

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

**Document archive
Vol. 5**

**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

LEGISLATIVE COUNCIL BRIEF

Equal Opportunities: Family Status and Sexual Orientation

INTRODUCTION

This paper informs Members of the outcomes of the two consultation exercises on discrimination on the grounds of family status and sexual orientation, and the Government's future course of action to enhance equal opportunities in the two areas.

BACKGROUND AND ARGUMENT

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. The two consultative documents on the separate studies on family status and sexual orientation were subsequently published in January 1996 for a two-month period of public consultation until 31 March 1996.

3. During the consultation period, we have invited views from more than 75 groups, including employer and employee organisations, chambers of commerce, school associations, women's groups, and groups representing the interests of single parents and homosexuals. In addition to a central briefing for all District Boards, we attended meetings of five District Boards, two chambers of commerce, a panel of the Legislative Council (LegCo) and an advisory committee to explain the issues. We also attended open forums and phone-in programmes organised by the mass media to facilitate public discussions on the consultative documents.

Outcome of the Consultation Exercises

Pre-printed Opinion Forms

4. A total of 9 850 pre-printed opinion forms were received in response to the consultative documents on sexual orientation and/or family status. An overwhelming majority of these submissions (85%) indicated strong opposition to legislation in respect of sexual orientation. They also expressed disapproval of giving legal recognition to de facto relationships¹. However, these submissions did not object to legislating against discrimination on the ground of family status.

¹ de-facto relationship means the relationship between two persons who are of the same or opposite sex and who live together as husband/wife or partners on a bona fide domestic basis, although not legally married to each other.

5 The remaining pre-printed forms mainly supported legislation to safeguard the rights of persons of different family status and/or sexual orientation.

Substantive Written submissions

(a) Family Status

6. As regards the substantive submissions, 92 were received on the subject of family status. Among them, 38 were in favour of the legislative option and 20 were against legislation. The remaining 34 did not comment on the legislative option specifically but expressed concerns over the problems faced by carers of the family and the general recognition of de facto relationships.

7. Some supporters of the legislative option suggested that such legislation should be modelled on Ms Anna Wu's Equal Opportunities Bill 1994. Others casted doubts on the effectiveness of legislation as a means to eliminate discrimination. They held it prudent to gather some experience through the implementation of the Sex and Disability Discrimination Ordinances before considering further equal opportunities legislation.

(b) Sexual Orientation

8. Among the 185 written submissions received regarding sexual orientation, 81 indicated support for legislation and 84 were against. Twenty either expressed views on non-legislative options or commented on the general issues of homosexuality only.

9. Submissions in support of legislation see legislation as a necessary step to ensure equal opportunities for all and to regulate discriminatory behaviour in this area. They also see it as an educational tool to cultivate in the community a proper attitude towards sexual minorities. Those who opposed legislation were concerned about the possible impact on young people and on the traditional institutions of family and marriage if non-heterosexual behaviour was recognised formally through anti-discrimination legislation. Others considered legislation to protect the rights of the homosexuals a form of 'reverse discrimination' against the rights of the majority who choose not to accept non-heterosexuality.

(c) Non-legislative Measures

10. Notwithstanding the views on the legislative options in both areas, there is general support for non-legislative measures to enhance equal opportunities for persons of different family status and sexual orientation. In respect of family status, a large number of submissions advocated the need to assist single parents and those who have responsibility for dependent family members. Suggestions put forward include improvements to elderly or child care services and other measures to enhance equal employment opportunities.

As regards sexual orientation, public education programmes are thought to be effective tools to strengthen public understanding and acceptance of different forms of sexual orientation. Additional measures proposed include improvements in the quality of services for homosexuals through proper training of service providers and provisions of financial assistance for homosexual groups in their counselling and support services. Summaries of the comments received on the two areas are at Annexes A and B respectively.

PROPOSAL

Discrimination on the ground of Family Status : The Legislative Approach

11. In view of clear public support for legislation, we propose to introduce anti-discrimination legislation on the ground of family status. We propose to define family status by making reference to the status of having responsibility for the care of any immediate family member. An immediate family member must be related to the person concerned by blood, marriage, adoption or affinity. The proposed definition will cover, for example, relationships between husband and wife, parent and child, and close relatives.

12. We propose to model the scope of activities on those covered under the SDO which prohibits discrimination in the areas of employment, education, disposal and management of premises, provisions of goods and services, and Government activities.

13. As regards exemptions, consideration may be given to allowing employers to afford special benefits for persons with a particular family status. This would cover existing arrangement which enable, for example, education allowance only for married employees with children. The Primary One Admission Scheme which allows more favourable consideration of an applicant with siblings in the same school may also justify an exception.

14. For effective implementation of the new legislation, we propose to extend the remit of the Equal Opportunities Commission (EOC) to handle complaints of discrimination on the ground of family status.

