurisdictions, such as the United Kingdom, the United States, Japan, and Sweden have emphasised the need to reconcile demands of the workplace with those of the family. This chapter provides an overview of such legislation where it exists, and the mechanisms by which other jurisdictions seek to balance the demands of family and work. Where federal systems are involved, we have concentrated on the legislation at the federal level in order to provide a reasonably concise overview.

Australia

8. The Australian Sex Discrimination Act (SDA) 1984 was amended in 1992 to proscribe dismissal from employment on the ground of family responsibilities². This amendment came into force on 13 January 1993.

9. The SDA defines family responsibilities in relation to an employee as: "responsibilities of the employee to care for or support:

- (a) a dependent child of the employee; or
- (b) any other immediate family member who is in need of care and support."

In this definition, "child" includes an adopted child, a step-child or an ex-nuptial child; "dependent child" means a child who is wholly or substantially dependent on the employee; "immediate family member" includes a spouse of the employee, an adult child, parent, grandparent, grandchild or sibling of the employee or of a spouse of the employee; and "spouse" includes a former spouse, a de facto spouse and a former de facto spouse.

² In 1989, the House of Representatives Standing Committee on Legal and Constitutional Affairs in Australia conducted its Inquiry into Equal Opportunity and Equal Status for Women. A Report was released in April 1992. The Report has made a number of recommendations concerning the operation of the SDA, one of which is the inclusion of discrimination on the ground of family status within the scope of the Australian Act.

10. The scope of the proscribed discrimination on the ground of family responsibilities is narrower than that on the grounds of sex, marital status and pregnancy in the SDA. It does not include indirect discrimination.³ Furthermore, direct discrimination on the ground of family responsibilities is limited to discrimination by dismissal in the area of employment.

11. The amendment to the SDA was partly a response to Australia's obligation under the International Labour Organisation (ILO) Convention No. 156.⁴ The Convention was ratified by the Australian Government in 1990. The amendment to the SDA implements Article 8 of the Convention which requires that family responsibilities shall not constitute a valid reason for the termination of employment.

12. Table 2.1 shows the number of major complaints lodged to the Australian Human Rights and Equal Opportunities Commission in the past two years.⁵ From this, it can be seen that only 6 out of a total of 1304 cases in the period from 1 July 1993 to 30 June 1994 related to family responsibilities. It is unlikely that this is due to the fact that discrimination in this area is limited to dismissal in employment. This is because the overwhelming majority of all cases are themselves employment-related.⁶ Hence, this number may provide a rough indication of the size of the problem of discrimination on the ground of family responsibilities relative to other areas of discrimination governed by the Act. On the other hand, one reason for the relatively small number could be that this was the first full year of operation of the relevant provisions.

³ In general terms, indirect discrimination means imposing the same requirement or condition on everyone but which has an unfair effect on a particular group of persons. Direct discrimination means treating a person less favourably than another person in analogous circumstances because of the person's status.

⁴ The International Labour Conference in 1981 adopted the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 156). The aim of these instruments is to strengthen protection for all workers with family responsibilities, to encourage the sharing of family responsibilities between men and women, and to build workplaces in which women and men have the choice and opportunity to respond to parental and other family duties.

⁵ Australian Human Rights and Equal Opportunities Commission Annual Reports (1992-93, 1993-94).

⁶ As far as employment-related cases are concerned, there were 666 cases during 1992-93 and 1187 cases during 1993-94. These constitute 85% and 91% of the total number of cases in the two years respectively.

Table 2.1 *Number of Major Complaints lodged to the Australian HREOC in the years 1992/93 and 1993/94*

<i>Nature of Complaints</i>	<i>Period: 1.7.92 - 30.6.93</i>	<i>Period: 1.7.93 - 30.6.94</i>
<i>Sex</i>	278	369
<i>Sexual Harassment</i>	292	592
<i>Pregnancy</i>	89	153
<i>Marital Status</i>	36	51
<i>Family responsibilities</i>	3	6
<i>Others (e.g. Victimisation, sex and sexual harassment)</i>	85	133
TOTAL	783	1304

13. Relevant legislative measures have also been incorporated into the industrial relations framework by virtue of the Australian Industrial Relations Act (IRA) 1988. This aims to prevent and eliminate discrimination against workers with family responsibilities and to assist workers to reconcile their employment with their family responsibilities.⁷

New Zealand

14. The New Zealand Human Rights Act (the Act) 1993 came into effect on 1 February 1994. It consolidated the previous Race Relation Act 1971 and the Human Rights Commission Act 1977 and provided for a variety of new grounds of unlawful discrimination including family status. The Act provides for discrimination on the specified grounds⁸ to be unlawful in various areas of activity such as employment, education, access to public places, provision of goods and services, and housing and accommodation. Under the Act, "family status" is defined as -

- (a) having the responsibility for part-time care or full-time care of children or other dependants; or
- (b) having no responsibility for the care of children or other dependants; or

⁷ The IRA 1988 was amended by the Industrial Relations Reform Act 1993 to require the Australian Industrial Relations Commission (AIRC) to remove discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

⁸ The New Zealand Human Rights Act prohibits discrimination on the grounds of sex, marital status, religious or ethical belief, race and colour, ethnic or national origins, age, disability, political opinion, employment status, family status, or sexual orientation.

- (c) being married to, or being in a relationship in the nature of a marriage with, a particular person; or
- (d) being a relative of a particular person.

The Act also makes it unlawful to discriminate a person because the person's relative or associate is of a particular family status. In addition, discrimination that is based on present or past circumstances and discrimination based on an assumption or belief about another person's family status are unlawful.

15. A table showing the major grounds of complaints lodged to the New Zealand Human Rights Commission since the enactment of the Human Rights Act is set out below:

Table 2.2 Major Grounds of Complaints lodged to the New Zealand Human Rights Commission in the years 1993/94 and 1994/95

<i>Grounds of Complaint</i>	<i>Period 1.7.1993 - 30.6.1994</i>	<i>Period 1.7.1994 - 30.6.1995</i>
<i>Sex/Sexual Harassment</i>	133	99
<i>Disability</i>	32	67
<i>Age</i>	26	45
<i>Marital Status</i>	13	29
<i>Family Status</i>	9	35
<i>Sexual Orientation</i>	7	22
<i>Others¹</i>	49	32
<i>TOTAL²</i>	269	329

Notes: (1) Other grounds include race, religious or ethical belief, and political opinion, etc.

(2) Since each complaint received may involve more than one ground or section of the Act, the "total" presented here exceeds the number of actual complaints received. There were in fact 235 complaints in 1993-94 and 257 complaints in 1994-95.

16. Since the Act did not come into effect until February 1994 for the new grounds of unlawful discrimination, such as family status, Table 2.2 only represents the number of cases gathered from less than two years of operational experience. However, in the first full year of operation (1994-95) of the Act, about 10% of all complaints related to discrimination on the ground of family status.

Canada

17. The Canadian Charter of Rights and Freedoms (the Charter) provides a constitutional safeguard against discrimination and has been

incorporated into the Canadian Constitution. It provides for rights against various forms of discrimination, including that on the ground of family status.

18. At the federal level, the Canadian Human Rights Act (HRA) is parallel to and complements the guarantee under section 15 of the Charter. Family status is a prohibited ground of discrimination under the HRA. The legislation covers various areas of activity such as employment, provision of goods and services, and accommodation. However, no definition of family status is given in the HRA. At the provincial level, however, family status has been defined. For example, in Ontario, which was the first province to have an enforceable human rights statute in Canada. The Ontario Human Rights Code was first enacted in 1962. A new Code was enacted in 1981 and became law in 1982. In the Code, "family status" is defined as the status of being in a parent-child relationship.

19. The numbers of discrimination cases related to family/marital status lodged with the Canadian Human Rights and Equal Opportunities Commission in the past few years are set out in Table 2.2.

Table 2.3 *Number of cases related to Family/Marital Status lodged with the Canadian Human Rights and Equal Opportunities Commission*

<i>Year</i>	<i>No. of Cases on Family/Marital Status</i>	<i>Percentage of Total Number of Cases</i>
1991	106	11%
1992	134	11%
1993	109	9%
1994	82	6%

United Kingdom

20. There is no legislation against discrimination on the ground of family status in the UK. The UK Sex Discrimination Act 1975 renders unlawful certain kinds of sex discrimination, and discrimination on the ground of marriage in the employment field. However, a policy of not employing women with children has been considered by the UK Employment Appeal Tribunal to constitute direct sex discrimination and indirect marital discrimination.⁹ Accordingly, the UK Act provides at least a partial avenue for redress for persons who have been discriminated against on the ground of family responsibilities.

⁹ Casebook of Decisions on Sex Discrimination and Equal Pay 1976-1988, UK Equal Opportunities Commission.

21. Notwithstanding the absence of legislation targeted at family status, one of the main themes of the UK Equal Opportunities Commission (EOC)'s strategies for the 1990s concerns work and the family.¹⁰ The overall objective is "to enable women and men to be effective and responsible employees and effective and responsible family members." Specifically, the UK EOC is of the view that the contribution women can make will be greater if more provision is made for family support so that there can be a choice of care both for children and elderly or dependent relatives.

22. Since the UK EOC is mainly concerned with issues pertaining to gender equality, its recommendations concerning work and the family are made from a gender perspective. For example, given that the majority of part-time workers are women, the UK EOC has recommended that employers provide support for working parents and that pay and non-pay benefits for part-time workers should be equivalent to those of full-time workers so as to enhance the status of women.

United States of America

23. At the federal level in the United States, there is no legislation against discrimination on the ground of family status. Title VII of the Civil Rights Act 1964 guarantees freedom from discrimination on the grounds of race, colour, religion, sex, and national origin in employment but does not prohibit discrimination based on family status.¹¹

24. Studies conducted in the US have found that women who are divorced, separated, widowed, or have never married and who have to support a family often experience considerable difficulty finding a job, especially when they have pre-school children.¹² Only a small number of businesses offer on-site child care or subsidise employees' child care expenses.¹³

¹⁰ "From Policy to Practice. An Equal Opportunities Strategies for the 1990s", UK Equal Opportunities Commission.

¹¹ Some states such as Michigan and Pennsylvania have anti-discrimination statutes which prohibit such discrimination in the area of employment. The Michigan Civil Rights Act and the Pennsylvania Human Rights Relations Act prohibit discrimination in employment on a number of grounds including "familial status".

¹² Weitzman, Lauren M. and Fitzgerald, Louise F. "Employed Mothers: Diverse Life-Styles and Labour Force Profiles". In Judith Frankel (Ed.), *The Employed Mother and the Family Context*.

¹³ O'Reilly, Patricia and Briscoe, Felecia M. "Social Support for Working Families". In Judith Frankel (Ed.), *The Employed Mother and the Family Context*.

25. The Family and Medical Leave Act was enacted in 1993 as a means of improving support for workers with family responsibilities. The Act entitles employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition.

26. In addition, flexitime work policies have become another way of helping parents meet their dual obligations of work and the family. At first such policies were hailed by feminists as major achievements, but now many are re-examining the policies. Some claim that they are simply a way of keeping women responsible for child care while remaining in a job.

Japan

27. There is no anti-discrimination legislation on the ground of family status in Japan. However, recognising the need to reconcile the conflicting demands of working and family life, child care leave has been made an employee's right with the enactment of the Child Care Leave Law in 1992. In addition, a family care leave system was incorporated into law through the Law Amending the Child Care Leave Law in 1995.

28. Under the Child Care and Family Care Leave Law, an employer may not dismiss a worker for reason of applying for child care or family care leave or taking such leave.¹⁴ The law aims to allow workers to care for their family without having to give up their employment.

29. Some of the sections in the law concerning family care will not come into effect until 1999. Nevertheless, the Japanese Government is encouraging employers to make every effort to implement the family care system fully in advance of this date.

Sweden

30. The Swedish Equal Opportunities Act came into force in 1992 and amendments to the new Act were proposed by Government in 1994. The amendments consist of rules requiring employers to take active steps to promote equality in the workplace. They require employers to promote a well-balanced distribution of women and men in various types of work and to make special efforts to attract applicants of the under-represented sex. The

¹⁴ The child care leave system entitles both male and female workers to apply for leave to care for a child until the child's first birthday. The family care leave system allows workers to apply for one period of family care leave for a period of at least three consecutive months per family member (spouse [including de facto spouses], parents, children, or spouse's parents) who requires constant care.

amendments also require employers to make it easier for both female and male employees to be able to combine work and parenthood.

31. The provision of paid and unpaid maternity, paternity and parental leave, child-care and sick child-care leave benefits in Scandinavian countries have been held up by some as the standard by which other countries should be measured. The Swedish Child-care Leave Act entitles parents to leaves of absence, partly in the form of full-time leave and partly in the form of a reduction in working hours. Furthermore, the Parental Insurance Scheme pays various forms of cash benefits to parents in connection with child-bearing and child care.

32. Such schemes reflect a family policy of encouraging shared responsibility for the care of small children and the home. Attractive though the result of these benefits may seem, it must be weighed against the heavy taxation policies and substantial Government intervention in the economic and social policies of Scandinavian countries.

CHAPTER III

LOCAL CIRCUMSTANCES

33. In order to better understand the issue of discrimination on the ground of family status in the local context, a number of meetings have been held with various organisations and interested parties such as employer and employee organisations, social service organisations, religious organisations, educational bodies, women's groups, and academics. The groups and individuals who gave their views are listed in the **Appendix**. In addition, a number of organisations expressed their opinions to the Bills Committee that examined the Sex Discrimination Bill and the Equal Opportunities Bill during the 1994-95 legislative session. This chapter summarises the views expressed with respect to the local situation of discrimination on the ground of family status.

Concept of "the Family"

34. Before examining issues related to discrimination on the ground of family status, it is first necessary to consider what is meant by "the family". Some consultees have questioned the traditional concept of the family with its emphasis on marriage between a man and a woman. As social concepts and values change, some people may choose co-habitation rather than a legal marriage. These consultees took the view that the living arrangement of co-habitees is comparable to that of the conventional family setting and should therefore be regarded as "a family".

35. On the other hand, some perceive a weakening in the institution of marriage as indicated by the rising divorce rate, which has become a source of concern in the community in recent years. They fear that giving direct legal recognition to de facto spouses may result in even less value being placed on marriage. They further believe that this would lead to adverse social consequences.

Major Issues of Discussion

36. The issue of whether de facto spouses and other partners should be included in any definition of the family attracted attention from some academics. However, in discussing the problems faced by persons due to

family status, de facto spouses were not one of the groups highlighted as suffering disadvantages. The two major groups that were identified as being likely to suffer disadvantages due to their family status are:

- (a) persons who need to take care of young children, elderly or disabled relatives; and
- (b) persons of single parent families.

Carer in the family

37. Consultees have identified women as the main carers in the family. Many asserted that family responsibilities hinder the personal development of women as well as their participation in the workforce and in community and social affairs.

38. In particular the traditional child care role of women is cited by many as a major hindrance to women seeking a career. They considered that mothers nearly always take more of the responsibilities of child caring and that this is the case in all levels of society. A local study on women with managerial responsibilities shows that such women continue to bear most of the responsibilities in child caring and household work.¹⁵ The career woman is no exception. Although most of these women have either full-time or part-time assistance for these tasks, nearly half of the respondents in the survey handle most of the household work including looking after sick children. Another study on women workers concluded that mothering responsibilities, which include child caring and caring for the family, constitute the major reason for exit from full-time employment for these workers.¹⁶ According to the study, many women in this group have had several service sector jobs prior to a reluctant exit from full-time employment due to family responsibilities.

39. Table 3.1 shows the labour force participation rate by age and gender over the past three years. The decrease in the labour force participation rate of women in their late twenties and early thirties is often interpreted as a response to the need to take care of young children in the family.

¹⁵ "The Effects of Social Change on Women in Management in the Industrial and Commercial Sectors in Hong Kong", City University of Hong Kong, August 1995.

¹⁶ "A Study of the Impact of Industrial Restructuring on Women Workers", the Hong Kong Federation of Women, August 1995.

**Table 3.1 Labour Force Participation Rate by Age and Gender
in the years 1992-94**

<i>Age Group</i>	<i>Labour Force Participation Rate (%)</i>					
	<u>1992</u>		<u>1993</u>		<u>1994</u>	
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>
15-19	28.4	22.1	27.9	20.2	23.9	19.3
20-24	82.4	82.5	81.1	79.1	80.2	77.7
25-29	97.8	79.1	97.5	79.8	97.8	81.7
30-34	98.6	58.4	98.3	65.0	98.3	63.5
35-39	98.7	51.4	98.5	50.2	98.6	52.1
40-44	98.1	52.8	98.5	51.5	98.6	53.1
45-49	97.2	52.2	97.4	51.2	97.3	50.5
50-54	92.7	39.5	92.6	40.2	92.4	41.2
55-59	80.4	25.7	81.4	25.3	78.3	26.6
60-64	54.6	16.3	51.9	13.5	50.7	12.4
65 and over	18.3	4.4	16.8	3.8	15.4	3.2

40. For those women with children who have chosen to remain in the labour market, some claim that they are often discriminated against when applying for a job. It has been pointed out that some application forms require job applicants to supply information on the number and educational level of their children as a way to find out the age of the children and deduce from that the level of care required of the applicant. This information may be used for determining whether the applicant should be invited for an interview.

41. To accommodate the demands of family responsibilities, women appear to be more likely to take up part-time work. Some women may also prefer working part-time as they can supplement their family income without seriously disturbing their housework schedule. Under the Employment Ordinance, a part-time worker is protected like a full-time worker if the worker has worked 18 hours per week for four consecutive weeks. Otherwise, he or she would not be accorded a similar level of statutory benefits and employment protection as a full-time worker. For this reason, some consultees claim that women have little incentive to participate in the job market as part-time workers.

42. Furthermore, some consultees consider that employees retraining schemes do not accommodate the needs of those with small children. In particular, they say that on-site child care facilities are not available to allow carers to take training courses and prepare for re-entry into the labour market.

43. The above discussion is based on the women's perspective. However, the need to balance work and family responsibilities is not confined to women alone. It is important to acknowledge that both men and women may face a situation of having to take care of children or other dependent relatives, even though women are apparently more likely to do so.

Single parenthood

44. Social changes and changes in attitudes towards marriage and family have led to an increasing number of divorces and single parent households. The situation in Hong Kong is similar to that experienced in other countries. According to data extracted from the Population Census, there are a total of over 34,000 single parents of whom about 67% are single mothers and 33% are single fathers. Most single parents are aged 30-49 and are living with one or two children. About 71% are working while others are either full-time homemakers, retired, or unemployed. Since single parents bear full responsibility for the care of their children and management of the household, single parent families are likely to face more problems than two-parent families in financial, emotional and child care matters.

45. Representatives of single parents claim that they and their children are often treated less favourably because of their status as single parents. They say it is common for single parents to disguise their family status by claiming to be married in order to avoid possible discrimination.

46. According to members of this group, discrimination against single parent households occurs most in the areas of employment and in the provision of accommodation. Although employers apparently seldom dismiss single parent employees on the ground of their family status, single working parents claim that they often face discriminatory treatment in the recruitment process and in the employment terms and conditions offered. A case quoted by representatives of single parents concerns an advertisement which laid down specific requirements seeking applicants of a particular family status.¹⁷ They also claim that single parent job applicants are more likely to be asked questions concerning how they would accommodate the demands of the job and

¹⁷ Some charitable organisations have put up job advertisements recruiting foster parents to look after children in "small group homes". Prospective applicants are requested to have a spouse and not more than two children. On the other hand, the small group home service is developed on the principle that a child's needs are best met in a normal family setting. For children who are temporarily deprived of parental care, small group home provides substitute care in a home-like setting. The child will continue to receive care, nurturance, and interactions close to what he would experience in a normal family. It is based on this child-centred approach that married couples are recruited to carry out the roles of substitute parents. In each small group home, eight children from different families are received into care. Therefore, it is preferred that the houseparents should not have more than two children, so that each child can be given adequate care and supervision.

the family. In addition, single parents say that they are more likely to be deprived of the opportunity to work overtime or undertake shift work, even if they could arrange for other relatives to look after their children.

47. Representatives of single parents state that they face a particular problem in renting accommodation. They say that some prospective landlords regard them as troublesome families with delinquent children. A number of them have experienced being asked to bring their children to the prospective landlord for "an interview" before the landlord would agree to let the premise.

48. On the other hand, employers assert that all aspects of employment including recruitment, remuneration, training, and promotion are based on experience and ability and not on a person's family status. In response to claims that persons of different family status are treated differently in underwriting matters and in the application of credit facilities, insurers explain that differences in underwriting principles are based purely on actuarial experience. Claims that credit rating discriminates against persons of a certain family status are not accepted by bankers' representatives. They say that scores calculated in credit ratings are based purely on ability to repay loans which is linked to personal income and not on a person's family status. They assert that credit scoring is reasonable and necessary for the purpose of risk management in banks.

49. The educational bodies we consulted said that they do not discriminate on the basis of family status in the employment of teachers and in providing education to students.

Welfare and Support Services for Carers and Single parent Households

50. Government's welfare policy is designed to help people overcome their personal and social problems. This is achieved through providing care and services which target those most in need, and encouraging co-operation with non-governmental organisations (NGOs) and the private sector in the provision of such services. A range of programmes are provided with the objective of promoting the well-being of the elderly and children while preserving and strengthening the family.

Elderly Care Services

51. A variety of services are provided to the elderly to meet their needs and to help those taking care of elderly family members. Key targets for elderly services set out in the 1991 White Paper "Social Welfare into the 1990s and Beyond" are being implemented. An Elderly Services Development Fund was set up in 1995 to provide grants to NGOs to help them introduce non-

profit-making self-financing welfare services for elderly persons. Planning ratios for care-and-attention homes, homes for the aged, social centres, day care centres and multi-service centres have also been revised to allow more of these centres to be set up.

Child Care Services

52. Provision of child care is another area in which the Government has helped workers with family responsibilities. With the increasing number of working parents, day care facilities for young children are a high priority category of the provision of family welfare services.

53. A wide range of day care services is available. As at 31.3.95, a total of over 23,768 places are provided in aided/government nurseries and 1,440 places in aided day crèches. The day crèche service provides care and looks after the developmental needs of children below the age of 2 while the day nursery service provides care and training and looks after the developmental needs of children of ages 2-6. Children who cannot be cared for by their parents during the day can make use of these services. Some nurseries and crèches also provide occasional service for children whose carers are unable to take care of them for brief periods due to various commitments or sudden engagements.

54. Families with social and/or financial needs are sometimes unable to give children who have begun formal schooling adequate adult care and supervision outside school hours. To meet this need, the After-School Care Programme (ASCP) is run by NGOs to render child care, lunch, homework tuition, guidance, counselling and play activities for primary students of ages 6-12. Government also helps to minimise the cost of running these centres with rent and rate support.

55. Action is being planned to provide additional places in pre-school centres for children with a disability, including the integrated programme in mainstream child care centres for children who are mildly handicapped, early education and training centres, and special child care centres to meet their special needs. For disabled children in need of occasional care, services have been provided in 18 centres where they can be looked after for short periods during the day. In addition, six Parent Resources Centres have been set up to provide guidance and support to parents of disabled children.

Family Services

56. Article 23 of the International Covenant on Civil and Political Rights states that "the family is the natural and fundamental group unit of

society and is entitled to protection by society and the State." Such rights are guaranteed in Hong Kong by article 19 of the Bill of Rights Ordinance. Government recognises the family as fundamental to society and has been devoting considerable resources to expand, strengthen, and promote the services in support of the family. A number of initiatives have been undertaken to strengthen these services. These are set out in the following paragraphs.

57. The Social Welfare Department has made available a comprehensive network of support services including different forms of child care arrangement, family aide service, and home help service. These all contribute to the alleviation of stress in home management. Home help services assist parents who have problems coping with the running of their homes. Family aid workers also provide training in home management for families in need. In addition, family services are provided through over 60 Family Service Centres operated by the Social Welfare Department and NGOs. Clinical psychological service is also available for helping individuals who are emotionally disturbed because of family problems.

58. A network of Family Activity and Resource Centres (FARCs) has been established throughout the territory to promote better communication and harmonious relationship among family members. Various activities are organised to strengthen the normal functioning of the family. In addition, the Family Care Demonstration and Resource Centre in Chai Wan provides demonstrations and practical skills training to married couples in small group sessions on family care, home management, parenting concepts and skills which enhance their ability to discharge their responsibilities in child rearing and caring for their old, sick or disabled family members.

59. Attention is also paid to Family Life Education (FLE), which seeks to arouse public awareness of the importance of family life. The service is delivered through 74 FLE workers with the ultimate aim to improve the quality of family life and prevent family breakdown. Publicity campaigns are also launched annually through various media.

Services for Single Parent Families

60. The increase in the number of single parent families has heightened demand for government-assisted child care services. In the absence of support from their spouses, single parents tend to have a greater need for financial and housing assistance, child care services, home help services, counselling services, temporary shelter and emotional support. In view of the special needs of single parent families, a separate leaflet on welfare services including family support and child care services has been produced for these families and disseminated to urge those in need to seek help.

61. Families that have housing problems in the process of divorce may apply for conditional tenancy in public housing. Single parents with dependent children who have genuine and urgent housing need and meet the eligibility criteria can be rehoused in public housing estates under the Compassionate Rehousing Scheme.

Social Security

62. Since April 1995, single parent families are paid a supplement to help offset the special difficulties faced by them in bringing up a family. In addition, the maximum level of disregarded earnings have also been raised to provide Comprehensive Social Security Assistance (CSSA) recipients with a greater incentive to remain in the labour market. Moreover, the first month's income of certain CSSA clients (the elderly, the disabled and family carers including single parents) who get full-time jobs is disregarded. Beginning 1 April 1996, the CSSA standard rates for able-bodied single parents and adults caring for dependants at home will be increased by 54% to \$1,605. Furthermore, elderly persons living with a family unit will also enjoy an increase in the CSSA standard rate by 12% to \$1,685.

Other Financial Assistance to Carers and Single parent Households

63. Through the Fee Assistance Scheme, low income families are eligible to receive assistance in order to meet the cost of full day care for children. Parents in financial difficulties and eligible for the CSSA Scheme may apply for full financial assistance for their children to join the After-School Care Programme. Those with social needs but not eligible for the CSSA may apply for help from charitable trust funds administered by the Government.

64. Single parent taxpayers are entitled to the Basic Allowance and a Single Parent Allowance which seeks to provide additional tax relief to those who have the sole or predominant responsibility for the care of their children. In recognition of the extra financial burden they face in raising a family on their own, the allowance has been set at a level which would provide appreciable relief to this category of taxpayers.

Provision of Retraining

65. Some carers may leave full-time employment for a few years to take care of young children and return to the workforce when their children begin to attend schools. To equip workers with necessary skill to re-enter the job market, the Employees' Retraining Scheme (ERS) was started in 1992 to provide retraining courses for local displaced workers over 30 years old. The

ERS has been extended to homemakers since May 1993. It is also the practice of the Labour Department to offer priority service to single parent job-seekers referred by the Social Welfare Department or voluntary agencies.

66. The Local Employment Service (LES) also provides free employment assistance and counselling services to all able-bodied job-seekers through a network of nine local employment centres. To better integrate the LES and ERS, the Job Matching Programme was launched. This involves the establishment of a Special Register at the LES in local employment centres of the Labour Department. The Special Register seeks to provide active job placement service to all unemployed persons aged 30 or above on the basis of actual job vacancies offered by employers either through direct job referrals or job-related retraining programmes organised by the Employees' Retraining Board.

Parent and Child Ordinance

67. With the enactment of the Parent and Child Ordinance (Cap. 429) in 1993, illegitimate children have been given the same legal rights as children born out of a legal marriage. The Ordinance seeks to remove, as far as practicable, the legal disadvantages previously suffered by illegitimate children. References to "parent" and "child" in all legislation and future documents are to include references to illegitimate relationships unless a contrary intention is shown. Various consequential amendments have been made to enable children born out of wedlock to enjoy the same rights as legitimate children.¹⁸

The Sex Discrimination Ordinance

68. Representatives of employee organisations have pointed out that there is an inter-relationship between marital status and family status. This is because differences between being married and unmarried relevant to indirect discrimination on the ground of marital status are most likely to reflect different family commitments.

69. The Sex Discrimination Ordinance (SDO) enacted in July 1995 has already outlawed discrimination on the grounds of sex,¹⁹ and

¹⁸ These include the Guardianship of Minors Ordinance (Cap. 13) which enables either parent to apply for the same range of maintenance orders in respect of a legitimate or illegitimate child; and the amendment to the Intestates' Estates Ordinance (Cap. 73) which enables the illegitimate issue of a person who dies intestate to enjoy the same rights as the deceased's legitimate issue.

¹⁹ The definition of marital status includes the state or condition of being single; married; married but living separately and apart from one's spouse, divorced; or widowed.

pregnancy. The SDO was modelled upon the UK Sex Discrimination Act. As indicated in Chapter II, the UK Employment Appeal Tribunal has ruled that a policy of not employing women with children constitutes direct sex discrimination and indirect marital discrimination.

70. Following the ruling of the UK Employment Appeal Tribunal, it may be argued that a policy of not employing any person (whether male or female) with small children is probably indirect discrimination on the ground of marital status as more married persons are likely to have children. Seen in this context, the Sex Discrimination Ordinance in Hong Kong may provide some degree of legal protection against discrimination on the ground of family status.

71. Similarly, case law in Australia has established that a policy of not promoting a woman with a child constitutes direct sex discrimination.²⁰ Moreover, if workplace practices are the same for everyone but have a disproportionate adverse impact on women, indirect sex discrimination provisions in the Australian Sex Discrimination Act may also be able to assist those who take on the double burden of work and family responsibilities.

²⁰ Australia and New Zealand Equal Opportunity Cases 1993.

CHAPTER IV

POSSIBLE MEASURES TO ENHANCE EQUAL OPPORTUNITIES FOR PERSONS OF DIFFERENT FAMILY STATUS: THE LEGISLATIVE OPTION

72. The previous chapter gave an overview of the issues and general problems faced by persons because of a particular family status or family responsibilities. It also gave an overview of Government services that address the needs of such persons and relevant legislative measures that have been taken. Possible further legislative measures that could be taken to enhance equal opportunities for persons of a particular family status are set out in this chapter.

73. Supporters of the legislative approach argue that anti-discrimination legislation is an effective safeguard of individual rights in the community and a means of educating the public.

74. On the other hand, anti-discrimination legislation by its nature restricts individual choice. In introducing such legislation, it is necessary to strike a balance between freedom of choice and freedom from discrimination. Otherwise the law may not be acceptable to the public. Far from achieving its aims, it may even end up provoking far worse behaviour than that which it seeks to prevent. Members of the public should be fully aware of the implications of such legislation, as well as the need for such legislation to command broad acceptance in the community, and for it to be adapted to local circumstances and needs.

Definition of "Family Status"

75. To ensure that any such legislation is precise and certain in its operation, it is necessary to define "family status" in a clear and readily understandable manner. There are two broad approaches that could be taken in defining "family status", either:

- (a) by reference to a person's status as a carer to take care of those in need (e.g. the sick and the disabled); or
- (b) by reference to a person's status as a member of the family (e.g. children, parents, siblings).

76. These two broad approaches are not incompatible. Indeed, the Equal Opportunities Bill combines the two in its definition of “family status or family responsibility”.²¹

77. As noted in Chapter II, the Australian Sex Discrimination Act proscribes discrimination on the ground of family responsibilities, which is defined as “responsibilities of the employee to care for or support a dependent child of the employee or any other immediate family member who is in need of care and support.”²²

78. We have also noted in Chapter II that while the Canadian Human Rights Act offers protection against discrimination on the ground of family status in a number of areas of activity, it does not define “family status”. Such an approach would appear to lead to uncertainty of application. We have also noted that the Ontario Human Rights Code defines “family status” narrowly as being in a parent-child relationship.

79. In the course of our discussions with consultees, a number of them took the view that it is more appropriate to use the status of the person as a carer, rather than to use a definition based on the relationships between the persons involved. However, others were of the opinion that such a definition would lack clarity and could potentially be abused or open to challenge when claims based on alleged discrimination on this ground arose.

80. In examining possible legislation, attention should be paid to which of the two broad approaches should be adopted in defining the ground of discrimination, that is, whether it should be based on the carer concept or family relationships, or whether these approaches should be combined. There is also a need to consider how far such definition should extend, e.g. should it include a restricted category of immediate family relationships or be more broadly stated?

²¹ Under the Equal Opportunities Bill, “family responsibility or family status”, in relation to a person, means:

- (a) having responsibility for the care of another person, whether or not that person is a dependant, other than in the course of paid employment;
- (b) the status of being a particular relative; or
- (c) the status of being a relative of a particular person.

²² ILO 156 Article 1, paragraph 3, provides that the definitions of “dependent child” and “other member of the immediate family who clearly needs care or support” are to be determined by reference to laws, regulations, collective agreement, work rules, awards, court decisions or a combination of these methods or, “in any other manner consistent with national practice which may be appropriate account being taken of national conditions” pursuant to Article 9 of the Convention. The definitions in the Australian Sex Discrimination Act has already been set out in Chapter II of this document.

Areas of Activity to be covered

81. According to consultees, discrimination on the ground of family status occurs mainly in the area of employment and in the provision of accommodation. One option would be for possible legislation to cover only these areas. This would be a narrower scope of application than that in the Sex Discrimination Ordinance (SDO). In addition to employment and accommodation, the SDO also proscribes discrimination in the areas of education, provision of goods and services, eligibility to vote for or be elected or appointed to advisory bodies, activities of clubs, and activities of Government.

82. A second option, then, would be for possible legislation against discrimination on the ground of family status to have the same scope of application as the SDO.

83. A third option would be for possible legislation on family status to draw references from the Equal Opportunities Bill, which has a wider scope including employment, education, access to places and vehicles, provision of goods, services and facilities, accommodation, land, clubs, application forms, and administration of laws and government programmes.

84. In examining the scope of any possible legislation to outlaw discrimination on the ground of family status, there is a need to assess carefully the impact such legislation may have on the community. Consideration should also be given to ensure that the scope of any possible legislation reflects local circumstances and needs so as to command broad support from the community.

Possible Areas of Concern

85. Consultees have expressed a number of areas of concern if the legislative option is to be pursued. In addition, some provisions in the Equal Opportunities Bill (EOB) allow for exceptions under certain circumstances. These are set out in the following paragraphs.

Employment

86. In the area of employment, employers sometimes restrict the employment of relatives of employees because of the possibility of collusion between relatives resulting in damage to the company. The EOB provides for an exemption to allow restriction of employment on this ground. In addition, employers may sometimes provide employees with accommodation of varying standards if such standards are determined according to the number of persons in an employee's household. The EOB also provides an exemption to allow for

such differential treatment on the ground of family status. Furthermore, some employers provide job-related benefits worked out with reference to a person's family status.²³ In this regard, an exemption is provided in the EOB to allow employers to afford employees with a particular family responsibility or family status special benefits or privileges in connection with that family status.

87. On the other hand, some provisions in existing legislation relating to employment and employees' compensation also give differential treatment to persons of a certain family status.²⁴ They are intended to prevent abuse. It would be undesirable to regard these provisions discriminatory on the ground of family status.

88. In examining any possible legislation, it is necessary to consider whether exemptions allowing for differential treatment should be provided in some of these areas.

Small Businesses

89. Employers with small businesses have expressed concerns about possible problems arising from frivolous complaints and the cost implications arising from the need to comply with anti-discrimination legislation. To address such concerns, the Sex Discrimination Ordinance provides for a transitional period of three years to allow business establishments with not more than five employees to comply with the provisions of the Ordinance. This arrangement seeks to enable small employers to better understand the operations of the Ordinance and benefit from the experience of large business establishments. A transitional period would also allow time for small businesses to institute adjustments in their business practices. On the other

²³ For example, in the civil service, different rates of the Private Tenancy Agreements are paid on the basis of family status (e.g. single/married/family) of the officers concerned. Officers of the same rank may therefore receive different housing benefits because of their family status. As another example, children of divorced officers not under their custody are not eligible for education allowance or medical and dental benefits in the civil service unless certain requirements have been fulfilled. Similarly, the step children of an officer not under the custody of the officer's spouse are not eligible for these benefits unless it can be proved that the officer has assumed financial responsibility for the step child.

²⁴ For example, under section 2 of the Employees' Compensation Ordinance, an employee who is a member of the employer's family and who lives in the same dwelling as the employer and is not covered by a valid employees' compensation insurance policy is denied protection under the Employees' Compensation Ordinance. As another example, by virtue of section 4(2)(b), the Employment Ordinance does not apply "to a person who is a member of the family of the proprietor of the business in which he is employed and who dwells in the same dwelling as the proprietor". Any person who come under section 4(2)(b) is not covered by the Employment Ordinance and has no entitlement to the benefits and protection under the Ordinance.

hand, the Equal Opportunities Bill does not provide for any such transitional period.

Education

90. In respect of education, the scoring system for school entry under the Primary One Admission Scheme takes into account the presence of siblings studying in the same school. Prospective primary one pupils with siblings already in the school concerned receive a higher score for that school and thus have a better chance of being admitted. This may be considered discriminatory against those without siblings or those whose siblings are not in the same school. However, the Scheme is considered beneficial as it is more convenient for parents if their children attend the same school. Educational bodies also consider that the scheme should be preserved because it helps to reduce the pressure on the school children concerned of having to face even keener competition over admission should the Scheme be discontinued.

91. Similar to the area of employment, the Equal Opportunities Bill also provides an exemption in the area of education to allow educational institutions to provide bona fide benefits, including concessions, to a person by reason of the person's family status.

Accommodation

92. Notwithstanding that some single parent households have claimed that they face a particular problem in renting accommodation, there have been concerns over respect for privacy of the individual in choosing who to live with in a private household setting.

93. The Equal Opportunities Bill allows for an exception in respect of accommodation. The provisions against discrimination on the ground of family status would not apply if the person who provides the accommodation or a near relative of the person resides on the premises and the accommodation provided is for not more than four persons. Provisions relating to accommodation in the Sex Discrimination Ordinance have also allowed a similar exception for small premises which are shared by the landlord (or a near relative) and the tenant.

94. Furthermore, accommodation provided by religious bodies and those provided by a charitable or voluntary body solely for persons of a particular family status are also exempted from the application of the Equal Opportunities Bill. Besides, in matters relating to the disposal of land, an exemption is also provided such that it would not be unlawful to discriminate on the ground of family status in the disposal of an estate or interest in land if it is by will or by way of gift.

Provision of Services

95. As indicated in Chapter III, banks do not consider that their policies in the provision of credit facilities discriminate on the ground of family status. However, bankers' representatives expressed concern that if the legislative option is pursued, banks may be challenged to demonstrate that their business decisions do not discriminate on the ground of family status. They claim that this would result in costs that would inevitably need to be passed onto their customers.

96. Insurers explained that differences in underwriting principles are based purely on actuarial experience. In recognition of this, the Sex Discrimination Ordinance provides that it would not be unlawful to treat persons differently on the basis of actuarial data in relation to insurance and similar matters.

Special Measures

97. There are some cases where special measures are in place to cater specifically to the needs of persons of a particular family status.²⁵ A general exception is provided in the Equal Opportunities Bill to allow for measures which were intended to meet the special needs of persons of a particular family status or responsibility. A similar exception is also provided in the Sex Discrimination Ordinance.

Enforcement

98. The effective implementation of any legislation hinges upon an appropriate enforcement mechanism. In considering possible legislation against discrimination on the ground of family status, it is also necessary to examine possible mechanisms to enforce any such legislation.

99. The Equal Opportunities Bill provides that the District Court should have jurisdiction to hear and determine alleged cases of discrimination on the ground of family responsibility or family status. Any claim of unlawful discrimination under the Bill has to be brought directly to court by the aggrieved person.

²⁵ For example, the Single Parent Allowance is provided as a special measure in recognition of the needs of single parents. Another example would be the allocation of housing. Such allocation is based on priorities since housing resources are in short supply. In practice this means according a higher priority to families with special needs (e.g. divorcees with the custody of the children under the Compassionate Rehousing Scheme).

100. On the other hand, the Sex Discrimination Ordinance provides for the establishment of an Equal Opportunities Commission (EOC) to oversee the implementation of the Ordinance. With the enactment of the Disability Discrimination Ordinance, the EOC is also responsible for cases of alleged discrimination on the ground of disability. The EOC will provide assistance for persons who have experienced discrimination on the ground of gender or disability. It is empowered to investigate complaints and conciliate between the parties in dispute. Should the aggrieved party decide to take the case to court, the EOC may also provide assistance in court proceedings.

Concluding Remarks

101. Before taking any decision to propose further anti-discrimination legislation, there needs to be broad support in the community for the new statutory obligations involved. This is crucial to ensure the effective implementation of any such legislation.

102. In any society, the rights of one group will inevitably come into conflict with the rights of other groups. All rights must be balanced in the interests of preserving a social structure in which each individual receives appropriate protection without the rights of others being unduly interfered with. Accordingly, any legislation in this area needs to strike a reasonable balance between the competing interests and rights of individuals in society.

CHAPTER V

POSSIBLE MEASURES TO ENHANCE EQUAL OPPORTUNITIES FOR PERSONS OF DIFFERENT FAMILY STATUS: NON-LEGISLATIVE MEASURES

103. Employment practices have been highlighted as one of the two main areas of concern with respect to discrimination on the ground of family status. Any possible anti-discrimination legislation would therefore need to address this area. Some have expressed concerns over the impact of such legislation on small businesses, in particular the possible cost implications of compliance with the legislation. They consider that the introduction of additional anti-discrimination legislation may result in confrontation between employers and employees and unnecessary litigation. They also commented that such legislation would result in more Government intervention in the labour market which they consider undesirable. Some consultees have suggested that a non-legislative approach may be more appropriate in fostering equal opportunities in this area.

104. Consultees who expressed support for a legislative approach also emphasised the need for co-ordination between legislation and policies to support workers with family responsibilities. Accordingly, whether or not the legislative option is pursued, there is broad support for non-legislative measures to be taken. Possible non-legislative measures based on the comments made during our discussions with interested parties and individuals are set out in the following paragraphs.

Public Education

105. Discrimination is an issue which is closely associated with peoples' personal values, beliefs and education. Public education is a key tool in bringing about changes in social values. Public education can be targeted at students through the school curricula and to the public at large through civic education programmes, publicity and promotion campaigns.

106. Social service organisations have advocated the targeting of public education at specific groups such as employers. They also propose that agents of change such as principals, teachers, and social workers should be educated to promote a better understanding of different family status and to address negative attitudes towards persons of a particular family status (e.g. single parent families and married women with children). Public education could also help raise awareness of the importance of both parents sharing family responsibilities such as child caring.

Incentives related to Employment

107. Flexible work hours and a parental leave system have been suggested by consultees as other ways of assisting workers to reconcile the conflicting demands of work and family. They believe that a restructuring of employment practices by employers to take into account family and caring responsibilities could relieve the burden of workers with family responsibilities.

Child Care Support by Employers

108. Employers can play a role in improving the quality of life of working families. Elsewhere, some employers have enhanced their ability to recruit workers and strengthen their competitive edge by offering a variety of child-care options and benefits. These include before- and after-school programmes, on- or near-site child-care centres, emergency and sick child-care, and family day-care networks that provide substitute caregivers and support for local child care centres. Employers that provide such assistance to their employees report that it results in better relations with their employees and improved morale among workers. Moreover, such companies are able to reduce turnover and absenteeism, and are in a better position to recruit suitable workers.

109. The 1991 White Paper on "Social Welfare into the 1990s and Beyond" encouraged the setting up of employer-sponsored child care centres for the use of employees. At present, there are four work-based child care centres in Hong Kong with a total capacity of 214 places. Government will continue its efforts to promote this concept among employers. On the other hand, while large employers may be in a better position to provide various forms of incentives, small businesses may not be able to do so readily due to possible cost implications and operational difficulties.

Part-time and Flexitime Arrangements

110. Flexibility in arranging work schedules is considered by some consultees to be one of the effective ways of assisting workers to manage the competing demands of work and family life. However, flexible working arrangements generally go with a lower level of benefits, retirement plans, employment security, and incomes. Some consultees urged employers to consider providing comparable benefits to accompany flexible work arrangements as to "non-flexible" work arrangements. For example, job-sharing arrangements whereby two or more people can share a single job, salary and a set of benefits.

Social Services

111. Support services can provide an important complementary role to possible legislation. Consultees agree that the provision of services should be treated separately from the issue of discrimination on the ground of family status. However, they are of the view that policy initiatives may assist in addressing the crucial link between working life and family life. They have suggested an enhancement of social support services in the following areas to assist those with family responsibilities:

Comprehensive Social Security Assistance (CSSA) Scheme

112. The CSSA allowance is available to non-working single parent families. If the recipient finds a part-time job, the amount of the allowance will be reduced. When a full-time job is found, the family may no longer be eligible for this welfare payment. To provide an incentive for single parent families to obtain full-time work, some consultees have suggested that there should be a grace period of 3-6 months of full-time employment for single working parents to adapt fully before the allowance is terminated. Consultees also proposed that consideration could be given for Government to provide a "carer's allowance" to assist those who left the job market in order to take care of children, the disabled or elderly family members at home.

Day Care and Community Care

113. Besides taking care of children, workers may also need to take care of elderly parents or parents-in-law, and sick or disabled family members. Some consultees indicated that more co-ordination in relevant support services is required. The provision of day care and community care facilities would help to relieve workers from domestic responsibilities of caring for family members.

Child Care Support

114. In Hong Kong, family support was traditionally provided by the Chinese extended family with three or more generations living under one roof. With rapid urbanisation and the emergence of new towns, nuclear families comprising parents and children with an average household size of three to four people are increasingly the social norm. The prevalence of nuclear families and the increasing number of mothers in employment has resulted in an increase in demand for day care facilities for children. Without the additional support formerly provided by extended family members, parents must turn to the community for support in order to free themselves for full-time employment.

115. Some consultees claim that there is a lack of adequate and affordable child care provision. They say that many parents are simply not able to work because such services are not available. They advocate an increase in the supply of child care services to enable workers to re-enter the labour force or improve their skill levels through training.

116. Some consultees hold that the operating times of child care and crèche facilities do not adequately meet the needs of working parents. The operating hours of these facilities often coincide with normal working hours so that working parents would need to incur extra costs in engaging someone to take the children to child care centres or seek help from friends and neighbours.

117. Moreover, some consultees feel that there is a public misconception about using child care and crèche services. It is often assumed that those who make use of such services must have family problems. Unless and until such misconceptions are removed, there will continue to be pressure on those with family responsibilities to give up their job for their family.

118. As already indicated in Chapter III, a wide range of social support services have been strengthened and developed to assist families in discharging their caring and protective functions. In recent years, the Social Welfare Department has been expanding child care centres provision by providing 1,400 additional day nursery places and 250 additional day crèche places each year in order to meet the growing demand for child care centre services. Child care centres remain open during inclement weather to assist parents who cannot make alternative arrangements. Some nurseries have now begun to provide extended hours service to meet the needs of working parents who require longer hours of child care assistance. Of the day nurseries providing extended hours service, some are providing longer hours of services on weekday evenings and Saturday afternoons, while some nurseries open much earlier in the morning in order to meet the different needs of working parents in the districts. To remove misconceptions about the use of child care and crèche services, extensive publicity have also been carried out to inform parents and the public about the child care centres service.

119. In respect of elderly care, the dispatch of community care nurses and household assistants is one such support services to assist the elderly. To enable old people to make better use of facilities and services of day centres, transport service of such centres is also upgraded.

120. The comprehensive review of social security arrangements is now underway. Before the final outcome of the review, benefit levels for certain groups in the CSSA Scheme will be improved from 1 April 1996 to take into account their needs. In addition, other forms of assistance such as fee

assistance schemes, single parent allowances as well as the provision of retraining are also available to those in need.

121. In the course of the development of welfare services, emphasis will continue to be placed on the importance of the family unit as the primary provider of care and welfare. Government will continue to monitor and develop various forms of services as needs arise and work with non-governmental organisations in the process of enhancing the provision of support services.

Concluding Remarks

122. Some consultees are of the view that it would be pre-mature at this stage to legislate against discrimination on the ground of family status. They believe that an approach combining public education and improvements in support services could be more effective in bringing about equality of opportunities in this area.

123. Other consultees take the view that although legislation alone would not solve the problems they have identified in this area, it would guarantee a basic right to protection from discrimination on the ground of family status. Such consultees advocate a dual approach of legislative and non-legislative measures as the most effective means of assisting persons who face discrimination on the ground of family status and responsibilities.

CHAPTER VI

INVITATION OF PUBLIC COMMENTS

124. Measures that the Government may adopt to further promote equal opportunities in Hong Kong in respect of persons of different family status could have wide implications for the community. It is important that members of the public express their views on this subject.

125. Members of the public who wish to comment on the consultation document and the issues raised therein are invited to submit their comments in writing or by fax to -

Home Affairs Branch
31st Floor, Southorn Centre,
Hennessy Road,
Wanchai, Hong Kong
(Fax Number: 2591 6002)

by 31 March 1996.

Academics

Gender Research Programme, Hong Kong Institute of Asia-Pacific Studies - The Chinese University of Hong Kong
 Ms Leung Lai-ching - City University of Hong Kong
 Mr Mak Hoi-wah - City University of Hong Kong
 Mr Ng Chun-hung - The University of Hong Kong
 Mr Tse Wing-ling - City University of Hong Kong

Banks and Financial Institutions

Hong Kong Deposit-Taking Companies Association
 The Federation of Insurers of Hong Kong
 Hong Kong Association of Banks

Educational Establishments

Caput Schools Council
 Grant School Council
 Hong Kong Prevocational Schools Council
 Hong Kong Association of Sponsoring Bodies of Schools
 Hong Kong Special Schools Council
 Subsidized Primary Schools Council
 Subsidized Secondary Schools Council

Employers' Organisations/Human Resources

The Chinese General Chamber of Commerce
 Hong Kong Management Association
 Hong Kong Institute of Human Resource Management
 The Hong Kong General Chamber of Commerce
 The Chinese Manufacturers' Association of Hong Kong

Labour Organisations

Hong Kong & Kowloon Trade Union Council
 The Hong Kong Federation of Trade Unions
 Hong Kong Women Workers' Association
 Federation of Hong Kong & Kowloon Labour Unions
 Hong Kong Confederation of Trade Unions

Social Service/Religious Groups

Hong Kong Council of Social Service

Christians for Hong Kong Society

Hong Kong Christian Institute

Justice & Peace Commission of the Hong Kong Catholic Diocese

Hong Kong Christian Council

Student Christian Movement of Hong Kong

Hong Kong Women Christian Council

Concerned Group on Single parents

Women's Groups

Hong Kong NGO Liaison Group on Women's Issues

Hong Kong Women's Coalition

Association of Women for Action and Research

PRESS STATEMENT

Legislative Councillor Christine Loh

To: News Editors

24 January 1996

Release of consultative papers on family status and sexuality discrimination

These two consultative documents thoroughly canvas the issues relevant to legislation against family status and sexuality discrimination. Virtually without exception, however, these issues were raised, researched and publicly discussed last year in the Bills Committee that studied Anna Wu's Equal Opportunities Bill.

There is no need for these documents.

Once again the question to ask is: why must the Government continue to insist on its own rigid, inflexible and interminably slow timetable?

Nothing has been gained by the delay since last year. No one should be in any doubt that, if Government had participated at all in last year's legislative process, the issues raised in these documents would have been settled by now.

The pattern established last year was one of long stretches of delay, followed by short bursts of sabotage. I am sad to see at least the first part of that pattern still running on now as if no one were at the helm.

There are also some significant omissions in the documents that give cause for worry.

The Government often appears before UN committees in Geneva to reaffirm its commitment to its long-standing obligations under various human rights treaties. Recently it has particularly emphasised progress in fighting discrimination, namely the enactment of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance.

Now, back home, the Government's documents conspicuously fail to make a single reference to those obligations. It is absolutely clear that enactment of legislation against these two forms of discrimination would represent further progress under those treaties. This fact is obviously relevant in deciding whether to legislate. Its glaring absence from the documents suggests that the Government regards the treaty obligations it talks up in Geneva as irrelevant in actual practice to its decision-making here.

It is also striking that the document on sexuality contains no simple, straightforward statement of principle on the matter. The document should be seeking views on *how* to combat sexuality discrimination, by legislative means or otherwise -- but it seems to leave

open the conclusion that there should be no fight at all. It appears that Government is unsure whether homosexuals, like everyone else, have a right to work, to seek lodging, and to live their lives without harassment.

The Government should state clearly whether it opposes discrimination against homosexuals or not. Government needs to be perfectly clear about its position on sexuality discrimination, because its record is abysmal. Last year this Government stooped to inviting and using prejudice against homosexuals in its no-holds barred efforts to de-rail Anna Wu's Equal Opportunities Bill.

Despite these reservations, the substance of the document on sexuality discrimination is encouraging in certain respects.

The document suggests no reason not to take a legislative approach. It only canvasses social issues wider than legislation on the one hand, and details on the other. Most of the "areas of concern" it highlights, like homosexual marriage and adoption, are genuinely controversial but also clearly outside the scope of any legislation that has been proposed. Other objections are matters of detail that can easily be met by exceptions. All were already considered by the Bills Committee last year.

The way forward to legislate seems clear -- the only thing still needed is the will to go forward.

The survey results also indicate that, with the support of a good civic education campaign, people are ready for equal opportunity legislation. The survey shows that many people have uncertainties and concerns about homosexuality in general. But it also shows that there is relatively less prejudice precisely in those areas that are relevant to anti-discrimination legislation, such as the workplace, access to public places, etc.

— end —

Legislative Assistant to
Christine Loh: Adam Mayes,
2521-6820 or 78996896 x777

布政司署
政務科
香港灣仔
軒尼詩道一百三十號
修頓中心
三十一樓



GOVERNMENT SECRETARIAT
HOME AFFAIRS BRANCH
31st FLOOR, SOUTHOEN CENTRE,
130 HENNESSY ROAD,
WAN CHAI,
Hong Kong

傳真號碼 OUR REF. : HAB/CR/1/2/21

By Fax and Post

電話號碼 YOUR REF. :

(2 pages)

電話號碼 TEL NO. : 2835 1144

傳真號碼 FAXLINE : 2591 6002

30 January 1996

The Hon Christine Loh
Room 322, Central Government Offices
West Wing
11 Ice House Street
Central
Hong Kong

Fax No: 2537 6937

Dear Ms Loh,

I refer to your letter of 18 December 1995. In response to the questions raised in your letter, I set out below the Administration's views:

(a) Reinstatement

Our view remains that possible remedies for unfair dismissal, including reinstatement orders, should be considered in a comprehensive manner. The Labour Department is conducting a review on 'unfair dismissal' with a view to providing better protection for employees against various unfair practices of the employers. The issue of reinstatement will also be covered in the review. The Labour Advisory Board will need to be consulted on the results and recommendations before decisions are taken on this subject.

(b) Limit on Damages

The Sex Discrimination Ordinance and the Disability Discrimination Ordinance are independent pieces of legislation to tackle the problem of discrimination in two different areas. The circumstances under which discrimination may arise and how the problem should be redressed may vary. Strict parity between the two Ordinances is not necessary.

In the case of the Sex Discrimination Ordinance, we endorsed the view of those Legislative Council Members who considered it prudent to impose a limit on the maximum amount of damages to be awarded by the court in proceedings relating to employment matters. As for the Disability Discrimination Ordinance, the Legislative Council apparently did not have similar concerns over the need to impose such a limit.

Yours sincerely,

(Miss Maggie Wong)
for Secretary for Home Affairs

立法局議員陸恭蕙辦事處
OFFICE OF CHRISTINE LOH . LEGISLATIVE COUNCILLOR

1st February, 1996

Miss Maggie Wong
Home Affairs Branch
31st Floor, Southorn Centre
130 Hennessy Road
Wanchai, Hong Kong

Dear Miss Wong

Thank you for your fax of 30/1. I will not pursue the point on reinstatement for the time being since you say you are reviewing it. However, on the point about the limit on damages in relation to the Sex Discrimination and Disability Discrimination Ordinances, it appears that you are not willing to give a straight forward answer. Let me try and ask you again. You say that the two ordinances are independent pieces of legislation to tackle the problem in two different areas. You further say that "the circumstances under which discrimination may arise and how the problem should be redressed may vary." Could you tell me what "the circumstances" are? I would appreciate that you be specific. Could you also explain in detail what "parity" between the two ordinances "is not necessary"? Why is it "prudent" to impose the \$150,000 limit? Again, please be specific.

Thank you.

Yours sincerely

Christine Loh
Legislative Councillor

CL/al

1777



LEGISLATIVE COUNCIL BRIEF

**UNITED NATIONS CONVENTION ON THE ELIMINATION
OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

INTRODUCTION

This brief informs Members of the progress regarding the extension of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to Hong Kong.

BACKGROUND

2. It has been our intention to, subject to consultation with China through the Joint Liaison Group (JLG), seek the extension by the United Kingdom (UK) of CEDAW to Hong Kong. Reservations to preserve some of our existing policies and practices including the rent concession under the Joint Declaration and the small house policy will be entered upon the extension.

3. The UK Government has completed in 1995 a review of its own reservations under CEDAW. Taking into account the outcome of the review, we have come to a view on the reservations which should be entered on behalf of Hong Kong upon the extension of CEDAW to Hong Kong.

RESERVATIONS

4. The UK Government has agreed in principle to enter the reservations set out in paragraphs 5 and 6 on behalf of Hong Kong.

5. The general reservations are -

- (a) the understanding that CEDAW allows Hong Kong to maintain its existing laws, regulations, customs and practices, which provide for women to be treated more favourably than men;
- (b) that the affairs of religious denominations and orders in Hong Kong should not be affected by obligations under CEDAW; and
- (c) Hong Kong Government has the right to continue to apply immigration law;
- (d) a Hong Kong-specific reservation to preserve the position in respect of the rent concession under Annex III to the Joint Declaration and the small house policy.

6. Other reservations are required with reference to different articles of CEDAW -

- (a) Article 9 - Equality in nationality laws

Article 9 of CEDAW requires States Parties to grant women equal rights with men (a) to acquire, change or retain their nationality and (b) regarding the nationality of their children. A similar reservation to that made by the UK to this Article is required for Hong Kong in order to cover the continuation of certain temporary or transitional provisions in the British Nationality Act 1981 as it applies in Hong Kong. This reservation will be removed after June 1997 when the Act in question will no longer apply to Hong Kong.