15. During the public consultation, there were strong calls for non-legislative measures to assist those of a particular family status, in addition to the introduction of legislation. In this regard, we propose to pursue a programme which will seek to -

- (a) strengthen public education through civic education and family life education programmes to enhance public acceptance of persons of different family status;
- (b) continue to facilitate persons with family responsibilities, in particular women and single parents, to re-enter the labour market through the Employee Retraining Scheme; and

- (c) through major employer associations, encourage businesses to implement flexible working hours and parental leave system.

Significant improvements in social services for the elderly and day nurse service for children, and additional tax concessions for single parents have been approved under the 1996/97 Estimates. These should also help relieve the family responsibility and financial burden of the single parents and those having to take care of their dependent family members.

Sexual Orientation : Self-supporting Services for the Homosexuals

16. As the public generally consider it premature to adopt the legislative approach in the area of sexual orientation, no legislation is proposed. Nevertheless, to address the problem of discrimination encountered by some homosexuals, we propose to pursue a programme of non-legislative measures to reinforce the concept of equal opportunities in the community and to facilitate the provision of support services by the homosexual groups. The programme will seek to -

- (a) target the civic education programme to strengthen the concept of equal opportunities for all and to instil in the community the necessary respect for the rights of persons of a different sexual orientation. The civic education programmes within the school curricula in this respect should also be enhanced;
- (b) cover in health or sex education in schools an introduction to sexual orientation to instil in students a proper understanding of the issue and eliminate misconceptions about homosexuality;
- (c) incorporate the subject of sexual orientation in the training of social workers and clinical psychologists to ensure a proper understanding of the different forms of sexual orientation and to improve counselling skills of the service providers; and
- (d) identify financial resources for the homosexual groups to provide support services to the homosexuals. Useful but limited services such as phone-line counselling and self-help psychological courses are provided by some homosexual groups to help their clients handle identity crisis and manage stress. Financial assistance is required for the homosexual groups to improve existing services and introduce new programmes to better serve the needs of homosexuals.

FINANCIAL AND STAFFING IMPLICATIONS

17. The proposal to legislate against discrimination on the ground of family status will have financial implications on the proposed enforcement

body i.e. the Equal Opportunities Commission. It will also create a new cause of action which would become eligible for legal aid. Hence there would be financial and staffing implications arising from the increase in legal aid applications. We will bid for the required funds in the normal way when we have estimated the amount of additional resources needed .

18. To handle issues of discrimination other than gender discrimination, we require one Administrative Officer Staff Grade C post and one Administrative Officer post at a cost of \$2.84 million per annum in the Home Affairs Branch. Follow-up actions on the two studies on family status and sexual orientation, inter alia, will be under the purview of the new posts. Additional resources required in the current financial year for the implementation of the non-legislative measures in the relevant areas described in paragraphs 15 and 16 above would be absorbed by the global allocation of the relevant branches. Further implementation of these measures would be subject to additional resources available through the annual Resource Allocation Exercise.

PUBLIC CONSULTATION

19. Our proposals to legislate against discrimination on the ground of family status and adopt non-legislative measures to enhance equal opportunities in respect of family status and sexual orientation are a direct result of consultations with the general public, District Boards and other interested parties during the two-month public consultation from January to March 1996.

PUBLICITY

20. A press conference will be held and a press release issued to announce the results of the public consultation on discrimination on the grounds of family status and sexual orientation. We will make know our proposal for a dual approach, including the introduction of legislation in the area of family status, and pursue a programme of non-legislative measures to address discrimination on the ground of sexual orientation. We will also report to the relevant panel of LegCo the findings of the two consultation exercises as well as the way forward in tackling discrimination in the two areas. A compendium of submissions received during the consultation period will also be issued.

ENQUIRIES

21. For enquiries on this brief, please contact Ms CHANG King-yiu, Principal Assistant Secretary for Home Affairs, at 2835 1373.

25 June 1996

Home Affairs Branch

File Reference: HAB/CR/1/2/34

Discrimination on the ground of Family Status
Summary of Comments from Submissions

Overview

The consultative document on discrimination on the ground of family status was published in late January 1996 for a two-month public consultation. We received a total of 8,895 submissions. Of the submissions received, 8,803 are pre-printed opinion forms and 92 are written submissions which came from women's groups, employer organisations, education bodies, religious bodies, political parties, labour unions, community groups and individual members of society.

Problem

Most respondents take the view that discrimination on the ground of family status is a problem affecting women in particular. Women's groups and employee organisations have emphasised that women often assume the responsibility of carers in the family and as a result have often been discriminated against, especially in the field of employment.

Single parent groups and concerned parties have also highlighted the plight faced by single parent households in the areas of employment, education, and provision of accommodation. In addition, single parents have pointed out that they have also faced discrimination in other areas, such as in travelling, "parent-child tours" offer discounts only when a child is accompanied by two adults, less favourable treatment in applying for credit facilities, and harassment of children from single-parent families.

Other respondents such as employer organisations recognise that while there may be problems faced by persons with family responsibilities, the problem is more a social and welfare issue rather than discrimination. They question the need and effectiveness of instituting further anti-discrimination legislation and consider that it will be more beneficial to gather operational experience of the Sex and Disability Discrimination Ordinances before coming to a view on whether further anti-discrimination legislation is warranted.