(b) Article 11 - Equality in employment and labour rights

(i) Retirement benefits

Article 11 of CEDAW obliges States Parties to take all appropriate measures to eliminate discrimination against women in the field of employment. Among the areas covered by this obligation is the right to social security in the case of retirement. A reservation is necessary to cover any private retirement schemes which might provide differential treatment in respect of retirement and death benefits for people of different sex.

(ii) Discrimination based on Maternity

Article 11, paragraph 2, provides specifically for the protection of women from discrimination on the grounds of marriage or maternity. The Employment Ordinance (Chapter 57) provides that a female employee has to fulfil a certain qualifying period of employment for entitlement to maternity leave and maternity leave with pay, and for protection against dismissal on the basis of pregnancy. A reservation is required to cover our existing law in this area.

(c) Article 15 - Equality in legal and civil matters

Article 15 of CEDAW provides that States Parties shall accord women equality with men before the law. For the avoidance of doubt, a reservation under this Article would clarify our understanding that only the relevant discriminatory provision of a contract or other legal instrument would be deemed null and void, not necessarily the whole contract or instrument.

FINANCIAL AND STAFFING IMPLICATIONS

7. There are no additional financial and staffing implications arising from the proposed extension of CEDAW to Hong Kong.

CONSULTATION

8. As the proposed extension of CEDAW to Hong Kong will confer new international rights and obligations (IROs) to Hong Kong, and as it is intended that such IROs should continue to apply to Hong Kong after 1997, consultation with the Chinese side of the JLG is required. We have formally put our consultation paper to the Chinese side and are awaiting their response.

9. The decision to seek the extension of CEDAW to Hong Kong has general public support.

PUBLICITY

10. No publicity is proposed at this stage.

ENQUIRIES

11. For enquiries in relation to this matter, please contact the following officer:

Ms Chang King-yiu, Principal Assistant Secretary for Home Affairs

Tel: 2835 1373

1 February 1996

Home Affairs Branch

BY HAND

2nd February, 1996

Mrs. Katherine Fok, OBE, JP
Secretary for Health and Welfare
Health and Welfare Branch
7th Floor
Main Wing
Central Government Offices
Hong Kong

Dear Mrs. Fok,

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

I attach for you information the English text of the captioned bill, as submitted to the Law Draftsman for certification.

Yours sincerely,

Christine Loh Kung-wai

BY HAND

2nd February, 1996

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

Dear Mr. Suen,

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

I attach for you information the English text of the captioned bill, as submitted to the Law Draftsman for certification.

Yours sincerely,

Christine Loh Kung-wai

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

電 話 TEL NO 2835 1388

圖文傳真 FAXLINE 2832 9983

7 February 1996

Ms. Christine LOH Kung-wai,
Legislative Councillor,
Rm. 322, West Wing,
Central Government Office,
HONG KONG.

Dear Ms. Loh,

**Sex and Disability Discrimination
(Miscellaneous Provisions) Bill 1996**

Thank you for your letter of 2 February 1996 and the draft Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 attached to it.

I understand that, except for a few new provisions, the draft Bill contains most of the amendments which Ms Anna Wu moved during the Committee Stage when the Legislative Council examined the Sex and Disability Discrimination Bills 1995.

Under the enabling legislation, i.e. the Sex Discrimination Ordinance (SDO), the Equal Opportunities Commission is the executive body to oversee the effective implementation of the SDO and the Disability Discrimination Ordinance (DDO). One of its functions is to keep under review the working of the Ordinances and, when necessary, draw up proposals for amending the Ordinances. It would therefore be prudent to

allow the Commission to gain some practical experience in enforcing the legislation before coming to a view on whether any amendments to the Ordinances are required. In any case, it would only seem fair and proper for the Commission to be consulted on any proposed amendments which it may be tasked to implement.

Yours sincerely,

(Michael M Y SUEN)
Secretary for Home Affairs

c.c. Secretary for Health and Welfare

立法局議員陸恭蕙辦事處
OFFICE OF CHRISTINE LOH . LEGISLATIVE COUNCILLOR

5th March, 1998

Ms. Chang King-yiu
Principal Assistant Secretary
Home Affairs Branch
31st Floor, Southorn Centre
130 Hennessy Road, Wanchai
Hong Kong

Dear Ms. Chang,

Equal pay under the Sex Discrimination Ordinance [SDO]

I apologise for the long delay in following up on our 6 February telephone conversation on the captioned subject.

Detailed provisions on equal pay will not be proposed as part of the forthcoming private members' bill entitled the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996, although they were included in the early draft of that Bill about which we spoke.

Nevertheless, serious concerns remain about the ambiguity that surrounds this very important aspect of the SDO. As it has been almost exactly one year since these concerns were first raised (by the Hon. Anna Wu in the 3 March 1995 meeting of the Bills Committee studying the Sex Discrimination Bill), it would be desirable for the Administration to dispel this ambiguity as soon as possible.

Last year, the Administration helpfully amended the Sex Discrimination Bill to remove ambiguity about whether equal pay would be covered *at all* (by inserting a provision, now s. 11(2)(b), expressly applying the SDO to terms of employment). Ambiguity remains, however, about whether the resulting right to equal pay extends to *work of equal value*. This ambiguity arises for the reasons described in Anna Wu's 4 May 1995 letter to Home Affairs Branch, attached:

“In interpreting the SDB [Sex Discrimination Bill], the courts of Hong Kong will ordinarily be able to refer to UK court decisions interpreting the very similar language of the UK Sex Discrimination Act. No such guidance will be available with respect to equal pay, however, because all UK equal pay decisions are based on the Equal Pay Act, the provisions of which have no parallel in the SDB. In this regard, therefore, the SDB calls for clarification.”

This ambiguity gives rise to a distinct possibility that the SDO may be interpreted by the courts as providing far less protection in respect of equal pay than is available in the UK under the laws on which the SDO is otherwise substantially based. Such a result would be contrary to the general understanding given the Bills Committee that studied the Sex Discrimination Bill.

1737

The Administration has often stated that the SDO covers equal pay but has not provided any further details, on the basis that such details should left for the Equal Opportunities Commission to determine after consultation on a draft Code of Practice.

Whether the SDO confers a legal right to equal pay for work of equal value, however, is a question of law. The answer cannot properly be found by consultation or in a Code of Practice. The Administration will be in no better a position to interpret the legislation after the Commission promulgates its Code. Moreover, no one is in a better position to interpret the legislation than the Administration, as the drafter and proposer of the legislation.

We would appreciate clarification of the Administration's understanding of this matter, in particular as follows:

- (1) Did the Administration intend the SDO to confer a right to equal pay for work of equal value?
- (2) As a matter of law, does the SDO confer such a right in the Administration's view?

For your information, I have attached relevant extracts from the notes of meetings of the Bills Committee that considered the Sex Discrimination Bill, as well as a copy of Anna Wu's 4 May 1995 letter.

Thank you for your assistance.

Yours sincerely,

(Adam C. Mayes)
for Christine Loh Kung-wai

12. With regard to the UK Equal Pay Act, Ms Anna WU recalled that the Administration had previously indicated that equivalent equal pay provisions would be made for Hong Kong, and inquired whether the Administration was now suggesting that such provisions be made in the form of Codes of Practice under the SDB rather than as primary legislation. She suggested it would be inappropriate to delegate such an important legislative matter to the Equal Opportunities Commission.

13. The Administration pointed out that clause 61(10) allowed flexibility for the EOC to provide transitional provisions or savings in the Code of Practice while under clause 61(5) the Legislative Council might amend it within 28 days after the sitting at which it was laid.

14. In reply to an enquiry about the coordination between Ms Anna WU and the Administration to eliminate the differences between the EOB and SDB, Ms Anna WU stated that she was willing to consider giving up the EOB should the Administration make policy commitments to legislation on areas of discrimination covered in the EOB. She opined that the functions and powers of the EOC should be widened to cover all areas of discrimination or at least promotion and monitoring of all types of discrimination. She also requested the Administration to put forward legislation on discrimination against sexuality, age and family status. She undertook to draw up a list of proposed amendments to the SDB with respect to the EOC and would also prepare suggested amendments to the EOB for Members' consideration.

Ms Anna
WU

15. The Administration reiterated that it would take a step-by-step approach in anti-discrimination legislation with introduction of the SDB followed by the Disability Discrimination Bill. Whether the legislative route would be taken in tackling other areas of discrimination would be determined after a study of the issues involved including an assessment of community response to these two enactments.

5. A Member opined that, in the UK Protection of Women Act which the SDB was based upon, most of the exemptions, such as those relating to underground work and cleaning dangerous parts of any machinery in motion, had been repealed. The UK Act only retained exceptions on, for example, maternity protection. In this connection, she suggested a one-year immunity for protective legislation, renewable by Legislative Council resolution, to allow the Administration time to review it against the current covenants, standards in the Bill of Rights Ordinance and the CEDAW. In the course of the review, the Administration should also consider whether the protective legislation required updating.

6. The Administration reiterated that the Equal Opportunities Commission (EOC) was empowered under the SDB to review, inter alia, the protective legislation. The issue was therefore whether the Administration or the EOC should conduct the review. It would consider this suggestion and reply to the Bills Committee.

Adm.

B. Employment Field - Part III of the SDB (Paper No.SDB 2/95)

Code of Practice

7. Ms Anna WU did not support the Administration's plan to implement Part III of the SDB after promulgation of Codes of Practice (paragraph 2 of paper No.SDB 2/95 referred). She pointed out that a code of practice had already been developed by some employers' organisations and the UK Act was implemented without awaiting the issue of Code of Practice. Since the Administration had power to implement Part III of the SDB as planned, she suggested to impose a time limit of one year for the EOC to develop and issue the Code of Practice. Part III of the SDB should then be implemented even though the Code of Practice was not yet ready. She recapitulated that the Administration had previously indicated that equal pay provisions equivalent to those in the UK Equal Pay Act would be made for Hong Kong but now proposed that such provisions be made in the form of Codes of Practice under the SDB rather than as primary legislation. She considered it inappropriate to delegate such an important legislative matter to the EOC.

The issue of equal pay arises because the SDB makes no explicit reference to it. Like the UK Sex Discrimination Act 1975 (and unlike sex discrimination legislation in most other jurisdictions), the SDB does not explicitly prohibit discrimination in contractual terms and conditions as such, but only in pre-contractual terms on which employment is offered (see SDB cl. 10(2); compare EOB cl. 13(2)(a)).

In the UK Sex Discrimination Act, this omission is explained by the existence of a separate UK Equal Pay Act 1970, which contains detailed provisions addressing discrimination in employment contracts. No provisions similar to the Equal Pay Act are made in the SDB, however.

In interpreting the SDB, the courts of Hong Kong will ordinarily be able to refer to UK court decisions interpreting the very similar language of the UK Sex Discrimination Act. No such guidance will be available with respect to equal pay, however, because all UK equal pay decisions are based on the Equal Pay Act, the provisions of which have no parallel in the SDB. In this regard, therefore, the SDB calls for clarification.

Thank you for your assistance.

Yours sincerely,

Anna Wu

cc. Clerk to the Bills Committee considering
the Equal Opportunities Bill and the Sex Discrimination Bill

4 May 1995

Miss Susie Ho
Principal Assistant Secretary
Home Affairs Branch
31st Floor, Southorn Centre
130 Hennessy Road
Wanchai
Hong Kong



Dear Miss Ho,

Questions about the Sex Discrimination Bill [SDB]

We would like to know the Administration's opinion on several matters pertaining to the SDB, as follows.

1. District Court remedies

Can the Administration indicate what, specifically, are the remedies available in SDB proceedings? Are these remedies more limited than those explicitly made available in EOB proceedings (see EOB cl. 234), and if so, why should they be so restricted? In particular, as previously asked in Bills Committee meetings, can the Administration indicate whether reinstatement is available as a remedy in SDB proceedings?

2. Period within which proceedings to be brought

Clause 78 of the SDB limits the period in which SDB proceedings may be brought, in general to one year following the act that is the basis of the complaint (plus a grace period for EOC conciliation, if any). Within what periods may other types of civil proceeding be brought, and why should SDB claims be more stringently limited?

3. Equal pay

In the Administration's opinion, will the SDB require (a) equal pay for the same or similar work and (b) equal pay for work of equal value, and on what basis is this opinion maintained? Does the Administration intend to make any more specific legislative provisions for matters of equal pay than is now contained in the SDB, and if so, in what manner?

Room 415, Central Government Offices (West Wing), 11 Ice House Street, Hong Kong
Telephone: 537 2466, 537 2467 Facsimile: 530 2018 Law Office: 843 7553
Liaison Assistant: Eric Chow 1128633 a/c 8939 Adam Mayes 1128028 a/c 1525
香港中區第十一號中區政府合署西座四一五室

30. Regarding the issue of equal pay for equal work, the Administration undertook to reply to Ms WU's letter dated 4 May 1995 requesting the Administration's views on, inter alia, the issue of equal pay under the SDB (a copy of letter at Appendix II to LegCo Paper No.HB 651/94-95). At a Member's request, the Administration would provide a copy of UK Equal Pay Act for Members' reference.

Adm.

31. A Member requested the Administration to revert to the Bills Committee on the areas of Clause 10 of the SDB that could not be implemented without Codes of Practice. She recalled that the Administration only mentioned equal pay for equal work as an area requiring Codes of Practice to implement. In this regard, she reiterated that the Administration had previously indicated that equal pay provisions equivalent to those in the UK Equal Pay Act would be made for Hong Kong, but it now proposed that such provisions be made in the form of Codes of Practice under the SDB rather than as primary legislation. She considered it inappropriate to delegate such an important legislative matter to the EOC.

32. The Administration responded that it would review Clause 10 of the SDB to determine in what areas Codes of Practice were required.

Adm.

III. Way Forward

33. The Chairman said that an interim report of the Bills Committee on Ms WU's proposal to restructure the Equal Opportunities Bill (EOB) would be discussed at the House Committee meeting on 5 May 1995. He urged Members to support the recommendation of the Bills Committee. The Chairman reiterated that Ms WU could proceed with the EOB in the usual manner should the House Committee not support her proposal. In reply to a Member's enquiry on the Administration's position regarding Ms Anna WU's proposed restructuring of the Equal Opportunity bills, the Administration reiterated that it would take a step-by-step approach in dealing with discrimination and hoped that the SDB and

布政司署
政務科
香港灣仔
軒尼詩道一百三十號
修頓中心
三十一樓



GOVERNMENT SECRETARIAT
HOME AFFAIRS BRANCH
31st FLOOR, SOUTHOHN CENTRE,
130 HENNESSY ROAD,
WAN CHAI,
Hong Kong

本署檔號 OUR REF. · HAB/CR/1/2/21

來函檔號 YOUR REF :

電 話 TEL NO. : 2835 1144

圖文傳真 FAXLINE · 2591 6002

By Fax and Post

(2 pages)

12 March 1996

The Hon Christine Loh
Room 322, Central Government Offices
West Wing
11 Ice House Street
Central
Hong Kong

Fax No: 2537 6937

Dear Ms Loh,

Thank you for your letter of 1 February 1996.

The Sex Discrimination Ordinance and the Disability Discrimination Ordinance deal with discrimination in different areas. The problems to be redressed also differ, for example the Sex Discrimination Ordinance deals mainly with sex discrimination and sexual harassment against women whereas other discriminatory practices, e.g. access to premises, vilification, and requests for information from people with a disability, are also covered by the Disability Discrimination Ordinance.

During the Committee Stage of the Sex Discrimination Bill 1994, an amendment was moved by the Hon Peggy Lam, a Member of the Legislative Council, to limit the amount of damages to be awarded in employment cases. The Hon Member was concerned about the lack of a yardstick in awarding damages in the absence of experience in enforcing anti-discrimination legislation in Hong Kong and that without a maximum limit on damages, the remedy obtainable under the Bill might be subject to abuse. This concern was shared by the Administration and apparently by some other Members as the proposed amendment was carried in the Council.

Notwithstanding the above, Legislative Council Members did not appear to have a similar concern regarding damages which might be awarded for discrimination on the ground of a person's disability and no limit on damages was proposed by Legislative Council Members when they scrutinised the Disability Discrimination Bill 1995. We note that you have proposed the Sex and Disability (Miscellaneous Provisions) Bill 1996 to, inter alia, remove the limit on damages in the Sex Discrimination Ordinance. No doubt Legislative Council Members will consider, once again, the need for a limit on damages when the Bill is introduced and scrutinised by the Council.

Yours sincerely,

(Miss Maggie Wong)
for Secretary for Home Affairs

LEGCO QUESTION (No. 2)

Date of Sitting: 13.3.1996

Asked by: Hon Tsang Kin-shing

Replied by: Chief Secretary

Question:

As the Governor and the Chief Secretary have described on a number of occasions the existing system of government as an "executive-led" system, will the Government inform this Council:

- (a) what is an "executive-led" system and what are the specific contents in such a system;
- (b) whether the introduction of Members' bills under the Standing Orders of this Council is contrary to the "executive-led" system;
- (c) whether the Governor's intention to refuse assent to a Member's bill under certain circumstances as stated in his Policy Address last year is to uphold the "executive-led" system; and
- (d) how the Government will ensure that the "executive-led" system will not hamper the development of democracy in the territory?

Reply :

- (a) The political system of Hong Kong is built on the principle of 'separation of powers' with an executive-led government. The executive, legislature and judiciary have different and independent roles, which check, balance and support each other. Under our executive-led system of government, the executive is responsible for formulating and implementing policies and providing various services to the community. In line with this, it is the Administration's role to put its legislative and expenditure proposals to the Legislative Council for consideration. In short, the Administration proposes and the legislature disposes.

(b) LegCo Members have a constitutional right to introduce Private Members' Bills provided that their proposals do not have the object or effect of disposing of or charging any part of the public revenue. But a proliferation of Private Members' Bills on important issues of public policy would undermine the present division of responsibilities between the executive and the legislature. It would also upset the Administration's own legislative programme, which has been carefully drawn up to take account of the views and aspirations of the various sectors of our community, including LegCo. As the Governor said in his Policy Address, we believe that the public interest would be better served if we moved forward on an agreed basis, rather than on parallel tracks.

- (c) The Governor's statement in his 1995 Policy Address was no more than a recognition of the constitutional position. The Governor also emphasized that the Administration is committed to working together with Members of this Council on behalf of the community we all serve.
- (d) The principle of 'executive-led' government does not mean that the executive can do whatever it wants. In the Hong Kong system, the legislature and the executive perform distinct roles and provide checks and balances to each other. Thus, the Administration's legislative and financial proposals all have to be approved by the Legislative Council, in which we have no votes.

LEGCO QUESTION NO. 1 (Oral)

Date of sitting : 13 March 1996

Asked by : Hon LEE Cheuk-yan

Replied by : SHA

Question : The Government undertook last year that it would adopt two measures concerning women's rights, viz. the setting up of an Equal Opportunities Commission (EOC) and the extension of the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to the territory. However, these two measures have still not been implemented by the Government. In this connection, will the Government inform this Council :

- (a) what is the timetable for the setting up of the EOC and when its membership will be announced;
- (b) whether the Government will consider setting up the EOC first to start work before its chairman is appointed;
- (c) whether, having regard to the fact that the Government has planned to draw up certain reservations for inclusion in CEDAW upon its extension to the territory and that the matter will be discussed by the Sino-British Joint Liaison Group, women's groups will be consulted on these reservations; if not, why not;
- (d) what is the timetable for discussion of the reservations referred to in (c) above by the Joint Liaison Group?

Reply :

As Members are aware, we are in the process of recruiting the Chairperson of the Equal Opportunities Commission. We hope to complete the selection process before the end of March. As the individual circumstances of the person selected may involve certain formalities to be completed before an announcement of appointment can be made, a firm timetable for the setting up of the Commission cannot be given at this point. However, Members may rest assured that we intend to make an announcement of the full composition of the Commission as soon as possible.

We do not consider it proper to set up the Equal Opportunities Commission without its Chairperson. In order to ensure that the Commission can function effectively upon its commissioning, the preparatory team in my Branch has already secured its funding and office accommodation has been leased and furnished. Other preparatory work such as the drawing up of the proposed organisation structure and terms of reference for the Commission and its committees, and the terms and conditions for the recruitment of some 60 staff for the Commission office is being finalised. Work has also started on the preparation of draft Codes of Practice on employment for consideration by the Commission.

I would now turn to the second part of the question on the Convention on the Elimination of all forms of Discrimination Against Women, which many referred to as CEDAW. As the application of CEDAW will confer new international rights and obligations on Hong Kong, and as the Convention is intended to continue to apply after 1997, we need to consult the Chinese side at the Joint Liaison Group. We have handed over a speaking note together with the relevant information to the Chinese side in January this year and are awaiting their response.

In September last year, the United Kingdom completed a comprehensive review of the previous reservations which it entered under CEDAW. We have since then examined these reservations in respect of their relevance for Hong Kong. We propose to enter seven reservations upon the extension of CEDAW to Hong Kong. These seek to either clarify our obligations under the Convention or to reiterate the compatibility of some of our existing regulations and practices with the Convention. All but one are modelled on similar reservations to be retained by the United Kingdom. The exception covers the rent concessions provided for under the Joint Declaration and the small house policy. On this latter reservation, we had explained to the public the need for it in 1994 when we announced our intention to seek an extension of the Convention to Hong Kong.

OFFICE OF CHRISTINE LOH, LEGISLATIVE COUNCILLOR

Room 322, 3/F, West Wing, Central Government Offices,
11 Ice House Street, Central, Hong Kong
Tel. (852) 2537-2485 Fax (852) 2537-6937

FACSIMILE TRANSMISSION FORM

To : Christine Loh
Anna Wu
Eric Chow
Carole Petersen
Andrew Byrnes

From : Adam Mayes
(Direct line:2521-6820)

Date : 14/3/96 Total pages : 2 (including this page)

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

Ms. Chang King-yiu of HAB suggests we have a small, working-level meeting to exchange views informally about the Bill. They would like clarification of the intentions behind some provisions, and about the expected implications. She, Anne Shepherd and representatives from 1 or 2 other branches that may be affected by the amendments would attend the meeting. Sometime thereafter, Michael Suen will seek a policy-level discussion on the Bill with Christine et. al.

I suggested Sat. 11:30, Mon. 9-10:30, and Tues afternoon to her as possible times and am awaiting her reply.

Ms. Chang is seeking expert advice on the equal pay issue raised in the letter I sent her last week. Also, Home Affairs is currently taking advice on the Bill's charging effect and to that end has sent it to some other branches for consideration as well.

Privacy Commissioner

Mr. K. M. Cheung (for Robin McLeish in HAB) told me that the position will be advertised beginning this Saturday until the open invitation closes on 9 April (not 19 April as reported yesterday).

The advertisement will appear locally in 3 newspapers (SCMP, Sing Tao, Ming Pao), on 3 consecutive Saturdays in each paper. Internationally, it will be distributed to the HK Government's 10 overseas offices (in UK, US, Canada, Australia, Singapore, and other locations) for placement in the media there. GIS will also put the ad on internet on the GIS homepage.

The selection board has not yet been finalised or sent to the Governor for approval, so he can't say much about it, but it will be composed similarly to the selection board for the EOC Chairperson described below.

Equal Opportunities Commission Chairperson

According to Ms. Chang King-yiu, the search for the Chairperson was conducted in essentially the same way as the Privacy Commissioner search described above. The ads began running 10 February and the invitation closed on 8 March. There were over 100 applicants. The proportion of applications from overseas has not yet been figured but it is "very impressive".

The board considering the applicants includes the 2 policy secretaries with responsibility for the discrimination Ordinances, and 3 unofficials. The unofficials were invited to the board for their "rich administrative experience and high social standing". They do not have any particular expertise in equal opportunity or connection with women's or disability rights groups. They are, however, well able to judge the type of qualifications mentioned in the advertisement, e.g. managerial experience, legal background and the like, says Ms. Chang.

(In the Legco sitting yesterday, Michael Suen in answer to a question said they hoped to have a Chairperson by end of this month.)

See you,

立法局議員陸恭蕙辦事處
OFFICE OF CHRISTINE LOH . LEGISLATIVE COUNCILLOR

14th March, 1996

Miss Maggie Wong
Home Affairs Branch
31st Floor, Southorn Centre
130 Hennessy Road
Wanchai, Hong Kong

Dear Ms Wong

Thank you for your letter of 12 March. Can you explain exactly what form of "abuse" the Administration was concerned about in supporting the \$150,000 limit in the Sex Discrimination Bill? I would like to understand the Administration's concern, not Members' concern. Why does the Administration feel the limit is appropriate in the area of sex discrimination? The fact that I will raise an amendment to abolish the limit does not obviate the Administration from explaining its concern fully. Your Branch has not been as forthcoming about giving as full a reply as possible in this important issue.

Thank you.

Yours sincerely

Christine Loh
Legislative Councillor

CL/al

1804

**Presentation to Finance Committee by the
Secretary for Home Affairs
on 20 March 1996 at 5:30 p.m.**

The three programmes under Head 53 Government Secretariat : Home Affairs Branch as stated in paragraph 1 of my report contributes to Policy Area 19 : District and Community Relations. The total provision sought under this Head is \$61.0m. I would like to take this opportunity to highlight the following priority areas.

(I) Equal Opportunities

2. Last year saw good progress made in the promotion of equal opportunities. We saw the enactment of two equal opportunities ordinances, namely the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. We also witnessed a growing awareness in the community of the importance of equal opportunities, thanks to the dedicated efforts of the *Committee on the Promotion of Civic Education (CPCE)*.

3. There is more to be done this year. Action is in hand to establish a statutory Equal Opportunities Commission (EOC) to oversee the implementation of the two equal opportunities ordinances and to work towards the elimination of discrimination. In line with our step-by-step approach in tackling the issue of discrimination, we have issued two consultation documents on discrimination on the grounds of family status and sexuality. We will proceed with the two consultation exercises and seek to report to Members results of our findings as soon as possible within this legislative session. We will also embark on a study in respect of racial discrimination later on in the year.

4. The CPCE has adopted "Equal Opportunities" as one of its work themes for 1996/97. It will produce a variety of teaching and promotional materials in the coming year, including comic booklets, teaching kits targeted at different age groups, and television programmes. It will also organise large scale exhibitions and mass media publicity campaigns, and encourage voluntary agencies and district civic education organisations to organise activities and carry out projects under the Community Participation Scheme. This comprehensive education programme will complement the Home Affairs Branch's programme to promote gender equality and any publicity efforts by the EOC.

(II) Basic Law

5. With the imminent transfer of sovereignty, there is increasing demand for the Government to step up the promotion of the Basic Law. The CPCE has adopted this as another major work theme in the coming year. Projects planned include the organisation of exhibitions and competitions, and production of television programmes, video tapes, and a series of handbooks for different target groups.

6. A full-time Educational Unit has been set up to assist the CPCE to develop human rights educational materials. This will enable the Committee to launch more ambitious and comprehensive programmes on human rights education for the community.

(III) Privacy protection for personal data

7. Our current work is concentrating on setting up the Privacy Commissioner's Office, promoting awareness of the Personal Data (Privacy) Ordinance among data users in both the private and public sectors, and advising Government branches and departments on preparation for compliance with the Ordinance. Work on establishing the Privacy Commissioner's Office is now at an advanced stage.

8. As regards promotion of awareness of the Ordinance, an introductory guide for data users was published in October 1995 and 56,000 copies have been distributed to date. A poster campaign promoting compliance with the 6 data protection principles in the Ordinance began on 17 February.

9. Shortly after enactment of the Ordinance, all Policy Secretaries and Heads of Department were asked to prepare for compliance. Home Affairs Branch is assisting them with the provision of general advice through seminars and briefings, as well as specific advice in response to queries raised by individual branches and departments.

- END -

來函編號 Your Ref:
本局編號 Our Ref: CB/B/P2/LCS2
電話 Tel: 2869 9270
圖文傳真 Fax: 2810 1691

立法局秘書處
Legislative Council Secretariat

22 March 1996

Mr Michael SUEN, CBE, JP
Secretary for Home Affairs
Home Affairs Branch
31st Floor, Southorn Centre,
130 Hennessy Road, Wan Chai
Hong Kong

Dear Mr SUEN,

**Equal Opportunities
(Family Responsibility, Sexuality and Age) Bill**

I refer to my letter of 5^④ March 1996 seeking the Administration's view as to whether, according to the Administration's assessment, the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill to be presented by the Hon LAU Chin-shek has any charging effect within the terms of Standing Order No. 23 of the Legislative Council Standing Orders.

As the President has indicated that he wishes to make a ruling before the end of the month, I should be grateful for your response by the close of play on Wednesday, 27 March 1996.

Yours sincerely,

(LAW Wing-lok)
for Clerk to the Legislative Council

香港中區皇后大道中立法局大樓
Legislative Council Building, 8 Jackson Road, Central, Hong Kong.

+ 852 2537 1204 P.02

LEGISLATIVE COUNCIL
+ 852 2537 1204

1808
27-MAR-1996 15:35

INFORMATION NOTE
**EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY,
SEXUALITY AND AGE) BILL**

BACKGROUND AND ARGUMENT

1. The Equal Opportunities Bill (EOB), a Private Member's Bill, was introduced by Ms. Anna Wu into the Legislative Council in the 1993/94 legislative session. The EOB contained provisions outlawing discrimination on the grounds of sex, marital status, pregnancy, family responsibility, sexuality, race, disability, religious or political conviction, age, trade union membership and spent conviction.
2. In the 1994/95 session, the Administration introduced 2 bills which addressed some but not all of the forms of discrimination that were covered by the EOB, the Sex Discrimination Bill (SDB) and the Disability Discrimination Bill (DDB). In response to the SDB and DDB, Ms. Anna Wu restructured the EOB by dropping the parts that duplicated the government bills and dividing the remainder of the EOB into three bills, one of which was the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill.
3. A Legislative Council Bills Committee studied the EOB (together with the SDB and DDB) from August 1994 to June 1995. The Bills Committee examined the EOB in detail and recommended several amendments to address areas of concern such as same-sex marriage, adoption of children, reproductive technology, retirement age, and the protection of minors' welfare. The Bills Committee also received submissions from the public, most of which were in favour of enacting comprehensive equal opportunities legislation to protect victims of different forms of discrimination, including family responsibility, sexuality and age discrimination.
4. Despite public support for the Bill in principle, and the proposal of amendments to address the particular areas of concern raised by the Bill, the EOB was defeated on 28 July 1995.
5. Because of the EOB's defeat, even though the Sex Discrimination Ordinance and the Disability Discrimination Ordinance were enacted, numerous victims of other forms of discrimination remain unprotected by law. Since the Government has neither a commitment to, nor a timetable for legislating against these other forms of discrimination, some Members of this Council decided to re-introduce the EOB into the Legislative Council in the 1995/96 session.

THE BILL

7. The main purpose of the captioned Bill is to render unlawful discrimination on the grounds of family responsibility or family status, sexuality and age in various areas and to make provision for remedies for such discrimination. In doing so, the Bill is also intended to give effect to a variety of international obligations pertaining to discrimination that are applicable to Hong Kong.
8. The Bill reproduces, with several technical changes, the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill gazetted on 30 June 1995. It also incorporates many of the proposed Committee Stage Amendments agreed by the Bills Committee studying the Equal Opportunities Bill during the last legislative session.

Definition

9. Clause 3(1) defines the terms used in the Bill. Under the Bill, “family responsibility’or family status”, in relation to a person, means:
- (a) having responsibility for the care of another person, whether or not that person is a dependant, other than in the course of paid employment;
 - (b) the status of being a particular relative; or
 - (c) the status of being a relative of a particular person.
10. “Sexuality” is defined to mean heterosexuality, homosexuality (including lesbianism) and bisexuality.

Areas of activities covered

11. Clause 6 ensures that the Bill covers unfavourable treatment of a person because of the family responsibility, sexuality or age of a relative or associate of the person.
12. Parts II to IV contain clauses prohibiting discrimination on the ground of family responsibility or family status (Part II); sexuality (Part III); and age (Part IV). In each of these Parts, discrimination is defined to include both direct and indirect discrimination, and is made unlawful in the area of work, including—
- (a) selection of employees, commission agents and contract workers;
 - (b) terms and conditions, access to opportunities for promotion, transfer, training and benefits, and dismissal or termination of employees, commission agents and contract workers;
 - (c) admission to partnerships and professional or trade organisations, and the treatment of members by such bodies; and
 - (d) the activities of qualifying bodies and employment agencies.
- and in other areas including—
- (i) education;
 - (ii) access to places and vehicles;
 - (iii) access to goods, services and facilities;
 - (iv) accommodation, other than within the home of the discriminator or a near relative;
 - (v) the disposition of interests in land, other than by will or by gift;
 - (vi) clubs, defined as voluntary associations of 30 or more persons, which maintain premises on which alcoholic beverages are served;
 - (vii) job application forms and certain other requests for information; and
 - (viii) the administration of laws and government programmes.
13. Part II concerns discrimination on the ground of family responsibility or family status. Discrimination is defined in clause 8 and is prohibited—
- (a) in work (clauses 9 to 15); an exemption in clause 9 permits employers to afford persons of a particular family status or responsibility special benefits in connection with that status;

- (b) in areas other than work (clauses 16 to 23); exemptions in clause 16 permit educational institutions to favour applicants with relatives already studying or working at the school, and to afford persons of a particular family status or responsibility special benefits in connection with that status
14. Part II contains the following additional provisions concerning discrimination on the ground of family responsibility or family status—
- (a) clause 24 exempts measures to meet the special needs of persons of a particular family status or responsibility;
 - (b) clause 25 permits employers to provide employees with accommodation of varying standards if the standard is determined according to the number of persons in an employee's household;
 - (c) clause 26 permits employers to restrict the employment of relatives of their own or others' employees where there is a significant likelihood of collusion and of resulting damage to the business.
15. Part III concerns discrimination on the ground of sexuality. Discrimination is defined in clause 27 and is prohibited—
- (a) in work (clauses 28 to 34);
 - (b) in areas other than work (clauses 35 to 42).
16. Discrimination in the form of harassment on the ground of sexuality is prohibited, in the areas of employment (clause 43), education (clause 44), accommodation (clause 45), and provision of goods and services (clause 46). Harassment because of the sexuality of the victim's relative or associate is also covered (clause 47).
17. Clause 49 prohibits discrimination in the form of vilification on the ground of sexuality, meaning a public act inciting hatred, contempt or severe ridicule for a person on that ground. "public act" is defined in clause 48; fair reporting and privileged communications are exempt, as are reasonable acts done in good faith for academic, scientific, research or artistic purposes (clause 49). Serious vilification involving a threat of or an incitement to physical harm on the ground of sexuality is a criminal offence punishable by a fine at level 3 (clause 50).
18. Clause 51 makes an exception to Part III for laws governing capacity to marry or eligibility to adopt and for acts done under such laws, and clause 52 similarly exempts access to reproductive technology procedures. Clause 53 provides a further exception permitting measures to meet the special needs of persons of a particular sexuality.
19. Part IV concerns discrimination on the ground of age. Discrimination is defined in clause 54 and is prohibited—
- (a) in work (clauses 55 to 61);
 - (b) in areas other than work (clauses 62 to 67, 69 and 71), with certain exceptions—
 - (i) mature age admission schemes are exempt from the provision concerning education, as are minimum age requirements for admission to primary and secondary schools (clause 62);

- (ii) benefits or concessions may lawfully be offered to particular age groups in connection with accommodation, clubs and access to places, vehicles, goods, services and facilities (clauses 63, 64, 65 and 67);
- (iii) residential complexes intended for a particular age group are exempt from the provision concerning dispositions of land (clause 66);
- (iv) clubs formed to benefit members of a particular age group are exempt, and any club may lawfully retain age categories of membership (clause 67);
- (c) in sports, including coaching, refereeing and administration (clause 68); exemptions apply if a person is not reasonably capable of performing the activity, or, with respect to competitors only, if the activity is a competitive one between members of a particular age group;
- (d) in connection with superannuation schemes and provident funds, except if necessary to comply with or obtain a benefit under any other law or if reasonable having regard to actuarial or other relevant data (clause 70).

20. Clauses 72 to 81 provide for the following further exceptions to the provisions of Part IV—

- (a) clause 72 provides an exemption for discrimination which is justified by reasonable health and safety considerations;
- (b) clause 73 exempts retirement schemes, whether voluntary or mandatory;
- (c) clause 74 permits any reasonable act done in good faith to protect minors' welfare;
- (d) clause 75 permits a person to refuse to enter into an unenforceable contract with a minor;
- (e) clause 76 preserves laws that protect minors' welfare, or that relate to the legal capacity, entitlements, obligations or disqualifications of minors.
- (f) clause 77 provides an exception for existing laws and for acts necessary to comply with them;
- (g) clause 78 preserves the operation of laws and policies relating to adoption;
- (h) clause 79 exempts measures to achieve equality or to meet special needs of persons of a particular age;
- (i) clause 80 provides an exemption for dramatic and artistic roles if authenticity demands a person of a particular age, and for employment in services for or to promote the welfare of persons of a particular age; and
- (j) clause 81 provides an exemption with respect to the availability and terms of annuities or insurance policies if the discriminatory terms are reasonably based upon actuarial or other relevant data.

General exceptions

21. Part VI provides general exceptions to the Bill—

- (a) gifts to charities may lawfully discriminate in identifying a class of persons eligible to receive charitable benefits (clause 84);
- (b) voluntary bodies may lawfully discriminate in admission to membership and in the provision of benefits, facilities or services to members (clause 85); this exemption, however, does not apply to clubs, to bodies established by law, or

to associations with profit-making activities or which provide finance to members;

- (c) religious bodies may lawfully discriminate in connection with the performance of religious duties, and in the training, appointment, etc. of persons to perform such duties (clause 86);
- (d) religious schools may discriminate in good faith in employment and educational matters to avoid injury to the religious susceptibilities of adherents of the religion (clause 87);
- (e) school authorities may comply with the Primary One Admission System, the Secondary School Places Allocation System, or any admission scheme imposed by law (clause 88);
- (f) establishments providing housing for the aged and ancillary services may lawfully restrict admission to any class of applicants, and may discriminate on any ground except age in the provision of benefits, facilities or services to those admitted (clause 89).

22. Clause 90 empowers the Secretary for Home Affairs to provide temporary exceptions to the Ordinance by way of regulations. The exceptions provided may be of a general or specific nature, and are subject to the approval of the Legislative Council. Regulations may also provide for any person to apply to the Secretary for a temporary exception.

Implementation and enforcement

23. Part VII provides for implementation and enforcement. Discriminatory acts or practices made unlawful by the Bill are "civil wrongs" (clause 91) triable in the District Court (clause 92).

24. Once the court is satisfied that a person has unlawfully discriminated against another, it may make an order which it considers just and appropriate in the circumstances (clause 94). For example, the court may—

- (a) order that the defendant pay to the plaintiff damages in compensation for any loss or damage suffered, or punitive and exemplary damages;
- (b) make an order enjoining the defendant from continuing or repeating any unlawful conduct;
- (c) order the defendant to perform any reasonable act or course of conduct to redress a plaintiff's loss or damage;
- (d) order the defendant to employ, re-employ or to promote the plaintiff;
- (e) make an order declaring void in whole or in part and from such time as is specified any unlawful contract or agreement; or
- (f) declare that all or part of a pre-existing law has been repealed.

LEGISLATIVE TIMETABLE

25. The faired draft of the Bill was sent for information to the President of the Legislative Council and to the Secretary for Home Affairs in late January.

26. The Law Draftsman certified the Bill under Standing Order No. 39(1A) on 4 March 1996 and the certified Bill was forwarded to the Secretary for Home Affairs and to the President of the Legislative Council for assessment of the Bill's charging effect, if any. It is understood that as

of today's date, the Secretary for Home Affairs had not yet made his assessment available to the President.

- 27 The Bill will be gazetted and introduced into the Legislative Council as soon as it is confirmed to have no charging effect.

ENQUIRIES

- 26 Any enquiries relating to the Bill can be directed to Mr. Eric Chow at 2367-7632

Office of Hon Lau Chin-shek, Legislative Councillor
25 March 1996

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

**Minutes of Meeting held on
Friday, 29 March 1996 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 Zachary WONG Wai-yin
Hon Christine LOH Kung-wai
Hon LEE Cheuk-yan
Hon LAU Hon-chuen, 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 Members

Hon Ronald ARCULLI, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon CHAN Wing-chan
Hon CHAN Yuen-han
Hon LAU Chin-shek
Hon SIN Chung-kai

Absent with : Hon Allen LEE Peng-fei, CBE, JP
apologies Hon LAU Wong-fat, OBE, JP
Hon James TO Kun-sun
Hon Andrew CHENG Kar-foo
Hon CHEUNG Hon-chung
Hon CHOY Kan-pui, JP
Hon Bruce LIU Sing-lee

By invitation : For Item III

Administration

Mr Francis LO
Principal Assistant Secretary for Home Affairs

Mr T D Stephenson
Assistant Director of Home Affairs

Mrs Lesley Y C WONG
Principal Assistant Secretary for Treasury

The Hong Kong Federation of Hotel Owners Limited

Mr Michael LI
Executive Director

Ms Paddy LUI
Executive Committee Member

Mr Patrick LEE
Executive Committee Member

For Item IV

Administration

Mrs Stella HUNG
Deputy Secretary for Home Affairs

Ms CHANG King-yiu
Principal Assistant Secretary for Home Affairs

Mr Kenneth NG
Senior Statistician

Hong Kong Women Christian Council

Ms Rose WU
Ms YEUNG Shui-ching

Hong Kong Federation of Women's Centres

Ms Linda WONG

Hong Kong Women Workers' Association

Ms Linda TO

Queer Sisters

Ms Maryann KING

Women Committee, Hong Kong Confederation of Trade Unions

Ms CHEUNG Lai-ha

The Association for the Advancement of Feminism

Ms LEUNG Lai-ching

Ms LAM Wai-ha

Mongkok Kai Fong Association Chan Hing Social Service Centre Concern Women Rights Group

Ms KWAN Lai-king

Ms LEE Wai-han

Ms SIN Lai

Ms LAU Yin-fong

Movement Against Discrimination

Mr MAK Hoi-wah

Chairman

Student Christian Movement of Hong Kong

Miss HUI Yu-ling, Karen

Executive Secretary

Justice and Peace Commission of the Hong Kong Catholic Diocese

Miss Mary YUEN
Executive Secretary

Horizons

Mr Roddy SHAW
Education Coordinator

Hong Kong Gay Coalition

Mr Robin Adams

Staff in attendance : Mrs Anna LO
Chief Assistant Secretary (Bills Committees) 2

Mr Raymond LAM
Senior Assistant Secretary (Panels) 6

I. Confirmation of notes of meetings and matters arising
(LegCo Paper Nos. PL 885 & 1131/95-96)

The notes of the Panel meetings held on 26 January 1996 and 9 March 1996 were confirmed.

II. Date of next meeting and items for discussion

2. Members agreed that the next meeting would be held on Friday, 26 April 1996 at 10:45 a.m. to discuss the following :

- (a) Issues related to the formation of owners' corporations in multi-storey buildings
- (b) Problems encountered by divorced women in recovering alimony
- (c) Way forward on examination of human rights reports

III. Hotel and Guesthouse Accommodation Ordinance
- proposed revision to licence fees
(LegCo Paper Nos. PL 1108 & 1144/95-96)

3. Mr Francis LO briefed Members on the salient points of the paper provided by the Administration. He explained that the existing licence fee structure was not in line with the government policy of setting fees at a level to cover the full cost of providing the services. As regards the process for the revision of licence fees, he informed Members that approval would be sought from the ExCo and a subsidiary legislation would then be endorsed by the ExCo and presented to the LegCo under the negative procedure. He added that under the new licence fees, hotels would not be subsidising the licensing cost of guesthouses, nor would the latter be subsidising the former.

4. On behalf of the Hong Kong Federation of Hotel Owners Limited, Mr Michael LI and Ms Paddy LUI presented the federation's views as follows :

- (a) Hotels in Hong Kong had already been subject to various licensing requirements from a number of Government departments. The hotel industry was confused by the different instructions given by different departments. There was also a possible duplication of work between the Hotel Licensing Authority and other licensing departments.
- (b) Differences in hotel sizes should not give rise to substantial differences in licensing cost, as hotel rooms were only sampled for inspection.
- (c) There was no mechanism to ensure sufficient control of licensing cost.
- (d) The rates of hotel rooms in Hong Kong had already been expensive. The proposed revision of licence fees would affect the competitiveness of the hotel industry and the tourist industry.
- (e) Hotels and guesthouses were different and therefore should be treated separately. Hotels involved huge investment that required long term planning and thus the licences should be subject to longer renewal intervals.
- (f) The local hotel industry had already experienced a sharp increase in cost in the past ten years. The Administration

should not discourage investment in the industry with a substantial increase in licence fees.

6. In reply to Members' questions, Mr LO advised that the licence fees for first time applications and annual licence renewals would be the same. He stated that inspections were necessary during licence renewal. Experience had shown that on many occasions, unauthorised alterations and illegal structures which undermine safety were identified in annual inspections. Mr LEE Wing-tat opined that as there was substantial difference between the processing cost of applications for the first licence and licence renewal, the Administration should consider setting different licence fees for the two types of applications.

7. As regards the drawback of the existing licence fee system, Mr LO explained that the existing system, which was introduced in 1991 and based on information available at that time, had become inappropriate as it did not reflect the different costs of licensing establishments of different sizes. In response to Members' request, Mr LO agreed to provide statistics on establishments found to be not in compliance with the licensing requirements.

(Post-meeting note : The Administration replied after the meeting that they would not be able to provide statistics on establishments not in compliance with the licensing requirements as the Licensing Authority had not kept such data specifically.)

8. On the question of whether the Administration would consider separating the licensing of hotels and guesthouses, Mr LO replied that under the existing legislation, hotels and guesthouses fell within the same definition and therefore could not be separated.

9. Mr LAW Chi-kwong opined that in the cost calculations, a logarithm factor should be applied instead of a factor of 0.7 to hotels with large number of rooms. He commented that the fixed cost per establishment was overstated as there was a large number of guesthouses operating without licences. He requested the Administration to provide more information on the processing of licence applications and detailed computation of cost. Mr LO replied that the cost of policing and prosecuting illegal guesthouses, estimated at over \$3 million per year, had not been included in the cost calculations. As regards the suggestion of applying a logarithm factor in the calculations, the Chairman suggested the Administration to provide a written reply after the meeting.

(Post-meeting note : The Administration replied after the meeting that they had taken into account the economies of scale factor in costing for licensing of hotels with large number of rooms. Whilst not each and every room in a larger hotel was inspected, there was a substantial amount of ancillary areas, e.g. shopping arcade,

restaurants and function rooms, which were subject to inspections as they fell within the hotel complex. Taking account of all these elements, they considered that applying a factor of 0.7 to the costing for licensing of hotels with more than 40 rooms was appropriate. In their view, using a logarithm factor would complicate the calculations of the costs for larger hotels. The appropriateness of the factor to be applied to hotels in each band would also be questionable.)

10. Mr Ronald ARCULLI pointed out that the information provided by the Administration was inadequate and the detailed cost computations had not been provided. He suggested the Administration to defer the proposal for one month so as to allow a subcommittee to be set up under the Panel to look into the Administration's proposal. As only three non-Panel Members indicated interest in the proposed subcommittee, the Chairman requested the Administration to consider deferring the proposal and suggested that a joint Panel meeting be arranged with the Economic Services Panel in late April or early May to deliberate on the issue. The Chairman would discuss the suggestion with the Chairman of the Economic Services Panel. Members were suggested to provide their written questions, if any, to the Panel Clerk for further submission to the Administration.

HAB

Chairman

IV. Equal Opportunities : the Administration's consultative documents on discrimination on the grounds of sexual orientation and family status and a bill to be proposed by Hon LAU Chin-shek on sexuality and family responsibility
(LegCo Paper Nos. PL 1108, 1144, 1148 & 1171/95-96)

11. Mrs Stella HUNG explained that the purpose of the Administration's consultative documents regarding discrimination on the grounds of sexual orientation and family status was to gauge the public's views on the discrimination issues in these areas, and possible measures to address the issues. The Administration was committed to enhancing equal opportunities in the community. While the closing date for consultation was 31 March 1996, more than 4,000 submissions had already been received. The Administration would analyse the submissions and report back to the LegCo in due course.

12. Mr LAU Chin-shek briefed Members on the progress of his proposed Private Member's Bill on family responsibility, sexuality and age. He informed Members that the part relating to age discrimination would be separately presented to the Manpower Panel and the Bill was being studied by the Home Affairs Branch to determine whether there was any charging effect.

Meeting with deputations

Representatives of Women's Organisations

13. Representatives of the following women's organisations presented the salient points of their joint submissions :

Hong Kong Women Christian Council
Hong Kong Federation of Women's Centres
Hong Kong Women Workers' Association
Queer Sisters
Women Committee, Hong Kong Confederation of Trade Unions
The Association for the Advancement of Feminism
Mongkok Kai Fong Association Chan Hing Social
Service Centre Concern Women Right Group

14. As regards family status, the organisations supported the introduction of legislative measures. They also called for the introduction of care-taking leave for women who had to take care of their family members, the strengthening of employee retraining courses, and the improvement of child care service. A supportive social service network should be established for single parent families and families receiving Public Assistance.

15. On discrimination on the ground of sexuality, representatives informed Members that a recent survey by Queer Sisters revealed that 60% of the homosexuals had revealed their sexual orientation to others, and more than 60% had claimed to be discriminated as a result of their sexual orientation. It was identified that 12% of the female homosexuals and 25% of the male homosexuals have considered or attempted suicide as a result of discrimination.

16. In concluding their views, representatives of the women's organisations remarked that the consultative documents were too conservative. They called for the introduction of both legislative and non-legislative measures to address discrimination issues and the implementation of anti-discrimination legislation through the Equal Opportunities Commission. Religious bodies should not be exempted from anti-discrimination legislation except in very exceptional cases.

Movement Against Discrimination (MAD)

17. Mr MAK Hoi-wah informed Members that the MAD was supportive of introducing both legislative and non-legislative measures, such as public education, to address discrimination on the grounds of sexuality and family status. He elaborated on the findings of a recent survey conducted by MAD on sexuality

and pointed out that there was a general resistance in the society to homosexuality, indicating the need to introduce legislative measures. MAD was also of the view that anti-discrimination legislation should be implemented through the Equal Opportunities Commission.

Justice and Peace Commission of the Hong Kong Catholic Diocese, Student Christian Movement of Hong Kong, and Hong Kong Christian Institute

18. Miss Mary YUEN and Miss Karen HUI stated that the Administration's consultative document was misleading in stating that religious bodies were against the introduction of legislative measures to address sexuality issues. They commented that a number of religious bodies were in support of legislative measures. Both legislation and public education should be adopted in tackling discrimination on the ground of sexual orientation. Religious organisations should not be exempted from legislative measures.

Horizons

19. Mr Roddy SHAW presented the Horizons' views as follows :

- (a) Both legislative protection and public education should be adopted in addressing discrimination on the ground of sexuality.
- (b) Religious organisations, including schools and centres operated by religious bodies, should not be exempted from any legislative measures, although exemption might be granted under exceptional circumstances.
- (c) Legislation on discrimination on the ground of sexuality would not result in cost increase to employers.
- (d) As regards civic education, more emphasis should be put on equal opportunities. Sexual orientation should be included in the curriculum of sex education.
- (e) Sufficient financial and human resources should be allocated for the provision of social service to homosexuals.
- (f) Courses should be introduced in universities and tertiary institutions to help training up professionals to provide counselling service for homosexuals.

Hong Kong Gay Coalition

20. Mr Robin Adams presented the views of the Hong Kong Gay Coalition on discrimination on the ground of sexuality. He referred to the survey findings of Queer Sisters on the suicide rate of homosexuals and stated that legislation was the quickest solution to protect homosexuals. He added that legislative protection would only enhance competitiveness in the business sector as it would ensure jobs to be offered, irrespective of sexuality, to the most suitable person. Mr Adams requested the Administration to take the following steps :

- (a) to introduce comprehensive legislation that protected people against discrimination on the ground of sexuality; and
- (b) to set up an office within the HK Government to address discrimination on the ground of sexuality and to staff the office with a majority of homosexuals and bisexuals who had better knowledge about the issue.

21. On the question of whether homosexuals should be granted the right of marriage and adoption of children, the attending non-government organisations shared the view that homosexuals should have the same rights as others. The decision on adoption of child should be based on whether the applicants had the quality of becoming good parents. The Queer Sisters further suggested that people of same or different sex should be allowed to register as family partners and they should be allowed to apply as a family unit for public housing, to inherit estate of their partners and to visit their family partners who were in critical conditions in hospitals.

Panel's deliberations

22. On the question of whether the Administration would still introduce legislative measures, if there were many opposing voices in the community, Mrs HUNG stated that the protection of human rights was an area of major concern to the Administration but the opinions of the public would be carefully studied before deciding on the measures. It should be noted that public acceptance would be of paramount importance to the effective implementation of any measures to be introduced to eliminate discrimination. The decision on whether to introduce legislation would not merely be based on a statistical comparison of people supporting and opposing the measures, but the level of public concern and their preference should certainly be given weight.

23. As regards the Administration's plan for the way forward, Mrs HUNG explained that all the submissions received would be carefully analysed and

the results were expected in May. If legislation was to be introduced, the Administration hoped to present the bill to the LegCo by around July 1996.

24. Members were generally of the view that the decision on whether to introduce anti-discrimination legislation should not be based merely on the number of people supporting and opposing legislative measures. Mr LEE Cheuk-yan remarked that the greater the opposing voices for legislative measures, the more it reflected the need for legislation. Dr John TSE stated that even if there was one case of discrimination, the Administration should consider introducing legislative measures. Mr LEE Wing-tat commented that the Administration should take steps to protect human rights even if there was public opposition. He added that with the current time frame, it was unlikely for Mr LAU's Private Member's Bill or the Government's bill to be passed in time within the current legislative session.

25. Mr LAW Chi-kwong informed Members that the Hong Kong Council of Social Service was supportive of introducing legislative measures to address discrimination issues.

Written submissions

26. Members noted that written submissions had also been received from the following associations :

SATSANGA

Ten Percent Club

Concern Group on Single Parents

Hong Kong NGO Group on Women's Issues and Hong Kong Federation of Women

Mr Scott Wilkens, Centre for Comparative and Public Law, University of Hong Kong

(Post-meeting note : The Hong Kong Aids Foundation subsequently provided a submission clarifying its position on discrimination on the ground of sexuality and the submission was circulated to Members vide LegCo Paper No. CB(2) 1051/95-96)

27. The meeting ended at 1:05 p.m.

LegCo Secretariat
22 April 1996

Ref: RL/202/19

Meeting of the House Committee on 29 March 1996
Reports of the Fact-finding Visit to
New South Wales, Australia and New Zealand

Purpose

Members are invited to note the findings of two reports compiled based on information gathered from a recent visit to New South Wales in Australia and New Zealand; and to consider referring the reports to the relevant Panels for deliberation.

Background

2. The Administration organised a fact-finding visit to New South Wales and New Zealand as part of its exercise to study the question of age discrimination in employment. The objective of the visit is to obtain first-hand information on the implementation of the legislative measures in the two places.

3. As agreed at the House Committee meeting on 5 January 1996, Hon LEE Cheuk-yan and Hon Mrs Elizabeth WONG CHIEN Chi-lien participated in the visit. They were accompanied by a staff from the Research and Library Services Division of the Legislative Council Secretariat. Hon Mrs Elizabeth WONG CHIEN Chi-lien also paid a visit to the Office of the Race Relations Conciliator in New Zealand.

4. The following reports have been compiled after the visit which took place between 22 January 1996 and 27 January 1996.

- (i) "Implementation of Legislative Provisions to Deal with Age Discrimination in Employment in New South Wales, Australia and New Zealand" compiled by the Research and Library Services Division - Appendix I ; and
- (ii) "Visit to the Office of the Race Relations Conciliator, New Zealand" compiled by Hon Mrs Elizabeth WONG CHIEN Chi-lien - Appendix II

Major findings

5. The major findings of the two reports are given below.

Implementation of Legislative Provisions to Deal with Age Discrimination in Employment in New South Wales, Australia and New Zealand

- (a) Both New South Wales and New Zealand have a history of anti-discrimination law for about 20 years but the legislative provisions to deal with age discrimination in employment were introduced only in recent years.
- (b) Both places rely on an independent body to administer the law by issuing guidelines and resolving complaints.
- (c) The number of complaints on age discrimination in employment is small. There were 85 cases in New South Wales in 1994/95 and 17 in New Zealand for the year ending June 1995.
- (d) The positive effect of the law noted by both employers and employees alike is that employers are encouraged to assess staff or job applicants on competency instead of age.
- (e) Problems encountered in the implementation of the legislative provisions include difficulties in interpreting the law and in proving discrimination.

Visit to the Office of Race Relations Conciliator, New Zealand

- (a) New Zealand first introduced anti-racial discrimination legislation in 1971. The Race Relations Act became part of the Human Rights Act in 1993.
- (b) The Office of the Race Relations Conciliator is part of the New Zealand Human Rights Commission. It is responsible for developing programmes to promote positive race relations and investigating complaints of discrimination.
- (c) The Office is useful in assisting the Government to resolve racial issues at an early stage.
- (d) The Office has achieved a good result in processing complaints meeting its performance pledges in terms of time and quality. One of the performance pledges is to resolve a complaint within 10 weeks.

Recommendations

6. To enable Members to deliberate the issues, it is recommended that :
- (i) the first report on age discrimination in employment prepared by the Research and Library Services Division be referred to the LegCo Panel on Manpower; and
 - (ii) the second report by Hon Mrs Elizabeth WONG CHIEN Chi-lien on the Office of New Zealand Race Relations Conciliator be referred to the LegCo Panel on Home Affairs.

Advice sought

7. Members are invited to note the major findings in paragraph 5 and the reports at the Appendix; and to endorse the recommendations in paragraph 6.

Research and Library Services Division
Legislative Council Secretariat
March 1995

**Implementation of Legislative Provisions to
Deal with Age Discrimination in Employment in
New South Wales, Australia and New Zealand**

Research and Library Services Division
Legislative Council Secretariat
March 1996

Implementation of Legislative Provisions to Deal with Age Discrimination in Employment in New South Wales, Australia and New Zealand

Introduction

The Administration set up the Working Group on Age Discrimination in Employment at the end of 1995. The Working Group has examined administrative and legislative provisions relating to age discrimination in some overseas countries and considered the legislative provisions of New South Wales in Australia and New Zealand most relevant to the Hong Kong situation. As part of its exercise to study the question of age discrimination, the Working Group organised a fact-finding visit to the two places to obtain first-hand information on how legislative measures work in these jurisdictions. The visit took place between 22 January 1996 and 27 January 1996 and the itinerary is at Appendix I.