The Legislative Option

A majority of respondents are of the view that anti-discrimination legislation should be introduced to eliminate discrimination on the ground of family status. Not many have commented on the detailed scope of the legislation, although an overwhelming majority of the submissions do not agree to accept de-facto relationship as a form of family status. For those who have commented on the various aspects of the legislative option -

(a) *Definition of "family status"*

Over 90% of the submissions have expressed strong reservation on the issue of co-habitation and oppose to include de facto spouse under the definition of family status. Others favour the definition of family status to cover both the status as a carer and a member of the family. A few respondents have, however, cautioned the difficulty of defining a "carer".

(b) *Scope of possible legislation*

There is a small majority of support for the possible anti-discrimination legislation to cover the same areas of activities as encompassed in Ms Anna Wu's Equal Opportunities Bill introduced in the 1993/94 legislative session. Other respondents favour the possible legislation to cover similar scope as the Sex and Disability Discrimination Ordinances, or only areas where they feel discrimination is a problem, in particular employment and accommodation.

(c) *Exceptions*

There is general support for the exceptions provided for in Ms Anna Wu's Equal Opportunities Bill. A majority of respondents are also in favour of preserving the current scoring system under the Primary One Admission Scheme which takes into account the presence of siblings studying in the same school. On the other hand, negative views have been expressed on the need for a transitional period for small businesses.

(d) *Enforcement Mechanism*

There are overwhelming calls for the Equal Opportunities Commission to assume the responsibility for overseeing the

implementation and enforcement of the possible legislation to outlaw discrimination on the ground of family status.

The Non-legislative Option

Notwithstanding the general support for legislation against discrimination on the ground of family status, there is unanimous support for non-legislative measures to enhance equal opportunities for those with family responsibilities. A wide range of economic and social support services have been proposed by respondents. These include -

(a) Social support services

All respondents consider that the provision of supporting services are effective means to assist persons facing problems arising from their family status/family responsibility, including the single parents. It is suggested that child care and elderly care services should be enhanced. In particular, employees retraining schemes should be targeted at persons with family responsibilities who are re-entering the workforce. Such retraining centres should also be designed with child care facilities to cater for the needs of mothers. Some respondents propose that a comprehensive social security benefits or a carer allowance should be made available for home carers or those who have to leave the job market in order to take care of children or family members at home. The single parent group have also suggested that Government should further improve the single parent allowance and provide subvention for self-help single parent groups. Mutual help and support among single parent families should also be encouraged.

(b) Employment-related Incentives

To assist persons with family responsibilities in accommodating the needs of family and work, some respondents have proposed that employers should be encouraged to implement flexible working hours, job-sharing or part-time arrangements for employees with family responsibilities. A few respondents also take the view that part-time workers should be given equal rights as full-time employees in terms of employment benefits.

(c) Public education

In addition to the above proposals, public education has been seen as an effective means to solve the problem of discrimination on the ground of family status. For example, civic education and public campaigns should promote a better understanding of different family status and encourage mutual

help among people to foster a caring community,. Many respondents also consider that education through the school curricula may instil the concept of equal opportunities for all in the younger generation. Some respondents propose that Government may also set out good employment practices in form of code of practice for employers to follow suit so that prospective employers would not make any stereotypical assumptions about those with family responsibilities during the recruitment process.

Discrimination on the ground of Sexual Orientation
Summaries of Comments from Submissions

Overview

The consultative document on discrimination on the ground of sexual orientation is published in late January 1996. During the two-month consultation period, we received a total of 10,014 submissions of which 9,829 are pre-printed opinion forms and 185 are written submissions. The submissions came from homosexual/bisexual groups, women's groups, educational bodies, religious bodies, political parties, employer organisations, labour unions, community groups and individuals members of society.

Problems encountered by Sexual Minorities

Most of the submissions focus on the problems faced by homosexuals and bisexuals while a minority also name transsexuality as an issue of concern regarding sexual orientation.

Homosexual groups and human rights activists take the view that discrimination on the ground of sexual orientation predominantly takes place in the areas of employment and provision of accommodation. It is pointed out that with low public acceptance of non-heterosexual orientations, homosexuals have difficulty in admitting their sexual identity. They are said to suffer from great social pressures and low self-confidence which may adversely influence their personal development and well-being. Public misconceptions about homosexuality, such as its associations with AIDS and promiscuity, is also thought to have intensified the problem of discrimination based on sexual orientation.

While it is cited that persons of a different sexual orientation are encountering the above problems, other groups such as employer associations maintain that the problem of discrimination in the area of sexual orientation is not serious and hence does not warrant a priority consideration of an anti-discrimination programme. Other respondents consider Hong Kong a receptive city in which homosexuality and bisexuality are being tolerated in most social circumstances. They observe that discrimination in the area is not a prevalent problem in Hong Kong.

Measures to enhance Equal Opportunities in the area of Sexual Orientation

I. The Legislative Option

Diverging views have been received regarding the legislative approach to prohibit discrimination on the ground of sexual orientation.