2. Two Legislative Councillors Hon LEE Cheuk-yan and Hon Mrs Elizabeth WONG CHIEN Chi-lien joined the Administration's delegation. They were accompanied by a research officer of the Research and Library Services Division of the Legislative Council Secretariat.

3. This report, based on information gathered from the visit, aims to describe the background leading to the introduction of legislative provisions to deal with age discrimination in employment in the two places and to examine their experience since the legislation was enacted.

New South Wales

Background for legislation

Discrimination faced by different age groups

4. Discrimination against young people on the ground of age is widespread in Australia¹. In the field of employment, young people under 21 face different treatment and are paid "junior" wages.

5. Discrimination in employment also affects mature workers and there has been a growing concern since the mid 1980s. Working men over 45 and

¹ Page 10, Age Discrimination - Options for New South Wales A Discussion Paper

working women over 35 are considered "old" in the work place. If they are out of work, it will take them, on average, two years to find another job².

6 Workers aged 55 or above also face difficulties in getting work. 64 per cent of those aged 55 or above report their age as the main difficulty in finding a job³. The labour force participation rate for those between 55 to 59 was 91.3 per cent in 1971. The rate fell to 75.5 per cent in 1989. Some of those within this age group may leave the work force for early retirement and others for redundancy or resignation⁴. Many of these people would have to rely on social security for their living if they are not covered by retirement schemes or could not find another job.

Human Rights Concerns

7. Age discrimination is also an important human rights issue. Interest groups such as the New South Wales Council for the Ageing, Australian Retired Persons Association and New South Wales Youth Advisory Council consider it unfair to classify people by stereotyped notions of capability of a certain age group and limit their opportunities. They have advocated the introduction of legislation to protect the rights of those who are discriminated.

Development of the legislation

8. Legislation against discrimination was first proposed in New South Wales in 1976. The Anti-Discrimination Bill 1976 originally included provisions against discrimination on the ground of age. The section was however removed during debate in the Parliament as there was disagreement on how the section was to operate. There was also pressure from the employer groups⁵.

9. In 1989, the New South Wales Premier, the Hon N F Greiner, MP, announced the government's decision to abolish compulsory retirement in a staged manner. However, on the broader issue of age discrimination, it was decided that a legislative option would not be pursued at that time.

10. Compulsory retirement was prohibited for the public sector in 1991, for local government in 1992 and for the rest of employees in New South Wales in 1993. The only people employed in New South Wales who can still be compulsorily retired are.

- people employed under a federal award that specifically states the compulsory retirement age

² Business Review Weekly, 19 July 1991

³ Australian Bureau of Statistics, Labour Force Projections Australia 1995-2011, July 1994

⁴ Page 8, Age Discrimination - Options for New South Wales A Discussion Paper

⁵ Business Review Weekly, 19 July 1991

- judges and magistrates
- police officers
- people employed for a fixed term

11. In May 1992, the Attorney General's Department of New South Wales issued the Green Paper entitled "Age Discrimination - Options for New South Wales: A Discussion Paper" seeking public views on the form and content of legislation to deal with age discrimination in the following areas:

- employment
- provision of goods and service
- accommodation
- membership of registered clubs
- education

12. All but two of the 59 submissions supported the introduction of legislation to deal with age discrimination. The Chamber of Manufacturers of New South Wales and the Retail Traders Association of New South Wales opposed to the introduction of legislative measures.

13. The two organisations considered that a legislative solution was an inflexible and unnecessarily restrictive approach to a problem that could be best resolved by educational strategies. They argued that legislation would put employers to considerable expense in the re-organisation of selection processes, salary structures and contributions to superannuation schemes⁶.

14. The New South Wales government concluded that the cost to employers in meeting the requirements of any legislation should not outweigh the potential advantages that would result for industry and the community generally.⁷ The government considered that the use of age as a substitute for judgements about individual performance would be both socially and economically inefficient and undesirable. The government believed that productivity would be improved with the introduction of legislation prohibiting age discrimination since inefficient management practices would be replaced by performance assessment based on merit.

15. In July 1994, the Anti-Discrimination Act was amended to include several new grounds for discrimination including age discrimination in employment.

Details of legislation concerning age discrimination in employment

16. Under the Anti-Discrimination Act, it is unlawful for an employer to discriminate directly or indirectly against applicants, employees, commission

⁶ Page 6, White Paper: Age Discrimination Legislation for New South Wales

⁷ Page 6, White Paper: Age Discrimination Legislation for New South Wales

agents, contract workers or partners because of their age when making employment-related decisions. Employment-related decisions include offer of employment, dismissal, terms of employment, opportunities for training, promotion and transfer.

17. It is also against the law for anyone to publish, broadcast, screen or publicly display a job advertisement that indicates an intention to discriminate anyone in terms of age. The person or organisation offering the job will be legally liable for the discriminatory job advertisement. Advertisers (organisations that print, broadcast or screen client's advertisements) may also be legally liable for the breach. The Anti-Discrimination Board advise advertisers to ensure that the advertisement they carry does not indicate an intention to discriminate.

18. The amended Anti-Discrimination Act covers all age groups. However, it does not provide protection to people working in small businesses where there are fewer than six employees. There are other exemptions, as given below:

- employing people under the age of 21 as "junior" and paying them at junior rates⁸
- genuine occupational qualification e.g. a male to model men's clothing
- employment in a private household
- superannuation schemes (provided that different treatment in contributions and benefits is based on actuarial or statistical data)

19. On establishing that there is a breach of the law, the Equal Opportunity Tribunal has the power to make an order restraining the respondent from continuing or repeating discriminatory acts. The Tribunal may require the respondent to pay to the complainant damages up to A\$ 40,000.

Administering of the Act

20. The Act is administered by the Anti-Discrimination Board. The President of the Board has statutory responsibilities under the Act for investigation and conciliation of complaints of unlawful discrimination.

Complaints handling procedure

21. All complaints made to the Anti-Discrimination Board have to be in writing. Upon receipt of a complaint, the staff of the Board will determine whether it appears to involve discrimination covered by the Anti-Discrimination Act. If this appears to be the case, the staff would attempt to conciliate the

⁸ This exemption will last until at least 1 July 1996 to give employers and government time to examine whether it is a good idea to change from the current age-based system of juniors to a non aged-based system of trainees

complaint by getting the parties involved to come to a settlement. Settlement may be in the form of monetary compensation, apologies or reinstatement etc.

22. If the complaint is not conciliated, it may be referred to the Equal Opportunity Tribunal for a judicial decision. However, only a few per cent of the complaints are referred to the Equal Opportunity Tribunal. The Anti-Discrimination Board has not yet referred any case on age discrimination to the Tribunal.

23. In 1994/95, the Anti-Discrimination Board received 1,698 formal complaints and finalised 1,501 complaints. 312 cases (20 per cent) and 583 (39 per cent) were finalised within one and two to six months respectively. Of the 1,698 complaints, 85 cases (five per cent) were on age discrimination in employment. No statistics on the time taken to finalise these cases or to refer to the Equal Opportunity Tribunal are available.

Guidelines

24. To prevent age discrimination from happening, the Anti-Discrimination Board provides guidelines to employers, managers, supervisors, employment agencies and advertisers on examples of lawful and unlawful behaviour.

25. Examples of the advice in the guidelines to prevent age discrimination in employment are given below:

- not to advertise any job for people of a certain age or age group
- not to use words like "junior", "mature", or "senior" to indicate people of a particular age group
- avoid asking for a particular number of years of experience
- remove any reference to age or date of birth from job application forms
- remove any length of service or length of experience requirements from promotion or transfer conditions / decisions

Impact of legislation

Positive effect

26. The Anti-Discrimination Board is of the view that legislation provides the basis for educational programs and training. It also considers the legislation useful in encouraging competency-based employment decisions instead of age-based. Direct benefits of the legislation include ensuring that the best person is employed for each job; the retention of skills and experience of older workers and consequent savings on training new staff; and the flexibility and

creativity provided by teams composed of people of different age and life/work experiences⁹.

27. The Ageing and Disability Department is of the view that legislation precedes changes in behaviour. More employers are interested in employing workers retrained under the Mature Workers Program after the introduction of the legislative provisions against age discrimination.

Problems

Lack of evidence

28. The Anti-Discrimination Board is of the view that it is difficult to have evidence on whether discrimination has actually occurred. The cases usually are not witnessed or documented. It is often one person's words against the other.

Difficulties in interpreting the law

29. Since the legislation prohibiting age discrimination came into force on 1 July 1994, employer organisations have expressed concerns to the Anti-Discrimination Board about difficulties in interpreting the Act and requested increased clarity on lawful and unlawful practices. For example, they are uncertain if the use of length of service to determine eligibility for job, salary or benefits could be considered as discriminatory.

30. There is also a concern that the guidelines provided by the Anti-Discrimination Board has no legal force and compliance with the guidelines does not provide a legal defence for employers.

31. Added to the problem, the number of case law on discrimination is relatively small since the law is new to the legal scene. This is especially the case for the new grounds of complaint such as age discrimination in employment. It is difficult for employers to find precedents to follow. Even if there were cases, the principles set down by the courts may be too broad for many to apply to their own situation.

32. In August 1995, the Anti-Discrimination Board issued a discussion paper entitled "Implementing Law in the Workplace" soliciting views on the possible options in providing more guidance to those in the workplace to determine whether their employment policies and practices comply with the law.

⁹ Page 2, Age Discrimination Guidelines for Employers, Managers, Supervisors, Equal Employment Opportunity Personnel and Employment Agencies

33. One option is to give employers specific guidance by regulations that are very clear on employers' liability. Such example is found in the United States where the Age Discrimination in Employment Act 1967 provides for the Equal Employment Opportunity Commission to issue interpretations of the Act in the form of interpretive rules which are legally binding.

34. Another option for providing more guidance to employers is to draw up codes of practice. Although the codes are not as certain as regulations, the codes should make liability more predictable for employers. When there are proceedings concerning an alleged breach of the law, an approved code of practice is admissible as evidence.

35. The Anti-Discrimination Board is in favour of providing more guidance to employers by codes of practice which are more flexible in applying to different workplaces and specific industry. Regulations are regarded as inflexible and may constrain the law from adapting to changing workplace and community needs.

New Zealand

Background of legislation

Discrimination faced by different age groups

36. Youth unemployment has become a problem in New Zealand since the 70's. The unemployment rate is the highest in the 15-19 age group¹⁰. Similar to New South Wales, young people aged between 16 to 20 receive "junior rates" which are 60 per cent of the minimum adult rate.

37. The problem faced by those aged 45 or above is long-term unemployment. Once they are out of work, it is difficult for them to get another job. More than 60 per cent of unemployed people over the age of 45 have been out of work for six months or more¹¹.

38. There are also anecdotal evidence that people aged 50 or above are targeted for early retirement¹². These people lack access to training, transfer and development opportunities. At the same time, old people are retiring early either voluntarily or involuntarily. While the retiring age in New Zealand is 63, labour force participation rate drops dramatically to 39 per cent after the age of 60. At the same time, people are living longer. The average life expectancy was 73.1 years for males and 78.9 years for females in 1993. Many old people have to depend on social security for their living.

¹⁰ Issues Paper for the New Zealand Prime Ministerial Task Force on Employment, 1994

¹¹ Page 14 Issues Paper for the New Zealand Prime Ministerial Task Force on Employment, 1994

¹² New Zealand Equal Employment Opportunities Trust expressed the view during a meeting with the Hong Kong delegation to study age discrimination legislation.

Development of legislation

39. The Human Rights Commission Act 1977 was amended to make it unlawful to discriminate against a person in employment because of their age since 1 April 1992.

40. The Human Rights Act 1993 was subsequently enacted to replace the Human Rights Commission Act and the Race Relation Act. It includes both the new and old grounds of unlawful discrimination, and took effect from 1 February 1994.

Details of the legislation on age discrimination in employment

41. Under the Human Rights Act, it is unlawful for an employer to discriminate directly or indirectly against applicants, employees, voluntary workers and contract workers because of their age in employment-related decisions. Employers are also liable for unlawful discrimination by their employees or agents.

42. It is also unlawful for anyone to publish or display any job advertisement or notice that could reasonably be understood as indicating an intention to discriminate anyone on the ground of age. Liability for unlawful advertising rests with both the person or organisation placing the advertisement, and the person or organisation publishing or displaying the advertisement. Advertisers are advised by the Human Rights Commission to avoid carrying discriminatory advertisement.

43. The Human Rights Act covers those between the school leaving age at 16 and those old enough to enjoy national superannuation. The upper age limit for protection is 63 at the moment. Employees can still be required to retire at the age of entitlement to national superannuation. However, the Human Rights Act prohibits compulsory retirement after 1 February 1999. From that date, the upper limit for protection under the Human Rights Act would also be removed.

44. The following areas are exempted from the Act:

- paying employees between the ages of 16 to 20 youth rates
- domestic work in a private home
- employment involving national security
- genuine occupation qualification e.g. bar staff must be over 20 years of age in order to serve in licensed premises
- superannuation schemes (provided that different treatment in contributions and benefits is based on actuarial or statistical data)

45. On establishing that a breach has been committed, the Complaints Review Tribunal may award one or more of a number of remedies including a declaration, an order restraining the employer from continuing or repeating the breach and an award of damages up to NZ \$200,000.

Administering of the Act

46. The Human Rights Commission is responsible for administering the Act. The main functions of the Commission are to investigate and resolve complaints of unlawful discrimination prohibited by the Act.

Complaints handling procedure

47. On receipt of a complaint, a complaints officer in the Commission would investigate by gathering information and interviewing parties concerned to decide whether there is enough evidence to establish that discrimination has occurred. If the opinion is that the complaint has substance then the Commission would try to settle the matter. If not, the Commission would take no further action. However, the complainant can still take the case to the Complaints Review Tribunal.

48. Alternatively, the Commission would try its best to settle the matter without investigating the complaint if both parties agree. The Commission puts relatively strong emphasis on this approach since conciliation usually results in a speedier outcome and avoids the need for a disruptive or protracted investigation. If the settlement attempts are unsuccessful during conciliation, the complainant may ask the Commission to start a formal investigation.

49. Settlement can take a variety of forms including apologies, assurances against repeating the behaviour complained of, monetary compensation, reinstatement and transfers etc.

50. In the year ending 30 June 1995, the Commission received 257 complaints on various kinds of discrimination. Among them, 17 cases (6.6 per cent) were on age discrimination in employment. Of the 268 complaints handled (including some carried forward from the previous year) during the year, 73 cases (27 per cent) were conciliated or investigated within 12 weeks while 112 cases (42 per cent) took the Commission more than six months.

Guidelines

51. The Human Rights Commission prepares and publishes guidelines to help employers and advertisers avoid acts or practices that may be inconsistent with or contrary to the provisions of the Human Rights Act. These include Advertising Guidelines, Pre-employment Guidelines and

Superannuation Guidelines which are drawn up after extensive consultation with relevant business and industry associations. The guidelines do not have legal force and in case of discrepancy between the Act and the guidelines, the Act will prevail.

52. Examples of advice given to employers are as follows:

- avoid asking job applicants their age or date of birth; applicants can be asked if they have reached minimum school leaving age
- avoid asking applicants to specify dates of school attendance; applicants can be asked to provide evidence of qualifications relevant to the job
- avoid using terms such as "senior", "junior", "mature" that could be assumed to indicate an intention to discriminate. Alternatives may include "responsible", "capable", "possessing initiative", "with good judgement".

Effect of legislation

Positive effect

53. The Human Rights Commission considers the age discrimination legislation useful in getting rid of the stereotypes towards people at different age groups. The Commission has good response from employers on the Human Rights Act and has a lot of enquiries on how to comply with the legislative provisions on age discrimination in employment.

54. The Equal Employment Opportunity Trust believes legislation would uphold the rights of employees. It considers legislation with reasonable sanctions would change the working environment.

55. Employers advertising vacancies through the employment service of New Zealand Department of Labour are advised to avoid discriminatory wordings. The department finds employers receptive towards their advice on how to comply with the Act.

56. The Auckland Employers Association is of the view that legislation changes behaviour. Age discrimination legislation focuses employers' attention on the qualities they want staff to have instead of relying on arbitrary indicators such as age. Employers would get the best person by adopting an open attitude during interviews. While legislation costs money, the Association is of the view that good management practices save money.

57. The New Zealand Council of Trade Unions (CTU) considers age discrimination legislation effective in getting rid of blatant breaches. Age discrimination legislation is also useful in encouraging people to link performance and competency with wage-fixing.

Criticisms

58. The Human Rights Commission considers that there are difficulties in implementing the Act. For example, it is difficult to know why someone is refused a job. Employers would make use of loopholes in language such as describing someone as "over-qualified" for a job than saying he or she is too old.

59. Youth rights groups have criticised the Human Rights Act for allowing youth rates to prevail. The Youth Law Project described the Act as letting down young workers.

60. The Auckland Employers Association is of the view that if the complaint process is not carefully handled, it would be a form of duress to employers. To avoid publicity and the lengthy process of investigation, some employers would prefer to pay money to settle complaints.

61. The New Zealand Employers Federation considers the law inflexible. Some employers feel that they should still be able to use age as a valid criteria such as career planning.

Concluding remarks

62. Both New South Wales and New Zealand have a history of anti-discrimination law but legislative provisions to deal with age discrimination were introduced only in recent years.

63. Age discrimination law concerns employers most since such discrimination mainly occurs in employment. Employer groups admit that age discrimination law could improve management practice and would enable them to judge staff by their competency rather than arbitrary criteria such as age. However, employers in New South Wales have asked for more concrete and specific guidance on their liability. Options of giving more guidance to employers by codes of practice and regulations are being contemplated by the Anti-Discrimination Board.

64. Both places rely on an independent body to administer the law by issuing guidelines and investigating and conciliating complaints. Investigation of complaints takes time and some employers consider the process harassing and some may choose to pay their way out. The experience of investigators also shows that actual evidence of discrimination is hard to find since there is often a lack of witness or documentary proof.

RP11/95-96
Research and Library Services Division
Legislative Council Secretariat
March 1996

Bibliography

Australia

A Fair Go at Any Age: Employing on Merit - Guidelines for Employers and Managers by Equal Opportunity South Australia

Age Discrimination - Options for New South Wales : A Discussion Paper issued by Attorney General's Department of New South Wales

Age Discrimination Legislation for New South Wales : White Paper issued by Attorney General's Department of New South Wales

Anti-Discrimination Board Fact Sheet : Age Discrimination - Your Rights

Anti-Discrimination Board Fact Sheet : Compulsory Retirement

Anti-Discrimination Board of New South Wales 1994/95 Annual Report

Anti-Discrimination Guidelines for Advertisers by Anti-Discrimination Board

Demography is Destiny by Directorate on Ageing

Extract on Anti-Discrimination Act on Age Discrimination

Implementing Discrimination Law in the Workplace : Discussion Paper by New South Wales Anti-Discrimination Board in August 1995

New South Wales Industrial Awards and Enterprise Agreements : Anti-Discrimination Guidelines for Employers and Unions by Anti-Discrimination Board

Older Workers, Flexible Retirement and Age Discrimination : Report for the New South Wales Office on Ageing by the Social Policy Research Centre of the University of New South Wales

New Zealand

A Guide for Employers on the Human Rights Act and Equal Opportunity Employment Opportunity by Employers Association

A Guide to the Human Rights Act by Human Rights Commission

Advertising Guidelines based on the Human Rights Act 1993 by Human Rights Commission

Age Discrimination in Employment : Guidelines for Advertisers by Human Rights Commission

Focus on Employment : The Government's Response to the Employment Task Force and the Multi-Party Group Memorandum of Understanding

Human Rights Act 1993

New Zealand Employers Federation 1995 Annual Report

Pre-employment Guidelines based on the Human Rights Act 1993 by Human Rights Commission

Report of the Human Rights Commission and the Office of the Race Relations Conciliator for the year ended 30 June 1995 by Human Rights Commission

Superannuation Guidelines based on the Human Rights Act 1993 by Human Rights Commission

Wellington Regional Employers' Association Incorporated 1995 Annual Report

General reference

Demographic Yearbook, 1992 United Nations

World Labour Report 1995, International Labour Office Geneva

World Population Projections: 1994-95 Estimates and Projections with Related Demographic Statistics, World Bank

Program of Fact-finding Visit to Australia and New Zealand
on 22-27 January 1996

10am - 12 noon 23 January 1996	Mr Mark McCormick, Senior Policy Officer, Ageing and Disability Department; Ms Sheen Wilson, Deputy Chair, Mature Workers Advisory Committee
2pm - 3:30pm 23 January 1996	Mr Chris Pulpick, President, Anti-Discrimination Board; Ms Nancy Hennessy, Director, Legal and Policy Division, Anti-Discrimination Board
9:30am to 4:00pm 25 January 1996	Pamela Jefferies, Chief Commissioner, Human Rights Commission Staff of the Commission to introduce the Human Rights Act, the operation of the Commission, case studies, complaints handling procedure, problem areas
4:00pm to 5:00pm 25 January 1996	Panel discussion with representatives of Youth Law Project, Mature Age Employment Agency, Auckland Employers Association and Equal Employment Opportunities Trust
9:30am to 10:45am 26 January 1996	Ms Adrienne D'Ath Chief Executive, New Zealand Employers Association
11:00am to 12noon 26 January 1996	Angela Foulkes, Council of Trade Unions
12:30pm to 2:15pm 26 January 1996	Luncheon with the Parliamentary Service at Parliament House, tour of Parliamentary building
2:30pm to 4pm 26 January 1996	Mr Graham Buchanan, Chief Legal Advisor, Department of Labour

**Supplementary Report by Hon Elizabeth Wong CBE ISO JP
Visit to the Office of the Race Relations Conciliator
New Zealand (26th Jan 1996 10am–12am)**

Introduction

The New Zealand Office of the Race Relations Conciliator (Te Tari Whakawhanaunga-A-IWI) is part of the Human Rights Commission, headed by Pamela Jefferies OBE , the Chief Commissioner. The Office itself is currently headed by Mr John Clarke, the Race Relations Conciliator, who is also a member of the Complaints Division under the Human Rights Commission.

Objectives

From my discussions with Mr Clarke and staff of his office, it appears to me that there are clear objectives of the office which are summarized below:

- a. To assist the Government to achieve its outcome of social cohesion within New Zealand; the strategic direction is to promote positive race relations in AOTEAROA , New Zealand.***
- b. To develop programmes for positive race relations that take into account the changing face of New Zealand as it moves into the twenty first century; schools are encouraged to learn Maori as a second language. It is interesting to note that there is a call for New Zealand to be bi-cultural ie to have a command of both the English and Maori language and culture so as to promote the uniqueness of New Zealand as a country. The country also encourages a multi-cultural approach ,and a number of schools are actively encouraging the study of Putonghua or Korean or Japanese.***
- c. To support the Internatinal Convention On the Elimination of All Forms of Racial Discrimination, particularly as it affects the rights of indigenous people.***

It is noted that an effort has been made to improve procedures contained in the Human Rights Act 1993 which allow the Race Relations Office to action complaints in an effective and efficient manner and to target

resources by providing services to those groups who are most likely to be racially discriminated against.

Grounds for complaint and procedures:

If one believes one has been treated unfairly or insulted because of race, colour or ethnic origins, including nationality, one might wish to make a complaint.

Making a complaint can be via a telephone call, a letter, or report or appearing in person to any race relations Office. Anyone can make a complaint and it does not have to be the person directly affected.

When a complaint is made it is checked for accuracy. If there is jurisdiction, the investigation goes ahead. Information is collected from everyone involved. Both parties are given reasonable and equal opportunity to respond. When the investigation is finished, a report is written. A decision is then taken about whether the behaviour is against the law.

All investigations are conducted in private by the complaints Division, of which the Race Relations Conciliator is a member. If the behaviour is unlawful, a conciliated settlement will always be sought with the help of the Office.

The settlement can include some or all of the following: an apology; a promise that the behaviour will not happen again; payment of compensation for loss of dignity etc.

If no agreement is reached, the complaint goes to the Complaints Review Tribunal. This works like a court and will hear all the evidence and can order damages to be paid.

Performance and achievements

Race issues are always sensitive and there is no room for complacency about racial harmony in any country. With particular reference to New Zealand, the tensions over the Treaty of Waitangi grievance and new

migrants into New Zealand, from places with a diversity of cultural backgrounds, such as Hong Kong, have made the Race Relations Conciliator's Office all the more relevant.

There is an increasing number of complaints, including some from Hong Kong people who have migrated to New Zealand. This is accompanied by a diversity of complainants and the nature of complaints has also differed.

The Office has been able to act on these complaints and timely responses to the complaints raised have been most effective in assisting the Government to resolve issues at an early stage to achieve peace and harmony for the well-being of society as a whole. The Office will continue to work out "performance pledges" with a view to full attainment of the objectives set for the office.

According to information provided, the Office has managed to achieve a good result in processing complaints. There is both time control and quality control in processing complaints as illustrated below:

- to accurately register all complaints*
- to gather all relevant data information*
- to prepare accurate investigation reports for the Complaints Division*
- to ensure that investigations are carried out by appropriately trained staff in mediation.*

The time for processing complaints are illustrated by a typical framework below:

- a. register and initiate action : within five working days of receipt of complaint and action includes seeking the advice from office solicitors;*
- b. Confirm initial jurisdiction: within 6 weeks of receiving complaint;*
- c. If complaint is found to have substance, attempt for conciliation is begun. This takes one to three weeks and if settlement can be reached the file is closed; or subsequently taken up by the Tribunal.*

It is to be observed from the above that both the quality and the time for investigation is carefully monitored and recorded.

As regards promotion and education, the Office holds seminars on race relations, arranges meetings and educational activities, and provides contribution of articles on race issues to the printed and electronic media.

The Office also provides curriculum support for the Ministry of Education. It carries out research projects eg :on affirmative action; on immigration; on race stereotyping and racial harassment in employment.

It provides guidelines for policy development on racial issues. It provides staff training, particularly in mediation. The Office has developed expertise in these areas.

Bibliography

- Report of the Human Rights Commission and the Office of the Race Relations Conciliator-for the year ended 30 June 1995***
- Corporate plan –Te Tari Mahi 95-96***
- NZ Government Response to the NZCTU Complaint***
- New Zealand Government’s response to the interim conclusions of the Freedom of Association Committee***
- Anti Discrimination-NSW 94-95 Report***
- Focus on Employment***

布政司署
政務科
香港灣仔
軒尼詩道一百三十號
管轄中心
三十一樓



GOVERNMENT SECRETARIAT
HOME AFFAIRS BRANCH
31ST FLOOR, SOUTHERN CENTRE,
130 HENNESSY ROAD,
WAN CHAI,
Hong Kong

下等機號 OUR REF. : HAB CR/1/234 PL III

來函編號 YOUR REF : (4) in CB/B/T2/LCS

話 語 TEL NO. : 2835 1368

圖文傳真 FAXLINE : 2834 6176

29 March 1996

Clerk to the Legislative Council
(Attn: Miss Betty Ma)
Legislative Council Building
8 Jackson Road
Hong Kong
(Fax: 2810 1691)

Dear Miss Ma,

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

I refer to your letter of 5 March 1996 and the Hon Lau Chin-shek's Equal Opportunities (Family Responsibility, Sexuality and Age) Bill.

The Administration has carried out an assessment of the Bill's financial implications and has taken legal advice on the question of whether the Bill has a "charging effect" within the meaning of clause XXIV(2) of the Royal Instructions.

It is our view that the Bill's effect will be to dispose of or charge the revenue or other public moneys of Hong Kong and thus requires, in its present form, the Chief Secretary's certificate that the Governor's recommendation will be signified on second reading.

Under the Legal Aid Ordinance, applicants for legal aid 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) does not exceed 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.

The Equal Opportunities (Family Responsibility, Sexuality and Age) Bill obliges the Government to spend money as it would introduce new categories of cases that the Legal Aid Ordinance would cover. In other words, the Bill obliges the Government to grant legal aid to persons who meet the means test and the merits test in respect of new causes of action. There will therefore be additional legal aid expenses not presently provided for in the Legal Aid Ordinance. In this respect, reference can be drawn from the President's previous ruling on an amendment which was put forward by the Hon Simon Ip in the last LegCo with reference to clause 14 of the Legal Aid (Amendment) Bill 1995. The Hon Simon Ip's proposed amendment would have had the effect of extending supplementary legal aid (under section 5A of Cap. 91) to all categories of professional negligence actions and not merely medical, dental and legal professional negligence as the Government Bill has proposed. The President's ruling, delivered on 8 June 1995, was in the following terms:

"Although it may be difficult to quantify the additional cost which would result from Mr. Ip's proposed amendment, which would extend the provision of legal aid in the High Court, Court of Appeal and District Court to all civil proceedings for damages for professional negligence (over and above the 3 professions in question), that additional expenditure will be required to implement this extension of the scope of legal aid. Such expenditure is likely to be substantial and not nominal. Accordingly, I am of the opinion that Mr. Ip's proposed amendment will have a charging effect within the meaning of SO 45(6)."

To recapitulate, the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill would introduce new causes of action which would become eligible for legal aid. As additional funds would have to be voted, it follows in our view that a disposal of the revenue is bound to occur. After consulting the Director of Legal Aid, it is estimated that the additional funds required are in the region of \$27.78 million a year.

I would be most grateful if you would convey our assessment to the President. Please let me know his decision on the matter.

Yours sincerely,

(Mrs Stella HUNG)
for Secretary for Home Affairs

1849

TOTAL P. 02
TOTAL P. 03
TOTAL P. 03

OFFICE OF CHRISTINE LOH, LEGISLATIVE COUNCILLOR

Room 322, 3/F, West Wing, Central Government Offices,
11 Ice House Street, Central, Hong Kong
Tel (852) 2537-2485 Fax (852) 2537-6937

FACSIMILE TRANSMISSION FORM

To : Anna Wu
Andrew Byrnes
Carole Petersen

From : Adam Mayes
(Direct line: 2521-6820)

Date : 29/12/95^{3, AC}

Total pages : **3** (including this page)

E. O. (Fam Resp. Age & Sexlty) Bill charging effect

The Admin claims the Bill has charging effect because proceedings under it are eligible for legal aid. The letter is attached.

If you have any ideas about arguing against this claim, let Eric, Lau Chin-shek or me know. I think we may have to add something like the following section to avoid charging effect:

“90A. Legal aid unavailable pending notice in gazette

- (1) Notwithstanding anything in the Legal Aid Ordinance (Cap. 91), no legal aid shall be available for any person for civil proceedings under this Ordinance.
- (2) The Governor-in-Council may repeal this section by notice in the gazette.”

Talk to you later,

TO: Adam Mayes
Eric Chow
Anna Wu
Carole Petersen

FROM: Andrew Byrnes

RE: Charging effect of Equal
Opportunities Bills

DATE: March 30, 1996

Dear Adam,

Thank you for your note with the letter from Home Affairs. It seems to me that there are a number of approaches that could be taken both in response to the substance of the letter and from a political perspective. However, I think that most of these would end up playing into the government's hands and permit them to delay even further the introduction of the Bills into Legco.

I think that you are therefore right to think about amending the Bills to sidestep the government's argument -- which would also at the end of the day perhaps underline the real strength of the government's commitment to human rights guarantees and access to justice.

However, I have set out a couple of arguments and approaches which occurred to me which we may wish to make at this or a later stage to the President or to the government.

Possible legal(?) arguments

The administration's position is inconsistent with earlier positions which it has taken on Bills presented both by private members and itself. [This may suggest that the administration is prepared to trim its sails according to the prevailing wind and to manipulate the provisions of the law in this respect in the interests of political expediency.] In particular:

- *The administration's assessment of the financial implications of the Bill of Rights Ordinance:* when the administration introduced the Bill of Rights Bill into the Council in 1990, it stated in the Explanatory Memorandum that the Bill had no financial implications. This appears to be similar to (though it may be broader than) a Bill having no charging effect, but the Bill of Rights Bill would have expanded the category of cases eligible for legal aid (even under the old rules), in the same way as the proposed Bills do. Accordingly, it is unclear

how the administration can claim that Bills which are essentially identical in this respect can be different when it comes to assessing financial implications.

- *The administration's assessment of the Equal Opportunities Bill 1994 and the three Equal Opportunities Bills introduced in 1995:* The Bills which the administration now claims have a charging effect are essentially identical to four Bills which the administration examined closely during the last Legislative Council session and found not to have a charging effect. How can it be that the identical Bills are now the subject of different characterisations by the administration? What was the test that was applied in 1994 and 1995? Why has that test been now changed? What is the test that is currently applied and on what authority does it rest?
- *The case of the Legal Aid (Amendment) Bill 1995:* It could be argued that the Bill proposed by Simon Ip was different in character from the Equal Opportunities Bills, since that Bill provided for amendment of the Legal Aid Ordinance explicitly to add additional categories of cases that would be eligible for legal aid. However, I am not sure that this is a particularly strong basis for distinguishing the cases, if the effect of the Equal Opportunities Bills is to create new categories of cases.

Without more information on the standards being applied, it seems difficult to contest the view, if the President is inclined to follow the ruling on Simon Ip's Bill.

Other matters

On the political level it may be that we would want to raise some of the points above with the administration. Perhaps it would also be worthwhile putting them on the spot: they have stressed time and time again their commitment to the enjoyment of human rights and accessibility to the courts in order to enforce human rights guarantees (the reason why we don't need a Commission). Should we ask them to give a certificate in respect of the Bills, so as to make clear their support for access to justice? The only problem with this is that it gives them an excuse for further delay and this may therefore be a matter that should be raised politically rather than at this stage.

We may also wish to ask them how they have arrived at an assessment of \$27.78m per year (the figure given to two-decimal places gives an air of scientific certainty to what can only be a wild guess on their part!).

The form of any amendment

One question which might be raised is whether a *discretion* on the part of the Director of Legal Aid to grant legal aid in such cases might be one way of getting round the charging effect. You may remember that last year John Swaine was unhappy about provisions *requiring* the EOC to perform certain functions, but more relaxed about provisions which *permitted* it to perform them. However, this route may simply lead to further delay, and I think that we should proceed along the route of making clear that the Ordinance(s) would give rise to no entitlement to legal aid. As a matter of political reality, if the Bills get through, it would seem highly likely that the government could be pressured to bring the EOC into the picture and then amend the Legal Aid Ordinance.

On Adam's proposed amendment: do we need the repeal by Governor-in-Council, or is that likely to create further debate? Are there any analogies?

I wonder whether it might be better to avoid the alleged charging effect by a consequential amendment to the Legal Aid Ordinance itself, rather than by including a provision to this effect in the Bills. Section 5 of the Legal Aid Ordinance provides that legal aid shall be available for those civil proceedings set out in Part I of Schedule 2, but not those specified in Part II of Schedule 2. We could simply add an additional category of excepted proceedings (those under the Equal Opportunities Bills to Part II of Schedule 2).

This would probably be tidier as a matter of legislative drafting. Politically, it would be ambiguous. It might be read as removing the legal aid denial from the sponsors of the Bill and placing it on the government; but, on the other hand, have a clear denial in the statute itself would highlight its existence and perhaps provoke greater interest and scrutiny of the government's stance on this.

Such an amendment might be in the following terms:

"Consequential Amendments

Legal Aid Ordinance

[91.] Part II of Schedule 2 to the Legal Aid Ordinance (Cap. 41) is amended by adding the following after paragraph 9:

'10. Proceedings under the Equal Opportunities (Family Responsibility, Sexuality and Age) Ordinance.'

The exact form would need to be checked (consult the earlier amendments to this Schedule; and we would need to include a corresponding amendment in the Race Bill.

This only deals with legal aid in relation to civil proceedings -- I don't know why the government has not taken the point that, since the Ordinance creates offences, it will also involve charging the revenue for legal aid for defendants

in criminal cases. Also, I wonder whether the provision would be completely constitutional: to the extent that the Bill of Rights Ordinance/ICCPR require legal aid to be made available for some civil proceedings, a statute which limits that right may be seen as violating the Letters Patent. However, in view of the courts' approach to the BOR/ICCPR and legal aid, I don't think that there is much mileage in this point.

Conclusion

At this stage, I think that we should proceed with an amendment which is least likely to give rise to further discussion and debate with the government and Legco.

Andrew

P.S. I note that the government is now talking about legislating on sexuality and family status in July if the consultation goes that way, so we need to get a move on!

2. Civil proceedings before any person to whom a case is referred in whole or in part by any of the said courts.
3. Appeals to, and applications for leave to appeal to, the Privy Council in civil proceedings. (*Added 14 of 1982 s. 17*)
4. Proceedings in the Lands Tribunal under Part II of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (*Added L.N. 295 of 1982*)

PART II

Exempted proceedings

1. Proceedings wholly or partly in respect of —
 - (a) defamation, other than the defence of a counterclaim alleging defamation. (*Repealed 27 of 1991 s. 19*)
 - (b)-(c) (*Repealed 40 of 1985 s. 6*)
2. Retainer actions.
3. Proceedings for the recovery of a penalty where the proceedings may be taken by any person and the whole or part of the penalty is payable to the person taking the proceedings.
4. Election petitions under the Electoral Provisions Ordinance (Cap. 367). (*Amended 4 of 1982 s. 3 & 5*)
5. In the District Court, in the case of a defendant, proceedings where the only question to be brought before the court is as to the time and mode of payment by him of debt (including liquidated damages) and costs.
6. In the District Court, proceedings for damages for assault and battery.
7. (*Repealed 27 of 1991 s. 19*)
8. Proceedings incidental to any proceedings mentioned in this Part of this Schedule.
9. In the Small Claims Tribunal, proceedings under the Small Claims Tribunal Ordinance (Cap. 338). (*Added 79 of 1975 s. 40*)

SCHEDULE 3

(s. 5A)

PROCEEDINGS FOR WHICH LEGAL AID MAY BE GIVEN UNDER SECTION 5A

PART I

Description of proceedings

1. In the High Court or Court of Appeal, civil proceedings brought by the added person for damages in a claim arising from personal injuries to, or the death of, any person (including the added person) —

2. 上述任何法例案件全部或部分轉介任何人席前進行的民事法律程序。
3. 在民事法律程序中的區官席提出的上訴，或要求向區官席提出上訴的許可的申請 (第14條第17條增補)
4. 根據《業主與租客(綜合)條例》(第7章)第11條由土裁官裁處管理的法律程序。 (第296號法律公告增補)

第II部

不在法律援助條例內的法律程序

1. 全部或部分費以下事項有關的法律程序——
 - (a) 請願，但對指稱有請願的反申索作出的抗辯除外。 (由1991年第27號第19條代修)
 - (b)-(c) (由1986年第40號第6條廢除)
2. 保監人訴訟。
3. 為追討罰款而提出的法律程序(如該等法律程序可由任何人提出，而有關罰款須全部或部分付予提出該等法律程序的人)。
4. 根據《選舉規定條例》(第367章)提出的選舉呈請。 (由1982年第4號第3及5條修訂)
5. 在地方法庭管理的法律程序，而就被告人而言，在該等法律程序中控官管理的唯一問題是檢控證據(包括算定調查時間及付款辦法)。
6. 因遺囑及股打而在地方法庭提出的要求調查賠償的法律程序。
7. (由1991年第27號第19條廢除)
8. 本附表本部所述的任何法律程序附帶引起的法律程序。
9. 根據《小額債款審裁處條例》(第338章)在小額債款審裁處提出的法律程序。 (由1975年第79號第40條增補)

附表3

(第5A條)

根據第5A條可給予法律援助的法律程序

第I部

法律程序類別

1. 受助人因任何人的入身受傷或死亡，而為申索調查賠償在高等法院或土裁官席提出民事法律程序。

(4) Notification in the Gazette to the effect that a person has been appointed to any of the offices referred to in subsection (1), or has ceased to hold any such office, shall be sufficient proof of the facts stated in the notice. (Added 58 of 1972 s. 2)

4. Panels of counsel and solicitors

(1) The Director shall prepare and maintain separate panels of counsel and solicitors enrolled on the rolls of barristers or solicitors maintained in accordance with the provisions of the Legal Practitioners Ordinance (Cap. 159) who are willing to investigate, report and give an opinion upon applications for the grant of legal aid and to act for aided persons. (Amended 14 of 1982 s. 3)

(2) The Director shall enter in the panel any limitation as to the number per annum or as to the type of proceedings in which a counsel or solicitor is prepared to act for aided persons and shall give effect to such limitation. (Replaced 54 of 1984 s. 3)

(3) Any counsel and solicitor shall be entitled to have his name included on the panel unless the Director is satisfied that there is good reason for excluding him by reason of his conduct when acting or assigned to act for persons receiving legal aid or of his professional conduct generally.

(4) The Director shall not include the name of a counsel or solicitor on the panel unless he is satisfied that such counsel or solicitor has a current practising certificate and shall remove from the panels the name of any counsel or solicitor who does not have a current practising certificate.

(5) Subject to the provisions of section 25(2), any counsel or solicitor may at any time request the Director to remove his name from the panel and the Director shall comply with such request. (Amended 54 of 1984 s. 3)

PART II

SCOPE OF LEGAL AID

5. Persons eligible for legal aid

(1) Legal aid to which this section applies shall, subject to and in accordance with this Ordinance, be available for any person whose financial resources do not exceed \$120,000, for the civil proceedings mentioned in Part I of Schedule 2, except proceedings mentioned in Part II of that Schedule. (Replaced 54 of 1984 s. 4. Amended L.N. 5 of 1986: 27 of 1991 s. 4)

(4) 憲報上所刊登有關某人已被委任第(1)款所指任何職位或已停止該公告，即為證明其內所述事實的充分證據。(由 1972 年第 58 號第 2 條增補)

4. 大律師及律師名冊

(1) 署長須分別編製及備存大律師及律師的名冊，紀錄所有已在按照(條例)第 159 章)的條文備存的大律師或律師登記冊上登記，而又願意在有人申請法律援助時進行調查、作出報告及提供意見、並代受助人行事的大律師及律師。 (由 1982 年第 14 號第 3 條修訂)

(2) 署長須在名冊內註明大律師或律師準備代受助人行事的每年次數或類別的限制，並按照該等限制行事。(由 1984 年第 54 號第 3 條代修)

(3) 任何大律師或律師均有權名列名冊內，除非署長因該人代表或選擇受法律援助人士行事時所作的行為，或因該人的一般專業操守，而信納有理由將其姓名列入名冊內，則屬例外。

(4) 署長須信納大律師或律師已持有有效執業證書，方可將其姓名列入名冊內，除非該大律師或律師並未持有有效執業證書，署長須在名冊內將其姓名註銷。

(5) 除第 25(2) 條另有規定外，任何大律師或律師均可隨時要求署長在名冊內將其姓名註銷，而署長須遵照其要求。(由 1984 年第 54 號修訂)

第 II 部

法律援助的範圍

5. 有資格獲得法律援助的人

(1) 除本條例另有規定外，財務資源不超過 \$120,000 的人，均可依照本條例所適用的法律援助，以進行附表 2 第 1 部所述的民事法律程序，但該部所述的法律程序則不包括在內。(由 1984 年第 54 號第 4 條代修。由 1991 年法律公告修訂：由 1991 年第 27 號第 4 條修訂)

33. Appeals and powers of the Director

- (1) Where a person who has been granted legal aid under the Supplementary Legal Aid Scheme—
- (a) fails, whether in whole or in part, in proceedings brought by him with the assistance of such legal aid, the Director may appeal against any judgment or order of the court in which the proceedings were brought;
 - (b) succeeds, whether in whole or in part, in such proceedings and fails to defend any appeal brought by any other person, the Director may himself oppose such appeal.
- (2) Where the Director exercises his powers under subsection (1) he shall have all the rights and privileges which the aided person would have had had he brought or opposed the appeal, including the right to settle the proceedings by means of a compromise arrived at with another party to the proceedings.
- (3) Where the Director appeals or opposes an appeal under this section all expenses payable in connection with such appeal, including any amount payable under an order as to costs, shall be paid by the Director out of the Fund; but if the Director succeeds on the appeal in whole or in part section 32 shall apply as if the aided person had himself appealed or defended the appeal. *(Part VI added 54 of 1984 s. 26)*

SCHEDULE 1

[s. 2(1)]

LEGAL AID OFFICERS—DESIGNATIONS

1. Assistant Principal Legal Aid Counsel.
 2. Senior Legal Aid Counsel.
 3. Legal Aid Counsel.
- (Added 24 of 1983 s. 5)*

SCHEDULE 2

[s. 5]
(Amended 24 of 1983 s. 6)

PROCEEDINGS FOR WHICH LEGAL AID MAY BE GIVEN UNDER SECTION 5

PART I

Description of proceedings

Civil proceedings in any of the following courts—

33. 覆覈提出的上訴及其權力

- (1) 凡根據法律援助計劃獲給予法律援助的人——
- (a) 在該項法律援助協助的協助下，於法院提出的法律程序中全部覆覈可對該法院所作的判決或命令提出上訴；
 - (b) 在該等法律程序中全部或部分勝訴，但沒有在任何其他人士抗辯，則覆覈本人可反對該上訴。
- (2) 凡覆覈根據第(1)款行使其權力，須享有假若受助人提出上訴所應享有的所有權利及特權，包括有權與法律程序的另一方達成妥協，使有關上訴解決。
- (3) 凡覆覈根據本條提出上訴或反對上訴，則因該上訴而須繳付的所有根據有關訟費的命令而須繳付的款項，須由覆覈費計劃基金撥款支付。上訴中全部或部分勝訴，第 32 條即適用，猶如受助人本人提出上訴或在上訴中勝訴。
- (第 VI 部由 1984 年第 54 號修訂)*

附表 1

法律援助主任——職銜

1. 助理首席法律援助律師。
 2. 高級法律援助律師。
 3. 法律援助律師。
- (由 1983 年第 24 號修訂)*

附表 2

(由 1983 年第 24 號修訂)

根據第 5 條可給予法律援助的法律程序

第 1 部

法律程序類別 I

1. 在以下法院進行的民事法律程序——
- (a) 上訴法院；

In the District Court, civil proceedings brought by the aided person for damages in a claim arising from personal injuries to, or the death of, any person where the claim exceeds \$60,000 or less. In the opinion of the Director, the claim is likely to exceed \$60,000 and proceedings essential to such proceedings including the defence to any counterclaim. (Added 40 of 1989 s. 10)

2. 受助人因任何人的身受傷或死亡，而為中集國者賠償在地方法院提出的民事法律程序，而所中集的款額超過 \$60,000，或要賠償為相當可能超過 \$60,000，以及該等法律程序附帶引出的法律程序，包括對任何反申索作出的抗辯。(由 1989 年第 40 號第 10 條增補)

PART II

Excepted proceedings

第 II 部

不在法律援助範圍內的法律程序

Claims for damages for personal injuries or death sustained or alleged to be sustained as a result of the negligence of, or the breach of statutory duty by, —
(a) a medical or dental practitioner, or
(b) any other person who carries on a profession which, in the opinion of the Director, is a profession allied to medicine,
& in his capacity as a practitioner of medicine, dentistry or profession allied to medicine.
Claims in the District Court for damages for assault and battery (Added 27 of 1991 s. 20)
(Schedule 3 added 54 of 1984 s. 27)

1. 因或指稱因——
(a) 執業醫生或執業牙醫；或
(b) 其他從事專業或受法律管轄有關的專業的人士，其身分行事時該專業或未有履行法定職責，以致他人身受傷或死亡而提出的損害賠償申索。(由 1991 年第 27 號第 20 條增補)

2 因遭襲擊及毆打而在地方法院提出的損害賠償申索。(由 1991 年第 27 號第 20 條增補)

Consequential Amendments

Legal Aid Ordinance

103. Section added

The Legal Aid Ordinance (Cap. 91) is amended by adding--

“5B. Legal aid unavailable for certain proceedings pending notice in gazette

(1) Despite section 5, 5AA and 5A, no legal aid shall be available for any person for proceedings mentioned in Schedule 4.

(2) The Governor in Council may, by notice in the gazette, repeal any item or items in Schedule 4.”

104. Schedule added

The following is added -

“SCHEDULE 4

[s. 5B]

PROCEEDINGS FOR WHICH LEGAL AID MAY NOT BE GIVEN

1. Proceedings under the Equal Opportunities (Family Responsibility, Sexuality and Age) Ordinance (of 1996).”.

To be further added to Sch. 4 if needed --

2. Proceedings under the Equal Opportunities (Race) Ordinance (of 1996).

3. Proceedings under the Hong Kong Bill of Rights Ordinance (Cap. 383) in respect of legislation that affects only relations between private persons.

4. Proceedings under the Sex Discrimination Ordinance (67 of 1995) in respect of an act that would be lawful under that Ordinance if the Sex and Disability Discrimination (Miscellaneous Provisions) Ordinance 1996 (of 1996) had not been enacted.

5. Proceedings under the Disability Discrimination Ordinance (86 of 1995) in respect of an act that would be lawful under that Ordinance if the Sex and Disability Discrimination (Miscellaneous Provisions) Ordinance 1996 (of 1996) had not been enacted.

OFFICE OF CHRISTINE LOH, LEGISLATIVE COUNCILLOR

Room 322, 3/F, West Wing, Central Government Offices,
11 Ice House Street, Central, Hong Kong
Tel. (852) 2537-2485 Fax (852) 2537-6937

FACSIMILE TRANSMISSION FORM

To : Andrew Byrnes
Eric Chow
Christine Loh
Carole Petersen
Anna Wu

From : Adam Mayes
(Direct line:2521-6820)

Date : 3/4/96

Total pages : 3 (including this page)

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

Future working meetings with Admin.

Following up on our 22 March meeting (which is summarised below), Ms. Chang King-yiu of HAB called yesterday to suggest a further series of working level meetings with representatives of Branches affected by the Bill. The meetings would attempt to work out in detail the possible compromises raised in the 22 March meeting. She will be able to arrange the meetings after she returns from vacation on 15 April.

Before she contacted other Branches to arrange the meetings, she wanted reassurance (which I gave) that the Bill's sponsor(s) would be open-minded in considering such compromises, and in particular that they would consider allowing more flexible time-limits if justified in particular cases. She said Michael Suen would probably talk to Christine (maybe at Legco today) to confirm the plan for more working meetings.

My recollection of the 22 March meeting follows.

See you,

Summary of discussion at the 22 March working meeting

1. I met for a little more than an hour with Chang King-yiu for HAB, Anne Shepherd for HWB, Betty Neoh for Civil Service Branch, and A.G. O'Brien for Financial Services Branch. (You may remember Betty Neoh used to be with the Legco Secretariat -- she was clerk to the EOB Bills Committee for its first few meetings in 1994!)

2. The meeting was at HAB's request, so we agreed that Admin would raise the points on which they wanted clarification. We agreed not to spend too much time reiterating familiar arguments on points of disagreement. The points we may want to explore further are in boldface.

3. HAB and HWB remained very concerned about the inflexible commencement dates the Bill sets for the Ordinances. The arguments on this are already well-understood by both sides. The disagreement is not technical, but on policy.

4. All the Admin. side felt they were (unfairly) hemmed in by the 1+1 year time limits set by the Bill before expiry of the exceptions for death and retirement benefits, and for the miscellaneous exceptions in Sched. 5. I explained that the time limits reflected a perception among legislators, arising from the history of the SDO, that at policy level the Admin. would only act in this area under pressure. I spent some time clarifying that the time limits did not necessarily reflect a legislative intent to delete these exceptions entirely; and that it was expected that after study, some permanent exceptions might be made by further amendments to the Ordinance on Admin's recommendation. Admin. remain very uncomfortable with the timed expiry provisions and would clearly prefer in all cases to settle the exceptions now rather than study them under statutory time limits. **If a particular exception absolutely requires further study, they would prefer a more flexible time limit such as open-ended extension by Legco resolution.**

5. CSB and FSB were concerned that there should be no effect on pre-existing pension obligations in either the public or the private sectors. I recalled that the Bills Committee had agreed with HAB that a 'grandfather' exception should be made for pre-existing pension rights. HAB queried why, if there was agreement in principle on the grandfather clause, the Bill caused all SDO provisions on pensions to expire, including the grandfather clauses (at SDO ss. 11(5), 15(5) and 16(5)). I recalled that the Bills Committee had objected for timing reasons to the particular terms in which HAB had formulated the agreed pension provisions: the SDO would not apply to *any* pension arrangements *until* they were put into the empty Sched. 2, and the Administration had provided no timetable for doing so. I explained that because of the terms in which the provisions were drafted, this timing problem could not be disentangled from the grandfather clauses; the provisions would have to be replaced entirely to make them acceptable. **It seems likely that acceptable terms could be worked out, given mutual agreement in principle that pre-existing obligations should be excepted.**

6. FSB was also concerned that it may take some time for private sector pension schemes to adapt if they were covered, and that 2 years might not be long enough. He said an informal FSB survey indicated that the sexes were often treated differently in private sector pensions, particularly in regard to retirement ages. I said that 2 years seemed like a reasonably long time for study and adaptation, but that we recognised that the pension area was complicated. **I suggested that FSB might want to begin looking at how pensions were treated under sex discrimination law in other jurisdictions.**

7. Regarding the exceptions in Schedule 5, in response to a general query by HAB I suggested that legislators would be willing to preserve any exceptions that could be shown to be justifiable. I recalled that items 4 to 8 of the Sch. had been introduced by HAB for the first time at the last Bills Committee in which HAB participated, and that as a result the items had never been explained to the Bills Committee. HAB explained that the items were introduced late because they were only drafted after the policy decision (at the Bills Committee's request) to extend marital status discrimination beyond the employment field. I noted that there was also objection in principle to the provision of exceptions on an ad hoc basis through a schedule. We then went through most items in Sched. 5 one by one.

8. The arguments concerning the exceptions for the disciplined services (item 1 of Sch. 5) and for the small house policy (item 2) were already well-known to both sides. These are not technical, but policy disagreements.

9. CSB clarified that the exception for marital status discrimination in civil service and employment benefits (item 3) was intended to preserve rules against double benefits. I

responded that this purpose sounded reasonable, but that our objection was to the overinclusive terms in which the exception was drafted. **CSB was agreeable to redrafting the exception in more focussed terms and moving it into the main Ordinance.**

10. HWB said that the exceptions for marital status discrimination in the provision of reproductive technology (item 4) and by adoption services (item 5) reflected public opinion that only married couples should be served. I pointed out that we had inserted similar exceptions in the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill. **These could probably be moved from the schedule into the main Ordinance as permanent exceptions.**

11. CSB explained that the exception for sex discrimination at item 7 lists all the specific provisions in pension ordinances that give rise to pre-existing obligations which the Admin. was able to identify as sexually discriminatory (e.g. surviving children's benefits end at marriage for women but not for ~~women~~^{men}, at 21 for women but 18 for men, etc.).

12. Noone raised item 6 (marital status discrimination in the Home Ownership Scheme) or item 8 (marital status discrimination arising from a specific provision in sub. leg. concerning auxiliary police pensions).

13. At Admin's request, I explained the purpose of the amendments concerning indirect discrimination (at cl. 4-6 of the Bill). Admin. seems satisfied that the amendments remedy a technical defect.

14. At Admin's request, I explained the amendments to the EOC's formal investigation process (cl. 13-4), noting the changes to the amendments proposed last year. HAB continues to disagree, for the same reasons as last year.

15. At Admin's request, I explained the proposed new s. 79A on binding undertakings (at cl. 17). Admin. seems satisfied that the new power might be more efficient for the EOC in certain circumstances.

16. At Admin's request, I explained what was meant by intervention in the proposed new s. 82B (at cl. 18 of the Bill).

17. At Admin's request, I also explained the purpose of the amendment enabling the EOC to take over proceedings if an assisted claimant abandons them (cl. 19). HAB reiterated and elaborated their misgivings. In particular, HAB queried whether it was absolutely clear as a matter of law that the section would not authorise EOC interference with out-of-court settlements; and whether in some circumstances a claimant might be prejudiced if the EOC took over proceedings, e.g. if the claimant had abandoned them to avoid disclosure of information that the claimant preferred to keep confidential. **HAB suggested that the amendment be modified to require the EOC to obtain the court's permission, in light of the particular circumstances, before taking over proceedings.**

-- end --

布政司署
政務科
香港灣仔
軒尼詩道一百三十號
修頓中心
三十一樓



GOVERNMENT SECRETARIAT
HOME AFFAIRS BRANCH
31ST FLOOR, SOUTHOORN CENTRE,
130 HENNESSY ROAD,
WAN CHAI,
Hong Kong

本署檔號 OUR REF. . . (2) in HAB/AI/05/96

來函檔號 YOUR REF :

電 話 TEL NO. : 2835 1058

圖文傳真 FAXLINE . . 2591 6002

9 April 1996

The Office of the Hon Christine Loh Kung-wai
(Attn. : Adam C. Mayes)
Room 322, Central Government Offices, West Wing,
11 Ice house Street,
Central, Hong Kong.

Dear Mr Mayes,

Code on Access to Information
(Case no. 0005/96)

I refer to your letter dated 28.3.96 requesting information relating to consideration of candidates for the positions of the Chairperson of the Equal Opportunities Commission (EOC) and the Privacy Commissioner for Personal Data.

Concerning the EOC, I would like to provide the following information for your reference : .

- (1) The selection board for the Chairperson, EOC comprises the two Policy Secretaries overseeing the Sex and Disability Discrimination Ordinances, i.e. Secretary for Home Affairs and Secretary for Health and Welfare respectively, and three unofficial members who have high social standing and experience in the administration and management field. They are the Hon Rosanna WONG Yick-ming, Professor Rosie YOUNG Tse-tse and Mr. Andrew SO Kwok-wing.
- (2) There is no standard policy or guidelines for the composition of selection boards. In the case of the recruitment of the Chairperson, EOC, we are looking for a suitable candidate who has rich managerial and administrative experience. Hence, the need for unofficial members with high social standing and expertise in the field.

- (3) To facilitate the work of the selection board for the Chairperson, we have provided board members with :
- (a) access to all applications and summaries of these applications;
 - (b) the recruitment advertisement which sets out the duties, requirements and terms and conditions of appointment of the Chairperson (a copy enclosed at Annex I); and
 - (c) terms of reference of the EOC (a copy enclosed at Annex II).

Documents mentioned in (3)(i) above contain personal data of the applicants. They, therefore, cannot be released for the reason set out in paragraph 2.15 of the Code on Access to Information, which states that *“Disclosure of information about any person other than to the subject of the information, or other appropriate person, may be refused.”*

Regarding the position of the Privacy Commissioner for Personal Data, the membership of the selection board is not yet finalised. As stated above, there is not a standard policy or guidelines for the composition of selection boards. Since the board has not yet been properly formed, we have not provided any guidelines or documents to anyone for use in carrying out the selection work.

Thank you for your interest in the work of this Branch.