Supporters for the legislative option think that anti-discrimination legislation is the first step to change the social environment by regulating discriminatory behaviour. Legislation can also serve as an educational tool to cultivate correct attitude towards persons of a different sexual orientation among the public. It can also provide legal redress for people being discriminated against. The Government is urged to introduce legislation against discrimination, harassment and vilification on the ground of sexual orientation.

While agreeing that every person should be entitled to his own rights regardless of sexual orientation, a majority of the respondents hold opposing views towards the legislative route in addressing the issue of sexual orientation. Most members of the public express that the issue of sexual orientation is a matter of moral value and personal belief which should not be bound by means of law. Many respondents worry that homosexuality would be condoned if legislation is to be introduced. Some educational and religious organisations have also raised concerns on the possible impact of such legislation on young people and traditional institutions of family and marriage. They opine that legislating against discrimination will restrict individual's choice. This may result in "reverse discrimination" in which protecting the rights of sexual minorities may intrude the rights of others. Hence no legislation should be introduced at the expense of the majority of society. Employer organisations share the view that it was pre-mature to institute further anti-discrimination legislation as more practical experience is to be gained through the implementation of the Sex and Disability Discrimination Ordinances.

II. Non-legislative Measures

While diverging views have been expressed on the legislative option, there is unanimous support for the use of educational means to address discrimination on the ground of sexual orientation. Various forms of educational programmes, including civic education, health education, sex education, education through the mass media and school curricula, are suggested as effective means to promote public understanding and enhance public acceptance of persons of different sexual orientation. In addition to public education, non-legislative measures well supported by a majority of respondents include -

(a) *Provision of services*

Respondents have expressed that there is a need to enhance existing services targeted at the sexual minorities. Support services specifically catered for the needs of persons of different sexual orientation should be strengthened. Examples include counselling services for the homosexuals/ bisexuals and their families, medical services, and psychotherapy, etc.

(b) *Training for service providers*

To improve the quality of services provided for non-heterosexuals, it is suggested that service providers should be better equipped with knowledge on issues concerning different forms of sexual orientations. Some have proposed that the subject of sexual orientation should be incorporated into the programmes offered by tertiary institutions for prospective teachers, social workers, psychologists and other helping professionals.

(c) *Financial Assistance to homosexual/bisexual groups*

Limited services such as phone line counselling and self-help psychological courses are currently offered by some homosexual/ bisexual groups. To facilitate the operation of these groups and to enable the provision of better services, concerned parties have suggested that such groups should be offered financial assistance such as tax exemption, concessionary rent for premises and other financial subsidies.

Other non-legislative measures cited in the submissions by a smaller number of respondents include -

- establishment of a responsible body similar to the Equal Opportunities Commission to work towards equality in the area of sexual orientation;
- legal recognition of domestic partnership for both same-sex and heterosexual relationships;
- in-depth survey on issues relating to sexual orientation;
- extension of ambit of the Equal Opportunities Commission to cover issues concerning discrimination based on sexual orientation, and
- establishment of a drop-in centre or resource centre to provide information and facilities for persons of different sexual orientation.

Government to Take Active Approach to Fight Discrimination

The Government will initiate legislation to ban discrimination on the ground of family status and adopt practical measures to address discrimination in the area of sexual orientation, the Secretary for Home Affairs, Mr Michael Suen said today (Wednesday).

The way forward was devised on the basis of public views contained in more than 8,800 and 10,000 submissions received in response to the consultation documents on family status and sexual orientation respectively.

At a press conference to announce the findings of a two-month public consultation earlier this year, Mr. Suen said the submissions showed a clear public demand for legislation to protect the rights of persons of different family status and a majority preference for administrative measures to tackle discrimination on the ground of sexual orientation.

Mr Suen paid tribute to the many organisations and individuals who have aired their views. "The enthusiastic response clearly reflects a deep concern of the community about the issues," he said.

He said most respondents felt that discrimination on the ground of family status was common in employment, education and provision of services, and was particularly affecting women who assume the responsibility of carers in the family.

Mr Suen said preparation for legislation to eliminate discrimination on the ground of family status would start immediately.

2105

It could either be in the form of a self-contained bill, or alternatively, the Sex Discrimination Ordinance (SDO) could be extended to cover family status as an area of discrimination under the Ordinance.

"The extension should be simple and straightforward as the SDO already prohibits discrimination on the ground of marital status, which is a form of family status," he added.

Legislation regarding family status will cover a similar scope of activities as the SDO. The SDO currently outlaws discrimination in the areas of employment, education, disposal and management of premises, provisions of goods and services, and activities of clubs and Government.

"We also propose that the remit of the Equal Opportunities Commission be broadened to handle complaints and requests for assistance in this area," he added.

Apart from a clear support for legislative means, feedback from the consultation also revealed a strong demand for non-legislative measures to help enhance equal employment opportunities and to relieve persons of a particular family status, especially single parents and those who have to take care of the elderly or disabled members of their families.