Yours sincerely,

(P H Li)
for Secretary for Home affairs

THE EQUAL OPPORTUNITIES COMMISSION

Applications are invited from suitably qualified candidates for the following position:

CHAIRPERSON

An independent statutory body called the Equal Opportunities Commission will be established to oversee the implementation of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. The two Ordinances make it unlawful to discriminate against a person on the grounds of sex, marital status, pregnancy or disability, to harass or vilify a person on the ground of disability or to sexually harass a person. The main role and responsibilities of the Commission include:

- (a) to work towards the elimination of discrimination on the grounds of gender and disability;
- (b) to promote equal opportunities between the sexes and between persons with and without a disability;
- (c) to investigate complaints, encourage conciliation between parties in dispute and provide assistance to aggrieved persons;
- (d) to develop and issue relevant codes of practice under the two Ordinances; and
- (e) to undertake the necessary public education and research programmes.

Duties

Appointed by the Governor, the Chairperson will be responsible for steering the Commission to exercise its powers and perform its functions as provided under the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. The Chairperson will also be responsible for the setting up of the Commission's office and the subsequent operation of the Commission. The Chairperson will maintain contacts with all relevant parties to ensure that their interests are appropriately addressed.

Requirements

Candidates should have a degree from a university in Hong Kong or equivalent and at least 12 years' experience in administration and management at a very senior level. They should also possess leadership qualities and good inter-personal skills. They should preferably have legal background and be familiar with issues relating to discrimination and equal opportunities. Preference will also be given to candidates who have a good command of both English and Chinese. Experience in handling complaints would be desirable.

Remuneration

Basic salary of \$157,250 per month (equivalent to Point 8 of the Directorate Pay Scale in the Civil Service) plus a monthly cash allowance of \$70,320 in lieu of housing, passage and other benefits.

Basic salary will be subject to the same annual adjustment as is applied to the Directorate Pay Scale in the Civil Service while the amount of cash allowance will be fixed throughout the contract period.

Terms and Conditions

The successful candidate will be appointed by agreement on a full-time basis for a period of, initially, three years. The agreement is renewable at the discretion of the Governor. A gratuity at the rate of 25% of the total basic salary earned will be paid at the end of the contract. Fringe benefits will cover paid leave and medical and dental insurance.

Applications

Applications are invited from both the public and the private sectors. If the successful candidate is a civil servant, he/she must resign or retire from Government service upon appointment. Applications in letter form should reach the Equal Opportunities Commission Preparatory Office, 15/F., Southorn Centre, 130 Hennessy Road, Wan Chai, Hong Kong **not later than 8 March 1996**. All applications will be treated in strict confidence.

平等機會委員會

現誠聘具合適資格人士擔任下開職位：

主席

當局即將設立一個名為平等機會委員會的獨立法定機構，以監察《性別歧視條例》及《殘疾歧視條例》的實施情況。這兩條條例訂明，基於性別、婚姻狀況、懷孕或殘疾等理由而歧視他人，或基於殘疾的理由而騷擾或中傷他人，又或對他人作出性騷擾，均屬違法。委員會的主要職能包括：

- (a) 致力消除基於性別及殘疾理由的歧視；
- (b) 促進男性與女性之間和殘疾人士與非殘疾人士之間的平等機會；
- (c) 調查投訴個案、鼓勵涉及糾紛的有關方面接受調解，並向受屈人士提供協助；
- (d) 根據《性別歧視條例》及《殘疾歧視條例》的規定擬備及發出有關的責備守則；及
- (e) 進行所需的公眾教育及研究計劃。

職員

平等機會委員會主席將由總督委任，負責督導委員會行使及執行《性別歧視條例》及《殘疾歧視條例》所賦予的權力及職能。主席亦負責委員會辦事處的成立及委員會其後的運作。主席並須與各有關方面保持聯繫，確保他們的利益獲得適當照顧。

入職條件

申請人應持有香港任何一所大學的學位，或具備同等學歷，並須至少有12年擔任高層行政及管理職位的經驗。申請人亦須具備領導才能及良好的人際關係技巧。具法律知識和熟識與歧視及平等機會有關的問題則更佳。有良好的中英文水準和處理投訴的經驗的申請人可獲優先考慮。

薪酬

每月底薪為157,250元(相等於公務員首長薪級第8點)，另加每月現金津貼70,320元，以代替房屋、旅費及其他福利。

底薪將會跟隨公務員首長薪級薪制按年作出相同的調整，而現金津貼則在整個合約期間固定不變。

服務條件

申請人如獲錄用，將以合約形式被僱用為全職人員，最初為期三年。約滿後，由總督決定是否予以續約。合約期滿時，受聘者可獲得相等於期內年底薪總額25%的約滿酬金。其他附帶福利包括有薪假期、醫療及牙科保險。

申請辦法

歡迎公營部門及私營機構的僱員申請上述職位。獲取錄的公務員須於受聘時辭去政府職位或退休。請於一九九六年三月八日或該日前將應徵信寄交香港軒尼詩道130號修頓中心15樓平等機會委員會籌備辦事處收。所有申請均予嚴格保密。

Terms of Reference of the Equal Opportunities Commission

Under the enabling legislation i.e. the Sex Discrimination Ordinance, the Chairperson is to steer the Equal Opportunities Commission to perform the functions and powers under the Sex and Disability Discrimination Ordinances (SDO and DDO). The Commission shall -

- (a) work towards the elimination of discrimination;
- (b) promote equality of opportunity between men and women and people with and without a disability;
- (c) work towards the elimination of sexual harassment under the SDO and harassment and vilification under the DDO;
- (d) in the case of any act alleged to be unlawful by virtue of the Ordinances, encourage the parties in dispute to effect a settlement by conciliation;
- (e) keep under review the working of the Ordinances and when it thinks it necessary, draw up and submit to the Governor proposals for amending the Ordinances; and
- (f) perform such other functions as are imposed on it under the Ordinances or any other enactment.

To ensure the effective operation of the EOC, the LegCo Finance Committee has approved an annual provision of \$66.5M on the understanding that the Commission may need to employ 66 staff to handle cases lodged under the Ordinances, provide legal assistance to the claimants as appropriate, and conduct research or launch public education programmes to further the principle of equal opportunities in the community.

15 April 1996

Clerk to the Legislative Council
(Attn: Ms Betty Ma)
Legislative Council Building
8 Jackson Road
Hong Kong
(Fax: 2810-1691)

Dear Ms. Ma,

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

I refer to Mrs. Stella Hung's letter for Secretary for Home Affairs, dated 29 March 1996.

It comes as a surprise that the Secretary for Home Affairs considers the captioned Bill to have a charging effect for purposes of Standing Order 23, in view of the fact that the Bill is virtually identical to two Bills that were ruled not to have any charging effect in the last legislative term. The captioned Bill is based almost entirely on the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill that was introduced 5 July 1995. Moreover, all of the 1995 Bill's provisions were themselves drawn directly from the original Equal Opportunities Bill introduced 6 July 1994. Reference may therefore be taken from the President's rulings last term on both Bills.

Following recommendations of the Bills Committee that studied the 1995 Bill, the captioned Bill incorporates 9 new provisions that were not contained in either of the earlier Bills (clauses 51-2, 74, 76-8, 88, 90, and 98). None of the new provisions create causes of action (on the contrary, all but one are exceptions narrowing rights otherwise conferred), making them irrelevant to the Secretary's argument concerning expenditure on legal aid. The captioned Bill should have no more financial implications on provision of legal aid than the earlier Bills.

The argument made by the Secretary for Home Affairs seems to depart from the principles under which the two earlier Bills were ruled not to have charging effect.

It is established that a charge must be new and distinct and not already authorised by law. A charge may also result if the purposes of existing authority for expenditure are extended. The existing authority for legal aid is the Legal Aid Ordinance (Cap. 91), which lists in Schedules 2 and 3 the proceedings for which legal aid may be given.

The Secretary for Home Affairs refers to the President's ruling on the Hon. Simon Ip's amendment to the Legal Aid (Amendment) Bill 1995. That amendment, however, affected expenditure on legal aid very differently than this Bill. The Hon. Simon Ip's amendment would have directly amended item 4 of Schedule 3, Part I, thereby expanding one of the categories of proceedings that are eligible for legal aid. In contrast to the Hon. Simon Ip's



amendment, the Bill does not amend the Legal Aid Ordinance, and neither adds to nor amends the categories of eligible proceedings set out in the Ordinance's Schedules.

Rather, the Bill creates new statutory rights enforceable in the ordinary way in civil proceedings. Legal aid for civil proceedings in the District Court, High Court or Court of Appeal is already generally authorised by item 1 of Schedule 2, Part I. The Bill results in a practical likelihood that more such eligible proceedings will be brought, but makes no change in the scope or purposes of eligibility as defined by the Legal Aid Ordinance.

Practically speaking, an increase in civil proceedings will of course increase expenditure on the administration of justice, including on legal aid. It is well-established, however, that for purposes of SO 23 expenditure on the administration of justice is regarded as already authorised, and that the mere creation of new causes of action therefore creates no charge even though it may significantly increase actual litigation and hence expenditure. The cost figure mentioned by the Secretary represents just such an increase in the cost of administering justice, without charging effect.

It was understood that this principle formed the basis of the President's rulings last term that the 1994 and 1995 Bills mentioned above had no charging effect. The principle was accepted by the Secretary as well -- see the attached letter containing the Secretary's assessment of the 1994 Equal Opportunities Bill, in which the Secretary disclaimed any charging effect for purposes of SO 23 despite a projected expenditure to set up new courts to hear proceedings under that Bill.

The argument now offered by the Secretary, if accepted, reverses the principle previously followed. If an indirect charging effect exists in this instance, then every Bill that creates a new cause of action triable in civil proceedings must similarly have a charging effect. This would inevitably confine the types of Private Member's Bills Members can introduce to those that do not create a new cause for action triable in civil proceedings. Moreover, it is difficult to see why the same logic should not apply where expenditure on the administration of justice is increased in any other respect, such as the setting up of new courts which has not previously been regarded as a charge.

Yours sincerely,

(Eric Chow)
for Lau Chin-shek

ROBERT W. H. WANG & Co.

SOLICITORS, NOTARIES, AGENTS FOR TRADE MARKS & PATENTS



8TH & 18TH FLOORS
NINE QUEEN'S ROAD CENTRAL
HONG KONG
TELEPHONE (852) 2843 7333
FAX (852) 2845 5566 (8TH FLOOR)
(852) 2845 2504 (18TH FLOOR)
TEXTS E-MAIL ADDRESS
m.wang@rwandco.com

ANNA ILY WU * ROBERT W.H. WANG * MICHAEL DALTON * ANDREW W.H. WANG * K.W. HUI * ROGER K.S. WONG * CHRISTOPHER H.T. CHAN IDENEY D. LEVY	胡麗紅 王惟翰 陶爾敦 于振和 洪鎮威 王季生 陳美英 李國榮	+ JULIAN J. TODD * STEPHEN K.F. LO ANTHONY F. HILL Consultants * MIMI HO LESLIE K. SIMON + CHRISTOPHER J. KING	杜達年 盧紀平 李東尼 何美英 李利民 李洪榮	SUNEE S.P. CHUNG IRENE S.W. NG * ANNEALIS POKPY JI NAVIN K. AGGARWAL RICHARD BOWRY KIM C.K. TOI	張秀芬 李少敏 李寶儀 李誠德 李維 李月芬	EDWINA L.K. CHEUNG DOROTHY P. SIMON C.H. YANG PAUL P.C. FUNG JACQUELINE K.Y. CHING MARIA S.L. TONG PETER C.N. LI STEVEN J. BIRT CORRYON NG	張麗桂 施文玉 彭志康 方培哲 李耀輝 吳南波 李志昂 李兆豐 吳軒耀
---	--	--	--	---	---	--	---

INTERCHANGE NO. 009050 CENTRAL
SINGAPORE OFFICE:
50 RAFFLES PLACE
#12-05 SHUELL TOWER
SINGAPORE 048623
TELEX: RS 42670
FAX: (65) 2255065
TELEPHONE: (65) 2259122

Our Ref. **AW** Date: **15th April 1996**
Your Ref.

FAX TRANSMISSION

To: Adam Mayes Fax No. 2537 6937
From: Anna Wu No. of pages: 1

CONFIDENTIALITY NOTICE

This facsimile transmission is intended only for the use of the person or entity to whom it is addressed and may contain information that is confidential and privileged under applicable laws. If you are not the intended recipient, you are hereby notified that any use, review, disclosure or copying of this information is prohibited. If you have received this transmission in error, please notify us immediately by telephone, facsimile or telex and return to us the copy received by mail.

Thank you.

MESSAGE

I have been away and have returned. Any development on the "charging effect" relative to the Bills? After pondering over the issue again, I guess it is best to take the two-pronged approach, firstly to argue for a favourable decision from Andrew Wong on the existing Bills and secondly to submit the additional clause barring application for Legal Aid. It is important to get the Bills in as quickly as possible. I think the government is stalling and manipulating public opinion. Once the Bills are in, these tactics will be less effective. I am tied up for a week on a deposition. Please let me know what you would like to do.

Regards,
Anna Wu

/pk
(4.96 15)

王惟翰律師樓 香港皇后大道中9號8及10字樓

* Notary Public Δ Admitted in Singapore + Not ordinarily resident in Hong Kong

To : Christine Loh (& Adam Mayes)
Emily Lau (& Karen Lam)
Libby Wong (Michael Luke)
Andrew Byrnes
Carole Petersen
Anna Wu
From : Eric Chow
Date : 17.4.96
Total 3 pages

Charging Effect Ruling on Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

Regarding the charging effect of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, I have already submitted our response to the LegCo President this Monday (see attached). I understand that members of this EO working group generally think that we should now proceed with a parallel track by adding an amendment to the Bill restricting access to legal aid in civil proceedings. Currently, the English draft of that amendment has already been sent to the Law Draftsman while I'll work on the Chinese version very soon. Once those are ready, we'll be able to get the Certificate from Law Draftsman and the amended Bill is ready to be submitted to the LegCo President.

立法局秘書處啟

However, my office (incl. Lee Cheuk Yan and Leung Yiu Chung) are very concerned about the implications of submitting a bill that restricts access to legal aid. We understand that doing so is probably best for the EOB strategy-wise, given that the Government may release the consultation result and thus may put pressure on introducing the EOB; and eventually it may be the only option other than giving up the EOB altogether if it is ruled to have charging effect. But we still consider that the implications of this ruling on other private member's bills in future is significant enough to justify having a big fight against the views of the Administration. Also, we are not exactly sure whether it is appropriate to submit our initiative to curtail the right to access legal aid even before the ruling is made. Therefore, we plan to do some more research on the legal aid issue and then supplement information to the President in the next day or two.

根據《常規》第7(2)條的規定，特此通知，立法局定於一九九六年五月一日（星期三）下午二時三十分，在立法局會議廳舉行會議。請大家知悉。

立法局會議
一九九六年五月一日

立法局會議廳
立法局文件 CB(3)647/95-96 號

N M 95/96-26

布政司署
政務科
香港灣仔
軒尼詩道一百三十號
修頓中心
三十一樓



GOVERNMENT SECRETARIAT
HOME AFFAIRS BRANCH
31st FLOOR, SOUTHOORN CENTRE,
130 HENNESSY ROAD,
WAN CHAI,
Hong Kong

本署編號 OUR REF. : HAB/CR/1/2/21 Pt.32

By Fax & By Post

來函編號 YOUR REF :

(2 pages)

電話 TEL NO. : 2835 1373

圖文傳真 FAXLINE : 2591 6002

18 April 1996

Mr. Adam C. Mayes
Room 322, Central Government Offices
West Wing
11 Ice House Street
Central
Hong Kong

Dear Mr Mayes,

Thank you for your letter of 5 March 1996. After consulting legal advice, I would like to respond briefly to the questions raised.

I should perhaps start off by reiterating that interpretation of the statutory provisions - the Sex Discrimination Ordinance in this case - is a matter for the courts. Hence we are not in the position to state, for example, whether as a matter of law the Ordinance confers a right to equal pay for work of equal value. Notwithstanding the above, our understanding of the Ordinance is set out below.

Sections 11(1)(b) and 2(b) of the Sex Discrimination Ordinance prohibit discrimination in the terms and conditions of employment. This should cover discrimination as regards the pay a person is offered or receives.

Although the Ordinance makes no reference to the notion of equal pay for work of equal value, in determining whether, say, a woman was discriminated against in terms of pay, the court would need to consider whether she was doing work of equal or comparable value to that of the man with whom she wished to be compared. Whether the principles adopted under the UK Equal Pay Act would be followed in this respect would be a matter for the court to decide.

/....

When the Sex Discrimination Ordinance was promulgated, our intention was to provide specific guidance to employers and employees on how the principle of "equal pay for work of equal value" should be applied via the Codes of Practice on Employment to be prepared by the Equal Opportunities Commission. Under section 69(13) of the Sex Discrimination Ordinance, a code of practice, in so far as it is addressing the issue of equal terms of employment, may make reference to and incorporate provisions of an overseas enactment. No doubt the Commission will study relevant overseas experience when preparing the relevant Codes. It should be noted that section 69(14) of the Ordinance provides that "in any proceedings under this Ordinance before any court any code of practice issued under this section shall be admissible in evidence, and if any provision of such a code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question." Hence the Codes would provide reference for the court in considering related claims.

Yours sincerely,

(Ms CHANG King-yiu)
for Secretary for Home Affairs

布政司署
政務科
香港灣仔
軒尼詩道一百三十號
修頓中心
三十一樓



GOVERNMENT SECRETARIAT
HOME AFFAIRS BRANCH
31st FLOOR, SOUTHERN CENTRE,
130 HENNESSY ROAD,
WAN CHAI,
Hong Kong

本署檔號 OUR REF. : HAB/CR/1/2/21

來函檔號 YOUR REF :

電 話 TEL NO. : 2835 1144

圖文傳真 FAXLINE : 2591 6002

By Fax and Post

(2 pages)

18 April 1996

The Hon Christine Loh
Room 322, Central Government Offices
West Wing
11 Ice House Street
Central
Hong Kong

✓Fax No: 2537 6937

Dear Ms Loh,

Thank you for your letter of 14 March 1996.

Our position on the proposed amendment to the Sex Discrimination Bill to limit the award of damages was set out in the second reading debate of the Bill. This is recapitulated below for your ease of reference -

“The Administration appreciates that some Members of the Bills Committee, some employer organisations as well as women organisations hold that in the absence of experience in enforcing anti-discrimination legislation, it would be prudent to impose a limit on the maximum amount of damages to be awarded by the court. The Administration endorses this view and agrees that the proposed upper limit of \$150,000, which amounts to more than 12 months of the average salary of a worker in Hong Kong, is reasonable.”

/....

The fact remains that it was the concern expressed by some Members of the then Bills Committee and other groups we shared when we voted for the proposed amendment.

Yours sincerely,

(Miss Maggie Wong)
for Secretary for Home Affairs



立法局議員劉千石辦事處

香港九龍尖沙咀北京道五十七號四樓 電話：739 0836 傳真：724 5006

LAU CHIN SHEK'S OFFICE

來函編號 / Your Ref. :

日期 / Date :

22 April 1996

Clerk to the Legislative Council
(Attn: Ms. Betty Ma)
Legislative Council Building
8 Jackson Road
Hong Kong
(Fax: 2810-1691)

Dear Ms. Ma,

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

Further to my letter dated 15 April 1996, I am writing to provide supplementary information in relation to the assessment of the captioned Bill's financial implications.

Firstly, additional resources required for providing legal aid in civil proceedings under the captioned Bill is not a new and distinct charge on the general revenue. In this respect, reference can be taken from two government bills of very similar nature, the Sex Discrimination Bill and Disability Discrimination Bill introduced in the last session. While both Bills, like the captioned Bill, would introduce new categories of cases that the Legal Aid Ordinance would cover, additional expenses for legal aid are not considered part of the financial implications in the Legislative Council Brief. In the LegCo Brief of the Sex Discrimination Bill (File Ref: HAB CR 1/2/21 XVI), the costs for setting up the Equal Opportunities Commission and the resource implications for the Judiciary are included in the Financial & Staffing Implications (para 26-27); whereas in the case of the Disability Discrimination Bill (File Ref: HW CR2/5091/94 (95) Pt.15), the costs for providing access for the disabled in schools is the only additional item under Financial & Staffing Implications (para 33-35). This clearly suggests that additional resources required for providing legal aid in discrimination cases should not be construed as expenses arising out of the imposition of new duties on an existing department.

Second, it is important to note that the main object of the captioned Bill is not to extend legal aid service to new classes of persons or to relax the conditions upon which it is available. Rather, its main object is to eliminate discrimination against persons on the grounds of family responsibility, sexuality and age. As Erskine May suggested, "a bill may have several objects, of which some consist only in the creation of a charge, while others do not create a charge at all or only create one incidentally. In such cases it has to be considered whether the financial objects of the bill are sufficient to outweigh substantive provisions not primarily financial." (20th Ed., p.817)

For instance, the Immigration (Amendment) Bill 1995 presented by the Hon. Lee Cheuk-yan seeks to restrict entry of foreign workers. Should the Bill be passed into law, in



cases where local workers are displaced by imported foreign specialists, the local workers may seek judicial review under the new law, arguing that the approval by the Director of Immigration does not comply with the provisions. In such proceedings, the local workers may apply for and be granted legal aid provided they could meet the means test and the merits test. Although this would have similar effect of increasing the funds required for the provision of legal aid, it is an example where the Bill concerned contains other provisions of sufficient importance to justify its introduction despite the charge it creates

Third, as mentioned in the previous letter, additional expenses for legal aid represents an increase in the cost of the administration of justice. Apparently, provisions of legal aid is not explicitly stated as part of administration of justice by Erskine May. However, according to Mr. Seton Pollock, who has been responsible for the administration of the English Legal Aid Scheme (being the chief executive as Secretary of the Law Society for Legal Aid),

“[the purpose of the Legal Aid and Advice Act 1949] was to provide the means by which the principle of equality before the law, which underlies our legal system, should cease to be a mere theory and become a practical reality, and to establish legal aid as an integral part of the administration of justice rather than a mere adjunct or ‘optional extra’.” (p.5, *Legal Aid - The First 25 Years*, Oyez Publishing, London, 1975)

Indeed, the same interpretation has been given by the Hong Kong Government. In the *Consultative Paper on Legal Aid* released in 1993, it is stated by the inter-departmental Working Group that “[legal aid] is thus an essential part of the adversarial system of dispute resolution in which parties need skilled legal help.” (para 4) Such interpretation is further affirmed in the first sentence of the *Report of the Reconvened Working Group on Legal Aid Policy Review*, “[t]he provision of legal aid is an integral part of the administration of justice.” (para 1.1)

Finally, the assessment of the captioned Bill's charging effect should be distinguished from that of the Hong Kong Bill of Rights (Amendment) Bill 1996 presented by the Hon. Bruce Liu Sing-lee. Unlike the Hon. Bruce Liu's Bill, the captioned Bill has no effect in relation to the scope of the discretionary waiver of the means test provided under section 5AA of the Legal Aid Ordinance (Cap. 91). In other words, the captioned Bill would not require the Legal Aid Department to conduct the merits test unless the applicants have passed the means test, and thus would not create the same kind of additional expenses for legal aid as the Hon. Bruce Liu's Bill.

I would be most grateful if you would convey our views to the President.

Yours sincerely,

(Eric Chow)
for Lau Chin-shek

OFFICE OF CHRISTINE LOH, LEGISLATIVE COUNCILLOR

Room 322, 3/F, West Wing, Central Government Offices,
11 Ice House Street, Central, Hong Kong
Tel. (852) 2537-2485 Fax (852) 2537-6937

FACSIMILE TRANSMISSION FORM

To : Anna Wu
Eric Chow
Carole Petersen
Andrew Byrnes

From Adam Mayes
(Direct line:2521-6820)

Date : 25/4/96 Total pages : 1 (including this page)

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

As I mentioned in my 3 April memo, in last month's meeting with K. Y. Chang, Anne Shepherd, et. al., it was suggested that we revise the amendment enabling the EOC to take over proceedings abandoned by claimants who had been receiving EOC assistance.

Admin. suggested that the amendment should require the EOC to obtain the court's permission, in light of the particular circumstances, before taking over proceedings. This would assuage concern about possible prejudice to claimants, e.g. if a claimant had abandoned the proceedings because of an out-of-court settlement, or in order to avoid disclosures in court that the claimant would prefer not to make.

Any comment on the following, very simple draft revision? Do we need something more explicit about the circumstances the court should take into account? Additions are italicised:

"18. Assistance other than by way of conciliation

Section 85 is amended by adding -

- "(5A) (a) Where any person, who has received assistance in respect of proceedings under subsection (2), withdraws from those proceedings, the Commission may, *with the leave of the court hearing the proceedings and subject to any conditions imposed by the court*, 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."

See you,

P.S. In a chat with Christine yesterday evening at Legco, Stella Hung said HAB expects to have an announcement on the EOC within 2 weeks. She also said they received 7,000 submissions on family responsibility and 9,000 on sexual orientation. It emerged from the former, she noted, that the community is uncomfortable with the idea of treating cohabitants as de facto spouses. (I take this remark to indicate the way in which coverage of de facto spouses would be publicly distorted if we put it forward. Good thing we've decided to drop it.)

立法局議員陸恭蕙辦事處
OFFICE OF CHRISTINE LOH . LEGISLATIVE COUNCILLOR

2nd May, 1996

Ms. Chang King-yiu
Principal Assistant Secretary
Home Affairs Branch
31st Floor, Southorn Centre
130 Hennessy Road, Wanchai
Hong Kong

Dear Ms. Chang,

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

This letter follows up on several matters raised in our 25 April telephone conversation about the captioned Bill, and in the 22 March meeting with you and representatives of 3 other policy branches about the Bill.

The Administration expressed particular concern about the provisions of the Sex Discrimination Ordinance (the SDO) that the Bill amends to expire in 1-2 years time. For several such provisions, we understand that the Administration considers permanent replacement provisions are needed (albeit not necessarily in the same terms as the existing provisions), and strongly prefers that those permanent provisions be enacted now, in the context of the captioned Bill, rather than through future amendment proposals made during the 1-2 year grace period allowed by the Bill.

In response to these concerns, we propose to revise the Bill before it is gazetted to provide a number of permanent provisions of the types discussed with the Administration. The details of these proposals follow.

We would be grateful to hear the Administration's views on the proposals soon, ideally before the Bill is gazetted (which we hope to arrange soon). As we've discussed, however, if the Administration is unable to come to a definite view on any of these matters before the Bill's gazettal, we can of course continue discussions after the Bill is gazetted with a view to making agreed amendments at committee-stage.

Double benefits rule

By "double benefits rule", I understand the Administration to be concerned with a rule of the type now provided in the Civil Service Regulations by regulation 809. Please let me know if you have other regulations in mind.

We do not believe that removal of the further exception made by item 3 of SDO Schedule 5 (for marital status discrimination arising from employment benefits relating to housing, education, air-conditioning, passage or baggage) would endanger the double benefits rule. It seems likely that a double benefits rule of the CSR 809 type would be regarded under the SDO as justifiable differential treatment, not as unlawful discrimination. The concurrent

availability to a married person of another benefit obtained by the person's spouse, which is the same as, or similar to, a benefit withheld by the rule, likely amounts under SDO s. 10 to a materially different circumstance. If so, then no discrimination arises because no comparison of treatment can be made under SDO s. 7(1).

The Civil Service Regulations are also, of course, already subject to the non-discrimination standard imposed by article 22 of the Hong Kong Bill of Rights Ordinance (Cap. 383). Administrative arrangements that are regarded as unproblematic under the Bill of Rights need cause no more concern in relation to the SDO.

There is, however, no objection in principle to expressly authorising the rule for avoidance of doubt. We therefore propose to add such a provision to the Bill, in the terms (drafted with a view to CSR 809(1)(b)(ii) and (iii)) shown at annex A. Item 3 of SDO Schedule 5 would correspondingly be repealed, as shown at annex F.

Adoption services and reproductive technology

Items 4 and 5 of SDO Schedule 5 provide "further exceptions" for any marital status discrimination arising from provision of facilities and services for adoption, and from provision of access to reproductive technology. We have no objection to moving these exceptions into the body of the SDO, as also shown at annex A (repealing them in Schedule 5, as shown at annex F). The Equal Opportunities (Family Responsibility, Sexuality and Age) Bill contains similar exceptions in relation to discrimination on the grounds of sexuality and age (see Clauses 51, 52, and 78).

Grandfather exception for death and retirement benefits

The "grandfather exception" that was originally proposed by the Administration and accepted by the Bills Committee last year remains acceptable in principle. The original proposal for amendment of the SDO is attached at annex B for your reference. It was never explained why the terms of the originally proposed amendment were changed to link the resulting provisions (SDO ss. 11(5), 15(5) and 16(5)) to an empty schedule, thereby indefinitely deferring their agreed effect.

We propose to incorporate into the Bill exceptions of the type originally proposed, in the terms shown at annex C. The Bill will also repeal items 7 and 8 of SDO Schedule 5, as shown at annex F.

If the proposed "grandfather" exception is made, no problem should arise from simultaneous repeal of item 7, which is the SDO's further exception in favour of specified, statutory pension provisions. The provisions specified in item 7 discriminate by defining unmarried women as dependants until the age of 21 in circumstances in which married women and all men cease to be defined as dependants at the age of 18. All these provisions, however, are already in effect "grandfathered" inasmuch as the arrangements they make can no longer be entered into.

As regards the discriminatory pension provision excepted from the SDO by item 8 of Schedule 5, the Administration advised last year's Bills Committee (in para. 6 of the Annex

to SDB Paper 5/95) that it planned to amend that provision to remove the discriminatory elements. Please let us know the current status of these amendments, and whether they might be taken forward as consequential amendments under the captioned Bill.

Temporary exceptions

The above proposals repeal all but 3 of the "further exceptions" in SDO Schedule 5 and replace them with permanent provisions in the body of the Ordinance. As before, the Bill will set the remaining 3 "further exceptions" to expire in 1-2 years' time.

The 3 remaining SDO provisions set for timed expiry provide exceptions for certain, sex discriminatory employment practices in the disciplined services; for sex discrimination connected with the small house policy; and for marital status discrimination in the Home Ownership Scheme and the Private Sector Participation Scheme (items 1, 2 and 6 of SDO Schedule 5). We would be interested to discuss these exceptions further with you, particularly the exception in relation to public housing, for which no explanation has previously been provided.

The Bill makes a similar timed expiry arrangement for the "further exceptions" provided by schedule in the DDO. As no items have been scheduled in the DDO, however, the arrangement seems unnecessary. We propose instead for the Bill to repeal that DDO provision with immediate effect, as shown at Annex D.

EOC maintenance of abandoned proceedings

The Bill contains a provision authorising the EOC to take over proceedings from a claimant to whom it has provided assistance if the claimant abandons them. In response to the Administration's concerns about this provision, we propose to revise it as shown at annex E. Under the revised provision, the EOC may take over proceedings only with the leave of the court hearing them and subject to any conditions imposed by that court.

Commencement dates

The Bill specifies commencement dates for both the SDO and the DDO. We are changing the dates that will be specified in the gazetted Bill from 1 June to 1 September 1996. As before, the responsible policy secretaries remain able to commence the Ordinances by stages, provided each Ordinance is fully in operation by the specified date. The Legco Bills Committee that eventually studies the Bill may, of course, recommend further amendment of the specified dates.

Yours sincerely,

Adam C. Mayes
for Christine Loh Kung-wai

9A. Sections added

The following is added -

“56A. Double benefits for married persons

(1) For avoidance of doubt, it is hereby declared that nothing in Parts III, IV or V renders it unlawful for a person to refuse or omit to provide a benefit or allowance relating to housing, education, air-conditioning, passage or baggage to a married person if the married person’s spouse receives the same or a similar benefit or allowance, whether from the first-mentioned person or from another.

(2) In this section -

(a) “benefit” () includes part of a benefit;

(b) “allowance” () includes part of an allowance.

56B. Reproductive technology

(1) Nothing in Part IV or V renders unlawful any discrimination between persons of different marital status arising from the provision of any reproductive technology procedure.

(2) In this section, reproductive technology procedure () 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.

56C. Adoption

Nothing in Part III, IV or V renders unlawful any discrimination between 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).”.

Sex Discrimination Bill (SDB)Exceptions for Death or Retirement Benefits in Clause 10(4)

At the Bills Committee Meeting on 5.5.1995 Members, having considered SDB Paper No. 5/95, requested the Administration to further consider the proposal to "grandfather" the exception provided in Clause 10(4) so that it only applies to members of death or retirement schemes which are already in operation before the commencement of the provisions in the Sex Discrimination Ordinance.

2. Clause 10(4) of the SDB provides that it would not be unlawful for the employer to treat male and female employees and applicants for employment differently concerning 'provision in relation to death or retirement'. It is not the Administration's intention to encourage new retirement schemes which have yet to be set up to differentiate between male and female employees in relation to death or retirement benefits without any reference to actuarial data. In line with this principle, we now propose to effect a committee stage amendment to Clause 10(4) of the Bill. The amendment will limit this exception to members of death or retirement schemes which are already in operation on the commencement of Clause 10(4) of the Bill. All employees who obtain employment after the commencement of the Bill and those employees who are offered a scheme of retirement and benefits after such commencement will not be

covered by the exception. In providing death or retirement benefits to these employees, the employer shall not differentiate in the treatment of his/her employees on the ground of gender, unless such differential treatment falls within the ambit of Clause 43 of the Bill.

7. Discrimination against applicants or employees

Section 11 is amended -

- (a) by repealing subsections (4) and (5) and substituting -

“(4) Subject to subsection (5), subsections (1)(b) and (2) shall not apply to provision in relation to death or retirement made for a woman before the commencement of this section in so far as any such provision continues for that woman on and after that commencement.

(5) Subsections (1)(b) and (2) shall apply to provision in relation to death or retirement of the kind mentioned in subsection (4) in so far as, in their application to such provision in relation to retirement, they render it unlawful for a person to discriminate against a woman -

- (a) in such of the terms on which he offers her employment as make provision in relation to the way in which he will afford her access to opportunities for promotion, transfer or training or as provide for her dismissal or demotion;
 - (b) in the way he affords her opportunities for promotion, transfer or training or by refusing or deliberately omitting to afford her access to any such opportunities; or
 - (c) by dismissing her or subjecting her to any detriment which results in her dismissal or consists in or involves her demotion.”;
- (b) [7(b)-(c) same as before].

8. Partnerships

Section 15 is amended by repealing subsections (4) and (5) and substituting -

“(4) Subject to subsection (5), subsections (1)(b) and (d) shall not apply to provision in relation to death or retirement made for a woman before the commencement of this section in so far as any such provision continues for that woman on and after that commencement.

(5) Subsections (1)(b) and (d) shall apply to provision made in relation to death or retirement of the kind mentioned in subsection (4) in so far as, in their application to such provision made in relation to retirement, they render it unlawful for a firm to discriminate against a woman -

- (a) in such of the terms on which the firm offers her a position as partner as provide for her expulsion from that position; or
- (b) by expelling her from a position as partner or subjecting her to any detriment which results in her expulsion from such a position.”.

9. Trade unions, etc.

Section 16 is amended by repealing subsections (4) and (5) and substituting -

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

27. Further exceptions

Section 60 is repealed.

36. Amendment of Schedules

Section 87 is amended by repealing “3, 4 or 5” and substituting “3 or 4”.

37. Further exceptions to this Ordinance

Schedule 5 is repealed.

18. Assistance other than by way of conciliation

Section 85 is amended by adding -

- “(5A) (a) Where any person, who has received assistance in respect of proceedings under subsection (2), withdraws from those proceedings, the Commission may, *with the leave of the court hearing the proceedings and subject to any conditions imposed by the court*, 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.”.

22A. Further exceptions to this Ordinance

Schedule 5 is amended -

- (a) in Part 1, by repealing the definitions for “allowance”, “benefit” and “reproductive technology procedure”; and
- (b) in Part 2, by repealing items 3, 4, 5, 7 and 8.

CHAPTER V - HOUSING BENEFITS

II. PREVENTION OF DOUBLE HOUSING BENEFITS AND DOUBLE HOUSING RELATED BENEFITS AND ENFORCEMENT OF LIVE-IN REQUIREMENT

809 (1) (a) For the purpose of administering housing benefits in the civil service, civil service housing benefits and civil service housing related benefits are defined as follows :

(A) Civil Service Housing Benefits

- (i) Non-Departmental Quarter;
- (ii) Private Tenancy Allowance;
- (iii) Hotel and hostel accommodation;
- (iv) Departmental Quarter (other than an operational post-tied departmental quarter);
- (v) Membership of a Local Officers' Co-operative Building Society, or Underlease of a Local Officers' Government Built Housing Scheme (other than membership or underlease acquired through beneficial succession);
- (vi) Acquisition of a legal title through accepting the first assignment of a lease to a flat and land which belonged at some time to a Local Officers' Co-operative Building Society or a Local Officers' Government Built Housing Scheme, and the officer was a member of that Society or underlessee of that Scheme immediately before such assignment (except that this sub-paragraph shall not apply in the case where an officer became a member of such Society or underlessee of such Scheme through beneficial succession, or had inherited the flat and land after such assignment);
- (vii) House Allowance;
- (viii) Home Purchase Allowance and/or Downpayment Loan granted under the Home Purchase Scheme;

Amendment No. 43(a)/91

CHAPTER V - HOUSING BENEFITS

809 cont.
May 91

- (1) (a) (A) (ix) Home Financing Scheme Allowance and/or Downpayment Loan granted under the Home Financing Scheme;
- (x) Accommodation Allowance;
- (xi) Housing Loan granted under the Housing Loan Scheme;
- (xii) Public rental housing flat provided by the Hong Kong Housing Authority/Hong Kong Housing Society and acquired under the Civil Service Public Housing Quota, irrespective of whether the officer concerned is a tenant or an authorized occupant;
- (xiii) Home Ownership Scheme flat acquired through the Civil Service Public Housing Quota arrangement (including a flat sold under the Home Ownership Scheme administered by the Hong Kong Housing Authority, Private Sector Participation Scheme, or Middle Income Housing Project), which is subject to resale restriction, irrespective of whether the officer concerned is an owner or authorized occupant;
- (xiv) Home Purchase Loan acquired through the Civil Service Public Housing Quota arrangement.

(B) Civil Service Housing Related Benefits

- (i) Furniture and Domestic Appliances;
- (ii) Furniture Allowance and Domestic Appliances Allowance;
- (iii) Air Conditioning Allowance.
- (b) (i) Except under the circumstances set out in CSR 809(1)(c) below, an officer (whether single, married, separated, divorced or widowed) is entitled to receive at any one time only one civil service housing benefit referred to in CSR 809(1)(a)(A) above, and only one of the same (or similar) civil service housing related benefits referred to in CSR 809(1)(a)(B) above. The officer (whether single, married,

Amendment No. 43(b)/91

CHAPTER V - HOUSING BENEFITS

- 809 cont. (1) (b)
- (i) separated, divorced or widowed) is prohibited from receiving double housing benefits and/or double housing related benefits (i.e. the concurrent receipt of more than one civil service housing benefit and/or more than one of the same (or similar) civil service housing related benefits).
 - (ii) Except under the circumstances set out in CSR 809(1)(c) below, a married officer is not eligible to receive any civil service housing benefit if his spouse is in receipt of a civil service housing benefit provided by the Government or any housing benefit at all provided by a private employer. No married officer may receive double housing benefits (i.e. the same or a similar benefit provided more than once concurrently) when such benefits are provided by the Government (in the case of the officer) and by the Government or a private employer (in the case of the officer's spouse).
 - (iii) A married officer is not eligible to receive a particular civil service housing related benefit if his spouse is in receipt of that same or similar benefit provided by the Government or a private employer. No married officer may receive double housing related benefits (i.e. the same or a similar housing related benefit provided more than once concurrently) when such benefits are provided by the Government (in the case of the officer) and by the Government or a private employer (in the case of the officer's spouse).

Amendment No. 43(c)/91

CHAPTER V - HOUSING BENEFITS

809 cont.
May 91

(iv) Save where provisions exist under the Home Purchase Scheme, the Home Financing Scheme or the Housing Loan Scheme for an officer to receive concurrent housing benefits, an officer is ineligible to receive civil service housing benefits, if he or his spouse is :

- a tenant or an authorized occupant of a public rental housing flat (i.e. a rental flat provided by the Hong Kong Housing Authority, Hong Kong Housing Society and Hong Kong Settlers' Housing Corporation); or
- an owner or an authorized occupant of a flat sold under the Home Ownership Scheme (including a flat sold under the Home Ownership Scheme administered by the Hong Kong Housing Authority, Private Sector Participation Scheme, or Middle Income Housing Project) which is subject to resale restriction; or
- an owner or an authorized occupant of a flat sold under the Flat for Sale Scheme administered by the Hong Kong Housing Society which is subject to resale restriction; or
- the recipient of a loan granted under the Home Purchase Loan Scheme administered by the Hong Kong Housing Authority.

regardless of whether or not the flat or loan concerned was acquired through the Civil Service Public Housing Quota.

(v) For the purpose of this regulation, the term "married officer" includes an officer separated from his spouse. A separated officer who has genuine difficulties in complying with this regulation must report to the Secretary for the Civil Service who shall consider each case on its merits.

Amendment No. 43(d)/91

809 (1) (c) An officer may receive concurrent civil service
(Cont'd) housing benefits and/or concurrent civil service
housing related benefits under the following
circumstances :

(i) An officer may occupy an operational post-tied departmental quarters under the direction of his Head of Department while he or his spouse receives concurrently another civil service housing benefit, provided that in the case of benefits set out in CSR 809(1)(a)(A)(i)-(xi) the approval of the Secretary for the Civil Service is obtained (see CSR 809(1)(d)). The definition of an operational post-tied departmental quarters is contained in the Accommodation Manual. Where the officer goes on leave for a period of 14 consecutive calendar days or more and retains the quarters under CSR 804(5)(a) for his/his family's residence, he shall report to the Secretary for the Civil Service who shall decide whether he may continue to receive concurrently the other benefit during his leave. The 14 days referred to in this regulation include intervening Sundays and Public Holidays, and Sundays and Public Holidays occurring at the beginning or end of the leave period (see CSR 871(5)).

Aug 94

(ii) If an officer or his spouse is in receipt of a civil service housing benefit, he may be granted hotel/hostel accommodation under CSRs 841(3) and (4) and as provided under the Overseas Service Regulations, subject to the approval of the Secretary for the Civil Service.

(iii) If an officer or his spouse is :

- a member of a Local Officers' Co-operative Building Society; or
- an underlessee of a Local Officers' Government Built Housing Scheme; or
- an ex-member of a Local Officers' Co-operative Building Society to which a Government loan has not been granted and who has acquired a legal title to a flat and land which belonged to that Society. (The societies which have not received a Government loan are Wah Yuen Chuen and Shatin Lodge Co-operative Building Societies); or

CHAPTER V - HOUSING BENEFITS

809 cont. (1)(c)(iii) - an owner of a Home Ownership Scheme flat which was not acquired by him or his spouse through the Civil Service Public Housing Quota arrangement; or

- a recipient of a loan, granted under the Home Purchase Loan Scheme administered by the Hong Kong Housing Authority, which was not acquired through the Civil Service Public Housing Quota arrangement,

he may at the same time receive House Allowance, provided that CSRs 861 and 862 are satisfied.

May 91

(iv) If an officer is in receipt of a Housing Loan under the Housing Loan Scheme, Home Purchase Allowance and/or Downpayment Loan under the Home Purchase Scheme, or Home Financing Scheme Allowance and/or Downpayment Loan under the Home Financing Scheme, he may receive concurrently another civil service housing benefit, provided that the terms and conditions and regulations of the schemes providing for the concurrent entitlement are satisfied.

(v) Where an overseas officer, or a local officer receiving a substantive salary on or above MPS point 34 (or equivalent) is directed by his Head of Department to occupy an operational post-tied departmental quarters, he may be provided with a set of furniture and domestic appliances for that quarters under CSR 890, and at the same time be granted either another set of furniture and domestic appliances under CSR 890 or furniture and domestic appliances allowances in lieu at the rates set out in Annex 5.3 for another accommodation occupied by his family (as defined in CSR 801(a)), subject to CSR 809(6) and the following conditions being met:

- the officer's family (as defined in CSR 801(a)) shall be residing at the accommodation for which the other set of furniture and domestic appliances is supplied or furniture and domestic appliances allowances in lieu are granted;

1897

CHAPTER V -HOUSING BENEFITS

809 cont. (1) (c) (v) the officer is eligible for exemption from rent under CSR 871(2); or where the other accommodation occupied by his family is a civil service housing benefit, the officer has obtained approval from the Secretary for the Civil Service or the Head of Department as appropriate for the retention of such a benefit; and

the accommodation shall not be let or sub-let to any person.

(vi) Where there are other exceptional circumstances approved by the Secretary for the Civil Service.

May 91 (d) If a Head of Department directs an officer in receipt of a civil service housing benefit to occupy an operational post-tied departmental quarter, he shall inform Government Property Administrator within 30 days of such direction. In the case of the benefits set out in CSR 809(1)(a)(A)(i)-(xi), the Secretary for the Civil Service shall also be notified; in the case of the other benefits, the Director of Housing shall also be notified (see CSR 809(1)(c)(i) and CSR 831(2)).

(e) Save as provided in CSR 809(1)(c) above and CSR 809(6) below, an officer in receipt of one civil service housing benefit/civil service housing related benefit may relinquish this benefit for switching to another civil service housing benefit/civil service housing related benefit provided to him or his spouse by the Government, or to a housing benefit/housing related benefit provided to his spouse by a private employer.

May 91 (2) A married officer (including an officer separated from his spouse) is required to opt for either the civil service housing benefits/civil service housing related benefits provided to him by the Government or such benefits provided to his spouse by the Government or similar benefits provided to his spouse by a private employer. An officer in receipt of a civil service housing benefit/civil service housing related benefit should, upon getting married, exercise such an option within 60 days of his marriage (see CSR 809(4)(a)). This option can be changed at any time if the officer and his spouse so wish, subject to any specific conditions attaching to a particular benefit, and also subject to the prior approval in writing of the Secretary for the Civil Service being obtained. A separated officer who has genuine difficulties in complying with this regulation must report to the Secretary for the Civil Service who shall consider each case on its merits.

CHAPTER V - HOUSING BENEFITS

- 809 cont. (3) When an officer (whether single, married, separated, divorced or widowed) applies for a civil service housing benefit, he is required to forward a "Statement on Housing and Housing Related Benefits Received by An Officer/His Spouse" (GF 551) to -
- May 91 (a) his Head of Department (in the case of departmental quarters, and public rental housing flats, Home Ownership Scheme flats and Home Purchase Loans acquired through the Civil Service Public Housing Quota arrangement); or
- (b) the Secretary for the Civil Service and his Head of Department (in the case of other civil service housing benefits).
- May 91 (4) (a) An officer (whether single, married, separated, divorced or widowed) who is in receipt of civil service housing benefit(s) is required to report, within 30 days, to -
- (i) his Head of Department (in the case of departmental quarters, and public rental housing flats, Home Ownership Scheme flats and Home Purchase Loans acquired through the Civil Service Public Housing Quota arrangement); or
- (ii) the Secretary for the Civil Service and his Head of Department (in the case of other civil service housing benefits),
- any change in the information provided in the "Statement on Housing and Housing Related Benefits Received by An Officer/His Spouse" (GF 551) which affects his entitlement to such benefit(s).
- (b) An officer (whether single, married, separated, divorced or widowed) who is in receipt of civil service housing related benefit(s) provided by the Government is required to report to his Head of Department within 30 days any change in circumstances which affects his entitlement to such benefit(s).
- (c) Any overpayment of allowances due to the officer's failure to comply with CSR 809(4)(a) and (b) may result in deduction of the overpayment from his salary, or from any money due to him or to his estate.
- (5) An officer may not claim House Allowance if another person is also claiming the allowance or another civil service housing benefit in respect of the same accommodation.

CHAPTER V - HOUSING BENEFITS

809 Cont. (6) (a) As from the date an officer:

- (i) commences to receive Home Purchase Allowance under the Home Purchase Scheme, Home Financing Scheme Allowance under the Home Financing Scheme, or receives a Housing Loan under the Housing Loan Scheme (except where he is entitled to continue receiving other civil service housing benefits under the Terms and Conditions of the Scheme concerned); or
- (ii) acquires a legal title through accepting the first assignment of a lease to a flat and land which belonged at some time to a Local Officers' Co-operative Building Society to which a government loan has been granted, or a Local Officers' Government Built Housing Scheme, and the officer was a member of that Society or underlessee of that Scheme immediately before such assignment (other than where he became a member or underlessee through beneficial succession, or had inherited the flat and land after such assignment),

his eligibility for the following civil service housing benefits and civil service housing related benefits is immediately and irrevocably forfeited -

- (i) Non-Departmental Quarters;
- (ii) Private Tenancy Allowance;
- (iii) Hotel and hostel accommodation;
- (iv) Departmental Quarters, other than operational post-tied departmental quarters which he is directed to occupy by his Head of Department;
- (v) Membership of a Local Officer's Co-operative Building Society, or underlease of a Local Officers' Government Built Housing Scheme, other than in the case of a beneficial successor, nominee or guardian;
- (vi) Membership of a Local Officer's Co-operative building Society flat which has not received a loan from the Government, upon full settlement of the Housing Loan granted under the Housing Loan Scheme or cessation of payment of allowance under the Home Purchase Scheme and Home Financing Scheme, except where he is already a member immediately prior to the full settlement of the Housing Loan or cessation of the Home Purchase Scheme and Home Financing Scheme Allowance.

May 91

CHAPTER V - HOUSING BENEFIT

- 809 cont. (6) (a) (vii) House Allowance;
- (viii) Home Purchase Allowance granted under the Home Purchase Scheme (other than in the case of an officer in receipt of Home Purchase Allowance under CSR 809(6) (a) (i));
- May 91 (ix) Home Financing Scheme Allowance granted under the Home Financing Scheme (other than in the case of an officer in receipt of Home Financing Scheme Allowance under CSR 809(6) (a) (i));
- (x) Housing Loan granted under the Housing Loan Scheme (other than in the case of an officer in receipt of a Housing Loan under CSR 809(6) (a) (i));
- (xi) Public rental housing flat, Home Ownership Scheme flat and Home Purchase Loan acquired through the Civil Service Public Housing Quota arrangement; and
- (xii) Furniture and domestic appliances, other than those supplied to an operational post-tied departmental quarters which he is directed to occupy by his Head of Department;
- May 91 (xiii) Furniture and Domestic Appliances Allowance in the case of all Home Financing Scheme Allowance recipients and Home Purchase Allowance recipients as from 1.10.90.
- (b) Where an officer has forfeited his eligibility for the civil service housing benefits and civil service housing related benefits set out in CSR 809(6) (a) above, he will not be eligible for any such benefits during his remaining service, regardless of whether such service is broken, except where he is directed to occupy an operational post-tied departmental quarters by his Head of Department.
- (c) If such an officer is married and his spouse is a civil servant, his spouse will also be ineligible for the civil service housing benefits and civil service housing related benefits set out in CSR 809(6) (a) above during his spouse's remaining service, regardless of whether such service is broken, except where his spouse is directed to occupy an operational post-tied departmental quarters by his spouse's Head of Departmental.

1901

CHAPTER V - HOUSING BENEFITS

- 809 cont. (7) (a) An officer in receipt of civil service housing benefit(s) stipulated in CSR 809(1)(a)(A)(i)-(xiv) is required to personally live in the accommodation as his full-time residence, unless prior written approval for exemption is obtained from
- May 91 (i) the Director of Housing for the benefits set out in CSR 809(1)(a)(A)(xii)-(xiv);
- May 91 (ii) the Secretary for the Civil Service for the benefits set out in CSR 809(1)(a)(A)(i)-(xi) for circumstances other than the following -
- he has acquired an uncompleted property and is thereby exempted from the live-in requirement until the property is ready for occupation (the property is deemed to be ready for occupation one month from the date on which a mortgage or first legal charge on the property is executed); or
 - he is directed by his Head of Department to live in an operational post-tied departmental quarter; or
 - he is on overseas duty, posting, full-pay leave or no-pay leave for attending training under CSR 1014.
- (b) Letting, sub-letting or use of such accommodation, or any part thereof, for any purpose other than residence for the officer himself and his family is prohibited (see CSR 805).
- (8) An officer who fails to comply with CSR 809(1)-(7) above may render himself liable to disciplinary and/or legal proceedings and/or disqualification from all forms of civil service housing benefits, and where appropriate, may be required to pay or refund to the Government an appropriate sum to be determined by the Secretary for the Civil Service.
- (9) In the event of any dispute arising from this regulation, the Secretary for the Civil Service's decision shall be final.

Chairperson and Members of Equal Opportunities Commission Appointed

The Governor has appointed Dr Fanny Cheung Mui-ching as the Chairperson of the Equal Opportunities Commission (EOC) for a term of three years commencing May 20, 1996.

Sixteen other members have also been appointed to serve on the Commission for a two-year term with effect from the same day.

Under the Sex and Disability Discrimination Ordinances, the EOC is to eliminate discrimination and promote equal opportunities between women and men and persons with and without a disability.

The Commission will undertake public education and research programmes to promote equal opportunities in the community, handle complaints and encourage conciliation between parties in dispute, and provide assistance to aggrieved persons.

It may also issue codes of practice to provide practical guidance to the employment sector to facilitate compliance with the statutory requirements of the Ordinances.

Dr Cheung is currently the Dean of the Faculty of Social Science of the Chinese University of Hong Kong (CUHK). She is fully conversant with issues relating to discrimination on the grounds of sex and disability in Hong Kong.

For the past 20 years, Dr Cheung has played an active part in promoting equal opportunities for women. She spearheaded the establishment of a women's centre in the early 1980s to provide comprehensive counselling and development services for women. She also founded the Gender Research Programme at CUHK 10 years ago and has been serving as the Programme Director since.

Furthermore, Dr Cheung has a commendable track record in the field of rehabilitation. She has been closely involved in public education and community campaigns to promote public acceptance of the handicapped persons and is the incumbent Vice-Chairperson of the New Life Psychiatric Rehabilitation Association. She is also the Chairperson of the Advisory Committee on Social Work Training and Manpower Planning.

The 16 members appointed to the EOC represent a wide range of community interests. They possess diverse but useful expertise in the relevant fields. Apart from the professionals and academics, there are members who have recognised credentials in promoting the rights of women, equal opportunities and rehabilitation services for the disabled persons, or who are conversant with issues relating to the employment sector.

The members are as follows:

1. Mr Chan Fuk-sing, Peter - certified public accountant, member of the Rehabilitation Advisory Committee;
2. Mr Cheung Wing-lam, Linus - Chief Executive of the Hong Kong Telecommunications Ltd and member of the Operations Review Committee of the Independent Commission Against Corruption;
3. Ms Cheung Yuet-lan - member of the Regional Council;
4. Dr Fung Hon-yuen, Stevenson - lecturer of the University of Hong Kong and member of the Rehabilitation Advisory Committee;
5. Ms Hung Suet-lin - social worker of Caritas-Hong Kong and Vice-chairman of the Association for the Advancement of Feminism;
6. Mrs Lam Pei Yu-dja, Peggy - Chairman of the Wan Chai District Board;
7. Mr Lee Man-ban - certified public accountant, Chairman of the Hong Kong Society for Rehabilitation;
8. Mr Lee Yeh-kwong, Charles - solicitor, member of the Governor's Business Council;
9. Mr Leung Kwan-yuen, Andrew - Managing Director of the Sun Hing Knitting Factory Ltd and employer representative on the Labour Advisory Board;
10. Miss Leung Oi-sie, Elsie - solicitor, President of the International Federation of Women Lawyers;
11. Ms Li Fung-ying - General Secretary of the Federation of Hong Kong and Kowloon Labour Unions and employee representative of the Protection of Wages on Insolvency Fund Board;
12. Professor Ng Mun-hon - Professor of the University of Hong Kong and member of the Advisory Council on AIDS;
13. Miss Shum Mun-ling, Elle - Director of Protech Components Ltd and member of the Committee on the Promotion of Civic Education;
14. Ms Wu Hung-yuk, Anna - solicitor, Vice-chairman of the Consumer Council;
15. Dr Wu Wai-yung, Raymond - medical practitioner, Chairman of the Rehabilitation Advisory Committee;
16. Mr Yeung Kong-hing, Peter - General Manager (Personnel) of the Hong Kong Air Cargo Terminals Ltd and Chairman of the Transport and Physical Distribution Training Board of the Vocational Training Council.

end/Wednesday, May 8, 1996
NNNN

G.N. 2015

LEGAL PRACTITIONERS ORDINANCE (Chapter 159)

It is hereby notified that, in exercise of the powers conferred by section 9 of the Legal Practitioners Ordinance (Chapter 159), the Chief Justice has appointed the following persons to be Members of the Solicitors Disciplinary Tribunal Panel with effect from 3 May 1996:—

Mr Antonio Angara AMADOR
Mr Brian George HANSEN
Mr Steven James Belton TRUMPER
Mr William August WILSON III

3 May 1996

Alice TAI *Judiciary Administrator for Chief Justice*

G.N. 2016

MIDWIVES REGISTRATION ORDINANCE (Chapter 162)

It is hereby notified that, in exercise of the powers conferred on the Governor by section 3(2)(b) of the Midwives Registration Ordinance and delegated to the Secretary for Health and Welfare, the Secretary for Health and Welfare has been pleased to appoint Dr HO Pak-chung as Member of the Midwives Board for a period of three years with effect from 1 May 1996.

G.N. 2017

NURSES REGISTRATION ORDINANCE (Chapter 164)

It is hereby notified that, in exercise of the powers conferred on the Governor by section 3(2)(b) of the Nurses Registration Ordinance and delegated to the Secretary for Health and Welfare, the Secretary for Health and Welfare has been pleased to appoint Mrs. TSANG WOO Che-moy, Betty as Member of the Nursing Board for a period of three years with effect from 1 May 1996.

G.N. 2018

PUBLIC FINANCE ORDINANCE (Chapter 2)

The following appointment is hereby notified:—

Mr. CHANG Wai-yuen, Rex, Acting Senior Administrative Officer, to act as Principal Assistant Secretary for the Treasury in addition to his existing duties from 6 May 1996 to 14 June 1996.

G.N. 2019

REGISTRATION OF PERSONS ORDINANCE (Chapter 177)

It is hereby notified that, in exercise of authority delegated to him by the Governor, the Secretary for Security has been pleased to appoint the following persons to be adjudicators of the Registration of Persons Tribunal under section 3C of the Registration of Persons Ordinance for a period of two years with effect from 1 May 1996:—

Dr. SO Kai-ming
Mr. TONG Ka-wah, Ronny, Q.C.
Mr. Alfred CHOW Cheuk-yu
Mr. Joseph KUN Kin-wai

G.N. 2020

REGISTRATION OF PERSONS ORDINANCE (Chapter 177)

It is hereby notified that the following person ceased to be Deputy Chief Adjudicator of the Registration of Persons Tribunal with effect from 1 May 1996:—

Mr. Michael SHUM Shiu-wai, M.B.E.

G.N. 2021

SEX DISCRIMINATION ORDINANCE
(67 of 1995)

It is hereby notified that, in exercise of the power conferred by section 63(3) of the Sex Discrimination Ordinance, His Excellency the Governor has been pleased to appoint Dr CHEUNG Mui-ching, Fanny, J.P. to be the Chairperson of the Equal Opportunities Commission for a period of three years with effect from 20 May 1996.

His Excellency has also appointed the following persons to be members of the Equal Opportunities Commission for a period of two years with effect from 20 May 1996:—

Mr. CHAN Fuk-sing, Peter, M.B.E., J.P. Mr LEUNG Kwan-yuen, Andrew
Mr. CHEUNG Wing-lam, Linus, J.P. Miss LEUNG Oi-see, Elsie, J.P.
Ms. CHEUNG Yuet-lan Ms LI Fung-ying, M.B.E.
Dr. FUNG Hon-yuen, Stevenson Professor NG Mun-hon
Ms. HUNG Suet-lin Miss SHUM Mun-ling, Elle
Mrs. LAM PEI Yu-dja, Peggy, O.B.E., J.P. Ms WU Hung-yuk, Anna
Mr. LEE Man-ban, M.B.E., J.P. Dr WU Wai-yung, Raymond, J.P.
Mr. LEE Yeh-kwong, Charles, O.B.E., J.P. Mr. YEUNG Kong-hing, Peter

G.N. 2022

SURVIVING SPOUSES' AND CHILDREN'S PENSIONS ORDINANCE (Chapter 79)

It is hereby notified that, in exercise of the powers conferred by section 4 of the Surviving Spouses' and Children's Pensions Ordinance, His Excellency the Governor, has appointed Mr CHENG Se-lim as a Director of the Surviving Spouses' and Children's Pensions Scheme with effect from 1 June 1996.

It is hereby notified that Mrs. Bonnie Yee-lo Smith ceases to be a Director of the Scheme with effect from 1 June 1996.

G.N. 2023

THE HONG KONG INSTITUTE OF EDUCATION ORDINANCE (Chapter 444)

It is hereby notified that under section 8 of the Hong Kong Institute of Education Ordinance, His Excellency the Governor in his capacity as the President of the Hong Kong Institute of Education has been pleased to make the following appointments/re-appointments to the Council of the Hong Kong Institute of Education:—

- (a) Mr. Simon IP Sik-on, O.B.E., J.P. as Chairman for the period 25 April 1996 to 24 April 1998
(b) Dr. Thomas LEUNG Kwok-fai as Deputy Chairman for the period 25 April 1996 to 24 April 1998

L.N. 185 of 1996

1996年第185號法律公告

**SEX DISCRIMINATION ORDINANCE (67 OF 1995)
(COMMENCEMENT) NOTICE 1996**

**性別歧視條例(1995年第67號)
1996年(生效日期)公告**

Under section 1(2) of the Sex Discrimination Ordinance, I appoint 20 May 1996 as the day on which sections 63, 64, 67, 68 and 69 and Schedule 6 of the Ordinance shall come into operation.

本人現根據《性別歧視條例》第1(2)條，指定1996年5月20日為該條例第63、64、67、68及69條及附表6開始實施的日期。

3 May 1996.

Michael M. Y. SUEN,
Secretary for Home Affairs.

孫明揚
政務司

1996年5月3日

L.N. 184 of 1996

1996年第184號法律公告

**DISABILITY DISCRIMINATION ORDINANCE (86 OF 1995)
(COMMENCEMENT) NOTICE 1996**

**殘疾歧視條例(1995年第86號)
1996年(生效日期)公告**

Under section 1(2) of the Disability Discrimination Ordinance, I appoint
20 May 1996 as the day on which sections 62, 64 and 65 of the Ordinance shall
come into operation.

本人現根據《殘疾歧視條例》第1(2)條，指定1996年5月20日為該條例第62、64及
65條開始實施的日期。

Mrs. Katherine FOK,
Secretary for Health and Welfare.

霍羅兆貞
衛生福利司

4 May 1996.

1996年5月4日

INFORMATION NOTE

SEX AND DISABILITY DISCRIMINATION (MISCELLANEOUS PROVISIONS) BILL 1996

1. The Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 (the Bill) is a private member's bill to amend the Sex Discrimination Ordinance¹ and the Disability Discrimination Ordinance² (the Ordinances). The Bill's sponsors are the Hon. Emily Lau and the Hon. Christine Loh.
2. The main purpose of the Bill is to strengthen and improve the Sex Discrimination Ordinance (the SDO). The SDO establishes the Equal Opportunities Commission (the EOC), and is regarded by the Administration as the model and framework for all other Hong Kong legislation on equal opportunities. The Bill also makes parallel amendments to the Disability Discrimination Ordinance (the DDO) where appropriate.
3. Almost all the amendments contained in the Bill were previously recommended by the Bills Committee that studied the Ordinances prior to enactment (the 1995 Bills Committee) during weekly meetings held November 1994 to July 1995. Both Ordinances are substantially based on the UK Sex Discrimination Act 1975,³ and many amendments contained in the Bill follow recommendations made by the UK Equal Opportunities Commission on the basis of its experience administering that UK Act.

Commencement dates

(Clauses 2 and 25)

4. The Bill specifies commencement dates for the Ordinances. The responsible policy secretaries remain able to commence the Ordinances by stages, provided each Ordinance is fully in force by the specified date.
5. The Ordinances currently leave commencement entirely at the Administration's discretion. As a matter of policy, the Administration will not bring any part of the Ordinances into force until the EOC is operational. Thereafter, the Administration will continue to postpone commencement of all the employment provisions until the EOC issues a relevant code of practice. This will likely delay commencement of the employment provisions for *at least a year after the EOC begins work on a code of practice* because of the drafting process required by the Ordinances: the EOC must undertake preliminary consultation with relevant organisations, such as employers' and workers' organisations; publish the draft code for wider public consultation and consider any representations made; republish and renew consultation if it chooses to modify the published guidelines; and table the finalised code for at least a month in Legco, where it may be further amended.⁴
6. The Bill specifies 1 September 1996 as the commencement date for both Ordinances. It is expected that another date may be substituted in light of when the Bill is actually enacted.
7. A similar amendment (specifying a 1 January 1996 commencement date) was put

¹ LN 67 of 1995.

² LN 86 of 1995.

³ 1975 c. 65 U.K.

⁴ SDO s. 69(2)-(9); DDO s. 65(2)-(9).

forward by the 1995 Bills Committee.

Indirect discrimination

(Clauses 4, 5, 6 and 27)

8. The Bill amends the test used in the Ordinances to identify indirect discrimination. The existing test is copied from UK law, and has been criticised by the UK EOC. The Bill replaces it with a simplified test used in recent Australian legislation (in particular, in the federal Sex Discrimination Amendment Act 1995).

9. The test now used in the Ordinances provides that indirect discrimination may arise if a “requirement or condition,” although applied equally, has a disproportionate impact on one sex (or on persons with a particular disability). The UK EOC explains why this test should be changed:

“There are two problems for a complainant in identifying the requirement or condition which is applied equally to both sexes. First, a complainant may have difficulty in deciding what the requirement is (particularly if it is composite: e.g. age + qualifications + experience) and in expressing that requirement.

“Secondly, an employer may express a ‘preference’ which may or may not constitute an absolute standard. In a case taken under the Race Relations Act 1976, *Perera v. Civil Service Commission* [1983] ICR 428, the court held that a ‘requirement or condition’ could only be said to exist when it amounted to a complete bar if not met. This means that practices which are decisive in a particular situation but which are not absolute bars cannot form the basis of a claim.”⁵

Exceptions for small employers

(Clauses 7(b)-(c) and 28)

10. Both Ordinances exempt small employers, i.e. those with 5 or fewer employees, for a 3 year period after the Ordinances’ enactment. The Bill reduces the duration of these exceptions by half.

11. As a result, the exception for small employers in the SDO will expire on 14 January 1997 and in the DDO on 3 February 1997, instead of on 14 July and 3 August 1998 as now provided. Legco may extend either exception by resolution for an additional year.

Exception for security of Hong Kong

(Clause 11)

12. The SDO provides an exception for any act done to safeguard Hong Kong’s security. The Bill repeals this exception, as recommended by the 1995 Bills Committee.

13. The Administration has not made clear what acts the exception is intended to authorise, but an act done for the purpose of “safeguarding security” falls within its scope regardless of whether that act was reasonable or was necessary to achieve the purpose. The exception also provides that in cases outside the employment field, the Chief Secretary (or a delegate) may *conclusively* certify *any* act as subject to the exception. There is no judicial control of the use of such certificates.

14. A similar exception was deleted from the DDO prior to enactment.

⁵ UK EOC, “Equal Treatment for Men and Women: Strengthening the Acts,” 1988, para. 3.3.

Exception for death and retirement benefits

(Clauses 7(a), 8, 9, 22 and 23)

15 The SDO does not apply to death and retirement benefits provided by employers, partnerships, trade unions, etc. This means, for example, that it remains lawful under the SDO for an employer to offer less valuable retirement benefits to women employees than to men in the same circumstances, despite the absence of any actuarial basis for the difference.

16. The Bill replaces this general exception with a narrower, “grandfather” type exception, as proposed by the Administration to the 1995 Bills Committee:

“It is not the Administration’s intention to encourage new retirement schemes which have yet to be set up to differentiate between male and female employees in relation to death or retirement benefits without any reference to actuarial data. In line with this principle, we now propose to effect a committee-stage amendment to [SDO s. 11(4)]. The amendment will limit this exception to members of death and retirement schemes which are already in operation on the commencement of [the section]. All employees who obtain employment after the commencement of the [SDO] and those employees who are offered a scheme of retirement and benefits after such commencement will not be covered by the exception. In providing death or retirement benefits to these employees, the employer shall not differentiate in the treatment of his/her employees on the ground of gender, unless such differential treatment falls within the ambit of [SDO s. 51, which authorises reliance on actuarial data].”⁶

17. Such a grandfather exception was acceptable to the 1995 Bills Committee, but the amendment eventually made by the Administration did not have the effect described. Instead, a grandfather exception of the type described applies only to death or retirement benefits which are listed in Schedule 2. Because nothing has yet been listed in that schedule, the SDO still does not apply to *any* death and retirement benefits, whether new or pre-existing. No explanation was given for Schedule 2, which in effect indefinitely defers the originally proposed arrangement. The Bill repeals Schedule 2 and its associated provisions and substitutes an exception of the type originally proposed.

Further exceptions

(Clauses 10, 12, 24, 29, 31, 39 and 40)

18. The SDO makes several, major exceptions by listing them as “further exceptions” in Schedule 5. The Bill provides for the expiry of several of these scheduled exceptions in 1-2 years after the Bill’s enactment. The exceptions set to expire authorise:

- sex discrimination in the small house policy in the New Territories;
- sex discrimination in certain practices of the disciplined services (including height, weight, uniform and equipment requirements, weapons training, participation in the Police Tactical Unit, and overall sex ratios); and
- marital status discrimination in public housing under the Home Ownership Scheme and the Private Sector Participation Scheme.

⁶ Home Affairs Branch, SDB Paper No. 13/95, para. 2 -- references to the Sex Discrimination Bill are up-dated to the SDO.

19. The Bill allows these exceptions to remain in effect for a grace period of 1 year, with the possibility of extension for a 2nd year by Legco resolution. At the end of this time, the exceptions (together with the schedule and other provisions authorising them) will expire. A similar arrangement now applies to the SDO's exception for protective legislation, which is due to expire on 14 July 1996 unless it is extended for another year by Legco resolution.⁷

20. The Bill replaces 3 other scheduled exceptions with similar exceptions in the body of the SDO. These exceptions authorise:

- an employer to refuse double benefits to married employees (e.g. a housing allowance for an employee whose spouse already receives a similar allowance);
- marital status discrimination in access to reproductive technology (e.g. in vitro fertilisation, artificial insemination) ; and
- marital status discrimination in access to facilities for adoption of children.

21. The remaining scheduled exceptions in the SDO concern obsolete, statutory pension arrangements. Because of the amendments that the Bill makes in respect of death and retirement benefits (described above), these exceptions are no longer needed and are repealed immediately.

22. The DDO also permits the making of "further exceptions" by schedule, but this provision is superfluous because the schedule is empty. The Bill therefore repeals the DDO schedule and its associated provisions.

Remedies obtainable in civil proceedings.

(Clause 16)

23. The Bill removes arbitrary limits that the SDO imposes on the remedies a Court may order for unlawful sex discrimination, and instead brings those remedies into parallel with the remedies available now under the DDO for disability discrimination. In particular, the Bill:

- repeals the \$150,000 limit on damage awards for work-related sex discrimination or harassment, which now prevents the Court from fully compensating claimants who were seriously harmed by such unlawful acts;
- empowers the Court to order an employer to reinstate a terminated employee if the Court judges this to be the just and appropriate remedy in the circumstances; and
- removes the bar against damages in cases where indirect sex discrimination was unintentional, giving the Court the same discretion to award damages as in other types of cases.

Civil proceedings by the EOC

(Clauses 18, 19, 21, 35, 36 and 38)

24. The Bill expressly enables the EOC to bring court proceedings in its own name. The EOC may bring such proceedings under the Ordinances, or under the Bill of Rights or the Letters Patent in relation to the types of discrimination that concern the EOC.

⁷ SDO 57(3)-(4).

25. The Administration previously agreed in principle to a request by the 1995 Bills Committee that the EOC be enabled to litigate in its own name. The resulting provisions, however, allow the EOC to do so only after the Secretary for Home Affairs has made regulations to govern such litigation, and only to the extent authorised by those regulations.

26. Unless replaced, the existing enabling provisions may perversely make the EOC's position worse than it would have been with no such provisions at all. Under UK court precedents, the EOC would have been able to bring judicial review proceedings in its own name despite not having any express, enabling provision. Because the Ordinances now each contain such a provision, however, the courts may conclude that the EOC cannot rely on the UK precedents and must instead await the making of regulations under the provisions. Aside from causing delay, the regulations made by the Secretary for Home Affairs may well place even greater restrictions on the EOC than the UK precedents would have.

27. There is also an important loophole in the existing provisions because they do not enable the EOC to litigate under the Bill of Rights and the Letters Patent in relation to the types of discrimination that concern the EOC. The existing provisions limit the EOC to proceedings under the Ordinances, but some acts of sex or disability discrimination may contravene the Bill of Rights or the Letters Patent even though they are lawful under the Ordinances, e.g. because an act falls within exceptions to the Ordinances which have no parallel in the Bill of Rights.

28. In addition to enabling the EOC to bring proceedings on its own, the Bill also enables the EOC, with leave of the court hearing proceedings:

- to intervene in proceedings of the types it may bring itself; and
- to take over proceedings that have been abandoned by an individual who was carrying them on with EOC assistance.

Formal investigations by the EOC

(Clauses 14, 15, 17, 32, 33 and 34)

29. The Bill simplifies the procedure for formal investigations by the EOC, and enables the EOC to accept binding undertakings in cases where a voluntary resolution is possible.

30. Before the EOC commences an investigation into specific persons or organisations, the Ordinances require it to draft terms of reference for the investigation. The terms of reference must both name the person (or organisation) to be investigated, and specify what particular unlawful acts the EOC believes that person may have committed. The Bill repeals the requirement that the EOC specify before launching an investigation what unlawful acts it believes may have been committed. The EOC must specify such beliefs instead at a later stage in the investigation, if it proposes to compel information from a person under investigation.

31. As the UK EOC has explained, the existing requirement disables the EOC from investigating at all in many situations where information is most needed.

“The intention . . . was that the Commission could investigate the possible causes of unequal treatment or the possible barriers to equal opportunity in a named organisation . . . irrespective of whether the Commission believed that such organisation might be committing unlawful acts. Such a power is important in that it enables the Commission to investigate the causes of job segregation in major

institutions, without being dependent on individuals' complaints or other evidence that particular kinds of unlawful acts might have been committed. Inequality is not necessarily the result of unlawful activity; it may be simply the result of ignorance or misunderstanding. . . .

"There are many situations which give rise to concern that equality of opportunity is being denied . . . but where, in advance of an investigation, there is no evidence as to the reasons why this has come about on which a belief relating to unlawful acts could be based. This is particularly likely to be the case where indirect discrimination is occurring as a result of certain practices and procedures."⁸

32. Another problem arising from the requirement is that such highly-specific terms of reference become a straight-jacket on an investigation. If an investigation reveals unlawful acts *other* than those that the EOC originally suspected and specified in the terms of reference, then the EOC must redraft the terms of reference to include them. Each time the Commission drafts new terms of reference, however, it must also hold a new round of hearings at which the parties being investigated may raise objections, with assistance of counsel if they wish.

33. The consensus of UK experts is that the cumbersome procedure seriously undermines the effectiveness of formal investigations. In a related UK court judgement, for example, Lord Denning remarked "I am very sorry for the commission, but they have been caught up in a spider's web spun by Parliament, from which there is little hope of escaping."⁹ Such elaborate restrictions on investigations are unnecessary, considering that the only sanctions that may result from an investigation are adverse publicity and, rarely in practice, a court injunction, but no awards of damages or other penalties.

34. The Bill also enables the Commission to register and enforce a binding undertaking voluntarily made by a person not to do particular discriminatory acts, as if the undertaking were an enforcement notice arising from a formal investigation. Essentially, this provides a short-cut for the EOC in cases where a person whom the EOC suspects of unlawful discrimination is willing to resolve the matter voluntarily without further EOC enforcement action.

Other changes in respect of the EOC

(Clauses 3, 13, 20, 26, 30 and 37)

35. The Bill gives the EOC express authority to carry out 2 important functions:

- to promote international standards relevant to the Ordinances; and
- to examine and report on proposed legislation.

36. Express statutory mention of these activities avoids doubt about how far the EOC may lawfully carry them out under the EOC's existing, general functions. It also underlines these activities' importance. Some of the international standards mentioned include those set by the ICCPR and ICESCR (so far as they relate to the types of discrimination that concern the EOC); CEDAW; ILO Recommendation No. 90 on equal pay; and the U.N. Declarations on the

⁸ UK EOC, "Equal Treatment for Men and Women: Strengthening the Acts," 1988, para. 4.7-4.8.

⁹ Lord Denning MR, *CRE v Amari Plastics (C.A.)* [1982] 1 Q.B. 1194 at 1203.

Rights of Disabled Persons, on the Rights of Mentally Retarded Persons, and on the Elimination of Violence Against Women.

37. The Bill also makes minor technical amendments to ensure that any time during which the EOC attempts to conciliate a person's complaint does not count against the time limit for the person to bring court proceedings on the complaint. The Ordinances currently encourage but do not require the courts to take this approach to time limits.

Office of Christine Loh
20 May 1996

布政司署
政務科
香港灣仔
軒尼詩道一百三十號
修頓中心
三十一樓



GOVERNMENT SECRETARIAT
HOME AFFAIRS BRANCH
31ST FLOOR, SOUTHOBN CENTRE,
130 HENNESSY ROAD,
WAN CHAI,
Hong Kong

本署參考 OUR REF. :
來函編號 YOUR REF : HAB/CR/1/2/34 Pt. IV
電話 TEL NO. : 2835 1368
傳真 FAXLINE : 2591 6002

20 May 1996

Clerk to the Legislative Council
(Attn: Miss Betty Ma)
Legislative Council Building
8 Jackson Road
Hong Kong
(Fax: 2810 1691)

Dear Miss Ma,

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

I refer to your letters dated 17 and 22 April 1996 regarding the Hon Lau Chin-shek's Equal Opportunities (Family Responsibility, Sexuality and Age) Bill.

2. In assessing the financial implications of Mr Lau's Bill, reference has been drawn to the Hon Simon Ip's proposed amendment to the Legal Aid (Amendment) Bill 1995. Consideration has also been given to the Hong Kong Bill of Rights (Amendment) Bill 1996 proposed by the Hon Bruce Liu.
3. Mr Simon Ip's proposed amendment in the last LegCo session with reference to clause 14 of the Legal Aid (Amendment) Bill 1995 would have had the effect of extending supplementary legal aid (under section 5A of Cap. 91) to all categories of professional negligence actions and not merely medical, dental and legal professional negligence as the Government Bill has proposed. The President had ruled that Mr. Ip's proposed amendment would require additional expenditure in implementing the extension of the scope of legal aid and thus would have a charging effect within the meaning of Standing Order 45(6).

4. The Administration has re-considered the former President's ruling on Mr Simon Ip's proposed amendment in the light of the Hong Kong Bill of Rights (Amendment) Bill 1996 proposed by Mr Bruce Liu. In this connection, the recent ruling on Mr Bruce Liu's Bill to extend the scope of the Bill of Rights Ordinance has reinforced our understanding that if a bill is enacted which brings a new class of civil actions within the scope of legal aid, any legal aid applicant will be legally entitled, under section 5 of the Legal Aid Ordinance (Cap. 91), to public funding for court action provided that the applicant meets the means test and the merits test requirements. The ruling confirmed that funding for legal aid under section 5 of the Legal Aid Ordinance is a charge on the revenue of the Government within the meaning of Standing Order 23 and Royal Instructions XXIV(2). It is apparent that this is also the view of Counsel to the Legislature: see paragraphs 6-9 of the President's ruling.

5. In a similar manner, the Equal Opportunities (~~Family Responsibility, Sexuality and Age~~) Bill would introduce new causes of action which would become eligible for legal aid. It obliges the Government to spend money by granting legal aid to persons who meet the means test and the merits test in respect of the new categories of cases that the Legal Aid Ordinance would cover. As additional funds would have to be voted for this purpose, it follows in our view that the effect of Mr Lau's Bill will be to dispose of or charge the revenue or other public moneys of Hong Kong.

6. In response to Mr Lau's comments that there is no relevance between his Bill and section 5AA of the Legal Aid Ordinance, the Administration would like to clarify that our assessment of the charging effect of Mr Lau's Bill is not in any way related to the scope of the discretionary waiver of the means test provided under section 5AA of the Legal Aid Ordinance. Furthermore, the Administration also believes that it is not proper to draw an analogy between Mr Lau's Bill and the Immigration (Amendment) Bill 1995 by the Hon Lee Cheuk-yan. As pointed out by the President in the latter case, Mr Lee's Bill did not impose new and distinct functions on the Immigration Department. On the contrary, our assessment on Mr Lau's Bill is based on the fact that it will impose new and distinct functions on the Legal Aid Department by extending the scope of legal aid to new causes of action.

7. The Administration did not advance this argument in respect of the Equal Opportunities Bill introduced in July 1994 and the previous Equal Opportunities (Family Responsibility, Sexuality and Age) Bill introduced in July 1995. Our understanding of the charging effect concept where legislation creates new causes of action within the scope of legal aid and hence would have a charge on

Government revenue was only brought to focus in the context of the former President's ruling on Mr Simon Ip's proposed amendment to Legal Aid (Amendment) Bill 1995. The more recent ruling on Mr Bruce Liu's Bill has confirmed this understanding further.

8. Mr Lau maintains that additional expenditure on legal aid caused by the introduction of new civil proceedings does not imply a charging effect because it is part of the cost of the administration of justice and that expenditure for that purpose is regarded as already authorised for the purposes of SO 23. We agree that the creation of new causes of action which fall to be litigated within the existing courts system do not create a charging effect. However, it does not extend to the additional cost of *every* aspect of the administration of justice. In this connection, we also note that the President's ruling on Mr Bruce Liu's Bill has already addressed this issue.

9. As pointed out by the Counsel to the Legislature, expenses for the administration of justice do not comprise an open ended category into which any expense remotely connected with the courts can be placed so as to by-pass the financial initiative of the Crown. It is only the additional expense in the operation of the courts system which results from a widening of their jurisdiction or from creating new offences which is not considered to have a charging effect. As the LegCo Legal Adviser emphasised, legal aid is not part of the machinery of the court system; it is an expense arising out of statutory duties imposed on a Government department.

10. The incidence of additional expenditure on legal aid which will be required out of the revenue as a result of the Bill will vary from year to year. Whether the amount be small or large, the vital point is that some measurable, though variable, additional charge on public funds will be produced by this legislation.

11. Turning to Mr Lau's observations on the statements in Erskine May, we would like to emphasise that compared to precedents drawn from the House of Commons as to how to apply the restriction imposed by Clause XXIV(2) of the Royal Instructions, the President's own interpretative rulings must be accorded a superior authority within Hong Kong. Statements in Erskine May regarding the "main" and "incidental" objects of a Bill and their impact on the question of charging effect must be read in the context of Hong Kong's own growing body of precedents on the subject.

12. In response to Mr Lau's comments that legal aid expenses were not included as part of the financial implications in the LegCo Briefs on the Sex

Discrimination Bill (SDB) and the Disability Discrimination Bill (DDB), we would like to point out that the assessment of financial implications of the proposals contained in all LegCo Briefs is done on the basis of the extent of information available at that time. In respect of the Sex and Disability Discrimination Bills, it had been acknowledged that there would be resource implications on legal aid as a result of the enactment of both Bills. However, these were not reflected in the LegCo Briefs on the two Bills because the Administration had not been able to arrive at a reliable assessment of the resource requirements taking into account the estimated timing of the enactment of the Bills.

13. Notwithstanding the above, the resource requirements of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance on legal aid are now fully reflected in the resources provided to the Legal Aid Department. In the Controlling Officer's Report under Head 94 - Legal Aid Department in the 1996-97 Estimates, references have been made to the additional demand for legal aid arising from the two pieces of anti-discrimination legislation and an increase in provision for legal aid costs due to increased expenditure arising from an anticipated increase in the number of legal aid applications to be processed and legal aid certificates to be issued.

14. In order to implement the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, the Administration has estimated that the additional funds required could amount to \$27 million a year. The estimate is made on the basis of the additional provision of \$25 million for legal aid cases arising from the Sex Discrimination Ordinance, as well as overseas experience in handling various types of discrimination. Judging from experience overseas, sex discrimination cases constitute slightly below 30% of the total number of discrimination cases filed while cases of discrimination on the grounds of family responsibility, sexual orientation, and age account for slightly over 30% of the total number of all cases filed.

15. It should be noted that we have only arrived at a conservative estimate of the additional expenditure required. As the Sex Discrimination Ordinance has already provided for the Equal Opportunities Commission to conciliate between the relevant parties in dispute, it is anticipated that fewer cases would have to resort to court action and thus fewer applications for and less expenses involved in providing legal aid. On the other hand, the Equal Opportunities (Family Responsibility, Sexuality, and Age) Bill does not provide for the conciliatory mechanism and the District Court is to hear and determine all alleged cases of discrimination concerned. There is certainly a possibility that the number of cases applying for and eventually eligible for legal aid would be higher than our estimation in this exercise.

16. I trust that the above clarifies the Administration's position on the issue. As I have already mentioned, with Hong Kong's own growing body of precedents on the question of the charging effect implication of Members' Bills, it is important that the issue be considered in the context of Hong Kong's constitutional development and interpretation on this subject.

Yours sincerely,

(Mrs Stella HUNG)
for Secretary for Home Affairs

MEMBERS OF LEGISLATIVE COUNCIL

立法局議員

22nd May, 1996

Governor Christopher Patten
Government House
Upper Albert Road
Hong Kong

Dear Governor Patten,

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

The undersigned Members of the Legislative Council ask that you give the Hon. Lau Chin-shek permission to introduce the captioned Bill, a private members' bill, into Legco in its present form despite any legal aid implications. The Administration has been seeking to block the Bill's introduction on the ground that it may require public expenditure if some litigants under it qualify for legal aid.

The Legal Aid Ordinance (Cap. 91) makes legal aid generally available to eligible litigants in civil proceedings in the District Court and above. Although the Bill itself makes no mention of legal aid, the Legal Aid Ordinance would apply to civil proceedings under the Bill in the usual way, making legal aid available under the Bill as a matter of course.

Legal aid is, of course, funded out of the public purse. As you know, a bill that has a charging effect on public money cannot legally be introduced into the Legislative Council without your prior permission. The Administration argues that the Bill's legal aid implications amount to such a charging effect, and that consequently, the Bill in its present form may not be introduced, debated or enacted in Legco without your permission. The President of the Council is now considering whether to accept this argument.

It comes as a surprise that the Administration considers the Bill to have a charging effect for this or any other reason, in view of the fact that the Bill is virtually identical to two previous bills that were ruled not to have any charging effect in the last legislative term. The Bill is based almost entirely on the Bill of the same name that was introduced 5 July 1995. Moreover, all of the 1995 Bill's provisions were themselves drawn directly from the original Equal Opportunities Bill introduced 6 July 1994.

If the President upholds the Administration's argument, we can overcome the objection by amending the Bill to make legal aid unavailable under it. To exclude legal aid in legislation that is intended to protect human rights would, however, be an extraordinary step. It is a step we are deeply reluctant to take, and we are writing to you in the hope that you will not make us do so. There is no need to await the President's decision before clarifying your own policy in this matter. Is it really the policy of your Administration to prevent public money from being used for legal aid to combat the discrimination that the Bill prohibits?

It must be emphasised that the Bill does not make enhancements of any kind to the existing legal aid arrangement. By its silence about legal aid, the Bill in its present form merely allows the same access to legal aid that is ordinarily available to civil litigants. The existing legal aid arrangements already recognise that legal aid must be available in connection with most legal rights -- not just human rights, but legal rights of all types -- in order to secure equal access to justice for poor litigants.

We cannot understand why you would single out the fundamental human right to be free from discrimination as a second-class right, for which access to justice may be treated as a luxury. On the contrary, we would regard it as particularly unfair to cut off legal aid access in the case of this Bill. To do so would compound unfair discrimination on the basis of age, family responsibility or sexuality with additional, unfair, officially-sanctioned discrimination on the basis of wealth.

In 1994, when you denied Anna Wu permission to move a bill establishing a Human Rights and Equal Opportunities Commission (also on grounds of charging effect), you said you preferred to enhance existing mechanisms to protect human rights, for example by widening legal aid eligibility for some human rights claims. If you now deny permission to move this Bill in its present form, you will pre-emptively cut off legal aid to an important category of human rights litigants. You would embark on a course of restricting and disabling rather than enhancing existing mechanisms to protect human rights. This in our view would seriously call into question your professed, earlier commitment to human rights protection.

For these reasons, we urge you to permit the Bill to go forward as it is, without further amendment to avoid charging effect. We look forward to your response.

Yours sincerely,

Hon. Lau Chin-shek

Hon. Emily Lau Wai-hing

Hon. Lee Cheuk-yan

Hon. Christine Loh Kung-wai

Hon. John Tse Wing-ling

Hon. Elizabeth Wong Chien Chi-lien

Hon. Zachary Wong Wai-yin

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

**Minutes of Meeting held on
Friday, 24 May 1996 at 10:45 a.m.
in the Chamber of the Legislative Council Building**

- Members Present :** Hon HO Chun-yan (Chairman)
Hon Emily LAU Wai-hing
Hon LEE Wing-tat
Hon Zachary WONG Wai-yin
Hon Christine LOH Kung-wai
Hon LEE Cheuk-yan
Hon Andrew CHENG Kar-foo
Hon CHEUNG Hon-chung
Hon LAW Chi-kwong
Hon NGAN Kam-chuen
Dr Hon John TSE Wing-ling
Hon Mrs Elizabeth WONG CHIEN Chi-lien, CBE, ISO, JP
- Members Absent :** Hon LO Suk-ching (Deputy Chairman)
Hon Allen LEE Peng-fei, CBE, JP
Hon LAU Wong-fat, OBE, JP
Hon James TO Kun-sun
Hon CHOY Kan-pui, JP
Hon LAU Hon-chuen, JP
Hon Bruce LIU Sing-lee
- Members Attending :** Hon CHAN Yuen-han
Hon SIN Chung-kai
- Public Officers Attending :** Item III
Mr LEE Lap-sun
Deputy Director of Home Affairs

Mr C D B Williams, JP
Assistant Director of Home Affairs

Mr LEE Shui-kai
Senior Housing Manager

Item IV

Mrs Brenda FUNG
Deputy Secretary for Home Affairs

Mr Carlson CHAN
Principal Assistant Secretary for Home Affairs

Items V and VI

Mrs Stella HUNG
Deputy Secretary for Home Affairs

Ms CHANG King-yiu
Principal Assistant Secretary for Home Affairs

Mr Robin McLeish
Principal Assistant Secretary for Home Affairs

Staff in Attendance : Mrs Anna LO
Chief Assistant Secretary (2) 2

Mr Raymond LAM
Senior Assistant Secretary (2) 6

**I. Confirmation of minutes of meeting and matters arising
(LegCo Paper No. CB(2) 1336/95-96)**

The minutes of the Panel meeting held on 26 April 1996 were confirmed.

Action

2. Noting that the Administration's supplementary report in respect of Hong Kong under the International Covenant on Civil and Political Rights would not be publicised until 3 June 1996, members agreed that the special meeting to gauge the views of non-government organisations on the supplementary report would be deferred from 8 to 14 June 1996.

II. Date of next meeting and items for discussion
(Appendix I to LegCo Paper Nos. CB(2) 1346 and 1379/95-96)

3. Members agreed that the next meeting would be held on Friday, 28 June 1996 at 10:45 a.m. to discuss the following :

- (a) Integration of new immigrants from China into the community
- (b) Work Plans of the Equal Opportunities Commission
- (c) Implementation of the new rules for rural elections

4. Members noted that the issue of the Preliminary Working Committee's proposal to reinstate twenty-six ordinances had been taken up by the LegCo Panel on Constitutional Affairs.

5. The Chairman reminded members that the special meeting to gauge the views of non-government organisations on the Initial Report in respect of Hong Kong under Article 44 of the Convention on the Rights of the Child would be held on 25 May 1996.

III. Issues related to the formation of owners' corporations in multi-storey buildings
(Appendix II to LegCo Paper No. CB(2) 1346/95-96)

6. Mr LEE Lap-sun briefed members on the paper provided by the Administration and assured that the Home Affairs Department (HAD) was committed to facilitating the formation of owners' corporations (OCs) in multi-storey buildings. He stated that HAD was stepping up training for its 335 Liaison Officers (LOs) working in the eighteen districts of Hong Kong.

7. In response to members' questions on whether the LOs were effectively discharging their duties at meetings for the formation of OCs and had clear understanding of "disputes among owners", Mr LEE Lap-sun stated that while the LOs had always tried their best to offer advice and assistance, there were

invariably difficult situations for the relatively young and inexperienced LOs. In view of this, HAD was strengthening training in this area.

8. Mr LEE Wing-tat commented that the Administration should focus on the training of Senior Liaison Officers(SLOs), who were in a better position to give advice in difficult situations. In reply, Mr LEE Lap-sun pointed out that while there was a SLO in each urban district, the percentage of SLOs in the New Territories was lower; thus it was very difficult for SLOs to attend all meetings. HAD was training the more experienced LOs to undertake the task.

9. Mr LEE Lap-sun informed members that HAD was facing a problem in staff shortage and the accumulated overtime of LOs had reached 24,000 hours. The difficult nature of the job and the long working hours had resulted in high turnover rate of the LOs. To address the problem, HAD was proposing to revise the entry requirement of LOs from matriculation to university level and had requested for additional staff. Temporary Community Organisers were employed to assist the LOs.

10. Mr Andrew CHENG commented that while under Section 3A of the BMO, owners of not less than 30% of the shares of a particular building might apply to the Secretary for Home Affairs to order a meeting of owners for appointment of management committee, the provision that the order would not be effective if there was objection from more than 10% of the owners was a loophole and should be reviewed.

11. Mr LEE Lap-sun undertook to provide the number of meetings for the formation of OCs, which could not be convened due to objection of more than 10% of the owners, since the implementation of the Building Management Ordinance (BMO) in 1993. As regards the imbalance of power between landlords and individual owners, he stated that the issue was being reviewed by the Administration. Legislative amendments would be considered if necessary. In response to members, he agreed to discuss with the Home Affairs Branch (HAB) the need for a full review of BMO.

12. In response to the Chairman, Mr LEE Lap-sun agreed that reference would be made to previous court cases on the formation of OCs. He also agreed to look into the possibility of issuing bulletins to OCs and added that the booklet entitled "How to form an Owners' Corporation and achieve effective building management" had proved useful.

13. Dr John TSE commented that as only one out of ten buildings in Hong Kong had formed OCs, the performance of HAD in facilitating the formation of OCs was relatively disappointing. He stated that performance targets might be set for LOs. In reply, Mr LEE Lap-sun stated that there were 4,500 OCs out of a

Action

HAD total of around 30,000 private buildings. He agreed to consider the suggestion of setting performance targets for LOs but added that effort would first be concentrated on improving the quality of the existing service.

IV. Transparency and public accountability of advisory and statutory bodies and their members' tenure of office

(Appendix III to LegCo Paper No. CB(2) 1346 and 1379/95-96)

14. Mrs Brenda FUNG briefed members on the main points of the Administration's paper. She stated that the HAB would convey the views of Members expressed at the LegCo motion debate on 8 May 1996 on the subject to the relevant Policy Branches and Heads of Departments for follow-up.

15. In reply to members, Mrs Brenda FUNG reiterated that the Administration considered the current system of advisory and statutory bodies to be working well. A full review was considered not necessary. Nevertheless, the Administration recognised areas for improvement and it would follow up on those areas. She stated that increasing the transparency of the advisory and statutory bodies and the appointment of more grass-root representatives would be some of the areas where improvement would be considered.

16. In response to Miss Emily LAU, Mrs Brenda FUNG made the following points :

- (a) There were only two persons sitting on more than 6 statutory or advisory bodies and their attendance rates were over 70%.
- (b) While the HAB had a data base of people who served on advisory or statutory bodies, appointments to these bodies were not solely made from the data base. Individual Policy Secretaries and Head of Departments had their own networks of contacts through which suitable candidates to advisory and statutory bodies could be identified. Government's objective was to secure the services of the best persons available to serve on these bodies.

HAB

17. At the request of Miss Emily LAU, Mrs Brenda FUNG agreed to provide the names of advisory or statutory bodies mentioned in paragraphs 5(a) to 5(d) of the Administration's paper and the sixty bodies with virtually no transparency.

18. Mr LEE Cheuk-yan stated that to his knowledge, papers were usually made available to the public by some statutory bodies after meetings, by

Action

HAB

which time decisions would have been made. He also called for the appointment of more grass-root representatives to advisory and statutory bodies. He quoted as an example that the Equal Opportunities Commission (EOC) had only one grass-root representative. Mrs Brenda FUNG agreed to provide a written reply on whether papers or reports were made available to the public before or after a meeting. On the appointment of more grass-root representatives to statutory bodies, she stated that the views of various organisations would have to be taken into account.

19. Mr LEE Wing-tat was dissatisfied with the Administration's reply and stated that the Administration should not be selective in taking actions. He commented that although nearly all Members present supported a full review of the advisory and statutory bodies at the motion debate on 8 May 1996, the Administration had ignored the views expressed by Members.

20. Dr John TSE was disappointed that there were about sixty bodies with virtually no transparency. He suggested that all statutory and advisory bodies should be asked to enhance their transparency and their meetings should, except those relating to confidential matters, be open to the public.

21. Miss Christine LOH suggested that the standing orders of the Arts Development Council on open meetings might be recommended to other advisory or statutory bodies.

22. Members were generally of the view that the Administration was ignoring Members' views expressed in the motion debate. It was agreed that a report be presented to the House Committee recommending it to write to the Chief Secretary to :

- (a) convey members' disappointment over the Administration's disregard for their expressed views for a comprehensive review of the advisory and statutory bodies;
- (b) request the Home Affairs Branch to send extracts of the speeches on the subject in the motion debate on 8 May 1996 to all Policy Secretaries and advisory/statutory bodies; and
- (c) make periodic reports to the Home Affairs Panel on the subject.

23. Members also agreed to form a working group comprising the following members to examine the subject :

Miss Christine LOH (Convenor of the working group)
Mr LEE Wing-tat (Deputy Convenor of the working group)
Dr John TSE

Action

Miss CHAN Yuen-han (non-Panel member)

24. Members noted a tabled list of questions (Appendix A) provided by Mr LEE Wing-tat, which had been provided to the Administration on 21 May 1996 for a written reply, which was still outstanding.

V. Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
(Appendix IV to LegCo Paper No. CB(2) 1346/95-96)

25. Miss Christine LOH briefed members on the salient points of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 (the Bill). She informed members that the English version of the Bill was expected to be cleared with the law draftsman shortly for presentation to LegCo within the current legislative session, if possible. So far, she had worked in close cooperation with the Administration in the preparation of the Bill and hoped that it would not be stuck by the "charging effect" rule. While it was unlikely for the proposed amendments under the Bill to take effect on 1 September 1996, she hoped that the committee to study the Bill, if formed, would expedite the process.

26. Mrs Stella HUNG suggested that the EOC, which was entrusted with the task of enforcing the Sex Discrimination Ordinance (SDO), should be given the opportunity to comment on the Bill. She added that it might be more appropriate to consider amendments to SDO after its implementation. The ruling on whether the Bill had any charging effect rested with the President of LegCo.

27. Miss Emily LAU suggested that the Panel should recommend the House Committee to give priority to the examination of the Bill when it was presented to LegCo. Mr LAW Chi-kwong, Mr LEE Wing-tat and Dr John TSE reserved their position on this suggestion. The suggestion was then put to vote and carried (3 for and 3 abstained).

VI. Proposal to strengthen the Directorate structure of Home Affairs Branch

(Appendix V to LegCo Paper No. CB(2) 1346/95-96)

28. Mrs Stella HUNG presented the salient points of the paper provided by the Administration. She stated that the proposed structure was necessary in view of the increased workload arising from human rights issues and related reports to the United Nations, the establishment of the EOC and the Privacy Commissioner's Office, and the study on racial discrimination.

Action

29. Mr LEE Wing-tat commented that it was difficult for him to support the proposal, as the Administration was selective in its work. Miss Emily LAU questioned whether the problem of increased workload could be tackled with the upgrading of a Deputy Secretary post. In reply, Mrs Stella HUNG stated that the proposal was drawn up in consultation with the Finance Branch and the Civil Service Branch after careful examination of the workload. She added that due to limitation of resources, it was necessary for the Administration to prioritise its work.

30. The meeting ended at 12:55 p.m.

LegCo Secretariat
26 June 1996



27 May 1996

Equal Opportunities (Family Responsibility,
Sexuality and Age) Bill

Thank you for your letter of 22 May 1996.

The Administration's assessment of the charging effect of the Honourable Lau Chin-shek's Equal Opportunities Bill on family responsibility, sexuality and age is a separate issue from our commitment to protecting human rights and ensuring equal opportunities for all. We are unequivocally committed to promoting equal opportunities for all and eliminating all forms of discrimination. The assessment of the charging effect is made on the basis of the criteria laid down in the Royal Instructions and the Legislative Council (LegCo) Standing Orders, and has nothing to do with our programme to combat discrimination. As the Honourable Members are aware, the determination of whether a Bill carries a charging effect remains the prerogative of the President of LegCo and, in the case of Mr. Lau's Bill, the President has yet to make his ruling.

We have on numerous occasions emphasised the need for a considered and prudent approach to address the issues of discrimination. We firmly believe that the community should be actively involved in the process of determining the measures required to eliminate discrimination in a particular area. It is, therefore, of paramount importance that genuine and extensive public consultation should be conducted before any proposals designed to address the issues would be adopted. The enactment of the Sex and Disability Discrimination Ordinances is a case in point. Both pieces of legislation were prepared after thorough research, wide consultation and indepth analyses.

.../

In response to community concerns on other forms of discrimination, we have undertaken studies on discrimination on the grounds of family status, sexual orientation, age and race as the next phase of our anti-discrimination programme. Each of these studies also involves extensive research and careful assessment of the concerned area of discrimination, as well as genuine public consultation to solicit views on possible measures to tackle the problems identified.

The consultation period in respect of discrimination on the grounds of family status and sexual orientation, which are also covered in Mr. Lau's Members' Bill, closed on 31 March 1996. Over 8,800 and 10,000 submissions were received on the two subjects respectively. Not only do the submissions reflect wide public interest on these issues, they also reaffirm our belief of the need for an extensive and informed public debate on the matter. There is a clear indication that members of the public do have a view on issues relating to equal opportunities. Analysis of the vast number of submissions are now underway. The Administration will report to the Legislative Council the conclusions of both studies within the current legislative session.

As regards the study on age discrimination, a consultative document will be published shortly to invite public opinion. Subject to the availability of staffing resources, the Administration intends to bring forward the study of racial discrimination.

We are always willing to listen to Members' proposals for legislative changes. Our commitment to conduct studies in different areas of discrimination, including those covered in Mr. Lau's Bill, already reflects our initiative in taking full account of the concerns of the community on the issues. We firmly believe that public interests would be better served if we move forward on an agreed basis, rather than on parallel tracks.

Governor

Hon. Lau Chin-shek
Hon. Lee Cheuk-yan
Hon. John Tse Wing-ling
Hon. Zachary Wong Wai-yin
Hon. Emily Lau Wai-hing
Hon. Christine Loh Kung-wai
Hon. Elizabeth Wong Chien Chi-lien
Legislative Council Building
8 Jackson Road
Central
Hong Kong

1931

TOTAL P. 22

LEGISLATIVE COUNCIL BRIEF

District Court Equal Opportunities Rules Labour Tribunal (General) (Amendment) Rules 1996

INTRODUCTION

The Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO) were enacted on 14 July 1995 and 3 August 1995 respectively. By virtue of item 15 of Schedule 8 to the SDO and item 4 of Schedule 6 to the DDO, new sections 73B and 73C are added to the District Court Ordinance (DCO). These new sections empower the District Court Rules Committee (Rules Committee) to make rules regulating the practice of the Court in exercise of its jurisdiction under the SDO and the DDO. At its meeting on 25 May 1996, the Rules Committee endorsed the Rules at Annex A.

BACKGROUND AND ARGUMENT

2. The SDO makes it unlawful to discriminate against a person on the grounds of sex, marital status, or pregnancy, and to sexually harass a person. The DDO prohibits discrimination against a person on the ground of disability, and to harass or vilify a person on the same ground. Both Ordinances provide that alleged cases of discrimination, harassment and vilification may be made the subject of civil proceedings in the District Court. The Rules Committee is empowered to make rules to regulate the proceedings of the Court in cases lodged under the two Ordinances.

3. The enforcement provisions in the SDO and the DDO are designed to provide an efficient and accessible vehicle for redress. Towards this end, the Judiciary has agreed that a separate list will be established in the District Court to ensure that all cases filed under the two Ordinances will be dealt with without delay. In accordance with new sections 73B and 73C of the DCO, the Rules Committee has approved the Rules at Annex A to set out other special practices of the Court in exercising its jurisdiction under the Ordinances. The new Rules at Annex B made by the Chief Justice are consequential revisions.

THE RULES

4. The commencement provisions are specified in Rule 1. Rule 2 covers the definition of terms in the Rules.

5. Rule 3 provides for the keeping of an Equal Opportunities Register which keeps the entries in relation to all actions and proceedings falling within the jurisdiction of the Court under the SDO and the DDO.

6. Rule 4 provides that the other rules made under the DCO shall apply to and in relation to the jurisdiction conferred on the Court by the SDO and the DDO except where those rules conflict with or are inconsistent with the District Court Equal Opportunities Rules.

7. To facilitate the transfer of claims from the Court to the Labour Tribunal when the claim or part of a claim falls within the latter's jurisdiction, the new Rule

5 is made to empower the Court to transfer to the Labour Tribunal actions which are beyond the jurisdiction of the Court but within the jurisdiction of the Tribunal.

8. As new Rules are required under the Labour Tribunal Ordinance to ensure that any claims so transferred will be dealt with in accordance with the provisions of the Labour Tribunal Ordinance, a new Rule 7A (at Annex B) is made under the Labour Tribunal (General) Rules to require the Registrar of the Labour Tribunal to follow certain procedures in dealing with claims transferred to it by the Court.

9. In line with the objective of making the Court more accessible in sex and disability discrimination cases, Rule 6 provides for certain categories of persons acting for a party to any action may, in relation to that action, appear in, conduct, defend and address the Court in any proceedings under the two Ordinances. Such persons may include members or employees of the Equal Opportunities Commission, office-bearers of a registered trade union, carers or relatives etc.

PUBLIC CONSULTATION

10. The special listing arrangements to accord priority to cases lodged under the Sex and Disability Discrimination Ordinances and other practices to facilitate the efficiency and accessibility of the Court were agreed with the Legislative Council when the Sex and Disability Discrimination Bills were passed in 1995. The Rules Committee considered and approved the Rules at Annex A on 25 May 1996.

FINANCIAL AND STAFFING IMPLICATIONS

11. Any additional financial and staffing implications arising from the new arrangements as prescribed in the Rules will be absorbed by the Judiciary within its global allocation of resources.

PUBLICITY

12. A press release will be issued when the District Court Equal Opportunities Rules and the Labour Tribunal (General) (Amendment) Rules 1996 are gazetted.

Home Affairs Branch

File Ref.: HAB/CR/1/2/35

Date of Issue: 29 May 1996

Subject Officer: Ms CHANG King-yiu

Telephone No.: 2835 1373

立法局參考資料摘要

〈地方法院平等機會規則〉

〈1996年勞資審裁處(一般)(修訂)規則〉

緒言

〈性別歧視條例〉和〈殘疾歧視條例〉已分別於一九九五年七月十四日及一九九五年八月三日制定。為配合〈性別歧視條例〉附表 8 第 15 項和〈殘疾歧視條例〉附表 6 第 4 項的規定，當局已在〈地方法院條例〉加入新條文第 73B 和 73C 條。這兩項新條文授權地方法院規則委員會（規則委員會）制訂規則，以規管法院根據〈性別歧視條例〉及〈殘疾歧視條例〉行使其司法管轄權的做法。規則委員會已在一九九六年五月二十五日的會議席上通過載於附件 A 的規則。

背景及論據

2. 〈性別歧視條例〉訂明，基於性別、婚姻狀況、懷孕的理由而歧視他人或對他人作出性騷擾，均屬違法，而〈殘疾歧視條例〉則禁止基於殘疾理由而歧視、騷擾或中傷他人。這兩項條例均訂明，指稱受歧視、騷擾或中傷的個案可循民事訴訟向地方法院提出。規則委員會已獲授權制訂規則，就法院對有關根據〈性別歧視條例〉和〈殘疾歧視條例〉而提出個案所應採用的法律程序，作出規定。

3. 〈性別歧視條例〉和〈殘疾歧視條例〉的執行條文，旨在提供一個便捷的途徑，讓受影響人士索取補償。為達致這個目標，司法機構已同意在地方法院另設排期審訊表，以確保所有根據這兩項條例而提出的個案迅速得到處理，不致受其他案件所阻延。規則委員會並已根據〈地方法院條例〉第 73B 和 73C 條這兩項新條文的規定，通過載於附件 A 的規則，以訂出法院根據這兩項條例行使其司法管轄權的其

他特別做法。載於附件 B 的新規則是首席大法官為此而作出的相應修訂。

規則

4. 第 1 條訂明規則的生效日期。第 2 條界定規則內各用詞的定義。

5. 第 3 條規定法院須備存一本平等機會登記冊（登記冊），將涉及《性別歧視條例》及《殘疾歧視條例》而屬法院司法管轄權範圍內的所有訴訟及法律程序的記項記錄在登記冊內。

6. 第 4 條規定其他根據《地方法院條例》所訂立的規則，適用於藉《性別歧視條例》及《殘疾歧視條例》而賦予法院的司法管轄權，亦適用於與該司法管轄權有關的情況，但如該等規則與《地方法院平等機會規則》有衝突或有抵觸，則屬例外。

7. 為方便法院把屬勞資審裁處司法管轄權範圍內的申索或部分申索移交勞資審裁處處理，第 5 條授權法院將超越法院司法管轄權但屬勞資審裁處司法管轄權以內的申索，移交勞資審裁處處理。

8. 此外，為確保經移交的申索會按照《勞資審裁處條例》的條文獲得處理，故當局須在《勞資審裁處條例》之下訂立新規則，《勞資審裁處(一般)規則》第 7A 條（載於附件 B），便是因此而增訂的。該條規定，勞資審裁處司法常務主任在處理由法院移交勞資審裁處的申索時，必須依循某些程序辦理。

9. 為落實方便市民向法院提出性別及殘疾歧視個案的目標，第 6 條規定，就根據這兩項條例所提出的任何訴訟而代表該訴訟其中一方行事的某些類別人士，可就該訴訟在法院的法律程序中出庭、進行法

律程序、抗辯和向法庭陳詞。這些人士包括平等機會委員會的委員或僱員、註冊工會的職員、該人的照料者或親屬等。

公眾諮詢

10. 有關根據《性別歧視條例》及《殘疾歧視條例》提出的案件可獲優先排期審訊的特別安排，以及其他有助方便市民向法院提出訴訟的辦法，立法局於一九九五年通過性別歧視條例草案及殘疾歧視條例草案時已表示同意。規則委員會已於一九九六年五月二十五日審議及通過載於附件 A 的規則。

對財政及人手方面的影響

11. 規則訂明的新安排在財政及人手方面所造成的額外開支，將由司法機構透過整體資源分配應付。

宣傳

12. 《地方法院平等機會規則》及《1996年勞資審裁處(一般)(修訂)規則》在憲報刊登時，政務科會發出新聞稿以作宣傳。

政務科

檔號：HAB/CR/1/2/35

發出日期：一九九六年五月二十九日

負責人員：張琮瑤

電話：2835 1373

283 M45

DISTRICT COURT EQUAL OPPORTUNITIES RULES

(Made by the District Court Rules Committee under sections 73B and 73C of the District Court Ordinance (Cap. 336))

1. Commencement

These Rules shall come into operation on a day to be appointed by the Chief Justice by notice in the Gazette.

2. Interpretation

In these Rules, unless the context otherwise requires -

"action" (訴 訟) includes a matter, and any part of an action or matter;

"claim" (申 索) includes part of a claim;

"Court" (法 院 、 法 庭) means the District Court and any judge of that Court sitting in court or in chambers;

"proceeding" (法 律 程 序) includes part of a proceeding;

"Register" (登 記 冊) means the Equal Opportunities Register kept under rule 3(1);

"relevant Ordinance" (有 關 條 例) means -

- (a) the Sex Discrimination Ordinance (67 of 1995); or
- (b) the Disability Discrimination Ordinance (86 of 1995);

"tribunal" (審 裁 處) means the tribunal within the meaning of section 2 of the Labour Tribunal Ordinance (Cap. 25).

3. Equal Opportunities Register

(1) The Registrar shall cause to be kept a register -

- (a) called the Equal Opportunities Register; and

(b) in such form as he thinks fit, or in such form as the Chief Justice may from time to time direct.

(2) The Registrar shall cause the Register to be maintained by proper entries therein in relation to all actions and proceedings falling within the jurisdiction of the Court under each relevant Ordinance.

(3) Every action or proceeding referred to in subrule (2) shall be numbered in each year according to the order in which it is commenced, and recorded in the Register accordingly.

4. Application of other rules

Subject to sections 73B(8) and 73C(8) of the Ordinance, any rules made under section 72 or 73 of the Ordinance shall apply to and in relation to the jurisdiction conferred on the Court by virtue of any relevant Ordinance.

5. Transfer of claim to tribunal

(1) Where the Court determines in respect of any action listed in the Register (and whether or not the action has commenced) that the action is a claim -

(a) beyond the jurisdiction of the Court under any relevant Ordinance; and

(b) within the jurisdiction of the tribunal,

then the Court shall order that the claim be transferred to the tribunal.

(2) Where the Court transfers under subrule (1) a claim to the tribunal, the Registrar shall send to the registrar, within the meaning of section 2 of the Labour Tribunal Ordinance (Cap. 25), a certified copy of the entries in the Register, and the documents in

his custody, relating to the claim.

6. Right of audience

Without prejudice to the generality of section 15 of the Ordinance in so far as it relates to persons who may address the Court, any person acting for a party to an action within the jurisdiction of the Court under any relevant Ordinance may, in relation to that action, appear in, conduct, defend and address the Court in, any proceeding therein if the person -

- (a) is a member of the Commission, or a committee, within the meaning of section 2 of the Sex Discrimination Ordinance (67 of 1995);
- (b) is employed or engaged under section 64(2)(d), (e) or (f) of that Ordinance;
- (c) is an office bearer of a registered trade union, or of an association of employers, authorized in writing by the party to so act;
- (d) is an officer or servant of an unincorporated or incorporated company or a member of a partnership and that company or partnership, as the case may be, is the party;
- (e) is a carer, or an associate, within the meaning of section 2 of the Disability Discrimination Ordinance (86 of 1995), in respect of the party (including any case where the action is a claim under the Sex Discrimination Ordinance (67 of 1995)).

Made this

day of

1996.

Explanatory Note

These Rules regulate -

- (a) the practice of the District Court ("the Court") in the exercise of its jurisdiction under the Sex Discrimination Ordinance (67 of 1995) and the Disability Discrimination Ordinance (86 of 1995); and
 - (b) the forms of proceedings therein.
2. Rule 2 defines the terms used in the Rules. The definition of "relevant Ordinance" should, in particular, be noted.
 3. Rule 3 provides for the keeping of an Equal Opportunities Register ("the Register") in which there is to be recorded entries in relation to all actions and proceedings falling within the jurisdiction of the Court under each relevant Ordinance.
 4. Rule 4 provides that other rules made under the District Court Ordinance (Cap. 336) shall also apply to and in relation to the jurisdiction conferred on the Court by any relevant Ordinance except where those rules conflict with or are inconsistent with these Rules.
 5. Rule 5 empowers the Court to transfer actions to the Labour Tribunal which are beyond the jurisdiction of the Court but within the jurisdiction of the Labour Tribunal.
 6. Rule 6 provides that certain categories of person (and whether or not the person is counsel or a solicitor) acting for a party to any action within the jurisdiction of the Court under any relevant Ordinance may, in relation to that action, appear in, conduct, defend and address the Court in any proceeding therein.