Mr Suen said to address public concern on this issue, the Administration proposed also to adopt the following administrative measures

- strengthening public education through civic education and family life education;

2106

- continuing to facilitate persons with family responsibility to re-enter the labour market;

- encouraging employers to implement flexible working hours and parental leave system.

Turning to the result of the consultation on discrimination on the ground of sexual orientation, Mr Suen said submissions reflected divergent views on this issue.

While some pointed out that homosexuals suffer from public misconception about them and discrimination in the areas of employment and provision of accommodation, others maintained that the problem of discrimination on the ground of sexual orientation was not serious in Hong Kong.

Some made the point that homosexuality was against traditional Chinese culture which placed much emphasis on the institutions of family and marriage.

On the proposal to introduce legislation to prohibit discrimination on the ground of sexual orientation, over 85 per cent of the submissions indicated strong opposition. They were concerned about giving legal recognition to homosexuality and de facto relationships through anti-discrimination legislation.

Some educational and religious bodies were concerned about the possible impact of such legislation on young people while others considered laws to protect the rights of the homosexuals a form of 'reverse discrimination' against the rights of the majority who chose not to accept non-heterosexuality

"Nevertheless, there is general support for non-legislative measures to address the problems concerned. Respondents to the

2107

consultative document came out strongly in favour of public education programmes to promote equal opportunities for all, irrespective of a person's sexual orientation," Mr Suen said.

Mr Suen said the Government would pursue the following programme of measures to eliminate misconception, enhance public understanding of issues relating to sexual orientation and improve support services:

- strengthening civic education to instil in the community proper respect for the rights of others, irrespective of one's sexual orientation;

- covering the topic of sexual orientation in health or sex education at school to enhance students' understanding of the issue;

- improving the quality of services for homosexuals by incorporating the subject of sexual orientation in the training of service providers such as social workers and clinical psychologists;

- identifying possible financial resources to facilitate homosexual groups to enhance self-support services for sexual minorities.

Reiterating the Government's strong commitment to the principle of equal opportunities for all, Mr Suen said the proposed measures were aimed at removing potential injustice or unfair restriction of an individual's rights for equal opportunities in different aspects of life on account of his or her family status and sexual orientation.

2108

Noting that legislator Mr. Lau Chin-shek intended to introduce the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill into the Legislative Council, Mr. Suen wished the views of the community would be fully reflected and thoroughly considered at the Bill's Committee stage.

"The Administration will endeavour to persuade Legislative Councillors to accept its proposals to tackle discrimination in the areas of family status and sexual orientation. As the public consultation on age discrimination is underway, we hope members of the Legislative Council will see the merit of allowing the public to express their views and await the outcome of the consultation exercise before they proceed further with the Bill."

Meanwhile, Mr. Suen pledged to get on with drafting of legislation to outlaw discrimination on the ground of family status; to step up public education on equal opportunities for all, focusing particularly on the areas of family status and sexual orientation; enlist employers' support in promoting equal employment opportunities; and to identify possible financial resources for homosexual groups to facilitate their provision of services for sexual minorities.

A compendium comprising the written submissions for which we are able to obtain the authors' consent in making public their views has been published.

Note to Editors:

Copies of the compendium of submissions to the consultation on discrimination on the grounds of family status and sexual orientation will be boxed.

End/Wednesday, June 26, 1996

2109

TOTAL P.007

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

本署編號 OUR REF. : HAB/CR/1/2/21 Pt. 35

來函編號 YOUR REF :

電話 TEL NO. : 2835 1368

圖文傳真 FAXLINE : 2591 6002

27 June 1996

Clerk to the Legislative Council
(Attn: Miss Betty Ma)
Legislative Council Building
8 Jackson Road
Hong Kong
(Fax: 2810 1691)

Dear Miss Ma,

Sex and Disability Discrimination (Miscellaneous Provisions) Bill

I refer to your letter dated 31 May 1996 and the Hon Christine Loh's Sex and Disability Discrimination (Miscellaneous Provisions) Bill. I note that a similar letter has also been sent to the Secretary for Health and Welfare. This serves as a consolidated reply from the Administration.

2. The Administration has carried out an assessment of the Bill's financial implications. Clauses 10 and 24 of the Bill seek to replace the current exception provided in Schedule 5 of the Sex Discrimination Ordinance (SDO) in respect of differential treatment between persons of different marital status arising from a provision of the Civil Service Regulations (CSRs). However, clause 10 of the Bill covers only one aspect of the CSRs which prohibits the concurrent receipt of double benefits by a married couple. Other provisions of the CSRs which preclude the receipt of double benefits by married couples regardless of the time of receipts of such benefits are not covered. If the proposed Bill is carried in this form, married officers may become eligible for certain benefits even when their spouses had already received the same benefits and there will hence be financial implications. To illustrate the case in point, for married civil servants who may apply for Home Financing Allowance after their spouses, who are also civil servants, have received their full entitlement to civil service housing benefits, the additional funds required may be in the region of \$30.6 million in the first year, and a cumulative addition of \$15.3 million per annum thereafter.

3. Reference has also been made to clauses 13 and 30 of the Bill. Both clauses seek to add certain discretionary duties to the functions and powers of the Equal Opportunities Commission (EOC) as set out in section 64 of the SDO and section 62 of the Disability Discrimination Ordinance. These clauses propose to give the EOC statutory authority to undertake the additional functions of promoting international standards relevant to the respective Ordinances and to examine and report on proposed legislation.

4. Similarly, clauses 18 and 35 propose to add new sections to the Sex and Disability Discrimination Ordinances to enable the EOC to seek a declaration that a provision of law is inconsistent with the Hong Kong Bill of Rights Ordinance (Cap. 383) or with article VII(5) of the Hong Kong Letters Patent as it relates to discrimination on the grounds of sex, marital status, pregnancy, or disability. It also enables the EOC to intervene in proceedings under the Sex and Disability Discrimination Ordinances.

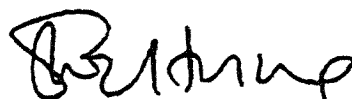
5. In an earlier ruling in respect of the Sex Discrimination Bill, the former President had made the following statement: -

“Where a new discretion is conferred, the [Equal Opportunities] Commission is of course free not to do the act, in which case no question of public expenditure will arise; but it is equally free to do the act, in which case the question of public expenditure will arise. It is in those circumstances that the effect of an amendment may be to dispose of or charge public revenue within the meaning of Standing Order 45(6).”

Our legal advice is that clauses which enlarge the functions of the EOC to include tasks not covered in the Sex and Disability Discrimination Ordinances as they stand do have a charging effect in that some measurable, though variable, additional charge on public funds will be produced by these new provisions. Should the EOC undertake the proposed new functions, we estimate that it may require an additional annual cost of around \$5 million for each Ordinance.

6. I should be grateful if you would convey our assessments to the President. We would respect and await the President's ruling on this Bill in due course. Please let me know his decision on the matter.

Yours sincerely,



(Mrs Stella HUNG)
for Secretary for Home Affairs

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

28 June, 1996

Clerk to the Legislative Council
(Attn: Miss Betty Ma)
Legislative Council Building
8 Jackson Road
Hong Kong
(Fax: 2810-1691)

Dear Miss Ma,

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

I refer to yesterday's letter from Mrs. Stella Hung for the Secretary for Home Affairs.

Double housing benefits (cl. 10 & 24)

2. I regret that the Administration finds it necessary to raise this point. My staff held repeated discussions in April and May with officers of Home Affairs and Civil Service branches about the Administration's concerns over double benefits. To alleviate those concerns, I proposed clause 10 of the Bill, which adds a new s. 56A into the Sex Discrimination Ordinance (Cap. 480, "the SDO") to clarify for avoidance of doubt that the effect which concerns the Administration is not intended.

3. The objection the Administration now raises is highly technical and could easily have been avoided. Essentially, the Administration objects to use of the present tense in s. 56A, in the expression "if the married person's spouse receives the same or a similar benefit or allowance." The Administration infers from this present tense that double benefits may be payable despite s. 56A if the spouse has already *received* the benefit before the married person becomes potentially eligible for the same benefit.

4. It was clearly known to the Administration that the section could be revised to their satisfaction, and I am disappointed they did not dispose of this matter by suggesting a simple revision such as inserting the words "or has received" after "receives". As the matter stands, however, I cannot accept that any charging effect arises from this technicality for 4 reasons.

5. First, the courts are unlikely to adopt the construction of s. 56A on which the Administration's argument is grounded. New s. 56A was drafted for the specific purpose of authorising the Administration's existing rules against double benefits. This purpose may be achieved if the "benefit or allowance" mentioned in s. 56A is construed as continuing for the duration of its enjoyment by the person who received it. It could then be said, to use the example cited by the Administration, that for purposes of s. 56A a person "receives" a Home Financing Allowance so long as he owns the home purchased by use of that allowance or is in possession of proceeds realised by sale of that home. The courts would likely so construe s. 56A in order to give it its intended effect.

2112

6. Second, even in the absence of any statutory exception of the s 56A type, a prohibition against receipt of double benefits by married persons does not in any case amount to unlawful discrimination under the SDO. The SDO defines unlawful discrimination against a married person as treatment of the person that is less favourable than treatment of a (real or hypothetical) unmarried person in circumstances that are the same or not materially different (SDO ss. 7(1)(a) and 10(b)). To show that the prohibition against receipt of double benefits is unlawful, a married person would have to show that an unmarried person would be eligible for double benefits *where the relevant circumstances were not materially different*. No such comparison can be shown because in this context a legal marriage is itself a circumstance that is both relevant and materially different. Until society and the law accords de facto marital relationships between unmarried persons the same recognition now given legal marriages, married persons will remain bound together by a variety of social and legal obligations that do not apply to cohabiting unmarried persons. The strength and likely duration of the bonds that unite two persons potentially eligible for double benefits are clearly relevant circumstances in determining the appropriateness of allowing or prohibiting receipt of those benefits.