(由地方法院規則委員會根據〈地方法院條例〉(第336章)
第73B及73C條訂立)

1. 生效日期

本規則自首席大法官以憲報公告指定的日期起實施：

2. 釋義

在本規則中，除文意另有所指外——

“申索”(claim)包括申索的一部分；

“有關條例”(relevant Ordinance)指——

(a) 〈性別歧視條例〉(1995年第67號)；或

(b) 〈殘疾歧視條例〉(1995年第86號)；

“法律程序”(proceeding)包括法律程序的一部分；

“法院”、“法庭”(Court)指地方法院以及在法庭或內庭開庭的地方法院任何法官；

“登記冊”(Register)指根據第3(1)條備存的平等機會登記冊；

“訴訟”(action)包括事宜，以及訴訟或事宜的任何部分；

“審裁處”(tribunal)指〈勞資審裁處條例〉(第25章)第2條所指的審裁處。

3. 平等機會登記冊

(1) 司法常務主任須安排備存一本登記冊，該登記冊——

稱為“平等機會登記冊”；及

(b) 的格式按司法常務主任認為合適者而定，或按首席大法官不時所指示者而定，

(2) 司法常務主任須安排將關乎根據每條有關條例屬法院司法管轄權範圍以內所有訴訟及法律程序的記項妥當保存於登記冊內；

(3) 第(2)款所提述的每宗訴訟或每項法律程序，均須按照其在展開年份中的先後次序每年配予編號，並據此記錄在登記冊內。

4. 其他規則的適用範圍

在不抵觸本條例第73B(8)及73C(8)條的條文下，任何根據本條例第72或73條訂立的規則，適用於憑藉任何有關條例賦予法院的司法管轄權，並且就該司法管轄權而適用。

5. 將申索移交審裁處

(1) 凡法院就登記冊內所列的任何訴訟(不論該訴訟是否已展開)裁定該訴訟是一項以下的申索 —

(a) 超越法院根據任何有關條例而具有的司法管轄權的申索；並且

(b) 屬審裁處司法管轄權以內的申索，

則法院須命令將該項申索移交審裁處

(2) 凡法院根據第(1)款將某項申索移交審裁處，司法常務主任須向《勞資審裁處條例》(第25章)第2條所指的司法常務主任送交一份關乎該項申索的登記冊記項的核證副本，以及由其保管的關乎該項申索的文件

6. 出庭發言權

在不損害本條例第15條的一般性的原則下，並在關於可向法庭陳詞的人的範圍內，就根據任何有關條例屬法院司法管轄權以內的某宗訴訟而代表該訴訟的任何一方行事的人，如屬以下身分，則可就該訴訟在法院的法律程序中出庭、進行法律程序、抗辯和向法庭陳詞——

- (a) <性別歧視條例> (1995年第67號)第2條所指的委員會成員或小組委員會成員；
- (b) 根據該條例第64(2)(d)、(e)或(f)條所僱用或聘用的人；
- (c) 在已登記的職工會中或在僱主協會中擔任職位並獲上述一方以書面授權如此行事的人；
- (d) 某間非法團公司或法團公司的高級人員或僱員，或某合夥的合夥人，而該公司或合夥(視屬何情況而定)是上述一方；
- (e) 就上述一方而言(包括根據<性別歧視條例> (1995年第67號)提出申索的訴訟的任何個案)是<殘疾歧視條例> (1995年第80號)第2條所指的照料者或有聯繫人士。

於1996年 月 日訂立：

本規則規管 —

(a) 地方法院(“法院”)根據《性別歧視條例》(1995年第67號)及《殘疾歧視條例》(1995年第86號)行使其司法管轄權的常規；及

(b) 地方法院法律程序的形式；

2. 第2條界定規則所使用的詞語，尤其是應該注意“有關條例”的定義。

3. 第3條為備存一本平等機會登記冊(“登記冊”)而訂定條文，將關乎根據每條有關法例屬法院司法管轄權範圍以內的所有訴訟及法律程序的記項記錄在登記冊內。

4. 第4條規定其他根據《地方法院條例》(第336章)所訂立的規則，亦適用於藉任何有關條例賦予法院的司法管轄權，並且就該司法管轄權而適用，但如該等規則與本規則有衝突或有抵觸，則屬例外：

5. 第5條賦權予法院將超越法院司法管轄權但屬勞資審裁處司法管轄權以內的申索，移交勞資審裁處：

6. 第6條規定就根據任何有關條例屬法院司法管轄權以內的任何訴訟而代表該訴訟的一方行事的某些類別的人(不論該人是否屬大律師或律師)可就該訴訟在法院的法律程序中出庭、進行法律程序、抗辯和向法庭陳詞：

LABOUR TRIBUNAL (GENERAL) (AMENDMENT) RULES 1996

(Made under section 45 of the Labour
Tribunal Ordinance (Cap. 25))

1. Commencement

These Rules shall come into operation on a day to be appointed by the Chief Justice by notice in the Gazette.

2. Rule added

The Labour Tribunal (General) Rules (Cap. 25 sub. leg.) are amended by adding -

"7A. Transfer of claim to tribunal

Where a claim is transferred to the tribunal in accordance with any rules made under section 73B or 73C of the District Court Ordinance (Cap. 336), the registrar shall send a notice in such form as he thinks fit to each claimant and person represented advising them that section 11 of the Ordinance must be complied with in order for the transferred claim to be commenced in the tribunal."

Chief Justice.

1996.

Explanatory Note

These Rules amend the Labour Tribunal (General) Rules (Cap. 25 sub. leg.) to add a new rule 7A to provide for the procedure that is to be followed by the Registrar of the Labour Tribunal where a claim is transferred to the Labour Tribunal pursuant to any rules made under section 73B or 73C of the District Court Ordinance (Cap. 336).

(根據《勞資審裁處條例》(第25章)第45條訂立)

1. 生效日期

本規則自首席大法官以憲報公告指定的日期起實施。

2. 加入條文

《勞資審裁處(一般)規則》(第25章, 附屬法例)現予修訂, 加入 —

“7A. 將申索移交審裁處

凡按照任何根據《地方法院條例》(第336章)第73B或73C條所訂立的規則, 將任何申索移交審裁處, 則司法常務主任須以其認為合適的格式, 向每名申索人及被代表的人送交通知書, 通知他們為便經移交的申索在審裁處展開, 本條例第11條必須予以遵守。”

首席大法官

1996年 月 日

註釋

本規則修訂《勞資審裁處(一般)規則》(第25章, 附屬法例), 加入新的第7A條, 以就在有申索依據任何根據《地方法院條例》(第336章)第73B或73C條訂立的規則移交勞資審裁處的情況下, 勞資審裁處司法常務主任所須依循的程序, 訂定條文。

30th May, 1996

Dr. Fanny Cheung Mui-ching, JP
Chairperson
Equal Opportunities Commission
Unit 2002, 20th Floor
Office Tower, Convention Plaza
1 Harbour Road, Wanchai
Hong Kong

Dear Dr. Cheung,

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

I am sending you the captioned Bill and an information note describing it, for consideration by the Equal Opportunities Commission.

The Bill amends both the Sex Discrimination Ordinance (67 of 1995) and the Disability Discrimination Ordinance (86 of 1995). I and other legislators who support the Bill will be interested to hear the Commission's views on the amendments the Bill makes.

I hope to introduce the Bill into the Legislative Council as soon as possible. The text of the Bill has been finalised in both official languages, and the English text has been certified by the Attorney General's Chambers as being in conformity with formal requirements applicable to Hong Kong legislation.

If, as seems likely, the Commission is unable to form definite views about the Bill before its introduction into Legco, the Commission's eventual views will be of interest to the Legco Bills Committee that I expect will be formed to study the Bill in detail.

Yours sincerely,

Christine Loh Kung-wai

1950

30th May, 1996

The Hon. Andrew Wong Wang-fat, OBE, JP
President of the Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Mr. Wong,

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

For your reference in considering whether the captioned Bill has a charging effect, I now forward the Law Draftsman's engrossment and certification of the Bill's English text. I am also forwarding copies of the same to the Secretary for Home Affairs for his reference.

I hope to proceed with gazettal, first reading and second reading adjournment of the Bill in English only. Following the approved procedure for private member's bills presented in one official language, I will arrange for the certified text in the other language, Chinese, to be made available as soon as possible to facilitate its eventual addition to the Bill by committee-stage amendment.

I would be most grateful if your ruling on charging effect were available in time for the Bill, if allowed to go forward, to have its first reading at the 26th June sitting.

Thank you again for your consideration and advice.

Yours sincerely,

Christine Loh Kung-wai

cc. Mr. Michael Suen, Secretary for Home Affairs

1951



OFFICE OF CHRISTINE LOH, LEGISLATIVE COUNCILLOR

Room 322, 3/F, West Wing, Central Government Offices,
11 Ice House Street, Central, Hong Kong
Tel. (852) 2537-2485 Fax (852) 2537-6937

FACSIMILE TRANSMISSION FORM

To Anna Wu
Eric Chow
Carole Petersen
Andrew Byrnes

From : Adam Mayes
(Direct line:2521-6820)

Date : 31/5/96

Total pages : 1 (including this page)

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

HAB's K. Y. Chang (Prin. Ass't Sec'y in charge of E.O. issues) called me this afternoon. Although she herself seems distinctly uncomfortable taking such an approach after our earlier course of discussions about the Bill, she made it clear that the Administration would "on principle" raise any charging effect argument they were able to identify.

She said that HAB expected to collect all branches' final charging effect assessments within two weeks, she hoped by sometime next week.

To start with, Civil Service Branch continues to regard the Bill's putative impact on the double benefits rule as incurring a charge, despite the double benefits exception we added to the Bill. Their latest advice siezes on a technicality (which I won't bother explaining here) to assert that the exception as drafted does not cover *all* double benefit situations; they were unable to suggest any alternative wording that would.

I told her that a speedy assessment would be appreciated, given that legislators would be pressing hard for first reading by end of the Session.

Re. the Administration's consultation exercise on discrimination. she said they have a commitment to report to Legco before the end of the session, and to that end they expect to go to Exco sometime in June.

Regards,

平等機會委員會

香港灣仔港灣道一號

會議廣場辦公大樓 20 樓 2002 室

EQUAL OPPORTUNITIES COMMISSION

Unit 2002, 20/F., Office Tower,
Convention Plaza, 1 Harbour Road,
Wan Chai, Hong Kong.

本局傳真 OUR REF. : (13) in EOC/GEN/26
查詢傳真 YOUR REF. :
電 話 TEL. NO. : 2511 8123
傳真號碼 FAXING : 2511 8142

31 May 1996

The Hon. Ho Chun-yan, Albert
Chairman, LegCo Home Affairs Panel
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong
Fax. 2845 2444
Te. 2869 9252

Dear Mr. Ho,

As the Chairperson of the newly established Equal Opportunities Commission (EOC) in Hong Kong, I am fully aware of public aspirations for the Commission to eliminate discrimination in the community. I enclose my article which sets out the vision, mission and preliminary work plan of the EOC for your information. The Chinese version of my article will follow.

I look forward to working closely with you on the promotion of equal opportunities in Hong Kong. Please feel free to pass on my work plan to interested parties and contact me with regard to the work of the EOC.

Yours sincerely,

(Fanny Mui-ching Cheung)
Chairperson,
Equal Opportunities Commission

c.c. All Members

The Equal Opportunities Commission

Fanny M. Cheung

May 31, 1996

With the formation of the Equal Opportunities Commission (EOC), there has been a heightened public concern about discriminatory attitudes in the community. This reflects that discrimination in respect of sex and disability is still a problem in Hong Kong even though these problems were often hidden in the past. While public awareness of the concept of equal opportunities has improved over the years, individual incidences of discrimination and discriminatory attitudes still abound. This reaffirms the need for the establishment of the EOC and explains the high expectation that the public holds of the EOC.

While the public may be aware of the establishment of the EOC, its functions and its stages of operation may not be that well-known. The EOC is a statutory body set up to work towards the elimination of discrimination and promote equality of opportunity with specific reference to gender and disability. The EOC aims to achieve its mission through legislative and non-legislative means.

Legislative Means

The Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO) render unlawful acts which discriminate persons on the ground of gender, marital status, pregnancy, or disability, and empowers the EOC to investigate complaints related to any act alleged to be unlawful by virtue of the two ordinances, to effect settlement by conciliation, and to issue enforcement notices. It is important for the EOC to maintain its independent role and handle complaints in a fair and efficient manner. To protect the confidentiality of information in connection with investigations, and to avoid prejudicial judgement of cases prior to a full investigation of complaints, disclosure of information and opinions on individual cases have to be restricted. It is only through a responsible and sound system of complaint handling that the credibility and effectiveness of the EOC could be established.

In addition to investigation and conciliation, the EOC will issue codes of practice on employment. These codes of practice will provide guidelines for employers on fair and lawful practices in various aspects of employment related to the SDO and DDO. Since anti-discrimination is a new area of law in Hong Kong and its application in the employment field will be particularly complex, the codes will serve an important means to assist employers to observe the provisions of the ordinances.

The EOC will be empowered to review the working of the ordinances and recommend the necessary amendments to achieve the effective functioning of the Commission.

While legislative measures address unlawful acts of discrimination, discriminatory attitudes of individuals in and of themselves are not rendered unlawful. However, discriminatory acts are often motivated by such attitudes. Formation of such attitudes may be due to many factors, including ignorance, intolerance, misconception, conflict of interest, etc.

In the promotion of equal opportunity and the elimination of discrimination, it is essential to change discriminatory public attitudes. Legislative measures have to be complemented by public education and publicity efforts which constitute another major aspect of the work of the EOC.

Non-legislative Means

Changing public attitudes involves the joint effort of the whole community. The EOC aims to work closely with government and non-government organizations to promote publicity and conduct public education. To keep abreast with local concerns on key issues involving discrimination, the EOC will liaise with these organizations regularly. Corporate partnership will be established with employers and other institutions to provide role models in promoting equal opportunity policies in those settings. The Commission will inform the public regularly through publications and other media of its work and concepts of discrimination. It will also collect data and conduct research to identify areas of concerns and monitor social changes.

A strategic and comprehensive plan on publicity and public education programme will be mapped out to direct the efforts of the EOC. It will also assist other groups in their educational efforts. In considering its public education strategies, the EOC will consider what are the most effective methods to achieve different aims for different targets.

News media is one important means of communicating with the public. The EOC plans to work closely with the media in its public promotion efforts. The EOC has carefully considered its response to the media, and decided as a policy that given its legislative functions, it is irresponsible for the EOC to publicly condemn or exonerate any party which may be a subject of complaint. This defeats the spirit of fair investigation, prejudices its outcome, and consequently diminishes the effectiveness of the investigatory and conciliatory functions of the Commission. Simplified comments may not be the most effective way to help the public to understand the legal and contextual considerations involved in determining whether an act is discriminatory according to the ordinances.

Instead, public concern on current issues will arouse attention to issues related to discrimination and equal opportunities which may not be fully understood. Heightened awareness need to be followed up with balanced consideration and discussion without

losing sight of the spirit behind the promotion of equal opportunities, especially the concepts of respect for human dignity, protection of equal rights for all, sensitivity to others' needs, and tolerance of individual and group differences. As the vanguard of equal opportunities, we should not fall into the trap of becoming bigots ourselves.

Phases of Implementation of the Ordinances

The EOC is long overdue. Its establishment on May 20 has raised high public expectation on the full operation of the ordinances. In fact, the major provisions of the SDO and DDO are not yet implemented. The EOC does not even have its own staff yet. Its operation will come in three phases:

Preparatory Phase. At the moment, the top priority of the EOC is to set up the Commission Office and recruit its staff which is required for the implementation of the ordinances. The Commission aims to complete its recruitment exercise within two to three months, set up the operating procedures for the complaints handling system, and train up its staff to take up their job so that it could bring the ordinances into operation as soon as possible. Even without its staff, EOC members will start working on the draft codes of practice on employment so that public consultation could commence when the staff are in post. Members will also map out an interim publicity strategy to publicize the work of the EOC and the two ordinances to coincide with the opening of the EOC office targeted for September.

Initial Operation. The EOC expects that the non-employment-related provisions of the SDO and DDO will come into operation when its staff are in post. The EOC Office will handle individual enquiries, complaints and conciliation. It may also embark on formal investigations and serve enforcement notices on persons who have contravened the provisions of the ordinances. Consultation will be conducted on the draft codes of practice on employment followed by approval by the Legislative Council. The EOC will also commence its long-term strategies on public education, research, and community liaison.

Full Operation. When the Codes of Practice on Employment are approved by the Legislative Council, the entire ordinances will be brought into full operation targeted for the end of this year. In addition to its existing tasks, the EOC aims to build up corporate partnership with the public and private employment sectors to promote equal opportunity policies in organizations. Regular reviews on the working of the ordinances and monitoring of the work of the EOC, and assessment of the status of equal opportunities in Hong Kong will be conducted.

It is the vision of the EOC to work towards a society which ensures equal opportunities and eliminates discrimination on the grounds of gender, marital status, pregnancy, sexual harassment, or disability. We are convinced that removal of barriers for the disadvantaged will facilitate the growth of the prosperity of society, and enhance the full development of the potentials of all members of the society. We will join hands with all sectors of the community to work towards this goal.

OFFICE OF CHRISTINE LOH, LEGISLATIVE COUNCILLOR

**Room 322, 3/F, West Wing, Central Government Offices,
11 Ice House Street, Central, Hong Kong
Tel. (852) 2537-2485 Fax (852) 2537-6937**

FACSIMILE TRANSMISSION FORM

**From : Adam Mayes
(Direct line 2521-6820)**

Total pages : (including this page)

31 May 1996

Clerk to the Legislative Council
(Attn: Ms. Betty Ma)
Legislative Council Building
8 Jackson Road
Hong Kong
(Fax: 2810-1691)

Dear Ms. Ma,

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

As suggested by the Clerk on 29 May, I am writing to respond to Mrs. Stella Hung's letter for Secretary for Home Affairs, dated 20 May 1996. I again recommend my earlier letters dated 15 April and 22 April for the President's consideration as well.

Applicability of President's earlier rulings

The Administration cites 2 earlier rulings by the President as precedents. These rulings concern Mr. Simon Ip's proposed amendment to the Legal Aid (Amendment) Bill 1995 (Mr. Ip's amendment), and Mr. Bruce Liu's proposed Hong Kong Bill Of Rights (Amendment) Bill 1996 (Mr. Liu's Bill).

I wish to re-emphasise that, unlike Mr. Ip's amendment and Mr. Liu's Bill, the captioned Bill does not result in a new and distinct charge over and above the expenditure already authorised by the Legal Aid Ordinance (Cap. 91).

Both Mr. Ip's amendment and Mr. Liu's Bill significantly expanded a category of eligible proceedings under the Legal Aid Ordinance. Mr. Ip's amendment did so by directly amending the definition of one such category in the Legal Aid Ordinance (viz. item 3, Part I, Schedule 3 to Cap. 91). Mr. Liu's Bill did so, not by amending the Legal Aid Ordinance itself, but by amending a law — the Hong Kong Bill of Rights Ordinance (Cap. 383) — for which the Legal Aid Ordinance makes unique, express provision on eligibility (s. 5AA of Cap. 91).

By contrast, legal aid expenditure arises from the Bill because proceedings under it, like many other types of proceedings, fall within a broad category for which legal aid is generally authorised: civil proceedings in the District Court, High Court or Court of Appeal (item 1, Part I, Schedule 2 to Cap. 91). The Legal Aid Ordinance defines this category in such broad terms that it already encompasses a wide variety of proceedings other than those authorised by the Bill, which affects the category's overall scope only indistinctly if at all.

Estimated cost figures

I do not accept the \$27 million figure that the Administration estimates for legal aid expenditure arising from the Bill.

The Administration has calculated this figure by reference to the financial provision made for legal aid arising from the Sex Discrimination Ordinance (67 of 1995),

considered together with an estimate of the relative number of cases brought under the Bill in comparison with cases brought under the Sex Discrimination Ordinance.

First, the Administration's \$25 million financial provision for legal aid arising from the Sex Discrimination Ordinance is itself highly speculative, because that Ordinance has not yet come into force.

Second, I strongly disagree with the Administration's assertion that more cases are likely to be brought under the Bill than under the Sex Discrimination Ordinance. This assertion is said to be based on unspecified overseas experience. On the contrary, however, experience elsewhere with similar legislation indicates that *considerably fewer* cases are likely to arise in relation to the grounds of discrimination covered by the Bill than under the Sex Discrimination Ordinance.

Another branch of the Administration previously stated that "[e]xperience elsewhere indicates that the majority of cases brought to court under equal opportunities legislation relates to sex discrimination." (Health and Welfare Branch, Legislative Council Brief: Disability Discrimination Legislation, File Ref.: HW CR 2/5091/94, 20 July 1994, para. 20; excerpt attached as Annex A.)

While I agree with the Health and Welfare Branch's observation about overseas experience, slightly more detailed generalisations can fairly be made about overseas experience:

- In all jurisdictions with which I am familiar, the largest number of complaints are made in respect of sex discrimination, including sexual harassment.
- Complaints of disability and age discrimination are typically the 2 next most numerous categories. Where the law provides for both types of complaint, which is the more numerous varies among jurisdictions. Race discrimination complaints are comparably numerous in a few jurisdictions.
- Discrimination complaints grounded on any other category, such as pregnancy, marital status, family responsibility or sexual orientation, are far less numerous.

I have been able to assemble a few specific statistics at short notice about jurisdictions where legislation covers all or nearly all the relevant grounds of discrimination. These statistics bear out the generalisations above.

- Complaint statistics compiled by Australia's Queensland Anti-Discrimination Commission show 198 complaints made on grounds comparable to those covered by the Sex Discrimination Ordinance, compared to 69 complaints on grounds comparable to those covered by the Bill -- a proportion of 3 to 1. (Table 1 of Annex B, and Annex C.)
- Western Australian statistics, on both enquiries and complaints, show a proportion of about 1.5 to 1. (Table 2 of Annex B, and Annex D.)
- Complaint statistics compiled by the New South Wales Anti-Discrimination Board show a proportion of 2 to 1. This proportion is slightly skewed because the Board does not take complaints on family responsibility grounds, but sex

discrimination complaints clearly outnumber age discrimination complaints by a wide margin. (Table 3 of Annex B, and Annex E.)

- Canadian federal statistics also show sex discrimination complaints outnumbering age discrimination complaints by about 2 to 1. (Unfortunately the Canadian Human Rights Commission does not take complaints based on sexuality, and keeps a combined count of marital status and family responsibility complaints.) (Annex F).

Based on overseas experience, it can be safely predicted that the bulk of complaints under the Sex Discrimination Ordinance will be about sex discrimination (including sexual harassment), while the bulk of complaints under the Bill will be about age discrimination. It can further be predicted that sex discrimination complaints will outnumber age discrimination complaints, by as much as 1.5 to 3 times.

The two other grounds covered by each enactment -- marital status and pregnancy under the Sex Discrimination Ordinance, family responsibility and sexuality under the Bill -- are likely to give rise to far fewer complaints, in numbers that are not predictably weighted towards either enactment.

If the Administration's estimate of \$25 million is accepted for the legal aid expenditure arising from the Sex Discrimination Ordinance, overseas experience suggests that the similar expenditure arising from the Bill would be in the \$8-17 million range.

Yours sincerely,

Lau Chin-shek

FINANCIAL AND STAFFING IMPLICATIONS

19. We estimate that the Equal Opportunities Commission, which will handle discrimination on the grounds of sex and race as well as disability, will cost \$60 million a year in recurrent expenditure on full operation. This expenditure will be phased over the next three years with the gradual implementation of the different pieces of anti-discrimination legislation. It is difficult to determine what proportion of the total cost will be due to the Commission's work for people with a disability.

20. The disability discrimination legislation is likely to increase the workload of the Courts, but we cannot assess the resource implications accurately at this stage. We estimate that the Judiciary will require an extra \$16.1 million in annually recurrent expenditure to deal with cases arising from all anti-discrimination legislation. These additional resources will be provided in this year's resource allocation exercise. Experience elsewhere indicates that the majority of cases brought to court under equal opportunities legislation relates to sex discrimination.

21. There will not be any substantial additional expenditure required on the part of Government to satisfy the provisions on access (see paragraph 23).

Table 1 - Queensland statistics
(source - see Annex C)

Complaints

Similar to SDO

(a)	sexual harassment	94
(b)	sex	59
(c)	pregnancy	31
(d)	marital status	14
		<u>198</u>

Similar to Bill

(x)	age	40
(y)	parental status	19
(z)	lawful sexual activity	<u>10</u>
		69

Table 2 - Western Australian statistics
(source - see Annex D)

Complaints

Similar to SDO

(a)	sex	70
(b)	sexual harassment	66
(c)	pregnancy	22
(d)	marital status	<u>10</u>
		168

Similar to Bill

(x)	age	71
(y)	family responsibilities	37
(z)	sexual preference	<u>n/a*</u>
		108

Enquiries

(other than enquiries taken forward as complaints, which are counted above)

Similar to SDO

(a)	sex	746
(b)	sexual harassment	559
(c)	pregnancy	184
(d)	marital status	<u>104</u>
		1593

Similar to Bill

(x)	age	708
(y)	family responsibilities	258
(z)	sexual preference	<u>115*</u>
		1081

* The Western Australian Equal Opportunity Commission keeps count of enquiries about sexual preference discrimination, but does not take complaints on that basis.

Table 3 - New South Wales statistics
(source - see Annex E)

Complaints

Similar to SDO

(a)	sex & pregnancy	476
(b)	marital status	<u>58</u>
		534

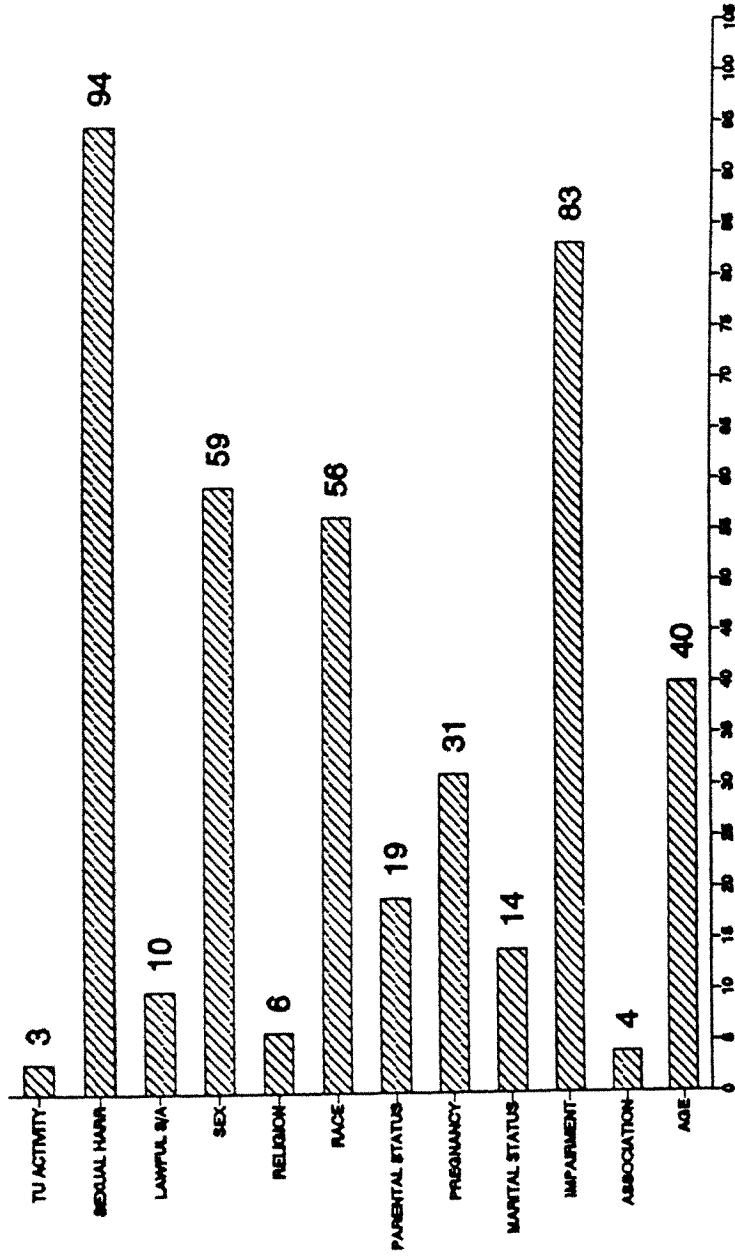
Similar to Bill

(x)	age	197
(y)	homosexuality	<u>60</u>
		257

Figure 4 Old Anti-Discrimination Commission and HREOC

ADA COMPLAINTS RECEIVED - BY GROUND

1 JULY 1992 - 30 JUNE 1993



1994/95 Complaints by Ground and Area

Ground	Employment	Places and Vehicles	Goods & Services	Accommodation	Education	Clubs	Land	Victimisation	Total
Age	45		12	11	3				71
Family Responsibilities/Status	37								37
Human Rights	4		2						6
Impairment	28	2	14		7				51
Marital Status	4		3	3					10
Political Conviction	1								1
Pregnancy	22								22
Race	38	15	34	14	1	2	1		105
Racial Harassment	5								5
Religious Conviction	3		3			1			7
Sex	57	5	3	1	3	1			70
Sexual Harassment	63				3				66
Victimisation								13	13
Total	307	22	71	29	17	4	1	13	464

1994/95 Enquiries by Ground and Area

Ground	Employment	Places and Vehicles	Goods & Services	Accommodation	Education	Clubs	Sports	Land	All Areas	Other	Total
Age	465	9	91	44	26	9	3	4	17	40	708
Criminal Conviction	51		9	2	1	1			1	2	67
Family Responsibilities/Status	218	1	7	6	6	4	1		4	11	258
Human Rights	39	1	37		6	1			6	61	151
Impairment	375	18	121	13	43	1	1		36	75	683
Incitement to Racial Hatred											
Marital Status	56		26	8		2			2	3	5
Political Conviction	12		2	1				1	2	9	104
Pregnancy	173	1	2		5	1			2	3	21
Privacy	6		10						1	2	184
Race	318	23	144	50	37	12	5	3	31	154	777
Racial Harassment	9		1		1					3	14
Religious Conviction	29		6	1	13	2			1	4	56
Sex	461	8	74	5	34	48	23		20	73	746
Sexual Harassment	454		7	5	19				36	38	559
Sexual Preference	34	1	10	5	4	4			38	19	115
All Grounds	186	1	7	9	14	7			458	38	720
Other	1746	28	330	67	69	45	9	3	13	1101	3411
	4632	91	684	216	278	137	42	11	69	1655	10910

Complaints Received by Ground July 1994 to June 1995

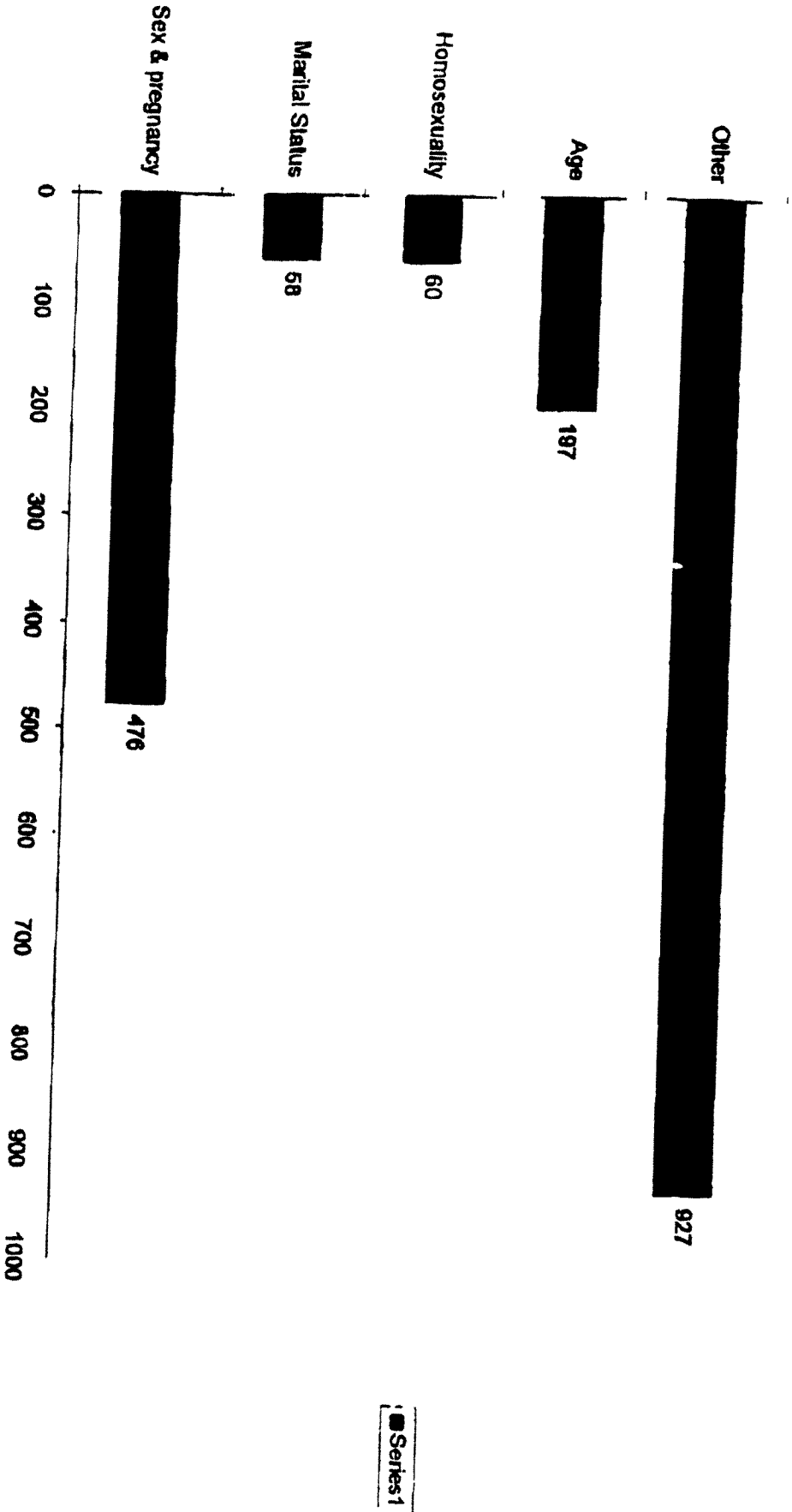


TABLE 3 DISTRIBUTION OF COMPLAINTS, BY GROUND OF DISCRIMINATION, 1989 TO 1992

GROUND	1989		1990		1991		1992	
	#	%	#	%	#	%	#	%
Sex	163	20	215	21	237	24	316	24
Race/colour	87	11	148	15	101	10	111	9
Disability	272	34	289	29	313	32	424	33
Family/marital status	102	13	96	9	106	11	134	11
Age	91	11	101	10	88	9	142	11
National/ethnic origin	71	9	149	15	118	12	143	11
Religion	19	2	13	1	17	2	10	1
Pardon	2	0	3	0	4	0	2	0
TOTAL	807	100	1,014	100	984	100	1,282*	100

*Figures for 1992 include referrals to alternate redress

TABLE 4 DISPOSITION OF COMPLAINTS, 1989 TO 1992

	Total 1989	Total 1990	Total 1991	Total 1992
Sent to tribunal	51	29	38	88
Sent to conciliation	227	189	169	209
Settlement approved	99	132	199	135
Dismissed	116	221	289	322
Not dealt with	28	45	58	37
No further proceedings	80	99	167	220
To deal with	83	71	65	16
No tribunal	10	13	67	29
Stood down	53	111	73	115
Early resolution	31	53	157	177
Referral to alternate redress				345
TOTAL	778	963	1,282	1,693

KEY TO TERMS

Settlement approved: Settlement agreed to by the parties and approved by the Commission

Not dealt with: The Commission decided not to investigate the complaint because it was out of time or, technically, without purpose

No further proceedings: The Commission decided not to pursue the complaint because it was withdrawn or the matter was resolved

OFFICE OF CHRISTINE LOH, LEGISLATIVE COUNCILLOR

Room 322, 3/F, West Wing, Central Government Offices,
11 Ice House Street, Central, Hong Kong
Tel. (852) 2537-2485 Fax (852) 2537-6937

FACSIMILE TRANSMISSION FORM

To : Anna Wu
Eric Chow
Carole Petersen
Andrew Byrnes

From : Adam Mayes
(Direct line:2521-6820)

Date : 6/6/96

Total pages : 1 (including this page)

Following yesterday's meeting between SHA and Christine, I talked to K. Y. Chang today.

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

SHA was encouraging about the consultation results and policy prospects on family status, and very discouraging about sexuality. He would not be drawn on age, which remains someone else's problem (Ed. & Manpower Branch).

KY mentioned she understood we would gazette the Bill without legal aid if their charging effect assessment is upheld. She said "her superiors" planned to argue that it is inappropriate to put forward equal opportunity legislation that deprives people of the right to legal aid. I told her we would make a fuss if they did.

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

SHA stressed that double benefits is the main concern about the Bill. KY said their law draftsmen are working on an exception that would fully cover the double benefits problem, but it's difficult and they haven't got one ready yet. In the meanwhile, HAB apparently intends making a charging effect argument about double benefits. She expects to put the assessment in next week.

I recalled to her that, notwithstanding our cooperation on drafting an exception per their specifications, our basic legal view is that an exception is unnecessary because the SDO requires the Admin. to do no more than is already required by the BORO. If that legal position were firmly established by a charging effect ruling in our favour, we would have to reconsider making any exception for double benefits. She said she was not familiar with this argument and will consult her legal advisor.

The other charging effect argument they have in mind concerns the new EOC functions of examining proposed legislation and promoting international standards. They are considering having another go at this clause, even though we changed the wording from "shall" in last year's disallowed CSAs to "may" in the Bill.

She mentioned some items HAB would like to negotiate further down the line (presumably after they've run out of ways to stall). HAB wants to discuss the EOC own-name litigation power, aiming for a compromise such as setting a timetable for the SHA to make the already-authorized enabling sub. leg.. She also mentioned that some branches may wish to use the Bill as a vehicle to make amendments for their own purposes to the SDO or DDO.

Regards,



LEGISLATIVE COUNCIL BRIEF

EQUAL OPPORTUNITIES : A STUDY ON DISCRIMINATION IN EMPLOYMENT ON THE GROUND OF AGE

INTRODUCTION

At the meeting of the Executive Council on 4 June 1996, the Council ADVISED and the Governor ORDERED that the Government should publish the consultation paper "Equal Opportunities : A Study on Discrimination in Employment on the Ground of Age" to solicit public views on this subject.

BACKGROUND AND ARGUMENT

2. In the debate on various pieces of proposed anti-discrimination legislation at the end of the 1994-95 legislative session, the Administration agreed to conduct studies on various areas of discrimination, one of which was age. The studies were to assess the problems as well as seek public views on the measures to deal with them. The Administration indicated that it would then report back to the Legislative Council within the 1995-96 session.

3. An interdepartmental working group, led by the Education and Manpower Branch, has now produced a public consultation paper on age discrimination in employment. Its main features are described below. (Although the consultation paper focuses on age discrimination in employment, public views of age discrimination which may appear in areas other than employment will also be solicited during the consultation exercise).

Statistical analysis

4. Chapter 3 of the paper covers the two statistical exercises undertaken by the working group. In the first, Labour Department carried out three surveys of newspaper job advertisements to ascertain what percentage of these mentioned age as a job requirement - this turned out to be 17% in July 1995, 13.7% in October 1995, and 19.3% in January 1996.

5. The practice of stipulating age requirements in such advertisements was most common in the following occupations -

- (a) sales/service workers;
- (b) clerical workers; such as general office clerks, secretaries, and receptionists; and
- (c) manual or unskilled workers, including delivery workers, store-keepers and messengers.

6. The second exercise examined the unemployment and underemployment statistics obtained from the General Household Survey for 1994 and 1995. The working group noted that there was no evidence to support any discrimination in employment against persons of any group using the tables on unemployment rates by age. They noted that unemployment rates were generally highest in the lowest age group.

Overseas Experience

7. Chapter 4 of the paper describes age discrimination legislation in Australia, Canada, New Zealand and the USA, and the non-binding European Union resolutions on age discrimination in employment. In Australia, an example of state legislation is the New South Wales 1977 Anti-discrimination Act, which provides an avenue for complaints about age discrimination. In Canada, the Human Rights Act prohibits discrimination on a number of grounds, including age. In New Zealand, the relevant age discrimination legislation is the Human Rights Act 1993, while in the USA, the Age Discrimination in

Employment Act protects individuals aged 40 or above against age discrimination in employment, but provides for exemption in cases where age is a genuine occupational qualification.

8. The European Union's non-binding resolutions call upon member states to eliminate any legal and administrative obstacles to the employment of older workers, and for the strict application of the principle of equal treatment and equal opportunities for such workers.

9. Other legislative measures have been adopted by several countries which do not have specific age discrimination legislation to promote employment opportunities for older or younger workers. In Japan, for example, the law concerning Stabilization of Employment of Older Persons prescribes comprehensive measures to promote the security of employment for older persons.

10. In Singapore, the Constitution guarantees that there is no discrimination against the citizens of that country in relation to employment, while the Retirement Age Act 1993 enables all employees to work up to the age of 60, or such other age, up to 67, as may be prescribed by the Minister for Labour. In the Republic of Korea, the Labour Standards Act concentrates on providing protection for younger employees.

Fact-finding Survey

11. We commissioned a survey, between January and March 1996, by researchers from the Centre for Public Policy Studies, Lingnan College, assisted by the market research firm, Survey Research Hongkong (SRH) Ltd. to collect information on factors affecting major employment decisions - including recruitment, job security and other employment conditions such as promotion and training policy - and to ascertain whether age discrimination had a role to play in such decisions.

12. The findings of the survey are set out in chapter 5 of the paper. In brief the major points in the survey report are -

- (a) There is some evidence that job seekers as well as workers at both ends of the age spectrum (i.e. those aged below 25 and those aged 45 or above) are disadvantaged in the labour market - when compared with those aged between the upper twenties and the lower forties - but in different ways.
- (b) Members of the labour force aged below 25 have higher unemployment rates than all other age groups. The unemployment rates were lower for persons aged 25 - 34, generally speaking lower still for those aged 35 - 44, but higher again among persons aged 45 and above. Older workers also face greater difficulty in finding jobs.
- (c) Older workers tend to get lower wage increases, and are less likely to be promoted or selected for training. (Nonetheless, the conclusions regarding wage increases and promotion should also be considered in the light of the possibility that some of the surveyed older workers may have already reached their top salary point or highest pay band).
- (d) A significant proportion of employer respondents indicated no age preference as to performance potential.
- (e) Although older workers appear to be disadvantaged, this seems to be related to certain traits which happen to coincide with old age. To the extent, however, that an older individual may be screened out and not considered for employment, regardless of whether he or she possesses these traits, then he or she can be said to be subject to age discrimination.
- (f) There is some evidence of employers attempting to cut costs by engaging in "statistical age discrimination" i.e. some capable older workers may be screened out for job interviews.

- (g) Apart from statistical age discrimination, there may be other economic reasons why some employers prefer to hire workers at the junior level and fill senior positions by internal promotion - especially in trades where a high level of skill and experience is required.
- (h) Rapid economic and industrial restructuring in Hong Kong in recent years may have rendered irrelevant the skills and experience of older workers, while younger workers are becoming increasingly well educated. So older workers tend to lose out, but this has nothing to do with age discrimination per se.
- (i) The market will not eliminate age discrimination by customers (or age discrimination by the market). Indeed, employers may be forced by market forces to avoid hiring older workers, for they must please their customers to survive.
- (j) There is little evidence of pure age discrimination by employers due to personal prejudice.

13. It should be noted that while some evidence seems to suggest the presence of age discrimination in employment, other evidence points to a different conclusion.

The Way Ahead

14. Chapter 6 of the paper outlines the three possible broad options to deal with the issue of age discrimination in employment :

- (a) to retain the status quo, and take no steps other than to monitor the situation closely and on a regular basis;
- (b) to introduce age discrimination in employment legislation similar to that described in the public consultation paper;
or

- (c) to adopt a combination of public education and self-regulation, rather than legislation.

15. If retaining the status quo was the preferred option, it would be necessary to consider how best to monitor the situation, and on what basis Government should intervene in the future.

16. If the legislative approach was to be considered, we would have to take account of a number of factors -

- (a) age discrimination in employment legislation is not a panacea, and cannot guarantee jobs;
- (b) careful drafting would be needed to ensure that the legislation does not interfere with age requirements for certain jobs imposed in the interests of the safety of young people. Genuine exemptions should also be allowed, and clear guidelines should be provided for use by employers;
- (c) we would need an effective enforcement mechanism, a channel for claims of unlawful discrimination and probably a system of conciliation. All this would entail additional financial and manpower resources, and
- (d) legislation may lead to over-regulation and unnecessary litigation, and may not benefit either employers or employees.

17. Public education might be more likely to change attitudes towards equal opportunities in employment than the legislative approach. Moreover, local employer organisations have indicated that most employers would prefer self-regulation to legislation. They have already taken up measures like the issuing of equal employment opportunities guidelines and say they will step up their promotional efforts.

18. The legislative and non-legislative options need not be mutually exclusive.

FINANCIAL AND STAFFING IMPLICATIONS

19. The public consultation exercise itself will involve minimal costs in printing and publicity. These will be absorbed within the existing resources of the Education and Manpower Branch.

ECONOMIC IMPLICATIONS

20. The labour market in Hong Kong operates predominantly as a free market with few impediments to employment other than the specific knowledge, skills and capability requirements that are deemed necessary for the performance of particular jobs. The terms and conditions of employment are generally determined by the forces of labour supply and demand. In normal circumstances, it is natural for employers to wish to choose the most capable or qualified candidates from amongst a broader group of candidates to fill their vacancies, just as it is natural for workers seeking employment to wish to find the best jobs that fit their own attributes. Activities and intentions in this vein in the labour market cannot be regarded as discrimination, although it is obvious that the edge with employers or with workers in any particular job inevitably varies with the balance of supply and demand in regard to such jobs and also with the overall conditions in the labour market.

21. A key concern is therefore that any anti-discrimination legislation could introduce artificial impediments that hinder the free play of market forces, imposing rigidities on their operations and possibly also adding to the cost of doing business. Nor would there be any benefit to employees if employers were discouraged from creating jobs to the scale initially intended. The ability of the economy to respond to externally induced fluctuations might also be restricted.

PUBLIC CONSULTATION

22. Community views prompted this study. We are publishing the consultation paper, and will seek comments from interested members of the public and organisations, in particular those that might be affected by the introduction of age discrimination legislation.

PUBLICITY

23. A press conference will be held and a press release will be issued on 7 June 1996 to announce the launch of the public consultation exercise. Besides issuing this brief, we will also brief the Legislative Council Manpower Panel. During the public consultation period, we will send copies of the paper to employers' groups, trade unions, and other interested parties. The public may obtain copies of the consultation paper from the Home Affairs Department's District Offices and the Labour Department's Local Employment Service Offices. The consultation paper is also available from the Hong Kong Government home page on Internet.

Education and Manpower Branch
Government Secretariat

File : EMB CR 1/3231/95 Part VII
June 1996

Mr. A M Reynolds, PAS(EM) 5
2810 3036

Equal Opportunities :

A study on Discrimination in Employment on the ground of Age

A consultation paper

**Education and Manpower Branch
Government Secretariat**

June 1996

Contents

	<u>Page</u>
Foreword	i
Chapter 1 Executive Summary	1-6
Chapter 2 Introduction	7-8
Chapter 3 Statistical Analysis	9-10
Chapter 4 Overseas Experience	11-16
Chapter 5 Fact-finding Survey	17-22
Chapter 6 The Way Ahead	23-26
Annex I Fact-finding Visit to Australia and New Zealand	27-38
Annex II Age Discrimination in Employment : International Instruments	39-41

Foreword

Fair treatment in all aspects of employment irrespective of age is important to every member of the community, and is a matter deserving public consideration. It is important that members of the public express their views on this subject.

Any measures that the Government may adopt to further promote equal opportunities in employment in Hong Kong in respect of age could have wide implications for the community. Members of the public who wish to comment on any of the points contained in this consultative paper, or on any other area where they believe age discrimination is an issue, are invited to write or fax to :

The Secretary for Education and Manpower
Central Government Offices
9th floor, West Wing
11 Ice House Street, Central
Hong Kong

Fax No. : 2868 5916

by 7 August 1996.

Please indicate whether you would like your name to be identified in the eventual report on the consultation exercise.

Comments may also be sent over the Internet to embinfo@emb.gcn.gov.hk

Education and Manpower Branch
Government Secretariat

June 1996

CHAPTER 1

EXECUTIVE SUMMARY

Introduction (Chapter 2)

- 1.1 In recent years the Government has sought to eliminate discrimination in a wide range of areas. The concept of equal opportunities has also been actively promoted. During the debate on various pieces of proposed anti-discrimination legislation in 1995, the Government undertook to examine possible discrimination on a number of grounds, including age.
- 1.2 A Working Group on Age Discrimination in Employment was set up within the Government in August 1995 with the aim, in so far as employment matters are concerned, of ascertaining whether age discrimination is a problem in Hong Kong, and if it exists, to consider what Government measures, if any, should be adopted to deal with it.

Statistical Analysis (Chapter 3)

- 1.3 The Labour Department carried out three surveys of newspaper job advertisements to determine what percentage of these mentioned age as a job requirement. The result showed that the majority of the advertisements had no age requirements. The percentage of surveyed vacancies where age was not a requirement varied between 83% in July 1995, to 86.3% in October 1995 and 80.7% in January 1996.
- 1.4 Amongst the newspaper job advertisements which had age requirements, the practice of stipulating such requirements was most common in the following occupational categories :
 - (a) sales/service workers such as sales persons and shop assistants;
 - (b) clerical workers, such as general office clerks, secretaries and receptionists; and

- (c) manual or unskilled workers, including delivery workers, storekeepers and messengers.
- 1.5 After examining the unemployment and underemployment statistics from the General Household Survey for 1994 and 1995, the Working Group noted that there ~~was~~ no evidence to prove any discrimination in employment against persons of any age group.

Overseas Experience (Chapter 4)

- 1.6 In Australia an example of state legislation is the New South Wales 1977 Anti-discrimination Act, which was amended to provide from 1 July 1994 an avenue for complaints about age discrimination.
- 1.7 In Canada there is a federal anti-discrimination law known as the Canadian Human Rights Act, and each province has similar measures. Age is one of a number of prohibited grounds for discrimination.
- 1.8 The European Union does not have any age discrimination legislation at present, but has non-binding resolutions which call for the strict application of the principle of equal opportunities and equal treatment for workers.
- 1.9 In New Zealand the relevant age discrimination legislation is the Human Rights Act 1993.
- 1.10 In the USA, the Age Discrimination in Employment Act of 1967, amended in 1990, protects individuals aged 40 or older against age discrimination in employment, and covers hiring, discharge, pay, promotion and other terms and conditions of service.
- 1.11 Some countries, while not having specific age discrimination legislation, deal with the issue through other legislative measures. In Japan, the law concerning Stabilization of Employment of Older Persons stipulates that the state should provide employment guidance, placement, vocational training and other measures to promote

employment opportunities for older persons. In Singapore, the Retirement Age Act 1993 enables all employees to work up to the age of 60, or to such other age, up to 67, as may be prescribed.

- 1.12 Further information on age discrimination legislation in Australia and New Zealand, and the fact-finding visit to these countries by two members of the Working Group, is at Annex I.
- 1.13 Annex II provides details of international instruments and International Labour Conventions and Recommendations which deal with equality of opportunity and treatment.

Fact-finding Survey (Chapter 5)

- 1.14 The fact-finding survey was carried out between January and March 1996 by researchers of the Centre for Public Policy Studies, Lingnan College assisted by the market research firm, Survey Research Hongkong Ltd. The main points contained in the survey report are as follows :
- There is some evidence that job seekers and workers at both ends of the age spectrum (i.e. those aged below 25 and those aged 45 or above) are disadvantaged when compared with those aged between the upper twenties and the lower forties.
 - Members of the labour force aged below 25 have the highest unemployment rates. Members of the labour force aged 35-44 generally have the lowest incidence of unemployment, but unemployment rates tend to be slightly higher again for those aged 45 or above.
 - Older workers tend to receive lower wage increases, are less likely to be in promotable jobs, less likely to be promoted, and less likely to be selected for training. (Nevertheless, the conclusions regarding wage increases and promotion should also be considered in the light of the possibility that some of the surveyed

older workers may have already reached their top salary point or highest pay band).

- For those employer respondents who indicated age preference for a number of job related characteristics, younger workers are preferred in aspects such as value for money, ability to deal with clients, ability to learn new skills and productivity/performance. On the other hand, older workers are preferred in aspects such as loyalty/low turnover, low absenteeism and maturity.
- Employers may attempt to save money by engaging in “statistical age discrimination”, i.e. they screen out an individual on the assumption that he or she possesses certain traits which usually happen to coincide with old age, irrespective of whether the person actually possesses such traits.
- To the extent that Hong Kong’s economic and industrial restructuring is creating a greater demand for highly skilled and better trained workers, older individuals may be less likely to be hired.
- The market will tend to eliminate age discrimination by employers due to personal prejudice, but will not eliminate age discrimination by customers or market forces, or by co-workers. There seems to be some evidence of age discrimination by the market, but no evidence of age discrimination by co-workers. There is little evidence of pure age discrimination by employers due to personal prejudice.

1.15 It should be noted that while some evidence seems to suggest the presence of age discrimination in employment, other evidence points to a different conclusion.

The Way Ahead (Chapter 6)

1.16 The Government is keeping an open mind on the preferred approach to deal with the issue of age discrimination in employment. The study indicates that there are three

possible broad options, and it is on these that public views are sought.

- 1.17 The first option would be to retain the status quo, and take no particular Government measures other than to monitor the situation closely and on a regular basis. If retaining the status quo was the preferred option, it would be necessary to consider how best to monitor the situation, and in the future on what basis the Government should intervene.
- 1.18 The second option would be to introduce age discrimination in employment legislation similar to that described in this paper. In considering the desirability of this option, a number of factors would need to be taken into account. These include :
- (a) Age discrimination in employment legislation is not a panacea, and cannot guarantee jobs.
 - (b) Careful drafting would be needed to ensure that the legislation does not interfere with age requirements for certain jobs that are imposed in the interest of the safety of the young. Genuine exemptions should also be allowed, and clear guidelines should be provided for use by employers.
 - (c) An appropriate enforcement mechanism, as well as a system of conciliation and a channel for aggrieved parties to lodge claims would be needed to deal with cases of age discrimination in employment. All these will have financial and resource implications for the Government.
 - (d) Legislation may not be an effective means of changing attitudes. It may lead to over-regulation and unnecessary litigation, and may not benefit either employers or employees.
 - (e) Legislation could introduce artificial impediments that would hinder the free play of market forces, imposing

rigidities on employers' operations and possibly also adding to the cost of doing business.

- 1.19 The final option would be a non-legislative one, being a combination of public education and self-regulation. Public education may be more likely to change attitudes towards equal opportunities in employment than a legislative approach. Indeed, legislation is no substitute for public education. Possible options might include the production of information leaflets and the monitoring of the situation through periodic surveys. Local employer organisations have indicated that most employers would prefer self-regulation to legislation. They have already issued guidelines on equal employment opportunities for use by employers and human resource managers, and have said that they will step up their promotional efforts.
- 1.20 The legislative and non-legislative options need not be mutually exclusive.

CHAPTER 2

INTRODUCTION

Background

- 2.1 In recent years the Government has sought to eliminate discrimination in a wide range of areas. In 1991 the Bill of Rights Ordinance was enacted. Amongst other things, the Ordinance prohibits discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Ordinance binds Government and public authorities. Since its enactment, a number of laws have been amended to remedy discriminatory provisions.
- 2.2 The concept of equal opportunities has also been actively promoted. The Sex Discrimination Ordinance and the Disability Discrimination Ordinance enacted in July and August 1995 respectively are steps taken to eliminate discrimination in society.
- 2.3 With society developing and becoming more open, there have been calls for other potential areas of discrimination to be explored. During the debate on various pieces of proposed anti-discrimination legislation last year, the Government undertook to examine possible discrimination on a number of grounds, including age.

Working Group on Age Discrimination in Employment

- 2.4 A Working Group on Age Discrimination in Employment (the Working Group) was set up in August 1995 under the Education and Manpower Branch, with representatives from Financial Services Branch, Home Affairs Branch, Census and Statistics Department and Labour Department. The terms of reference of the Working Group were as follows:

“In so far as employment matters are concerned,

- (a) to ascertain whether age discrimination is a problem in Hong Kong; and
- (b) if age discrimination does exist, to consider what Government measures, if any, should be adopted to tackle the problem of age discrimination.”

The Working Group concentrated on age discrimination in employment because of the public perception that this was the main cause of concern, particularly at the recruitment level.

2.5 The Working Group has undertaken the following studies :

- (a) **examination of General Household Survey statistics** for unemployment and underemployment for 1994 and 1995;
- (b) **a fact-finding survey** to collect information on whether and how age discrimination exists in the major areas of employment;
- (c) **examination of overseas legislative and administrative measures** concerning age discrimination;
- (d) **a fact-finding visit** to Australia and New Zealand to obtain a better understanding of how the relevant legislation in both countries is implemented; and
- (e) **surveys of advertised vacancies** to find out the percentages of newspaper job advertisements which mention age as a job requirement.

These studies are discussed in greater depth in the ensuing pages.

CHAPTER 3

STATISTICAL ANALYSIS

Introduction

3.1 The Working Group carried out two separate statistical exercises. These are described below.

Survey of newspaper job advertisements

3.2 The Labour Department carried out three surveys of newspaper job advertisements to determine what percentage of these mentioned age as a job requirement. The majority of the advertisements did not stipulate any age requirements. In the first survey carried out in July 1995, 83% of the 20,810 job vacancies surveyed had no age requirement. This figure increased to 86.3% in the second survey carried out in October 1995, but dropped to 80.7% in the third one carried out in January 1996. The second and third surveys screened 25,986 and 19,984 vacancies respectively.

3.3 Amongst the newspaper job advertisements which stipulated age requirements, the Working Group noticed that such a practice was most common in the following occupational categories:

- (a) sales/service workers such as salespersons and shop assistants;
- (b) clerical workers, such as general office clerks, secretaries and receptionists; and
- (c) manual or unskilled workers, including delivery workers, storekeepers and messengers.