7. Third, if the prohibition against receipt of double benefits did amount to marital status discrimination, it would already be unlawful under art. 22 of the Hong Kong Bill of Rights Ordinance (Cap. 383, “the BORO”). Any charge arising from the elimination of discrimination in government benefits has already been authorised and imposed by art. 22 of the BORO, because the obligations imposed on the Administration by art. 22 are the same in relevant respects as would be imposed by the SDO absent its statutory exception for government benefits.

8. The test for marital status discrimination under the SDO has been described above. Under art. 22 of the BORO, any departure from identical treatment must be justified by showing that a genuine need for different treatment exists that would be recognised by sensible and fair-minded people, and that the particular treatment is rationally selected to meet that need and proportionate to it (Bokhary JA in *R v Man Wai Keung (No 2)* (1992) 2 HKPLR 164 at 179, reaffirmed in *Lee Miu Ling & Anor v Attorney General* (1995) 5 HKPLR 585 at 591). Although the two tests approach the matter from different angles, a court’s considerations in determining under art. 22 whether a genuine need exists for a prohibition against receipt of double benefits by married persons, and whether that prohibition is rationally related and proportionate to that need, would be the same as the court’s considerations in determining under the SDO whether the relevant circumstances affecting married and unmarried persons are materially different.

9. The view that the court’s considerations under the SDO and art. 22 should be the same draws support from the Administration’s communications with the United Nations Human Rights Committee, which oversees implementation of the International Covenant on Civil and Political Rights (“the ICCPR”). Article 22 of the BORO is of course the domestic enactment of art. 26 of the ICCPR, and the Administration has made clear to the Human Rights Committee that the SDO implements ICCPR art. 26:

“Article 26

“341. The right to equality and non-discrimination under Article 26 of the Covenant is implemented in Hong Kong through article 22 of the Bill of Rights as well as through other legislation

“354 The BORO prohibits discrimination based on race, colour, sex, language, religious, political or other opinion, national or social origin, property, birth or other status. However, as explained in paragraph 4 above, the BORO does not provide protection against infringements by individuals of the rights of other individuals. The Hong Kong Government has therefore introduced legislation to prohibit discrimination on grounds of sex (see paragraphs 31 et. seq. above) and disability.”

(Fourth Periodic Report by Hong Kong under Art. 40 of the ICCPR, Section B, para. 341 and 354; also see para. 9 and para. 31 et. seq.)

10. Fourth and finally, the actual charge arising from any payment of double benefits required as a result of the Bill would be nil as a practical matter. The Administration may easily avoid paying any double benefits by revising the existing prohibition against receipt of double benefits to apply equally to unmarried persons in de facto marital relationships as well as to married persons.

11. As regards the other clauses challenged by the Administration (cl. 13, 18, 30 and 35), several provisions that are the same or closely similar were moved last year by Dr. the Hon. Leong Che-hung as committee-stage amendments to the SDO (then the Sex Discrimination Bill), at which time the President made directly relevant rulings on their charging effect. For reference, I have attached the relevant committee-stage amendments (Annex A), relevant extracts from Mrs. Stella Hung’s 23 June 1995 letter for Secretary for Home Affairs (Annex B), and the President’s 27 June 1995 ruling on the matter (Annex C).

EOC functions (cl. 18 & 35)

12. No new charge arises from clauses 18 and 35 because the EOC is already able under the existing SDO and DDO to undertake the activities mentioned in the clauses. It is on this very basis that the Administration has consistently opposed as unnecessary the insertion of any express mention of such activities into the SDO or DDO. I have attached two examples of many such statements by the Administration, in regard to the SDO at Annex D (*Bills Committee to study the Equal Opportunities Bill and the Sex Discrimination Bill, Notes of Meeting held on Friday, 1 June 1995, Legco Paper No. HB 1028/94-5, pp. 7-8, in particular para. 22 and 25*), and in regard to the DDO at Annex E (*Disability Discrimination Bill: Position Paper of the Administration, Health and Welfare Branch, 22 July 1995, pp. 6-8*).

13. Closely similar committee-stage amendments were proposed to the SDO and challenged for charging effect by the Administration last year (see Annex A, pp. 7-8 at 56(1); Annex B, para. 4). In his ruling, the President agreed that the EOC enjoys an existing discretion to undertake such activities under the SDO (see Annex C, pp. 2-3 under headings “Clause 56(1)(ca)” and “Clause 56(1)(ea)”). The President ruled, however, that because the

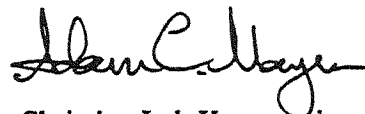
provisions in question made such activities an EOC duty rather than a discretion, they did have a charging effect. Clauses 18 and 35 of the Bill are clearly discretionary rather than mandatory, and have no such charging effect.

EOC litigation powers (cl. 13 & 30)

14. The litigation powers (“the new provisions”) added into the SDO by clause 13 and into the DDO by clause 30 are essentially identical to ss. 68A-B (“the old provisions”) that were unsuccessfully moved as committee-stage amendments to the SDO last year (see Annex A, pp. 10-11).