Examination of unemployment and underemployment statistics

3.4 After examining the unemployment and underemployment statistics from the General Household Survey for 1994 and 1995, the working group noted that:

- (a) the pattern of unemployment and underemployment rates by age was similar in all quarters;
- (b) by reference to the tables on unemployment rates by age, there was no evidence to support any discrimination against persons of any age group. Unemployment rates were generally highest in the lowest age group, with the exception of the manufacturing industry and the construction industry during some of the quarterly periods that were surveyed;
- (c) the overall unemployment rates in all four quarters of 1994 were broadly similar, except for a rise in the third quarter when many graduates joined the labour market; and
- (d) there was a general rise in unemployment rates in 1995 but the unemployment rates for the lower age groups remained higher than those for the more elderly groups.

CHAPTER 4

OVERSEAS EXPERIENCE

Introduction

- 4.1 The Working Group has examined legislation from a number of countries which prohibit discrimination on the grounds of age. In addition, some Working Group members visited Australia (Sydney, New South Wales) and New Zealand (Auckland and Wellington) to discuss with government officials, as well as representatives of employers and employees how their legislation works in practice. Details of the legislation studied are provided in this chapter. Information obtained from the study tour as well as further details of the relevant legislation is in Annex I while information on age discrimination in international instruments is at Annex II.

Australia

- 4.2 As an example of state legislation, the New South Wales 1977 Anti-discrimination Act was amended to provide from 1 July 1994 an avenue for complaints about age discrimination. The Act already covered discrimination on other grounds, e.g. sex, race and disability. The legislation covers all age groups and applies to all employment, irrespective of the size of the organisation. However, it provides a general exemption which aims to assist people to participate fully in society; e.g. travel and medical concessions based on age. (For details, see Annex I).

Canada

- 4.3 There is a federal anti-discrimination law known as the Canadian Human Rights Act, and each province has similar measures. The prohibited grounds of discrimination under the Act include race, national or ethnic origin, colour, religion, age, sexual orientation, marital status, family status, disability and conviction for which a pardon has

been granted. Age is a prohibited ground of discrimination in all provincial human rights legislation.

4.4 In Ontario, for example, Part I of the Human Rights Code states that every person has a right to equal treatment with respect to services, goods and facilities without discrimination because of (among other criteria) age. Section 5 of the Code states that :

- (a) every person who is an employee has a right to equal treatment with respect to employment without discrimination because of age; and
- (b) every person who is an employee has a right to freedom from harassment in the workplace by the employer because of age

An employment advertisement is considered discriminatory where it directly or indirectly classifies or indicates qualification according to age.

4.5 Under the Canadian Human Rights Act there is provision for exceptions where:

- (a) age is a genuine occupational requirement;
- (b) there is a minimum or maximum age required under other legislation;
- (c) it is the normal age of retirement;
- (d) there is genuine justification; and
- (e) a special arrangement is required to prevent disadvantageous treatment.

European Union

- 4.6 At present, the European Union (EU) does not have any legislation on age discrimination. However it does have non-binding resolutions which, among other things :
- (a) call on the Member states to eliminate any legal and administrative obstacles to the employment of older workers;
 - (b) seek to facilitate the return to work of the older long-term unemployed through aid for recruitment and through genuine vocational retraining;
 - (c) call for the strict application of the principle of equal opportunities and equal treatment for older workers;
 - (d) draw attention to its constant opposition to discrimination against older workers in the employment market; and
 - (e) call on the EC and Member states to examine the possibilities of employing older workers in activities relating to safeguarding and restoring the environment, social solidarity, cultural dissemination and humanitarian aid.

New Zealand

- 4.7 The relevant legislation in New Zealand is the Human Rights Act 1993. It replaced the Race Relations Act 1971, and the Human Rights Commission Act 1977 which already prohibited age discrimination in employment. The focus of the age discrimination legislation is to avoid premature retirement. (For details, see Annex I).

United States of America

- 4.8 The Age Discrimination in Employment Act of 1967, amended in 1990, protects individuals aged 40 or older against age discrimination in employment. It applies to

private sector employers with 20 or more employees, federal, state and local governments; and employment agencies and labour organisations with 25 or more members. The Act prohibits all forms of age discrimination in employment, including hiring, discharge, pay, promotions and other terms and conditions of employment. It also prohibits employment agencies and labour organisations from discriminating against an individual on the grounds of age. In addition, it is unlawful under the Act to print or publish a notice or advertisement that indicates a preference, limitation or specification based on age.

- 4.9 The Act provides for exemptions in cases where age is a genuine occupational qualification reasonably necessary for the operation of a particular business, or such differentiation is based on reasonable factors other than age. It is also permissible for state and local governments to make age-based hiring and retirement decisions for fire-fighters and law enforcement officers when such age limitations were already in effect on 3 March 1983, and the action taken is pursuant to a genuine hiring or retirement plan.

Other legislative measures

- 4.10 There are some countries which, while not having specific age discrimination legislation, have adopted various other legislative measures in their efforts to protect the employment security and promote employment opportunities for older and younger workers. Details of these practices are provided in the following paragraphs.

Japan

- 4.11 Japan has adopted a promotional approach through legislation. The Employment Measures Law states, amongst other things, that in order to promote the employment of middle-aged and older persons, the state shall endeavour to furnish materials and other aid to the employers and persons concerned.

- 4.12 The law concerning Stabilization of Employment of Older Persons prescribes comprehensive measures to promote the security of employment for older persons. It was amended in 1995 to stipulate that employers shall endeavour to employ workers until they reach the mandatory retirement age of 65. This law also stipulates that the state should provide employment guidance, employment placement, vocational training and other measures to promote the employment opportunities of older persons.
- 4.13 Public Employment Security Offices are set up to develop employment opportunities for older persons. At the national level the Ministry of Labour is empowered to appoint the "Central Older Persons Employment Security Centre", while at the prefectural level there are "Prefectural Older Persons Employment Security Centres." These centres serve the following functions:
- (i) to conduct surveys and research concerning the stabilization of employment of older persons;
 - (ii) to conduct courses for employers for the continuous employment of older persons;
 - (iii) to collect information and materials on measures for the continuous employment of older persons, and provide such information and materials to employers;
 - (iv) to provide counsel and other assistance to employers on technical matters relating to employment of older persons; and
 - (v) to perform various matters necessary for stabilizing the employment of older persons.
- 4.14 In addition to the above measures, "Silver Human Resources Centres" and a "National Silver Human Resources Centre Association" are set up to promote the welfare and the positive utilization of the abilities of retired persons. Prefectural Silver Human Resources Centres will facilitate the provision of temporary short-term work to older retirees,

conduct free placement services and carry out courses to provide the elderly with the necessary knowledge and skills. The National Association is concerned with promoting the employment of retirees.

Singapore

4.15 The legislative protection of employees against age discrimination is provided in the Constitution of Singapore and the Retirement Age Act 1993. The Constitution guarantees that there is no discrimination against the citizens of Singapore in relation to employment, whereas the Retirement Age Act 1993 enables all employees to work up to 60 years, or such other age, up to 67, as may be prescribed by the Minister for Labour. Under the Act, an employer is prohibited from dismissing on the ground of age any employee who is below 60 years of age or the prescribed retirement age. There are, however, no other provisions protecting employees against age discrimination in respect of recruitment, remuneration, promotion and other areas of employment.

Republic of Korea

4.16 The Labour Standard Acts of the Republic of Korea stipulates the minimum age for employment to be thirteen years old. It also provides protection for employees under the age of eighteen, e.g. providing for maximum working hours and prohibition of night work. There is, nevertheless, no restriction on employers from setting an age limit for new recruits and most companies make the rule that new applicants should be under 30 or 33 years old.

CHAPTER 5

FACT FINDING SURVEY

Introduction

- 5.1 A major part of the study on age discrimination in employment has been the fact-finding survey. This was carried out between January and March 1996 by researchers from the Centre for Public Policy Studies, Lingnan College, assisted by the market research firm, Survey Research Hongkong Ltd.
- 5.2 The purpose of the survey was to collect information on factors affecting major employment decisions including recruitment, job security and other employment conditions such as promotion and training policy and to ascertain whether age discrimination had a role to play in such decisions.

The survey

- 5.3 The terms of reference of the survey were :
- (a) In respect of employers, to establish
- what are the most important factors to be considered when recruiting employees;
 - what are the most important factors to be considered when promoting an employee;
 - what are the most important factors to be considered when selecting employees for training;
 - what factors are taken into consideration when dismissing or retrenching employees; and
 - whether any particular age group of workers is perceived to be subject to disadvantages in the

field of employment; and if so, what these disadvantages are.

- (b) In respect of employees or the unemployed, to establish
- how the interviewee's background may affect his chances of being employed or unemployed; whether age has an effect, and if so the possible reasons for that effect;
 - the number of job applications made since becoming unemployed. Whether the interviewee had been rejected for a job since becoming unemployed, if so the (perceived) reasons; and
 - what the interviewee perceived as important factors to be considered by his/her employer in promotion or selection for training.

Survey design

5.4 The survey consisted of three parts :

General public survey

Randomly selected households were the targets of this survey, which was conducted by telephone interviews. Two thousand successful interviews were carried out. Questions covered opportunities and experiences in various aspects of employment.

Survey of Job-seekers

The survey was conducted by face-to-face interviews with registrants at the Labour Department's job centres. It covered job seeking experiences and a total of 929 successful interviews was conducted.

Survey of Employers

A total of 1597 firms or organizations had responded to the survey (983 by mail and 614 responded to telephone interviews). The survey covered the major aspects of employment including recruitment, promotion, training and dismissal.

- 5.5 To supplement the analysis based on the above surveys, the researchers also referred to data from the General Household Survey (GHS) which is conducted by the Census and Statistics Department and which enjoys the benefit of a much larger sample size.

Main points in the survey report

- 5.6 There is some evidence that job seekers and workers of the younger and older age groups are “*disadvantaged*” in the labour market. Younger and older members of the labour force (i.e. those aged below 25 and those aged 45 or above), however, are disadvantaged in different ways:

- (a) Members of the labour force aged below 25 have higher unemployment rates than all other age groups.
- (b) The unemployment rates were lower for persons aged 25 - 34, generally speaking lower still for those aged 35 - 44, but higher again among persons aged 45 or above.
- (c) Older persons face greater difficulty in finding jobs in terms of the number of job offers received by the surveyed unemployed job-seekers.

These conclusions need to be considered in the light of such variables as education, industry, sex and marital status which may also affect a worker’s employment status.

- 5.7 Focusing on workers of the older age group, the results of the fact-finding survey also show the following :

- (d) Older workers tend to get lower wage increases. As job seekers, they are more likely than younger workers to expect a decline in wages (when they change jobs).
- (e) They are less likely to be in jobs with promotion prospects and less likely to be promoted. They are also less likely to be selected for training.
- (f) They are more likely to be dismissed than younger workers, although most employers indicated no age preference in this respect.

(Note : 1. The conclusions regarding wage increases and promotion should also be considered in the light of the possibility that some of the surveyed older workers may have reached their top salary point or highest pay band.

- 2. Allowing for other factors which may also affect a worker's employment opportunity, such as educational background, the age effect still comes out against older workers in the above two aspects in (d) and (e) above.)

5.8 Employer respondents have been asked whether they think certain age groups of workers perform better in a number of job-related worker characteristics. A significant proportion of employers who responded to the survey indicates no age preference. For those who do, younger workers are preferred in aspects like value for money, ability to deal with clients, ability to learn new skills and productivity/performance. On the other hand, older workers are preferred in aspects such as loyalty/low turnover, low absenteeism and maturity.

5.9 This has led to the possibility of the existence of a phenomenon called "*statistical age discrimination*".

Statistical age discrimination by employers is said to exist when employers do not give an individual worker a detailed assessment based on his/her own merits, in a hiring, promotion, training, or other job-related decision, but based on those attributes which the employer believes workers of that particular age group are likely to have (although that individual worker may not have such attributes at all). The reason for doing so is to save the cost of carrying out a detailed assessment of an individual worker's abilities. Therefore, for older workers, although some individuals may be doing well doing a job they may not be given a chance by their employers/potential employers so long as those employers believe that older workers are likely to be less capable. There is some evidence of such a practice in Hong Kong, and this is not surprising because Hong Kong is a market economy where reducing cost is an important consideration to employers.

- 5.10 Apart from statistical age discrimination, there may be other economic reasons why some employers prefer to hire workers at the junior level and fill senior positions from internal promotion. There may also be good reasons for a "deferred compensation" scheme of paying workers. That is, younger workers are paid relatively low wages, but are given raises as they gain seniority. The idea is to reward workers for their loyalty (i.e. not leaving the company/employer) and to motivate workers to undertake investment in skills. These practices are especially relevant for skill-intensive jobs. To the extent that Hong Kong's industrial restructuring is causing a greater demand for highly skilled and better educated workers, older individuals may be less likely to be hired. The statistical analysis lends support to this hypothesis.
- 5.11 The rapid economic and industrial restructuring of Hong Kong is necessarily causing a shift in the demand for the market and skills. The demand for the market is shifting towards younger workers, on the one hand, and towards increasingly well educated. So older workers are likely to be out of competition, but this has nothing to do with age discrimination.

- 5.12 Besides statistical age discrimination, there could also be some other reasons behind the phenomenon that older workers are disadvantaged in the market. One is "*age discrimination by the market*" and another is "*age discrimination by co-workers*".
- 5.13 Age discrimination by the market appears when customers prefer workers who serve them to be of a particular age group. In order to meet the customers' demand, employers will try to recruit only those workers who are of that favoured age group. In doing so, the employment opportunity of capable workers of other age groups would be reduced. This kind of age discrimination usually exists in personal service industries.
- 5.14 As regards age discrimination by co-workers, this happens when existing workers of a company favour new workers of a particular age group. With this in mind, the employer will try to recruit only those workers who are of that favoured age group so that existing workers are willing to work together with the new colleagues. Again, the employment opportunity of capable workers of other age groups will be reduced under such circumstances.
- 5.15 The market will tend to eliminate age discrimination by employers due to personal prejudice, but will not eliminate age discrimination by the market or by co-workers. According to the survey, there seems to be some evidence of age discrimination by the market but no evidence of age discrimination by co-workers. The survey has found little evidence of pure age discrimination by employers due to personal prejudice.
- 5.16 It should be noted that while certain findings of the fact-finding survey have shown that younger and older job-seekers/workers are disadvantaged in the labour market, some other results of the survey have indicated an absence of age discrimination in employment.

CHAPTER 6

THE WAY AHEAD

Introduction

- 6.1 The Government keeps an open mind on the preferred approach to deal with the issue of age discrimination in employment. This study has shown that there are three possible broad options, and it is on these that public views are sought.

Retention of the status quo

- 6.2 The first option would be to retain the status quo, and take no particular Government measures other than to monitor the situation closely and on a regular basis. It may be argued that the results of this study, and in particular the fact-finding survey, do not indicate that there is a need for any legislative or administrative measures to be taken at this time. Conversely, it could be argued that the existence of such phenomena as age discrimination by customers or market forces, or statistical age discrimination, point to the need for some action. If retaining the status quo is the preferred option, it would be necessary to consider how best to monitor the situation, and in the future on what basis Government should intervene.

The legislative option

- 6.3 The second option would be to introduce age discrimination legislation similar to that described in this paper. In considering the desirability of this option, a number of important factors need to be taken into account :
- (a) A significant number of countries do not have age discrimination in employment legislation, and age is not among the more usual forbidden grounds of discrimination in many international instruments.

- (b) Even in those countries where such legislation exists, it is not a panacea. Indeed, most countries do not regard legislation as a substitute for public education. While legislation may do away with the more blatant forms of age discrimination in employment, it cannot guarantee jobs, and there will always be ways to circumvent the rules.
- (c) The legislation would have to be drafted very carefully to ensure that age requirements for particular jobs that were imposed in the interests of the safety of the young were not overturned. It would also be necessary to allow for genuine exemptions and to provide clear guidelines for use by employers and employees.
- (d) The effective implementation of any legislation hinges upon an appropriate enforcement mechanism, so one would need to be set up to deal with cases of age discrimination in employment. A system of conciliation would also be necessary. One option would be to consider expanding the scope of the Equal Opportunities Commission to cover cases of age discrimination. Experience in Australia and New Zealand indicates that cases take a long time to be settled. In addition a channel would need to be provided for an aggrieved party to lodge any claim of unlawful discrimination on the ground of age. All this will entail additional financial and manpower resources on the part of the Government.
- (e) The labour market in Hong Kong operates predominantly as a free market, with few impediments to employment. The terms and conditions of employment are determined generally by the forces of labour supply and demand. Against this background it could be argued therefore that age discrimination legislation could introduce artificial impediments that would hinder the free play of market forces, imposing rigidities on employers' operations and possibly also adding to the cost of

doing business. Nor would there be any benefit to employees if employers were discouraged from creating jobs to the scale initially intended. The ability of the economy to respond to externally induced fluctuations might also be restricted.

- 6.4 Careful thought should also be given to the likely effectiveness of age discrimination in employment legislation, as well as the likely implications for those concerned. It may be argued that like other areas of discrimination, age discrimination in employment is related to personal attitudes and social values. Legislation may not be an effective means of changing such attitudes. It may also lead to over-regulation and unnecessary litigation. Employer organisations may be concerned that age discrimination in employment legislation will interfere with management decisions without bringing benefits either to employers or to employees. They may also fear it will create unnecessary work for management, and could possibly result in abuse.
- 6.5 On the other hand, some employee organizations and individual workers who believe they are being disadvantaged because of age may prefer the legislative option so that remedies and sanctions are clearly enshrined in the law. It may also be argued from the human rights angle that no discrimination should be allowed on account of age in the same way as, for example, sex or disability in which legislation has been enacted.

The non-legislative option

- 6.6 The final option would be to deal with this issue by non-legislative means, and primarily through public education and self-regulation.
- (a) Public education
- 6.7 Sustained public education in various forms may be more likely to bring about a change in attitudes when dealing with equal opportunities in employment. It is noticeable that

even in those countries which have age discrimination in employment legislation, public education on equal opportunities in employment is regarded as essential. Possible options might include the issue of information leaflets for members of the public, advertisements, the periodic monitoring of the situation through public surveys, and conducting seminars and training courses for human resource professionals.

(b) Self-regulation

- 6.8 Employer organisations in Hong Kong have indicated that the majority of employers prefer to deal with this issue by self-regulation rather than by legislation. With this in mind they published in May 1995 a set of guidelines on equal employment opportunities for use by employers and human resource managers. They have also organised seminars and workshops on this subject, and have said that they will continue to do so.
- 6.9 If the non-legislative option is the preferred approach, employer organisations should continue to encourage employers at large to make human resource management decisions on the basis of the qualifications, experience and performance of their employees and potential employees, regardless of age. Where they come across instances of age still being used as a factor in an employment related decision, they should encourage the employers in question to rectify such a practice.
- 6.10 Finally it should be noted that the legislative and non-legislative options need not be mutually exclusive. Also, in terms of timing, it would be quicker to implement any non-legislative proposals which do not require the due process of law-making.

FACT-FINDING VISIT TO AUSTRALIA AND NEW ZEALAND

Introduction

- 1.1 In January 1996 two members of the Working Group, accompanied by two Members of the Legislative Council and a research officer from the Legislative Council Secretariat visited Sydney, New South Wales, Australia as well as Auckland and Wellington, New Zealand. The purpose of the visit was to find out further information on the age discrimination legislation in the two countries, and to examine how the provisions work in practice.
- 1.2 Details of the legislation and the observations arising from the trip are in the following paragraphs. Additional information is in Appendix I.

New South Wales

Background to the legislation

- 1.3 The relevant legislation is the New South Wales 1977 Anti-Discrimination Act, which was amended to provide, from 1 July 1994, an avenue for complaints relating to age discrimination. The Act already covered discrimination on other grounds, e.g. sex, race, and disability.

The Anti-Discrimination Act

- 1.4 In so far as age discrimination is concerned :
 - (a) the legislation covers all age groups;
 - (b) it is applicable to all employment, irrespective of the size of the organisation;

- (c) it provides a general exemption which aims to assist people to participate fully in society, e.g. travel and medical concessions based on age; and
- (d) there is a small number of specific exemptions :
 - genuine occupational qualification in employment relating to age, e.g. in a drama;
 - special wage rates for persons under 21 years of age;
 - rights or protection based on age, e.g. voting, obtaining a driver's licence;
 - acts done in pursuance of other statutes; and
 - age-specific insurance clauses and superannuation schemes.

Definition

- 1.5 "Age discrimination" is defined as treating a person unfairly because of :
- his/her age, or a characteristic appertaining to a person of a particular age or age group, or
 - the age of any of their relatives or associates.

Discrimination in employment

- 1.6 It is unlawful for :
- (a) an employer to discriminate against a person on the grounds of age in the arrangements made for determining who should be offered employment, in actually determining who should be offered employment and in the terms on which employment is offered; and

- (b) an employer to discriminate against an employee on the grounds of age in respect of opportunities for promotion, transfer, training or other employment benefits, or in the event of dismissal.

1.7 The above provisions do not apply to employment in a private household.

Observations

- 1.8 Only 5% of the complaints received by the Anti-Discrimination Board during 1994-95 dealt with allegations of age discrimination in employment.
- 1.9 Although age discrimination in employment does not appear to be a serious problem in New South Wales, it was considered to be sensible for the legislative route to be followed because since 1977 an Anti-Discrimination Act had been in place to prohibit discrimination in other areas. The Act also provided the means of dealing with complaints against discrimination, i.e. the Anti-Discrimination Board and the Equal Opportunity Tribunal. It was therefore considered that the Act could be used to prohibit age discrimination. Legislation was also considered to be inevitable after the Anti-Discrimination Act 1990 progressively removed compulsory retirement as a means was needed to deal with discrimination complaints in this area.
- 1.10 While many of those spoken to during the visit to Sydney accepted that there was a need for age discrimination legislation, it was regarded as no substitute for public education. Legislation would provide an appropriate environment for education and promotional activities to be carried out. The Anti-Discrimination Board places great emphasis on public education, and operates an Information Services Branch which provides the public with information by answering enquiries and publishing fact-sheets and guidelines. It also conducts seminars and training courses for human resource professionals.

- 1.11 On the basis of the number of complaints finalised by the Anti-Discrimination Board in 1995, and their result, Board conciliation appears to be a lengthy process. Dealing with a formal complaint will cost an employer about AU\$36,500. It is likely that some employers chose to settle their cases through conciliation for economic reasons, while the large number of cases that did not proceed or were declined could also be due in part to the time-consuming investigative process. This seems to strengthen the need for public education to prevent cases arising from ignorance or malpractice.
- 1.12 In a discussion paper issued by the Board in August 1995, employer groups indicated concern that it was difficult for them to interpret the law, and they were frustrated about the uncertainty as to whether or not they were in breach of it. As the Anti-Discrimination Act outlined unlawful behaviour in general terms, increased clarity was required to indicate what was or was not unlawful. The discussion paper recommended that codes of practice should be developed, and that proof of compliance with the codes would be evidence that the employer was not in breach of the Act.

New Zealand

Relevant legislation

- 1.13 The relevant legislation is the Human Rights Act 1993, which took effect on 1 February 1994. It replaced the Race Relations Act 1971 and the Human Rights Commission Act 1977. It came at the tail-end of a number of pieces of human rights and equal opportunities legislation, which had been introduced in response to the demands of the previous two decades, e.g. feminist activities in the late '70s, the high unemployment rate in the '80s, increased social consciousness, the expansion of the service sector, and the new approach towards deregulation and individual bargaining.
- 1.14 The Human Rights Commission Act already prohibited age discrimination in employment. The Human Rights Act

extended the coverage to other areas, enlarged some existing grounds and introduced a number of additional grounds on which discrimination is unlawful. The focus of the age discrimination legislation was to avoid premature retirement; this is quite different to Hong Kong where the issue mainly concerns recruitment.

Human Rights Act 1993

1.15 In respect of age discrimination :

- (a) all people of 16 years of age or above are covered;
- (b) up until 1 February 1999, in areas related to employment and training the upper age limit for protection is the age of entitlement to superannuation of the person concerned;
- (c) it is not unlawful to discriminate on the grounds of age when :
 - the job concerned is domestic employment in a private household;
 - it is employment at a lower rate of pay for persons aged 20 or below;
 - there are age-related clauses in insurance based on reliable information relating to such factors as life-expectancy or sickness; and
 - for the provision of group travel, sporting events and institutional accommodation for persons of certain age groups.

The Complaints Review Tribunal also has the power in respect of any case before it to declare that a genuine occupational qualification applies.

Definitions

- 1.16 The law provides for a number of prohibited grounds of discrimination and lists those areas where protection against such discrimination applies. Discrimination will occur when a person is treated less favourably than another in the same or similar circumstances. It may apply to a person, to his relative or to his associate.
- 1.17 Where an applicant for employment or an employee is qualified for work of any description, it is unlawful for an employer to refuse or omit to employ him/her for such work on any prohibited grounds, including age. It is also unlawful for an employer on such grounds to offer or afford an employee less favourable terms of employment, benefits, or opportunities for training, promotion or transfer, or to terminate his/her employment or cause him/her to retire or resign.

Observations

Public education

- 1.18 While legislative prohibition of age discrimination had existed for a number of years, and was seen as a logical accompaniment to other human rights legislation, it was felt to be of limited use without the back-up of a public education programme.
- 1.19 The original target of the public education campaign was academic institutions, but the current target is employers so as to reduce the number of complaints to the Human Rights Commission. Employers seminars began in 1993, with the main participants being human resource managers. The focus was on training the trainers on a cost recovery basis.
- 1.20 Publications are produced according to the intended audience, e.g. a general leaflet for public use. There is also a technical newsletter using case studies which is aimed at academics and human rights experts.

Guidelines

1.21 Employer representatives pointed out that age was a difficult issue for them to work with because of its immediate impact. There was a need for flexibility in the legislation, and they would like to see more exceptions to cater for specific needs. They believed that in some circumstances age was a necessary factor and a valid criterion for employment, e.g. the development of young staff for new ventures and for succession. The employers' representatives also said that they wanted age discrimination in employment legislation to be open and easy to work with. After widespread consultation with the employers, and recognizing that additional, non-statutory information is required, the Commission has published guidelines on pre-employment practices, superannuation, and advertising. Adequate time for consultation, as well as a grace period, was considered essential.

Settlement and conciliation

1.22 In 1994-95 the Commission began to emphasize the benefits of conciliation. This arose because of delays in the resolution of complaints brought about by under-staffing. It could take between 18 months and two years for a case to be concluded.

1.23 Cases could be settled by an apology, or by an assurance that the alleged discriminatory act would not be repeated. Compensation could be paid for tangible losses, e.g. loss of wages, as well as intangible ones, such as loss of dignity. There was also provision for confidentiality, protection against victimization, and for the person who carried out the alleged act of discrimination to receive education, training or counselling.

1.24 It is noticeable that in spite of the establishment of the investigation procedure under the Human Rights Act, a less structured approach was regarded as a more effective way of resolving differences apparently because of the time taken to resolve cases.

Trade union views

- 1.25 Trade union representatives felt that the age discrimination legislation had not worked its way through the system. They did not feel that the Human Rights Act was enough to deal with equal opportunity in employment, although it could manage to get rid of the most blatant acts of age discrimination. There was no security in employment as a result of giving an individual employment rights. Union activities emphasised collective activities and outcome, while the human rights agenda was based on the best outcome for the individual. Furthermore, age was more subtle, unlike race and gender where a group could be identified easily. Each age group might have a different agenda, e.g. the young receiving less pay; long-term unemployment for the 40-50 age group; the age for retirement. Trade union representatives felt that it was difficult to organise in the workplace on age discrimination grounds. They believed that human rights legislation needed to be backed up by equal opportunities legislation.

**FACT-FINDING VISIT TO AUSTRALIA
AND NEW ZEALAND : ADDITIONAL DATA**

Australia

Background

1. New South Wales was the first state in Australia to pursue the legislative route on age discrimination issues. This approach was prompted by such factors as :
 - (a) an increasing perception within the community that age discrimination would lead to the categorization of people on the basis of stereotyped notions of ability based on age, rather than on the basis of an assessment of individual skills, capacities and qualities. With an increasingly large population of elderly people, this was a subject for concern; and
 - (b) other states were taking steps to prohibit age discrimination, e.g. in both Queensland and Tasmania, anti-discrimination legislation covered age discrimination at work or in work related areas.

Administration of the Act

2. The Act is administered by the Anti-Discrimination Board, which is part of the New South Wales Attorney-General's Department. Staff of the Board deal with complaints, carry out public education on anti-discrimination legislation, and recommend necessary changes for consideration by the Government. The Board may also refer cases to the Equal Opportunity Tribunal, which was established under the Act to conduct enquiries into complaints of discrimination, and to make awards.

Complaints procedures

3. When a formal written complaint is made to the Anti-Discrimination Board - which must be within six months of the incident - it is investigated by the Board's investigation officers and conciliation officers. The investigation process usually involves obtaining detailed information from the complainant and any witnesses, and then seeking comments on the findings from the respondent. Should both parties be agreeable, there will be an attempt to resolve the matter by conciliation, with the onus being on both parties to resolve their differences. There is a two to three month target for conciliation, and the majority of cases are resolved within six months of being assigned to a conciliation officer. Twenty-five percent of cases are resolved upon conciliation to the satisfaction of both parties. If the matter cannot be settled by conciliation, then the complainant may opt to have his cases referred by the Board to the Equal Opportunity Tribunal for judicial determination.
4. Tribunal remedies include compensation, re-instatement, apology, and the respondent being obliged to undergo a programme of public education.
5. In the event that a group of employees lodges a complaint, then a representative case may be heard and the result will become binding on the other, similar complaints.

Profile of complaints

6. Most complaints begin by way of enquiries. Of the 20,827 enquiries handled by the Anti-Discrimination Board in 1994-95, 1,567, or 7.5%, involved age. In terms of enquiries by area, employment topped the list with 11,509 enquiries, or 55.3% of the total.
7. Of the 1,698 complaints received by the Board in 1994-95, 197, or 11.6%, fell within the general area of age discrimination, while 85, or 5%, related to age discrimination in employment. Employment was the main area for complaints, accounting for 976, or 57.5%, of the

1,698 cases, with the main areas of concern being sexual and racial discrimination.

8. Of the 2,526 complaints handled by the Board in 1994-95, 1,501 were finalised. Of these finalised cases, 26, or 1.73%, related to age discrimination.

New Zealand

Administration of the Act

9. The Human Rights Commission, an independent body reporting to Parliament through the Minister of Justice, is the main body which administers the Human Rights Act. Its main mission is to promote, monitor and safeguard New Zealand human rights. Its prime statutory functions include the investigation and resolution of unlawful discrimination prohibited under the Act, and, through education and publicity, the promotion of respect for and observance of human rights.
10. From time to time the Commission has to report to the Prime Minister on the desirability of legislative, administrative or other action to give enhanced protection to human rights.

Procedures

11. All approaches to the Commission for assistance are classified as enquiries until proven to be within the jurisdiction of the Commission and requiring significant input from a conciliation officer, at which time they become complaints.
12. Details of a complaint will be taken down by a Complaints Officer. The Commission will then notify the respondent in writing that a complaint has been made, and will ask both parties whether they would like to attempt mediation. Should this be agreed, then the Complaints Officer will act as a facilitator. If either party declines mediation, or if mediation does not bring about a settlement, then a formal

investigation, undertaken by a different Complaints Officer, will start. The new Complaints Officer will talk to relevant parties, interview witnesses and examine documents. A report will be written on which both parties can comment. Should the Commission find the case to be substantiated, it will try to negotiate a remedy for the discrimination suffered.

13. Substantiated cases which cannot be resolved will be referred to the Proceedings Commissioner who will decide whether or not to take the complaint to the Complaints Review Tribunal. If the complaint is found to have no substance, then both parties will be notified, and no subsequent action will be taken. The complainant may then choose to take the case at his own expense to the Complaints Review Tribunal, which functions like a court. It can award damages, and make other legally binding orders.

Complaints profile

14. In the year ending 30 June 1995, the Commission received 8,084 enquiries, of which 825, or 10.21% were on the subject of age. (This was top of the list of enquiries). During the same period, the Commission initiated action on 257 formal complaints, broken down into 329 items, of which 17, or 5%, related to age discrimination in employment.
15. The substantial difference between the numbers of age discrimination enquiries and actual formal complaints may indicate that there is a wide gap between perceived public concern and actual practice, or may show the realistic expectation of a complaint being resolved satisfactorily.

AGE DISCRIMINATION IN EMPLOYMENT: INTERNATIONAL INSTRUMENTS

Introduction

- 2.1 The spirit of equality is enshrined as a positive right in numerous national constitutions as well as a number of international instruments. The most familiar and common prohibited grounds of discrimination include race, sex, colour, religion and public opinion. It is noticed, however, that discrimination on the grounds of age is not among the common forbidden grounds in these international instruments and in many national constitutions.

Declaration of Philadelphia

- 2.2. In the 1944 Declaration of Philadelphia, the International Labour Organization (ILO) proclaimed as a fundamental principle that:

“all human beings, irrespective of race, creed or sex have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.”

This principle was incorporated in the ILO constitution and put into effect through a number of Conventions and Recommendations.

ILO Conventions and Recommendations

- 2.3 ILO Conventions set international labour standards and serve as models for national legislation. They are open to ratification by ILO member states and impose obligations upon those states which ratify them. Recommendations, on the other hand, only provide guidelines and suggestions on

the practices to be followed by member states. They are not subject to ratification and do not have any binding effect. Since there is no requirement on member states to inform the ILO of their acceptance of recommendations, it is not known how many of them have actually implemented the suggestions contained therein.

2.4 International Labour Conventions and Recommendations on equality of opportunity and treatment include:-

- Convention No. 100 and Recommendation No. 90 on Equal Remuneration.
- Convention No. 111 and Recommendation No. 111 on Discrimination (Employment and Occupation).
- Convention No. 156 and Recommendation No. 165 on Workers with Family Responsibilities.
- Recommendation No. 162 on Older Workers.

2.5 Convention No. 111 and Recommendation No. 111 adopted in 1958 are the most comprehensive ILO instruments on equal opportunity. In this Convention, discrimination includes “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment and occupation.” It is noticeable that age is not included as one of the grounds on which discrimination is prohibited. Article 5 of the Convention also states that the special measures designed to meet the particular needs of persons requiring special protection for reasons such as sex, age, disablement, family responsibilities, social or cultural status shall not be deemed to be discriminatory.

2.6 Convention No. 111 has not been ratified by the United Kingdom and so does not apply to Hong Kong.

2.7 The most relevant document on the subject of age discrimination is International Labour Recommendation No.

162 concerning Older Workers. This states that within the framework of their national policies member countries should promote equality of opportunity and treatment for workers irrespective of age and should take measures to prevent discrimination in employment in respect of older workers. It also recommends that older workers should enjoy equal opportunities in vocational training and promotion. They should also have access to bodies empowered to examine and investigate complaints regarding equality of opportunity and treatment with a view to securing the correction of any practices regarded as in conflict with this policy.

- 2.8 Recommendation No. 162 also states that in exceptional cases age limits may be set because of special requirements, conditions or rules of certain types of employment.

President's Ruling

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

Mr LAU Chin-shek has presented me with a Member's bill, entitled Equal Opportunities (Family Responsibility, Sexuality and Age) Bill (the Bill), which he intends to introduce into the Council. He has requested me to give my opinion on whether or not the Bill, which seeks to render unlawful discrimination on the grounds of family responsibility or family status, sexuality and age in various areas and to make provision for remedies for such discrimination, has a "charging effect" under Standing Order No 23.

2. The views of the Secretary for Home Affairs have been sought twice in this regard and Mr LAU has been invited to respond twice to the views. I have also taken into consideration the opinion of the Counsel to the Legislature

3. Having taken into account all the views expressed, I am of the opinion that Mr LAU's bill does not have a "charging effect" for the purposes of Standing Order No 23.

4. The Secretary for Home Affairs considers that the Bill has a "charging effect" as it introduces new categories of cases which, as provided in Clause 92, the District Court has jurisdiction to hear and determine. Because legal aid may be provided in civil proceedings in the District Court, High Court and Court of Appeal, the Secretary considers that Government would be obliged to grant legal aid in respect of these new categories of cases to persons who pass the means and merits tests,

and that there would therefore be additional legal aid expenses, estimated to be around \$27.78 million a year.

5. The Secretary has cited as precedents Mr Simon IP's proposal in June 1995 to amend the Legal Aid (Amendment) Bill 1995 and Mr Bruce LIU's proposal in January this year to introduce the Hong Kong Bill of Rights (Amendment) Bill 1996, both of which were ruled to have a "charging effect".

6. To recapitulate, Mr IP's proposed amendment to the Legal Aid (Amendment) Bill 1995 was ruled to have a "charging effect" as it would have had the direct effect of extending supplementary legal aid to all categories of professional negligence actions and not merely medical, dental and legal professional negligence as the Government had originally proposed. Mr IP's proposed amendment had both the direct "object" and "effect" of creating a charge on public funds.

7. As regards Mr LIU's proposed Bill of Rights (Amendment) Bill 1996, it was ruled to have a "charging effect" as it sought to extend the binding effect of the Bill of Rights Ordinance to cover all authorities and persons acting in a private capacity. It has been decided that that bill sought to create a new generic class of enforceable rights (i.e. all inter-citizen rights) under the Ordinance, hence a new generic class of civil litigation based on claims under the Ordinance. That was a proposal seeking a certain, direct, fundamental and wide ranging extension of the Bill of Rights coverage and would have significant impact on the existing legal system. The effect of that bill on the funding for legal aid would be immense for the screening processes under section 5 (means

tests) and, particularly, section 5AA (discretionary waiver of the means tests) of the Legal Aid Ordinance.

8. It is relevant to state again the test principles with regard to the "object and effect" of bills and motions etc in relation to "charging": in order to constitute a charge upon public funds, the bills etc must have the object and effect of creating expenditures which are new and distinct and are payable out of general revenue/public moneys, and the charge must be effectively imposed. However, not all matters which prima facie involve expenditure are "charges". The fact that a proposal may result in some utilisation of the time, energies and resources of the public service does not in itself make it a "charging" one.

9. The object of Mr LAU's bill is to seek to render unlawful three specific areas of discrimination and to make provisions for enforcing the legal rights in those three areas. As such, it would have the effect of widening the jurisdiction of the District Court and, consequently, of increasing the costs of the administration of justice. But I am persuaded by the practice in the UK House of Commons that where sufficient statutory authority exists, such expenditure is not a charge and does not require authorisation (Erskine May pp 717, paragraph (c)).

10. The Secretary for Home Affairs agrees that the creation of new causes of action which fall to be litigated within the existing courts system does not create a "charging effect", but argues that the resulting greater expenditure of public money on legal aid has a "charging effect".

11. It is conceded that Mr LAU's bill, if enacted, may have the incidental effect of increasing the expenditure on the administration of the legal aid system. However, the question I have asked is: Are such expenditures new and distinct? Schedule 2 of the Legal Aid Ordinance provides that legal aid may be given in civil proceedings in any of the Court of Appeal, High Court and District Court. This provision is, in my opinion, wide enough to encompass the kind of likely actions incidental to the enactment of Mr LAU's bill. Any expenditure incurred cannot therefore be regarded as new and distinct.

12. Lastly, I am also of the view that the Administration has not demonstrated compelling reasons explaining why the assessment of the "charging effect" of the Bill should be different from that in regard to the Equal Opportunity (Family Responsibility, Sexuality and Age) Bill introduced by Ms Anna WU in 1995. Mr LAU's bill is identical in all material respects to Ms WU's bill which was assessed by the Administration as having no charging effect and it was so ruled by my predecessor.

13. Accordingly, I rule that Mr LAU's Bill does not have a charging effect for the purposes of Standing Order No 23.

(Andrew WONG)
President
Legislative Council

7 June 1996

平等機會委員會

香港灣仔港灣道一號

會展廣場辦公大樓 20 樓 2002 室

EQUAL OPPORTUNITIES COMMISSION

Unit 2002, 20/F., Office Tower,
Convention Plaza, 1 Harbour Road,
Wan Chai, Hong Kong.

本函編號 OUR REF EOC/CR/02
來函編號 YOUR REF
電 話 TEL No 2511 8123
圖文傳真 FAXLINE 2511 8142

8 June 1996

Hon Christine Loh Kung-wai
Room 322
Central Government Offices, West Wing
11 Ice House Street
Central
Hong Kong

Tel: 2537 2485
Fax: 2537 6937

Dear

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

Thank you for your letter of May 30 1996 in which a copy of your Bill is enclosed.

I will inform members of the Commission about your Bill at our next meeting scheduled for late June 1996. While the Commission does not yet have any legal advisor during this preparatory period, I will invite a few Commission members with legal background to begin to study the Bill and formulate our views at a later stage. At that time, we may invite you to one of our meetings to assist us to understand your proposed amendments.

I look forward to working with you towards the goal of eliminating discrimination on the basis of gender and disability in Hong Kong.

Yours sincerely,

(Fanny Mui-ching Cheung)
Chairperson,
Equal Opportunities Commission

From : Clerk to the Legislative Council

To : Members of the Legislative Council

Ref : CB(3)/M/OR

Tel : 2869 9205

Date : 10 June 1996

**LEGISLATIVE COUNCIL SITTING
ON 26 JUNE 1996**

**Motions under Factories and Industrial Undertakings Ordinance
and Sex Discrimination Ordinance**

I forward for Members' consideration three resolutions which the Secretary for Education and Manpower will move on 26 June 1996 under the Factories and Industrial Undertakings Ordinance and Sex Discrimination Ordinance

2. The speeches, in the draft English version, which the Secretary for Education and Manpower will deliver when moving the motions, are also attached. The Chinese translation of the draft speeches will be issued as soon as they are available.

(Ray CHAN)
for Clerk to the Legislative Council

Enc

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

RESOLUTION

(Under section 7 of the Factories and Industrial
Undertakings Ordinance (Cap. 59))

RESOLVED that the Factories and Industrial Undertakings
(Amendment) Regulation 1996, made by the Commission
Labour on 31 May 1996, be approved.

工廠及工業經營條例

決議

(根據〈工廠及工業經營條例〉(第59章)第7條)

議決批准勞工處處長於1996年 5 月 31 日訂立的〈1996年
工業經營(修訂)規例〉。

FACTORIES AND INDUSTRIAL UNDERTAKINGS
(AMENDMENT) REGULATION 1996

(Made under section 7 of the Factories and
Industrial Undertakings Ordinance
(Cap. 59) subject to the approval
of the Legislative Council)

1. Interpretation

Regulation 2 of the Factories and Industrial Undertakings
Regulations (Cap. 59 sub. leg.) is amended by repealing the
definition of "woman".

2. Cleaning of dangerous machinery
by young persons

Regulation 25(1) and (2) is amended by repealing "woman or".

Commissioner for Labour.

1996.

Explanatory Note

This Regulation amends regulation 25 of the Factories and
Industrial Undertakings Regulations (Cap. 59 sub. leg.) in order to
make that regulation apply equally to women as it does to men.

DRAFT

*Speech by Mr. Joseph W P Wong, JP
Secretary for Education and Manpower
in moving a motion on the
Factories and Industrial Undertakings (Amendment) Regulation 1996*

Mr. President,

I move the motion standing in my name on the Order Paper.

2. The Sex Discrimination Ordinance, which renders certain kinds of sex discrimination unlawful, was enacted on 14 July 1995. Exceptions are however laid down in sections 12 and 57 of the Ordinance for cases in which sex is a genuine occupational qualification, and for acts done for the purposes of protecting women. Such exceptions will expire in one year's time after the enactment of the Ordinance, unless they are extended by another year by resolution of this Council.

3. Regulation 25 of the Factories and Industrial Undertakings Regulations provides that no woman should be permitted to clean any dangerous part of any machinery or mill-gearing while the machinery or mill-gearing is in motion. The regulation is listed under Schedule 3 of the Sex Discrimination Ordinance as one of the provisions to which exceptions under sections 12 and 57 apply.

RESOLUTION

(Under section 7 of the Factories and Industrial
Undertakings Ordinance (Cap. 59))

RESOLVED that the Construction Sites (Safety) (Amendment)
Regulation 1996, made by the Commissioner for Labour
31 May 1996, be approved.

工廠及工業經營條例

決議

(根據《工廠及工業經營條例》(第59章)第7條)

議決批准勞工處處長於1996年5月31日訂立的《1996年建築地
盤(安全)(修訂)規例》。

CONSTRUCTION SITES (SAFETY) (AMENDMENT) REGULATION 1996

(Made under section 7 of the Factories and
Industrial Undertakings Ordinance
(Cap. 59) subject to the approval
of the Legislative Council)

1. Cleaning of dangerous machinery
by young persons

Regulation 46(1) of the Construction Sites (Safety) Regulations
(Cap. 59 sub. leg.) is amended by repealing "woman or".

Commissioner for Labour.

1996.

Explanatory Note

This Regulation amends regulation 46(1) of the Construction
Sites (Safety) Regulations (Cap. 59 sub. leg.) in order to make that
regulation apply equally to women as it does to men.

DRAFT

*Speech by Mr. Joseph W P Wong, JP
Secretary for Education and Manpower
in moving a motion on the
Construction Sites (Safety) (Amendment) Regulation 1996*

Mr. President,

I move the motion standing in my name on the Order Paper.

2. The Sex Discrimination Ordinance, which renders certain kinds of sex discrimination unlawful, was enacted on 14 July 1995. Exceptions are however laid down in sections 12 and 57 of the Ordinance for cases in which sex is a genuine occupational qualification, and for acts done for the purposes of protecting women. Such exceptions will expire in one year's time after the enactment of the Ordinance, unless they are extended by another year by resolution of this Council.

3. Regulation 46 of the Construction Sites (Safety) Regulations provides that no woman should be permitted to clean any dangerous part of any machinery or plant in the construction site while the machinery or plant is in motion. The regulation is listed under Schedule 3 of the Sex Discrimination Ordinance as one of the provisions to which exceptions under sections 12 and 57 apply.

SEX DISCRIMINATION ORDINANCE

RESOLUTION

(Under section 57(4) of the Sex Discrimination
Ordinance (Cap. 480))

RESOLVED that section 57(3) of the Sex Discrimination Ordinance
be amended by repealing "1st" and substituting "2nd".

性別歧視條例

決議

(根據〈性別歧視條例〉(第480章)
第57(4)條)

議決將〈性別歧視條例〉修訂，在第57(3)條中，廢除“1”而代以
“2”。

DRAFT

*Speech by Mr. Joseph W P Wong, JP
Secretary for Education and Manpower
in moving a motion to amend the Sex Discrimination Ordinance
by way of resolution pursuant to section 57(4) of the Ordinance*

Mr. President,

I move the motion standing in my name on the Order Paper.

2. The Sex Discrimination Ordinance, enacted on 14 July 1995, renders sex discrimination unlawful in the employment field, and in other fields of activity. The women-specific protective employment restrictions laid down under the Women and Young Persons (Industry) Regulations are exempted from the application of the Sex Discrimination Ordinance for a period of one year from the date of enactment of the Ordinance. The purpose of this resolution is to extend this grace period for another year.

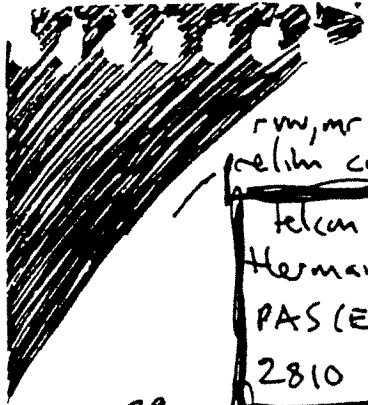
3. The objective of the Women and Young Persons (Industry) Regulations, made under the Employment Ordinance, is to safeguard the health and welfare of female (and young) workers in industry. Among other things, the Regulations prohibit women from working in dangerous trades [e.g. boiler chipping, manufacturing process using arsenic, lead, mercury, etc.], restrict their working hours and prohibit them from working on rest days. Section 57(3) of the Ordinance provides for a one-year grace period to exempt these provisions from the application of the Ordinance. To allow time for the Administration to review and to take appropriate adaptive measures, Section 57(4) further provides that this grace period may be extended for another year by resolution of this Council.

complexity and the far-reaching implications of the subject matter under review, it is necessary to seek an extension of the grace period for another year to allow the Labour Department to thoroughly consult the Labour Advisory Board and, on the basis of the consultation, amend the Regulations

8 The Labour Advisory Board has agreed to the proposed extension

9 Mr President, I beg to move

RESTRICTED :
UNTIL.....A.....P.M.
ON.....26 June 1996.....
內 部 文 件 - 不 得 外 洩
1996 年 6 月 26 日 下 午 四 時 正 前 登 表



row, mr lk
re: im cons'n - @ Lab Dept - Wm. Siv
telcon w/
Herman Cho
PAS (EM) IS
2810 3561

13/6/96

Wm. Siv } if Mr. Chor
Ass't Comr } not back
Jenny Chor } best
Ass't Comr } person
 } to
 } talk

no, 29 -

under Sec'y / Rec & Cult -
spec under person who lks after t. 2 municipal councils
by: Ian Peters - PAS (Culture) - 2594 6607
letter: PAS (D&F & Ent't) - 2594 6607 ← LM w/ Peter Ng, 14/6, 3:30 pm
File

initial consultation w/ LAB while in Geneva @ 4 June
Labour Confie - ~~the~~ ext approved for 1 yr
subst not yet put to LAB

Lab Dept submitted row last mo
we asked them to assess whether can comply
replied not until ~ Sept to prep rec'y dr. instr's

re Reg 4, not to put to JLS; not reg'd as
linked to CE-DAN.

Jenny [telcon w/
Jenny Chor, AC - Labor Dept]

29 July - LAB mtg

began row immed. after
will pass on concerns to Wm. Siv (re: resp'l, but comr)

**Paper for the House Committee Meeting
on 14 June 1996**

**Two Resolutions under section 7 of the Factories and
Industrial Undertakings Ordinance (Cap. 59)**

**Resolution under section 57(4) of the
Sex Discrimination Ordinance (Cap. 480)**

Legal Service Division Report

The Secretary for Education and Manpower has given notice to move a motion for each of the 3 above Resolutions on 26 June 1996.

2. The 2 Resolutions proposed to be made are to approve the **Factories and Industrial Undertakings (Amendment) Regulation 1996** and the **Construction Sites (Safety)(Amendment) Regulation 1996**. These 2 sets of Regulations were made by the Commissioner for Labour on 31 May 1996 under section 7 of the Factories and Industrial Undertakings Ordinance (Cap. 59), which also requires any regulation so made to be approved by the Legislative Council.

3. Both of the amending Regulations are to remove the statutory exceptions provided for in the Sex Discrimination Ordinance (67 of 1995) (the Ordinance) from their principal Regulations. These exceptions relate respectively to the prohibition of the employment of women to clean any dangerous part of any machinery or mill-gearing which is in motion in a workplace and to clean any dangerous part of any machinery or plant which is in motion in a construction site. These exceptions are inconsistent with the Ordinance but have been allowed to remain in force for one year after the enactment of the Ordinance, which took place on 14 July 1995.

4. The Resolution proposed to be made under the Sex Discrimination Ordinance relates to the statutory exceptions allowed to remain in the **Women and Young Persons (Industry) Regulations**. These exceptions are also due to expire on 14 July 1996. However, the Ordinance allows this one-year grace period to be extended for another year with the approval of the Legislative Council. The effect of the Resolution is to make such an extension. According to the Administration, this is to allow more time for reviewing the relevant provisions in the Regulations.

5. The draft Resolutions are in order from the drafting point of view.

(Arthur P K CHEUNG),
Assistant Legal Adviser
11 June 1996



香港職工會聯盟

HONG KONG CONFEDERATION OF TRADE UNIONS

油蔴地砵蘭街101-107號砵蘭大廈三樓 2字

2/F., 101-107, PORTLAND ST., PORTLAND BLDG., YAUMATEI, KLN. H.K. TEL.: 2770 8668 FAX.: 2770 7388

各位立法局同僚:

雖然本局早於去年六月及七月三日通過《性別歧視條例》及《殘疾歧視條例》，至今已接近一年，但絕大部分條文仍未生效。政府一直以種種理由推三阻四，需要等待平等機會委員會的成立，需要先制訂實務守則，需要委員會三度三選選舉等。一而再，再而三作為拖延實施法例的藉口，令不少遭受歧視的市民受害投訴無門，本人對此表示非常不滿。

政務司及衛生福利司剛於三月十三日刊登憲報，以附屬法例形式將其中數條條文於三月底實施，但牽涉的範疇只局限於平等機會委員會一分有限委的運作，其他所有有關禁止歧視行為的條文一概欠奉，因此，本人決定於六月二十六日立法局會議上提出決議案，修訂有關的附屬法例，為《性別歧視條例》及《殘疾歧視條例》的所有條文訂定實施日期。

該決議案的內容是要將兩條法例所有條文的生效日期定於七月二十九日，提出決議案的目的是要落實政府向公眾作出法例將於通過後半年至一年內生效的承諾，令受歧視者能得到基本的法律保障和有權追討補償，我相信有關建議應不會對政府造成太大不便，事實上，平等機會法例已經在社會上討論了超過兩年，各大商會就促進平等機會制訂的僱用指引亦已運作一年多，社會已有足夠準備接受兩條法例的實施，而為給予政府部門及平等機會委員會有足夠時間做好法例提早生效的準備，本人初步打算將生效日期定於決議案通過後一個月（亦即兩條法例通過足足一年後），並已於昨日去函政務科、衛生福利科及平等機會委員會，以進一步了解當中可能牽涉的實際困難，假如有需要的話，本人願意作出適當的修改。

本人提出決議案的目的絕非因為對新成立的平等機會委員會無信心，亦不希望有關建議會對委員會的運作造成壞影響，只是希望透過令法例盡快實施，為遭受性別、殘疾歧視、性騷擾等的受害人能夠得到應有的法律保障。

我衷心希望各位同僚能於六月二十六日支持該決議案，為促進平等機會踏出重要的一步！

祝 工作愉快

李卓人 啟

六月十四日

Mr LEE Cheuk-yan said that although the Panel on Home Affairs had not been formally consulted, the effect of his resolution was the same as that provided in the Member's Bill initiated by Miss Emily LAU and Miss Christine LOH which had been discussed by the Panel.

X X X X X X X X X X

X X X X X X X X X X

DOCUMENT

(7) Business for the LegCo sitting on 26.6.96

(c) Motions

- (vi) Resolutions under the Sex Discrimination Ordinance (67 of 1995) (Commencement) Notice 1996 and the Disability Discrimination Ordinance (86 of 1995) (Commencement) Notice 1996 - to be moved by Mr LEE Cheuk-yan

Mr LEE Cheuk-yan referred members to his letter tabled at the meeting (Appendix III). He said that the scrutiny period of the subsidiary legislation concerning the commencement date of certain sections of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance had been extended from 5.6.96 to 26.6.96. He would move a motion on 26.6.96 to amend the subsidiary legislation to the effect that all sections under the two Ordinances would come into operation on 29.7.96.

Members noted that the item was not included in the agenda of the House Committee meeting because Mr LEE had yet to give formal notice of amendments to the subsidiary legislation, the deadline of which was 18.6.96.

Mr James TO said that members had previously agreed that all major legislative proposals should first be discussed by Panels, before they were introduced into LegCo. The agreed system should also apply to the scrutiny of subsidiary legislation. He was concerned that the relevant Panels had not been consulted on some of the motions scheduled for the sitting on 26.6.96. The Legal Adviser said that it would be difficult to apply the agreed system to the study of subsidiary legislation which had statutory time limits. Miss Emily LAU said that while she agreed with the merit of the agreed system, she was concerned that Panels might be overloaded with work. In any event, Members could form a Subcommittee to study the subsidiary legislation if considered necessary.

**INTERPRETATION AND GENERAL CLAUSES ORDINANCE
(Chapter 1)**

**RESOLUTION
(Under section 34(2) and (4) of the Interpretation and
General Clauses Ordinance)**

**RESOLVED that the Sex Discrimination Ordinance (67 of 1995)
(Commencement) Notice 1996, published as Legal Notice No. 185
of 1996 and laid on the table of the Legislative Council on 15 May
1996, be amended by repealing everything after "I" and
substituting —**

"appoint —

- (a) 20 May 1996 as the day on which sections 63, 64, 67, 68
and 69 and Schedule 6 of the Ordinance; and**
- (b) 2 September 1996 as the day on which the remaining
provisions of the Ordinance,**

shall come into operation."

+ 852 2368 5895

INTERPRETATION AND GENERAL CLAUSES ORDINANCE
(Chapter 1)

RESOLUTION
(Under section 34(2) and (4) of the Interpretation and
General Clauses Ordinance)

RESOLVED that the Disability Discrimination Ordinance (86 of 1995) (Commencement) Notice 1996, published as Legal Notice No. 184 of 1996 and laid on the table of the Legislative Council on 15 May 1996, be amended by repealing everything after “I” and substituting —

“appoint —

- (a) 20 May 1996 as the day on which sections 62, 64 and 65 of the Ordinance; and
- (b) 2 September 1996 as the day on which the remaining provisions of the Ordinance,

shall come into operation.”.

**INTERPRETATION AND GENERAL CLAUSES ORDINANCE
(Chapter 1)**

**RESOLUTION
(under section 34(4) of the Interpretation and
General Clauses Ordinance)**

RESOLVED that the District Court Equal Opportunities Rules, published as Legal Notice No. 236 of 1996 and laid on the table of the Legislative Council on 5 June 1996, be amended -

- (a) in section 1 by repealing "a day to be appointed by the Chief Justice by notice in the Gazette" and substituting "2 September 1996";**
- (b) by adding after section 6 -**

"7. Application to proceedings by or against the Crown

For the purposes of section 73C(7) of the Ordinance, these rules shall also apply to all proceedings by or against the Crown."

18th June, 1996

Ms. Polly Yeung
Clerk to the Subcommittee on Resolutions under s. 7 of the
Factories and Industrial Undertakings Ordinance (Cap. 59)
and s. 57(4) of the Sex Discrimination Ordinance (Cap. 480)
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Ms. Yeung,

Sex-discriminatory protective legislation

Because I will be unable to attend the 19 June meeting, I have written down some specific questions on the captioned topic that I would like the Administration to answer.

For Members' reference, I am also attaching relevant information notes that the Administration provided last year to the Bills Committee studying the Sex Discrimination Bill (the Bills Committee).

1. The Administration undertook to the Bills Committee on 19 May 1995 to review protective legislation concerning industrial safety, on the agreed basis that safety standards should be raised rather than lowered to achieve equality between men and women. (See para. 3 of SDB Paper No. 12/95, attached.) What progress has been made towards that goal?
3. Concerning reg. 29 of the Dutiable Commodities (Liquor) Regulations, the Bills Committee was told on 27 April 1995 that "action is now being taken" to amend it to apply equally to both sexes. (See para. 7 of Paper No. SDB 1/95, attached.) What progress since then?
2. Concerning reg. 4 of the Women and Young Persons (Industry) Regulations, the Secretary in his draft speech mentions that repeal would affect Hong Kong's international rights and obligations because an ILO Convention, No. 45, forbids underground work by women.
 - 2.1. The Bills Committee learned that the ILO has adopted a new Convention which no longer requires any discrimination against women, to supercede Convention No. 45 (which dates from 1935). Is the Administration seeking to update Hong Kong's obligations in this respect? Is there any reason to remain in compliance with the old Convention until it is formally denounced and the new one applied to Hong Kong instead?
 - 2.2. Article 11(3) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires periodic review and revision of protective

2016

legislation. I understand that New Zealand denounced a similarly outdated ILO Convention (No. 89, restricting night work by women) at the time that it ratified CEDAW. Has this matter been put to the Joint Liaison Group as a CEDAW-related issue?

Thanks for your assistance.

Yours sincerely,

Christine Loh

SDB Paper No. 12/95

Sex Discrimination Bill:
Exceptions for Protective Legislation

At the Meeting of the Bills Committee on 28.4.1995, Members suggested that the Administration should consider reviewing the protective legislation in respect of employment matters stipulated in Schedule 2* of the Sex Discrimination Bill (SDB).

2. Under clause 11(2)(g)** of the SDB, being a man is a genuine occupational qualification for a job where the job needs to be held by a man because of restrictions imposed by a provision specified in Schedule 2 of the Bill. Schedule 2 sets out a number of legislative provisions which aim 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 rationale for stipulating such provisions are set out in Paper No. SDB 1/95.

3. For those protective legislation concerning industrial safety, we agree that the direction should be to enhance the safety aspect so that the differential treatment based on gender will be removed. In this connection, the Administration will undertake to conduct a review of the relevant legislative provisions set out in Schedule 2 of the SDB. In the meantime, it is necessary to retain the exceptions provided in Schedule 2 so that the present protective provisions would not be rendered unlawful upon the commencement of the SDB.

**Exceptions for Protective Legislation
in the Sex Discrimination Bill**

Under clause 11(2)(g)^{*} of the Sex Discrimination Bill (SDB), being a man is a genuine occupational qualification for a job where the job needs to be held by a man because of restrictions imposed by a provision specified in Schedule 2^{**} of the Bill. Under Clause 49^{**}, in relation to employment and vocational training, it is not unlawful for a person to do an act in relation to a woman if it was necessary to do so to comply with a provision in Schedule 2 and for the protection of the woman concerned. Schedule 2 sets out a number of legislative provisions which aim at protecting the safety, health and welfare of women by limiting or prohibiting their employment in certain trades, tasks or certain periods of time. A detail list of the matters covered by these legislative provisions is at Annex A.

Annex A

The Women and Young Persons (Industry) Regulations, Cap. 57 sub. leg.

2. The provisions in these Regulations generally prohibit women from being employed in underground work in mines or in any other industrial undertaking involved in tunnelling work. They also prohibit women from being employed in dangerous trades; restrict the carrying of weights by women; they restrict the hours of employment of women, their overtime and shift work in industrial undertakings. They also prohibit work during meal or rest intervals and work on rest days for women employed in industrial undertakings.

The Factories and Industrial Undertakings Regulations, Cap 59 sub. leg.

3. The provisions in these Regulations prohibit women from cleaning any dangerous parts of machinery and mill gearing in a notifiable workplace while the machine is in motion.

**A Review of the
Women and Young Persons (Industry) Regulations
in the light of the enactment of the
Sex Discrimination Ordinance**

Labour Department

April 1996

**A Review of the
Women and Young Persons (Industry) Regulations
in the light of the enactment of the
Sex Discrimination Ordinance**

Introduction

The *Sex Discrimination Ordinance* (SDO), enacted on 14 July 1995 as Ordinance No. 67 of 1995, renders sex discrimination unlawful in the employment field (and in other specified fields of activity). One year after the enactment of the SDO, the employment restrictions imposed on women by the *Women and Young Persons (Industry) Regulations* (WYP(IR)), which were originally intended to protect female workers for their health and welfare, will be regarded as sex discriminatory. The purpose of this review is to explore suitable means to reconcile the incompatibility between these two pieces of legislation. Recommendations made in this review are in the form of outlines only. Further operational details will be worked out when the policy on the direction of change has become clear.

Unlawful Sex Discrimination in the Employment Field

2. S.11(1) of the SDO makes it unlawful for a person to discriminate against a woman job applicant -
 - (a) in the arrangements he makes for the purpose of determining who should be offered that employment;
 - (b) in the terms on which he offers her that employment; or
 - (c) by refusing or deliberately omitting to offer her that employment.

3. S.11(2) makes it unlawful for a person to discriminate against a woman employee -
 - (a) in the way he affords her access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services or by refusing to afford her access to them;
 - (b) in the terms of employment he affords her; or
 - (c) by dismissing her or subjecting her to any other detriment.

4. Take an employer who has a job vacancy for night work as an example. If he refuses to offer employment to a female job applicant on the ground that she cannot take up night work duties owing to the restriction imposed by the WYP(D)R, his refusal to offer her employment will contravene s.11(1) of the SDO in spite of the fact that he is compelled to do so by the WYP(D)R. Besides, sex discrimination, as defined under s.5 and s.6 of the SDO, can be claimed equally by men and by women. Regulation 11 of the WYP(D)R requires an employer to provide a rest room for female workers who are employed on a scheme of shift work. This preferential treatment given to female workers may be regarded as an act of discrimination against male workers, contravening s.11(2)(a) of the SDO. Therefore, as illustrated in the above examples, the WYP(D)R and the SDO are incompatible.

5. To tackle this problem of incompatibility between the two pieces of legislation, the SDO provides for the following exceptions:

(a) Exception under s.12(2)(g)

The prohibition against discriminatory treatment in choosing whom to be employed does not apply when being a man is a genuine occupational qualification for the job. Being a man is a genuine occupational qualification for the job if the job needs to be held by a man because of restrictions imposed by the WYP(D)R.

(b) Exception under s.57(1)(ii)

An act done by a person in relation to a woman is not regarded as unlawfully discriminating if it is done pursuant to a requirement imposed by the WYP(D)R for the protection of that woman.

6. However, these two exceptions are introduced merely as a transitional measure to avoid a direct conflict between the SDO and the WYP(D)R because these exceptions shall expire one year after the enactment of the SDO (s.57(3)). Thus, the Government has to make use of this transitional period to review the WYP(D)R and take appropriate adaptive measures. This transitional period can be extended for one year by LegCo resolution (s.57(4)).

Employment Restrictions Imposed on Women under the WYP(DR

7. As stipulated in s.57(3) and Schedule 3 to the SDO, the employment restrictions imposed on women by regulations 4, 5, 6, 8, 10, 11, 13 and 14 of the WYP(DR cannot be invoked as a defence against a claim of sex discrimination upon expiry of the transitional period. Therefore, it is almost certain that such employment restrictions will be construed by the Equal Opportunities Commission (to be established under Part VII of the SDO) or by a court as sex discriminatory. The salient points of the existing employment restrictions imposed on women by these regulations are as follows:

Employment Restrictions

- | | | |
|--------------|---|---|
| Regulation 4 | - | No woman should be employed on underground work in any mine or quarry, or in any industrial undertaking involving a tunnelling operation. |
| Regulation 5 | - | No woman should be employed in any dangerous trade
(e.g. boiler chipping; chromium plating; manufacture of glass; manufacture of hydrochloric, nitric or sulphuric acids; manufacturing processes using arsenic, lead, manganese, mercury and phosphorus, etc.). |
| Regulation 6 | - | No woman employed in an industrial undertaking should be permitted to carry any load which is unreasonably heavy having regard to her age and physical development. |
| Regulation 8 | - | The working hours of women should not exceed 8 in any day nor exceed 48 in any week; |

- the period of employment should not exceed 10 hours in any day and should neither begin earlier than 6 a.m. nor end later than 11 p.m.; and
 - no woman should be required to work continuously for more than 5 hours without thereafter an interval of at least half an hour for a meal or rest.
- Regulation 10 - The overtime employment of women should not exceed 2 hours in any day or 200 hours in any year.
- Regulation 11 - No woman should be employed on any scheme of shift work involving work between 8 p.m. and 11 p.m. unless certain conditions (e.g. the provision of a suitable room for dining and rest) are complied with.
- Regulation 13 - No woman should be required to work during any part of an interval allowed for a meal or rest.
- Regulation 14 - No woman should be employed on more than 6 days in any week.

Approaches to Take to Tackle the Problem

8. To make the WYP(D)R compatible with the SDO, one of the following three approaches can be adopted in respect of each one of the employment restrictions:
- (a) to retain the employment restriction; or
 - (b) to remove the employment restriction; or
 - (c) to extend the scope of the employment restriction (with modifications where necessary) to cover both sexes.

If approach (c) is taken, we have to consider whether workers in all economic sectors are covered or only workers in the industrial sector are covered. This will be discussed in Paragraph 22 below.

Review of the WYP(DR)

Regulations 4, 5 and 6: Underground Work, Dangerous Trades, Heavy Load

9. Regulations 4, 5 and 6 of the WYP(DR) are on safety aspects of industrial work. The origin of these protective provisions can be traced back to the *Factories and Workshops Regulations* made under the *Factories and Workshops Ordinance 1937* (which was later repealed and replaced by the *Factories and Industrial Undertakings Ordinance*). Hong Kong society has changed so much in these six decades that many of the mischiefs which the regulations intended to address have either faded out or reduced in significance. There is practically no forced labour or "sweat-shop" labour in Hong Kong. With better education and social affluence, women should now have the ability and free will to decide what is in their best interests. Now that we have women engaged in strenuous and risky jobs such as fire fighters, there is no reason why women cannot be given the freedom to choose their own jobs or careers in the industrial sector. Furthermore, if a trade is dangerous for women, it should be equally dangerous for men; and if employment restrictions are considered necessary for the protection of women, the same protection should be given to men. On the strength of the above, the employment restrictions for women under regulations 4, 5 and 6 should not be retained. On the other hand, extending them to cover male workers will seriously damage our economy because it means that no one can be engaged in underground work, dangerous trades, or jobs which require the carrying of heavy load. Therefore, the best of the three approaches to take is to have the employment restrictions removed altogether.

10. However, in respect of regulation 4, it is considered desirable that the regulation be retained for two reasons -

- (a) the local custom is such that women workers will not be engaged in tunnelling work; and
- (b) to avoid implications arising from the change in the application of the *International Labour Convention No. 45*, currently applied to Hong Kong without modification by virtue of regulation 4. It will be necessary to consult the Chinese side through the Joint Liaison Group if there is any change to Hong Kong's international obligations and this may take considerable time. (see Paragraph 43 below).

It is therefore recommended that regulation 4 be retained and that regulations 5 and 6 be repealed.

Regulation 8: Working Hours, Period of Employment, Interval for a Meal

Working hours (reg. 8(1)(a))

11. The working hours for women employed in an industrial undertaking are restricted to 8 hours a day and 48 hours a week. This restriction follows the spirit of *International Labour Convention No.1: Hours of Work (Industry) Convention, 1919*. The United Kingdom has not ratified this convention and no declaration in respect of Hong Kong is registered.

12. It is socially undesirable to remove the working hour restrictions for women, particularly in view of the fact that most female workers nowadays still have a significant role to play in their household activities. Any move to relax the restrictions will also be regarded by many as a step backward in our legislative protection for female workers. Moreover, Hong Kong has an obligation under *Article 7 of the International Covenant on Economic, Social and Cultural Rights* to ensure that the working hours are reasonably limited. According to the General Household Survey conducted by the Census & Statistics Department in 1995, 23% (or 0.6 million) of the 2.6 million employees in Hong Kong worked 50 or more hours a week and 53% of these 0.6 million employees worked 60 or more hours a week (see Appendix A). The fact that so many workers have to work long hours is a cause of concern. Therefore, it is recommended that the restriction on working hours for women exclusive of overtime work be maintained at 8 hours a day and 48 hours a week and that this restriction be extended to cover workers of both sexes.

Period of employment (reg. 8(1)(b))

13. Under the existing employment restriction, the period within which a female worker may be employed should not exceed 10 hours a day, and it should neither begin earlier than 6 a.m. nor end later than 11 p.m. Considering that it is impracticable to extend the scope of this restriction to cover male workers and that similar prohibition of night work for women has been ruled by the Court of Justice of the European Community as discriminatory, it is recommended that this employment restriction for women be removed. However, an exception may be made for pregnancy and maternity (s.57, SDO).

Interval for a meal or rest (reg. 8(1)(c))

14. Under the existing provision, no female worker should be required to work continuously for a spell of more than five hours without thereafter an interval of at least half an hour for a meal or rest. As this is a reasonable standard which no enlightened employer will raise objections, it is recommended that this employment restriction be maintained and extended to cover male workers.

Regulation 10: Overtime Work

15. Some female workers are of the opinion that overtime work should continue to be controlled or else unscrupulous employers may assign overtime work to them so regularly that it may become part of their normal working hours. This concern is not unjustified. Moreover, if one accepts the principle of regulating working hours (Paragraph 12), one must also accept regulating overtime work or else the restriction on working hours will become meaningless. If overtime work is to be regulated, it has to be regulated in the same manner for both sexes in order to satisfy the requirement of the SDO. It is recommended that either one of the following two options be adopted:

- (a) to maintain the existing restriction on overtime work at 2 hours a day and extend the restriction to cover both sexes; or
- (b) to relax the existing restriction on overtime work to 3 hours a day and extend the restriction to cover both sexes.

Option (b) is preferred if we want to minimise the interference of the restriction on male workers. For example, if the permissible overtime work is relaxed to 3 hours a day, the maximum daily working hours inclusive of overtime work will become 11 hours, and the duration of employment inclusive of the two intervals for meal and rest (see Paragraph 14) will be 12 hours a day. With this relaxation in overtime restriction, certain jobs currently engaged by elderly workers which require long working hours rather than skills, such as the caretakers, will be unaffected.

16. To discourage an employer to require his employees to work long hours, we may consider adopting the practice of Singapore by imposing an obligation on an employer to pay overtime premium to his employee for overtime worked. To adopt this approach, there should be an ascertainable number of normal daily working hours for an employee. The overtime premium should also be specified.

17. Normal working hours can be determined by making reference to the terms of the employment contract agreed between an employer and an employee, subject to the restriction on working hours as discussed in Paragraph 12 above. Any hours worked beyond the normal working hours will be regarded as overtime work. With regard to overtime premium, the general practice is 150% of an employee's normal hourly rate of pay. If it is considered necessary to exercise a tighter control on overtime work, a progressive scale of overtime premium may be introduced. For instance, the overtime rate can be doubled on the second hour of overtime worked and tripled on the third hour of overtime worked.

Regulation 11: Shift Work

18. Regulation 11 provides that women should not be employed on a scheme of shift work involving work between 8 p.m. and 11 p.m. unless the work is carried on in a building approved by the Commissioner for Labour and a suitable room is provided for use as a dining and rest room. If the recommendation on removing the restriction on period of employment (Paragraph 13 above) is adopted, this restriction on shift work may be repealed.

Regulation 13: Meal Break and Rest Interval

19. Regulation 13 provides that women should not be employed in an industrial undertaking during any part of an interval allowed for a meal or rest. As this is already covered by regulation 8 as discussed in Paragraph 14 above, it is recommended that regulation 13 be repealed.

Regulation 14: Rest Days

20. Regulation 14 provides that female workers should not be employed to work more than 6 days in a week. Employers in most trades have already accepted the norm of granting their employees one rest day a week. However, as rest day is not made

compulsory for workers falling outside the coverage of the WYP(I)R, some employees in the catering trade are still unable to enjoy the benefit of one rest day a week. This has often been criticised by trade unionists. Considering that one rest day a week is already a generally accepted norm of the society and that repealing regulation 14 will be criticised as a step backward, it is recommended that rest day be made compulsory for both male and female workers.

21. To allow for some flexibility, an employer who cannot grant his worker a rest day on the worker's normal rest day may be allowed to replace the normal rest day by an alternative rest day. In connection with weekly rest days, it is worth mentioning that mainland China has introduced labour legislation providing for two rest days a week effective from May 1995.

Scope of Coverage of the Employment Restrictions

Industrial Sector versus Non-industrial Sector

22. To adopt a "minimum change" approach in solving the problem of incompatibility between the WYP(I)R and the SDO, the revised employment restrictions (or employment protection) recommended in the above paragraphs should only be applied to workers of both sexes in the industrial sector. There is no need to extend the coverage to workers in the non-industrial sector because the WYP(I)R only covers the industrial sector. However, considering that the difference between the industrial and non-industrial sectors is not so great nowadays and that the significance of the industrial sector is diminishing as a result of the structural change of Hong Kong's economy, it is considered timely that the coverage of the employment protection be extended to workers in the non-industrial sector as well. Therefore, with regard to the restrictions on working hours, the interval for a meal or rest, overtime work and rest days, it is recommended that the scope of coverage be applied to both workers in the industrial sector and workers in the non-industrial sector.

Managers, Executives and Professionals

23. If the employment restrictions are extended to cover both industrial and non-industrial sectors as recommended in Paragraph 22 above, we consider it desirable that the scope of coverage be confined to workers whose monthly wages are below a specified ceiling of, say, HK\$22,500 (the same as that for calculating severance or long service payments) in order not to interfere with the established trade practice of those people who are employed in managerial, executive or professional positions. These employees are able to protect their own interests and therefore do not need the proposed employment restrictions to protect them. Singapore adopts a similar approach and the wage ceiling for this purpose is S\$1,600 (as revised in November 1995). That is to say, in Singapore, the legislative provisions on hours of work, overtime payment, rest days, etc. do not apply to those employees whose monthly salaries are S\$1,600 or more. They also do not apply to those who are employed in managerial, executive or confidential positions irrespective of their salaries (s.2 and s.35, *Employment Act*).

Domestic Servants

24. Domestic servants will be affected if the coverage of the proposed employment restrictions is extended to workers in the non-industrial sector as recommended in Paragraph 22 above. As it is not practicable to limit the working hours of domestic servants to 8 hours a day, particularly for those live-in servants, it is recommended that domestic servants be excluded so far as working hours and overtime employment are concerned. No practical problems are envisaged in excluding domestic helpers from the employment restrictions because foreign domestic helpers are currently protected by the terms and conditions of a standard employment contract designed for them whereas local domestic helpers are able to negotiate reasonable terms and conditions of employment with their prospective employers. In Singapore, domestic servants are excluded from the coverage of the employment restrictions.

Other Classes of Workers

25. The employment practice in the private sector varies from trade to trade. It may also change from time to time. To cater for the special needs of certain trades, it is recommended that the Commissioner for Labour be empowered under the *Employment Ordinance* to exempt any class of workers (stevedores may be an example of such a class) from the employment restrictions, subject to certain conditions he may specify.

Ancillary Amendments

26. If all sex discriminatory elements in the WYP(I)R are removed, the reference to "women" in regulations 2, 3, 7, 9, 15, 16, 19, 20 and 21 of the WYP(I)R should be removed consequentially. Similarly, the title "*Women and Young Persons (Industry) Regulations*" may need to be amended.

27. Subject to legal advice, the employment restrictions (or protection) recommended in this review may be made a new set of regulations under the *Employment Ordinance*. Alternatively, they may also be incorporated into the *Employment Ordinance*. An advantage of making them a new set of regulations is that legislative procedures for subsequent amendments will be less complicated.

28. It is necessary to amend the SDO to exempt regulation 4 of the WYP(I)R from the application of the ordinance if we do not want to denounce *International Labour Convention No. 45: Underground Work (Women) Convention* (as recommended in Paragraph 10 above). Alternatively, and subject to legal advice, the *Employment Ordinance* may be amended with the legal effect of exempting regulation 4 of the WYP(I)R from the application of the SDO.

29. A comparison of the restrictions on working hours, overtime work and rest day in Hong Kong (as recommended in this review) and in selected neighbouring Asian countries is at Appendix B.

Effects on Application of International Labour Conventions

30. There are altogether 49 International Labour Conventions (ILCs) currently applied to Hong Kong. The effects of the proposed revamp of the WYP(D)R on Hong Kong's position on the application of the ILCs are discussed below.

31. *ILC No. 45: Underground Work (Women) Convention, 1935* is applied to Hong Kong without modification. It provides that no females of whatever age should be employed on underground work in any mine. If regulation 4 of the WYP(D)R is repealed, the convention can no longer be applied to Hong Kong. Denouncing the convention may adversely affect Hong Kong's international image.

32. *ILC No. 14: Weekly Rest (Industry) Convention, 1921* is applied to Hong Kong with modification. The convention provides that all workers employed in industrial undertakings should be granted one rest day in every period of seven days. It is applied to Hong Kong with modification because adult male workers may work voluntarily on a rest day without the substitution of a compensatory rest day. If rest day is made compulsory for all workers, Hong Kong will be able to improve its declaration to "applied without modification". However, if compulsory rest day is confined to workers whose monthly wages do not exceed a specified ceiling as recommended in Paragraph 23 above, Hong Kong will not be able to improve its declaration in respect of the convention. In other words, there will be no change to our status in respect of this convention.

33. *ILC No. 81: Labour Inspection Convention, 1947* is applied to Hong Kong without modification. Hong Kong's position on application of the convention will not be adversely affected on implementing the recommendations made in this review.

34. If the regulations on working hours and rest days under the WYP(D)R are extended to cover workers in all economic sectors as recommended, Hong Kong will, in principle, be in a position to implement the provisions of a number of ILCs, namely:

- *ILC No. 1: Hours of Work (Industry) Convention,*
- *ILC No. 30: Hours of Work (Commerce and Offices) Convention,* and
- *ILC No. 106: Weekly Rest (Commerce and Offices) Convention.*

Nevertheless, Hong Kong as a Non-Metropolitan Territory of the United Kingdom can only make declarations of application in respect of conventions that the United Kingdom has ratified. As the above conventions have not been ratified by the United Kingdom, Hong Kong would not be able to apply them as long as it remains as a Non-Metropolitan Territory of the United Kingdom.

Economic Implications

35. The removal of the employment restrictions imposed on women by regulations 5 and 6 of the WYP(D)R will have little effect on the labour market because few women will, as a result of the removal of such employment restrictions, engage in dangerous trades.

36. Removing the employment restriction on period of employment and relaxing the restriction on overtime work for women will be beneficial to employers in the industrial sector because they will have more flexibility in planning their production process and in deployment of labour. While the proposed introduction of overtime premium may increase the financial burden of some employers, the effect does not seem to be great because most employers in Hong Kong are already paying their employees overtime premiums for overtime worked.

37. The introduction of compulsory rest days will adversely affect many employers, particularly those in the catering trade. It may increase their labour cost, for example, by having to employ more workers. However, employers may be able to absorb the increase in labour cost by readjusting their remuneration package for workers. Their ability to do so will be high if the unemployment rate remains high.

38. While individual employers may be adversely affected by the proposed revamp of the WYP(D)R, the overall effect on Hong Kong's economy does not seem to be great because the positive and negative effects of the proposed amendments will probably set off one another. However, to cushion off the initial impact on employers, we may need to consider giving them a grace period to adjust to the changes.

Enforcement of the Employment Restrictions

39. If the recommendations made in this review are adopted, some of the existing employment restrictions for women will be retained and extended to cover male workers. These employment restrictions need to be enforced. Under the existing mode of enforcement, employers are required to keep records in specified forms and labour inspectors of the department are taking active enforcement through day-time inspections and outside-office-hour visits. With the scope of coverage of the employment restrictions extended to cover both sexes (in all economic sectors), additional manpower resources will be required if the existing mode of enforcement remains unchanged. As workers nowadays are more aware of their rights and outspoken, it is considered timely that the mode of enforcement be changed from active enforcement to enforcement by complaint.

Staffing Implications

40. No additional manpower will be required if the proposed employment restrictions are enforced by way of complaints. On the other hand, no substantial surplus in manpower is anticipated as a result of the change in mode of enforcement because the labour inspectorate still have to vigorously enforce the employment restrictions for young persons under the WYP(I)R, the *Employment of Children Regulations*, the *Employees' Compensation Ordinance* and the *Immigration Ordinance*. Should there be a surplus in manpower, the surplus can be redeployed to strengthen the operator service of the General Enquiry Telephone Service, to step up the enforcement of the *Immigration Ordinance* against illegal employment and to step up the enforcement of the *Employees' Compensation Ordinance* in respect of compulsory insurance for work injuries.

Consultation

41. The Labour Advisory Board (LAB) will be consulted on the recommendations of the review. Subject to clearance from SEM, it is proposed to go to LAB in July 1996.

42. It may be desirable to give an information paper to the LegCo Panel on Manpower after consultation with LAB.

43. If the ILCs applied to Hong Kong are affected, the LAB Committee on the Implementation of International Labour Standards must also be consulted. More importantly, it should be noted that a list of 49 ILCs applicable to Hong Kong, including *ILC NO. 45: Underground Work (Women) Convention*, was handed over to the Chinese side through the Joint Liaison Group in 1992 together with a paper on the continued application of ILCs after 1997. Any subsequent change to the list will need to be communicated to the Chinese side. This will have to be taken up through the Constitutional Affairs Branch. It is also worth noting that under the "Guidelines for Consultation between the Chinese and British Sides on New Rights and Obligations Affecting Hong Kong", the Chinese side has to be consulted through the Joint Liaison Group on new international rights and obligations or substantial amendments to existing international rights and obligations, if such international rights and obligations are intended for continued application after 1997. These consultation procedures have to be followed for any new ILCs to be applied or any improved declarations to be made as a result of any proposed amendments to our legislation.

Legislative Timetable

44. If the one-year transitional period stipulated under s.57(3) of the SDO is not extended, legislative amendments giving effect to the recommendations made under this review have to be completed by mid-July 1996. This is not possible.

45. Therefore, s.57(4) of the SDO must be invoked to extend the transitional period for another year. According to the normal LegCo procedures, the department should submit through SEM a bid for a time slot in August 1996 for introducing an amendment bill in the 1996/97 legislative programme. As draft drafting instructions must be ready soon after a legislative slot is given, consultations with the bodies concerned should be completed by September 1996 so that the relevant draft drafting instructions can be prepared in time.

Labour Department
April 1996

No. of Employees by Hours of Work by Industry
(2nd Quarter, 1995)

Industry	Weekly Hours of Work			
	under 50 (^{'000})	50 - 59 (^{'000})	60 or over (^{'000})	Total (^{'000})
Manufacturing	440.7	40.4	24.0	505.1
Construction	183.5	25.4	8.8	217.7
Wholesale-retail, Import-export Trade, Restaurants and Hotels	497.5	101.2	103.1	701.8
Transport, Storage and Communication	225.3	32.7	27.0	285.1
Financing, Insurance & Business Services	285.9	19.0	24.4	329.3
Community, Social & Personal Services	401.1	63.0	120.3	584.4
Others	26.6	1.0	1.7	29.3
TOTAL	2,060.7 (78%)	282.7 (11%)	309.3 (12%)	2,652.7 (100%)

Source: *General Household Survey*, 2nd Quarter, 1995 by the Census & Statistics Department

A Brief Summary of the Restrictions
on Working Hours and Rest Days in
Selected Neighbouring Asian Countries

	Max. Normal Working Hours	Max. Overtime Work	Night Work	Rest Day
Hong Kong (proposed)	8 hr. a day; 48 hr. a week	2 to 3 hr. a day	Not restricted (except for pregnancy and maternity)	1 day a week; WRD <u>not</u> permitted.
China	8 hr. a day; 40 hr. a week	1 hr. a day; may be extended up to 3 hr. a day.	Not restricted except for women who are pregnant or breast-feeding their babies	Normally 2 but at least 1 day a week; WRD permitted in exceptional cases
Singapore	8 hr. a day; 48 hr. a week	4 hr. a day; 72 hr. a month	Pregnant women not allowed to work between 11 p.m. and 6 a.m.	1 day a week; WRD permitted
South Korea	8 hr. a day; 44 hr. a week	<u>Men:</u> 12 hr. a week <u>Women:</u> 2 hr. a day 6 hr. a week 150 hr. a year	Women not allowed to work between 10 p.m. and 6:30 a.m.	1 day a week; WRD permitted
Japan	8 hr. a day; 40 hr. a week	<u>Women:</u> a) <u>industrial</u> - 6 hr. a week, 150 hr. a year; b) <u>non-industrial</u> : 24 hr. in 4 weeks	Women in industry not allowed to work between 10 p.m. and 5 a.m.	2 days a week; WRD permitted (except women in industry)
Malaysia	8 hr. a day; 48 hr. a week	4 hr. a day; 104 hr. a month.	Women in industry not allowed to work between 10 p.m. and 5 a.m.	1 day a week; WRD permitted
Philippines	8 hr. a day; 48 hr. a week	Not specified by law	Women not allowed to work - a) <u>industrial</u> : between 10 p.m. and 6 a.m. b) <u>non-industrial</u> : between mid-night and 6 a.m.	1 day a week WRD permitted
Thailand	<u>industrial</u> : 8 hr. a day; 48 hr. a week <u>non-industrial</u> : 54 hr. a week	<u>Production, sale and service trade</u> : 24 hr. a week	Women not allowed to work between mid-night and 6 a.m.	1 day a week; WRD permitted

(WRD = Work on Rest Days)

Source: *A Comparative Study of Employment Standards in Hong Kong & Neighbouring Countries*, compiled by the Development Division, Labour Department, October 1995

Ref. CB1/SS/20/95.2

**Subcommittee on the Resolutions under
Section 7 of the Factories and Industrial Undertakings
Ordinance (Cap. 59) and Section 57(4) of the
Sex Discrimination Ordinance (Cap. 480)**

**Minutes of Meeting
held on Wednesday, 19 June 1996 at 10:45 a.m.
in Conference Room B of Legislative Council Building**

Members Present : Hon Michael HO Mun-ka
Hon CHAN Yuen-han
Hon LEUNG Yiu-chung
Hon Margaret NG

Members Absent : Hon Henry TANG Ying-yen, JP
Hon Christine LOH Kung-wai

**Public Officers
Attending** : Mr Herman CHO
Principal Assistant Secretary for
Education and Manpower

Mr William SIU
Assistant Commissioner for Labour

Mr YIU Chak-lam
Labour Officer

Staff in Attendance : Miss Polly YEUNG
Chief Assistant Secretary (1)3

Mr Stephen LAM
Assistant Legal Adviser 4

Ms Connie SZETO
Senior Assistant Secretary (1)5

I. Election of Chairman

Hon CHAN Yuen-han was elected Chairman of the Subcommittee

II. Resolution under section 57(4) of the Sex Discrimination Ordinance (Cap 480)

2. The Subcommittee noted that the Secretary for Education and Manpower would move the captioned Resolution in 26 June 1996 to extend the grace period in section 57(3) of the Ordinance for a further period of one year. As the Administration had already been allowed one year's time to review the statutory exceptions provided in Schedule 3 to the Sex Discrimination Ordinance (SDO), members requested information on the progress of work.

3. In reply, Mr William SIU briefed members on salient points in the Labour Department (LD)'s report: "A Review of the Women and Young Persons (Industry) Regulations in the light of the enactment of the Sex Discrimination Ordinance" which was tabled at the meeting. In explaining the Labour Department's proposed courses of action on regulations 4, 5, 6, 8, 10, 11, 13 and 14 as detailed in the review report, Mr SIU highlighted the possible approaches which were being considered in respect of each of the employment restrictions contained in the Women and Young Persons (Industry) Regulations (WYP(IR)):

- (a) to retain the employment restriction; or
- (b) to remove the employment restriction; or
- (c) to extend the scope of the employment restriction (with modification where necessary) to cover both sexes in the industrial or other economic sectors.

4. In response to the query on the lack of good progress in the review of the WYP(IR) over the past year, Mr SIU outlined the LD's actions as follows:

- (a) After the enactment of the SDO in July 1995, the LD had embarked on a study on the implementation of similar protective provisions in neighbouring countries.
- (b) The review report with its recommendations was being considered by the Education and Manpower Branch.
- (c) The LD would liaise with the Census and Statistics Department to find out the economic implications if some of the protective provisions were to be extended to both sexes in other economic sectors as well

- (d) Consultation with employer and employee organisations would then be conducted, to be followed by consultation at the Labour Advisory Board (LAB) and the LegCo Panel on Manpower
- (e) Where necessary, legislative amendments would be proposed.

5 Members expressed grave concern on the absence of a firm timetable and expressed strong dissatisfaction towards the lack of good progress in the review of the Regulations. They also cast serious doubt on whether the Administration would be able to complete its work and propose legislative amendments in good time when so little had been done so far and no clear policy decision had yet been taken.

EMB

6. In this connection, Mr CHO and Mr SIU said that the need to assess the implications of any proposed change on the working population in other economic sectors, Hong Kong's obligations under the relevant International Labour Conventions and manpower constraints at the LD due to other competing priorities were some of the factors which made it difficult to complete all the work in one year's time. Mr CHO took note of members' concerns and hoped to expedite in consultation with the Director of Administration, the introduction of relevant legislative amendments in the next LegCo session.

7. Some members shared the Administration's view that great care must be exercised when proposing to modify or remove the present protective restrictions. A limitation on the daily working hours across the board, for example, might affect the income of workers. Nevertheless, the Subcommittee still considered the Administration's explanation unacceptable as it should be in a position to anticipate the issues involved and devise a reasonable timetable for review, consultation and legislative amendments.

8. In reply to the Chairman, ALA4 advised members that if the Legislative Council would not approve the extension of the one-year grace period, the statutory exceptions in the WYP(I)R would expire one year after the enactment of the SDO and these provisions might become unlawful thereafter. Members were of the view that they had little choice but to support the proposed extension reluctantly.

9. At members' request, the Administration agreed to provide the following information

LD/
EMB

- (a) Monthly progress reports to the Panel on Manpower in writing; and
- (b) a timetable setting out the proposed courses of action and the legislative timetable

The Administration would also consider members' suggestion to designate staff or to set up a task force to deal with the matter

III. Two Resolutions under Section 7 of the Factories and Industrial Undertakings Ordinance (Cap 59)

10 Members noted that the Resolutions sought to amend the Factories and Industrial Undertakings Regulations and Construction Sites (Safety) Regulations to remove the prohibition on the employment of women in certain dangerous jobs

11 Although members considered the proposed Resolutions generally acceptable, concerns were raised about whether the safety and well-being of women workers would be jeopardized as a result of removing the exceptions. The Administration was urged to take active steps to strengthen training and step up safety protection for women workers as they had not previously been engaged in such dangerous jobs.

12. On members' question of whether the employer could henceforth require or even compel a female worker to perform certain dangerous tasks which were hitherto prohibited by law, Mr SIU advised that such requirement by the employer might constitute a major change in the worker's duties and terms of employment. Reference might be made to the Employment Ordinance which contained provisions on the contractual relationship between employers and employees.

IV. Report to the House Committee

13. It was agreed that the Chairman would make a verbal report on the Subcommittee's deliberation at the next meeting of the House Committee on 21 June 1996.

14. The meeting ended at 12:20 p.m.

LegCo Secretariat

19 July 1996

ql 4420 190a doc

To : Christine Loh
From : Adam Mayes
Date : 22/6/96

Last-minute Monday & Tuesday meetings

Two sets of urgent papers are attached, re. the following matters.

1. A Subcomm. has been formed to discuss Lee Cheuk-yan's proposal to amend the SDO and DDO commencement orders to bring the laws into force on 2 September. It will meet **Tuesday, 25 June, 3:30-5:30**, conflicting with your scheduled interview with a Tin Tin reporter about your trip to China.

Given the importance of the commencement dates and your close association with the issue, I would recommend your attendance if possible. So far not a peep has been heard from Admin. about the proposal, but I'm sure they will lobby very hard against it (not least for the precedent it sets, aside from equal opportunity issues) and I assume this meeting will kick off their attack.

You need to join the Subcomm. **by Monday, 24 June** (or seek the President's permission to join late on grounds of absence from Hong Kong).

2. On **Monday, 24 June at 12:30** you may also want to attend at least part of the 2nd meeting of the Subcommittee on the proposed 1-year extension of protective legislation. The meeting was only announced mid-Saturday. The previous meeting was meant to be the only one, but it entirely overlooked 1 of the 9 provisions proposed for extension, despite specific reference to the overlooked provision in your letter (which the meeting also entirely overlooked). Now that the Secretariat realised the omission, they've scheduled an urgent meeting to discuss it.

The 8 provisions that were discussed are in the Women and Young Persons (Industry) Regulations, restricting women's industrial work. EMB and the Labour Department have responsibility for these Regulations, and EMB and Labour officials provided a detailed paper and attended the 19 June meeting.

However, the resolution at issue will also extend 1 other provision, Reg. 29 of the Dutiable Commodities (Liquor) Regulations, which restricts employment of young women in licensed establishments. This reg. is under the purview of Recreation & Culture Branch, not EMB, and the Sec'y for Ed. & Manpower neglected to mention it in his draft speech. The Legco Legal Adviser also overlooked it in his Legco brief, and RCB were not invited to the 19 June meeting.

Your letter, which Polly says was tabled for Members at the meeting, did ask a specific question about Reg. 29 (see para. 3), but to my surprise no reference at all was made to your letter in the meeting (nor was it made available to reporters and the public with the other meeting papers, as far as I could see). As a result, Reg. 29 was never discussed. (Nor, for that matter, were the questions asked in para. 2 of the letter ever raised.)

When Polly Yeung on Friday circulated a draft Subcomm. Report omitting reference to Reg. 29, I pointed out to her that it would be legally inaccurate unless the omission were corrected. Apparently she went back to the Legal Adviser for confirmation, and has now scheduled an urgent meeting to discuss this one provision with RCB. I don't think it will take too long.

For your info I've attached your letter to the Subcomm, Polly's draft report summarising the meeting that took place, and the EMB paper on the Women and Young Person's (Industry) Regulations tabled at that meeting

Establishment Subcommittee

LegCo Paper No. ESC 48/95-96

From : Clerk to the Establishment Subcommittee

To : Members of the Establishment Subcommittee

Date : 26 June 1996

Information Note

At the Establishment Subcommittee meeting on 5 June 1996, when members discussed EC(96-97)16 in relation to the proposed strengthening of the directorate structure in the Home Affairs branch, the Administration undertook to provide supplementary information on a number of matters related to the paper. The reply is now attached. The Chinese version will follow once available.

2. Members are invited to note that the staffing proposal has been approved by the Establishment Subcommittee and will be considered by the Finance Committee on 28 June 1996.

Mrs Constance LI
Clerk to the Establishment Subcommittee

Encl

cc Other members of the Finance Committee

ESC PAPER ESC(96-97)16
SUPPLEMENTARY INFORMATION

INTRODUCTION

At the meeting of the Establishment Sub-Committee of Finance Committee on 5 June 1996, Members requested supplementary information on a number of matters related to ESC Paper ESC (96-97)16 (the Paper). The information requested by Members is set out below.

Government's Point of Contact with the Equal Opportunities Commission (EOC) and the Privacy Commissioner's Office (PCO)

2. The Paper states that the coming into full operation of the EOC and PCO will result in Home Affairs Branch (HAB) assuming a new and important role as the main point of contact between these two independent statutory authorities and the Government. Members asked for more detail of what this role involves. It has two main aspects: firstly, HAB's continuing policy responsibility for equal opportunities and personal data privacy and secondly, HAB's responsibilities as controlling officer and housekeeping branch for the two bodies.

Policy Branch

3. As the main policy branch for the subjects dealt with by the EOC and PCO, HAB will act as the interface between the Government and the two statutory bodies. Discussions between the Government and the two bodies concerned on compliance with the relevant legislation in the public sector will be conducted through this channel. This will ensure that a consistent and co-ordinated approach is taken to such compliance.

4. HAB is the policy branch responsible for formulating, implementing and reviewing policies pertaining to personal data privacy and equal opportunities in general, and gender discrimination in particular. Accordingly, the Branch will continue to ensure that new policy initiatives which may have a personal data privacy or equal opportunities dimension are properly and thoroughly discussed with the PCO and EOC respectively and the relevant Government bodies before deciding on and implementing whatever action is required.

5. In addition, as policy branch for the EOC and PCO, HAB will be responsible for handling legislative amendments related to their areas of operation. The EOC has a specific statutory duty to review the workings of the ordinances governing its area of work and to recommend to the Government improvements to such ordinances. Any such recommendations to amend the Sex Discrimination Ordinance would be handled by HAB. The Branch would also be responsible for the preparation and enactment of legislation relating to any possible future expansion of the scope of work of the EOC to cover grounds of discrimination other than gender and disability. Similarly, if the Privacy Commissioner for Personal Data identifies the need for amendments to be made to the Personal Data (Privacy) Ordinance, HAB would have the responsibility of taking such proposals forward.

Housekeeping Branch and Controlling Officer

6. As the housekeeping branch for the EOC and PCO, HAB has a responsibility to ensure that the two bodies perform their functions and duties efficiently and effectively. Accordingly, HAB needs to perform an oversight function with respect to the two bodies and provide advice on administrative

and operational matters as necessary particularly during their initial period of establishment. On behalf of the two bodies, SHA will also have to account to Legislative Council questions or respond to Legislative Council motions relating to their work. As the controlling officer for both bodies, SHA needs to monitor the expenditure of both bodies. Besides, all their funding requirements have to be processed by HAB. If extra resources are required, bids will need to be made and argued for by HAB in the relevant Resource Allocation Exercise.

Interim Arrangements

7. Prior to the full establishment of the EOC and PCO, HAB will continue to play an active role in assisting the two authorities to set up their offices. Preparatory teams comprising a total of 18 staff have been seconded to the two bodies. These teams are on HAB's establishment and are supervised by senior staff of the Branch who report to the DSHA(1) post. The teams have the following duties:

- (a) to draw up staffing structures, including job descriptions and entry requirements, and staff terms and conditions of service;
- (b) to provide the administrative support for staff recruitment;
- (c) to prepare budgets and administer daily financial transactions;
- (d) to identify office accommodation and arrange for and oversee fitting-out work;

- (e) to assist the development of internal administrative policies and procedures on such matters as the handling of personnel matters and accounting arrangements; and
- (f) to conduct research and provide a draft framework for the preparation of employment codes of practice by the EOC.

Action item (a) above has been completed. Item (d) has been completed except for the installation of Local Area Networks. The remaining action items are all in progress.

8. Since the appointment of the members of the EOC, the preparatory team concerned has undertaken the additional responsibility of providing secretarial and administrative support to three working groups established by the EOC, on: Publicity and Public Education; the Preparation of the Code of Practice on Employment under the Sex Discrimination Ordinance; and the Preparation of Code of Practice on Employment under the Disability Discrimination Ordinance.

Changes in the Responsibilities of DSHA(1)

9. ESC Members asked for additional information on the changes to the responsibilities of the DSHA(1) post that justify the proposal to upgrade its ranking from AOSGB to AOSGB1. As indicated in the Paper, the responsibilities of DSHA(1) have undergone substantial changes that were not envisaged at the time that HAB was established in 1994. For example, there has been a dramatic increase in the volume, complexity and political sensitivity of work relating to access to information, press freedom, equal opportunities and the submission of reports under the various UN human rights treaties. In addition, the DSHA(1) post has recently assumed a new responsibility not

mentioned in the Paper of formulating and, in due course, overseeing the implementation of a policy on Government's use of the Internet.

Anti-discrimination Strategy

10. HAB's policy responsibility with respect to equal opportunities has expanded from a concentration mainly on gender discrimination to encompass all grounds of discrimination other than disability and age. This has required the Branch to undertake in the past year two major studies on discrimination, on the grounds of family status and sexual orientation. The Branch is shortly due to begin a third such study, on racial discrimination. These studies involve thorough research into local and overseas experience, the preparation of consultation documents, followed by public consultation exercises, the drawing up of an appropriate package of measures to tackle the problems identified and their implementation. DSHA(1) is responsible for these tasks, which involve a high level of political sensitivity and responsibility.

UN Human Rights Treaties

11. DSHA(1)'s responsibilities with respect to human rights reporting have also altered dramatically. This has resulted from the larger number of reports under processing, the much greater detail and length of the reports produced and the much greater scrutiny to which they are subjected by the relevant UN Committees and in Hong Kong by non-governmental organisations and the Legislative Council. The intense interest in the continued application of human rights treaties in Hong Kong post 1997 has also contributed significantly to the much higher level of political sensitivity and responsibility associated with this subject.

Internet Policy Within the Government

12. The use of the Internet by the general public is increasing rapidly. Many Policy Branches and Departments have already established their own Home Pages on the Internet. However, so far this has been done on the initiative of individual Branches and Departments without centralised guidance. The result is that while some Branches and Departments are making excellent use of the Internet others are barely doing so at all. HAB has the task of formulating and overseeing the implementation of a co-ordinated policy on the use of the Internet to enhance the availability of Government information, communication with the Public and transparency of Government operations. This new responsibility comes under the schedule of the DSHA(1) post.

Principle Assistant Secretary for Home Affairs (6)

13. Members asked for additional information on the work being undertaken by the post of Principal Assistant Secretary for Home Affairs (6) (P(6)). This post is a supernumerary one, created for a period of 18 months from 1 April 1996 to 30 September 1997 to deal with work related to the co-ordination of the handover ceremony and ancillary events. Since the creation of the post in April, most of the work undertaken by P(6) has been in the areas set out below.

Facilities for press coverage by local/overseas journalists

14. As the handover ceremony is a momentous event for Hong Kong, it is attracting intense interest from local and overseas media organisations. A media survey conducted in April by the Information Services Department indicated that at least 2,300 media personnel plan to cover the ceremony and

related events. As there are still some 13 months to go before the handover, we expect that more news organisations may come forward and that the ultimate number may reach several thousands. These numbers are on a par with, and may exceed, the largest size of any media contingent that has ever covered a historic event. With the relevant departments, P(6) has been undertaking the preparatory work for handling this unprecedented number of media representatives, including the planning and establishment of the necessary press and broadcasting facilities.

Hotel accommodation for overseas guests/journalists

15. There will be a high demand for hotel accommodation around the transitional period. To ensure that sufficient rooms are available for media representatives and possible overseas guests, P(6) has been working closely with the hotel industry on arrangements for the reservation of hotel rooms during that period.

Home Affairs Branch

24 June 1996



本署檔案 Our Ref (75) in EMBCR 5/3231/94 VI
來函檔案 Your Ref

電話 Telephone 2810 3561
傳真 Faxline 2869 0729

Fax : 2869 6794

24 June 1996

Clerk to the Subcommittee on the
Resolutions under Section 7 of the Factories
and Industrial Undertakings Ordinance and
Section 57(4) of the Sex Discrimination Ordinance,
Legislative Council,
8 Jackson Road,
Hong Kong.

(Attn.: Miss Polly Yeung)

Dear Miss Yeung,

Sex-Discriminatory Protective Legislation

I refer to Hon Christine LOH's letter dated 18 June 1996 on the captioned subject. I have the following responses to the points raised by Miss LOH in her letter.

Review of protective legislation concerning industrial safety

The Administration is proposing to remove the references to women in regulation 25 of the Factories and Industrial Undertakings Regulations and regulation 46 of the Construction Sites (Safety) Regulations. We agree there is no evidence to suggest that women are more accident prone than their male counterparts in performing certain dangerous jobs. The Administration will improve the safety standards for all workers, regardless of their sexes, through more comprehensive legislative provisions, enhanced enforcement, and the inculcation of a safety culture in the workplace through on-going safety education, training and promotion.

(Con'd/.....)

Dutiable Commodities (Liquor) Regulations

The Administration plans to seek the approval of the Executive Council to remove the gender connotation in regulation 29 of the Dutiable Commodities (Liquor) Regulations and publish the amendment regulation in the Gazette in July 1996.

International Labour Convention No. 45

According to our understanding, International Labour Convention No. 45, which provides that no women are allowed to be employed on underground work in any mine, has not been revised or superseded by any subsequent Conventions. The Convention No. 45 is applied to Hong Kong and its provisions are implemented by relevant legislation.

As regards discrimination in respect of employment and occupation, a Convention (No. 111) was adopted in 1958 to promote equality of opportunity and treatment in these fields and eliminate any discrimination on the basis of race, colour, sex, religion, political opinion, etc. However, the Convention is not in conflict with Convention No. 45 because it allows a member to take special measures designed to meet the particular requirements of persons who, for reasons such as age, sex disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance. Convention No. 111 has not been ratified by the UK and therefore is not open for Hong Kong to apply.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

A proposal on the continued application of CEDAW to Hong Kong after 1997 has been made to the Chinese side through the Joint Liaison Group. We are still waiting for the Chinese side's response. The International Labour Convention No. 89 mentioned in Miss LOH's letter, which restricts night work by women, is not applied to Hong Kong at present.

I should be grateful if you could pass this letter to Members of the Subcommittee for information.

Yours sincerely,

*(Herman CHO)
for Secretary for Education and Manpower*

Ref CB1/SS/20/95/2

**Subcommittee on the Resolutions under
Section 7 of the Factories and Industrial Undertakings
Ordinance (Cap. 59) and Section 57(4) of the
Sex Discrimination Ordinance (Cap. 480)**

**Minutes of Meeting
held on Monday, 24 June 1996 at 12:30 p.m.
in Conference Room B of Legislative Council Building**

- Members Present** : Hon CHAN Yuen-han (Chairman)
Hon Michael HO Mun-ka
Hon Margaret NG
Hon LEUNG Yiu-chung
Hon LEE Cheuk-yan
- Members Absent** : Hon Christine LOH
Hon Henry TANG Ying-yen, JP
- Public Officers
Attending** : Mr Herman CHO
Principal Assistant Secretary for
Education and Manpower
- Mr William SIU
Assistant Commissioner for Labour
- Mr Vincent TANG
Assistant Secretary for
Recreation and Culture
- Staff in Attendance** : Miss Polly YEUNG
Chief Assistant Secretary (1)3
- Mr Stephen LAM
Assistant Legal Adviser 4
- Ms Connie SZETO
Senior Assistant Secretary (1)5

EMB

Dutiable Commodities (Liquor) Regulations, members decided that the Subcommittee should make another report to the House Committee on 28 June 1996 on its latest deliberations. The Subcommittee therefore suggested that the Administration should postpone moving its motions by one week to the Sitting on 3 July 1996. Members at this meeting also expressed support for the Administration to seek the approval of the President to dispense with the 12-day period for giving notice to move its proposed Resolutions on 3 July 1996.

III. Reply to Hon Christine LOH's letter dated 18 June 1996

8. The Administration tabled a reply letter and briefed members on its salient points.

(Post-meeting note: Both letters were circulated to members of the Subcommittee vide LegCo Paper No. CB(1)1690/95-96)

9. The meeting ended at 1:20 p.m.

LegCo Secretariat
19 July 1996

**Subcommittee on the Resolutions under
Section 7 of the Factories and Industrial Undertakings
Ordinance (Cap. 59) and Section 57(4) of the
Sex Discrimination Ordinance (Cap. 480)**

Membership List

Hon CHAN Yuen-han (Chairman)
Hon TANG Ying-yen, Henry, JP
Hon HO Mun-ka, Michael
Hon LOH Kung-wai, Christine
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Margaret NG

Legislative Council Home Affairs Panel
Equal Opportunities : Policy Implications

Introduction

This note informs Members of the policy implications for the Government arising from the implementation of an equal opportunities strategy under the Sex Discrimination Ordinance in particular. A paper has been submitted to the Establishment Sub-committee of Finance Committee in response to request for further information to facilitate consideration of the proposal to strengthen the directorate structure in the Home Affairs Branch (HAB). The following information is also included in that paper.

Government's Point of Contact with the Equal Opportunities Commission

2. The coming into full operation of the Equal Opportunities Commission (EOC) will result in HAB assuming a new and important role as the main point of contact between this independent statutory authority and the Government. This role has two main aspects: firstly, HAB's continuing policy responsibility for equal opportunities and personal data privacy; and secondary, HAB's responsibilities as controlling officer and housekeeping branch for the statutory body.

Policy Branch

3 As the main policy branch for the subjects dealt with by EOC, HAB will act as the interface between the Government and the statutory body. Discussions between the Government and EOC on compliance with the relevant

legislation in the public sector will be conducted through this liaison channel. This will ensure that a consistent and co-ordinated approach is taken to such compliance

4. As the policy branch responsible for formulating, implementing and reviewing policies pertaining to equal opportunities in general, and gender in particular, the Branch will continue to ensure that new policy initiatives which may have an equal opportunities dimension are properly and thoroughly consulted with EOC and/or the relevant Government bodies before deciding on and implementing whatever action is required.

5. In addition, HAB will be responsible for handling legislative amendments related to the Sex Discrimination Ordinance. Under the Ordinance, EOC has a specific statutory duty to review the workings of the statutory provisions governing its area of work and to recommend to the Government improvements to such legislation. Any such recommendations to amend the Ordinance would be handled by HAB. The Branch would also be responsible for the preparation and enactment of legislation relating to any possible future expansion of the scope of work of EOC to cover grounds of discrimination other than gender and disability.

Housekeeping Branch and Controlling Officer

6. As the housekeeping branch for EOC, HAB has a responsibility to ensure that the statutory body performs its functions and duties efficiently and effectively. Accordingly, HAB needs to perform an oversight function with respect to the Commission and provide advice on administrative and operational matters as necessary particularly during the initial period of establishment of the

Commission. Secretary for Home Affairs (SHA) will also have to account to the Legislative Council for the operations and actions of the statutory body. For example, in answering Legislative Council questions or responding to Legislative Council motions relating to their work. SHA's role of controlling officer means that all of the Commission's funding requirements must be processed by HAB. If extra resources are required, bids will need to be made and argued for by HAB in the relevant Resource Allocation Exercise

Interim Arrangements

7. Prior to the full commissioning of EOC, HAB will continue to play an active role in assisting the Commission to set up its office. A preparatory team comprising a total of 13 staff have been seconded to the statutory body. The team is on HAB's establishment and is supervised by senior staff of the Branch who report to the DSHA(1) post. The team has the following duties:

- (a) to draw up staffing structures, including job descriptions and entry requirements, and staff terms and conditions of service;
- (b) to provide the administrative support for staff recruitment;
- (c) to prepare budgets and administer daily financial transactions;
- (d) to identify office accommodation and arrange for and oversee fitting-out work;

- (e) to assist the development of internal administrative policies and procedures on such matters as the handling of personnel matters and accounting arrangements; and
- (f) to conduct research and provide a draft framework for the preparation of employment codes of practice by EOC.

Action item (a) and (f) above have been completed. Item (d) has been completed except for the installation of Local Area Networks. The remaining action items are all in progress.

8. Since the appointment of the members of the EOC, the preparatory team concerned has undertaken the additional responsibility of providing secretarial and administrative support to three working groups established by the EOC, on: Publicity and Public Education; the Preparation of the Code of Practice on Employment under the Sex Discrimination Ordinance; and the Preparation of Code of Practice on Employment under the Disability Discrimination Ordinance.

Home Affairs Branch

June 1996

2039
TOTAL P.19

TOTAL P. 17

布政司署
政務科
香港灣仔
軒尼詩道一百三十號
傳訊中心
十一樓



GOVERNMENT SECRETARIAT
HOME AFFAIRS BRANCH
31ST FLOOR, SOUTHERN CENTRE,
130 HENNESSY ROAD
WAN CHAI,
HONG KONG.

本署編號 OUR REF HAB/CR/1/34/49 Pt.3

來函編號 YOUR REF .

電話 TEL NO 2835 1364

傳真傳真 FAXLINE 2834 6176

24 June 1996

Clerk to the LegCo Panel on Home Affairs
(Attn.: Ms Doris Chan)
Legislative Council Building
8, Jackson Road, Central
Hong Kong
(By fax: 2877 8024)

Dear Ms Chan ,

LegCo Panel on Home Affairs

**Commencement date of the Sex Discrimination Ordinance
and Disability Discrimination Ordinance**

At the meeting of the Home Affairs Panel held on 21 June to consider the supplementary report under the International Covenant on Civil and Political Rights, we undertook to advise Members of the timetable for the preparation of the Codes of Practice and the commencement of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance.

Under the two Ordinances, preparation of the codes of practice in employment is a matter for the EOC. The EOC is also required

to consult the public before putting the codes to LegCo for approval. We have undertaken, however, to conduct research and to provide a draft framework to facilitate the preparation of the codes by the Commission. Notwithstanding this, after taking into account the time required to establish the EOC and for it to prepare the codes of practice afterwards, we started work on the draft code of practice under the Sex Discrimination Ordinance early this year. The draft is complete and being studied by the Equal Opportunities Commission, as is the possible development of a second code under the Disability Discrimination Ordinance. The Commission expects to consult the public on the two drafts in September and to seek LegCo approval before the end of the year.

The two Ordinances will be brought into effect in September 1996 when the Equal Opportunities Commission has completed its recruitment programme. At that time, the Secretary for Home Affairs and the Secretary for Health and Welfare will gazette the commencement notices which do not need to undergo a positive resolution procedure in LegCo. The employment related provisions will take effect when LegCo has approved the codes of practice as required under the Ordinances. This is expected before the end of the year.

Yours faithfully,

(Jeremy Croft)
for Secretary for Home Affairs

c c. Chairman and Members of the Home Affairs Panel

c:\letter\legcol JC\ss

2031

Ref : CB2/SS/21/95
Tel : 2869 9254
Date : 25 June 1996
From : Chief Assistant Secretary (2)1
Council Business Division 2
Legislative Council Secretariat
To : Hon Members of the Legislative Council

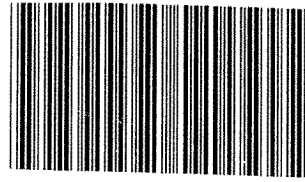
**Subcommittee on
Three Resolutions under section 34(2) and (4) of the
Interpretation and General Clauses Ordinance (Cap. 1) in
relation to the Sex Discrimination Ordinance (67 of 1995)
(Commencement) Notice 1996, Disability Discrimination
Ordinance (86 of 1995) (Commencement) Notice 1996 and
District Court Equal Opportunities Rules**

Cancellation of Meeting

As the President has ruled the two resolutions in relation to the Sex Discrimination Ordinance (67 of 1995) (Commencement) Notice 1996 and Disability Discrimination Ordinance (86 of 1995) (Commencement) Notice 1996 to be moved by Hon LEE Cheuk-yan out of order, on the advice of Hon Mrs Selina CHOW, the most senior Member on the preliminary membership, the meeting scheduled for 25 June 1996 at 3:30 p.m. has been cancelled.

(Mrs Sharon TONG)
Chief Assistant Secretary (2)1

c.c. Legal Adviser
Assistant Legal Adviser 4



X19134618