15. In yesterday’s letter, Mrs. Hung suggests the new provisions may have a charging effect. Mrs. Hung argued in similar terms last year that the old provisions might have a charging effect (see Annex B, para. 5). In the same ruling that Mrs. Hung cites in yesterday’s letter, the President in fact concluded that the old provisions had *no* charging effect (see Annex C, pp. 3-4 under heading “Clause 68A”). Mrs. Hung has suggested no reason to depart from last year’s precedent in respect of the essentially identical new provisions. If the President wishes, I am of course prepared to review the relevant arguments in greater detail.

Yours sincerely,



pp. Christine Loh Kung-wai

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

49 By adding -

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

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

51 By deleting the clause.

54 By adding -

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

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

56(1) (a) By adding -

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

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

(c) By adding -

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

57(3) By deleting the subclause.

63 By deleting subclause (4) and substituting -

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

- (a) inform that person of its proposal to investigate the act; and
- (b) offer him an opportunity of making oral or written representations, within 28 days after the notification of the proposal to investigate, with regard to it (or both oral and written representations if he thinks fit),

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

- (i) by counsel or a solicitor; or

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

64(2)(b) By deleting everything after “formal investigation” and substituting “confine it to activities of persons named in them.”.

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

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

“(4) Without limiting the generality of the power conferred by subsection (3), the District Court may -

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and order that the respondent should not repeat or continue such unlawful conduct or act;
- (b) order that the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent should employ or re-employ the claimant;
- (d) order that the respondent should promote the claimant;

- (e) order that the respondent pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;
- (f) order that the respondent pay to the claimant punitive or exemplary damages; or
- (g) make an order declaring void in whole or part and either ab initio or from such other time as is specified in the order any contract or agreement made in contravention of this Ordinance.”.

(c) By deleting subclause (5).

New

By adding -

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

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

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

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

(b) article VII (5) of the Hong Kong Letters Patent 1917-1994 as it relates to discrimination on the

- (3) In this section, "discrimination" (歧視) means -
- (a) for the purposes of subsection (2)(a), discrimination within the meaning of the Hong Kong Bill of Rights Ordinance (Cap. 383); and
 - (b) for the purposes of subsection (2)(b), discrimination within the meaning of the International Covenant on Civil and Political Rights,

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

68B. Commission may intervene in proceedings

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

- (a) a claim under section 68(1); or
- (b) a declaration of the kind referred to in section 68A(2),

is an issue."

74

By adding -

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

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

dispose of or charge any part of Government revenue may be proposed. In the light of this clause, the Administration's view is that the following amendments' effect will be to dispose of or charge the revenue or other public moneys of Hong Kong and thus require, in their present form, the Chief Secretary's certificate that the Governor's recommendation will be signified on second reading.

4. The proposed amendment to clause 56(1) of the Bill extends the functions of the Equal Opportunities Commission in two respects. Firstly, so as to "promote an understanding and acceptance, and the public discussion, of relevant international obligations and of the standards contained in relevant international instruments", and secondly, to scrutinise and report on legislative proposals which it considers may affect equality of opportunity between men and women. Our legal advice is that an amendment which enlarges the functions of the Commission to include tasks not provided for in the Bill as introduced does have a charging effect in that additional resources would be required which are not contemplated by the original proposal, at any rate if the new function involves a substantial, and not merely trivial, accretion to the Commission's overall responsibilities. It is our opinion, based on legal advice, that the proposed new functions are sufficiently substantial to make the amendment one having a charging effect. We estimate that the additional annual cost incurred as conferred by this amendment would be around \$3.5 million.

5. Proposed amendments to clauses 68A and 68B empower the Equal Opportunities Commission to bring proceedings in its own name and to intervene in proceedings. These new clauses also effectively add to the functions of the Equal Opportunities Commission, and, as such, are essentially like the amendment to clause 56. Our legal advice is that as implementation will require the provision of additional resources, these amendments do have a charging effect. It is estimated that the proposed amendments would require an additional amount of around \$2.3 million annually.



查詢電話 Our Ref
來函編號 Your Ref
傳真號碼 Our Tel. 2869 9461
圖文傳真 Our Fax 2877 9600

27 June 1995

The Hon Anna WU Hung-yuk
c/o Robert W H Wang & Co
17th Floor
Nine Queen's Road Central
HONG KONG

Sex Discrimination Bill

I have considered your submissions, both written and oral, in response to the Administration's view that a number of the amendments proposed to be moved by Dr C H LEONG will have a charging effect.

I would first make two general points:

- (a) Where a new function is imposed upon the Commission, in terms which require that it shall do a certain thing, the inevitable consequence is that there will be a charge on the public revenue if the doing of that act requires the spending of public money. Government is in those circumstances obliged to provide the money necessary to enable that act to be done

(b) Where a new discretion is conferred, the Commission is of course free not to do the act, in which case no question of public expenditure will arise; but it is equally free to do the act, in which case the question of public expenditure will arise. It is in those circumstances that the effect of an amendment may be to dispose of or charge public revenue within the meaning of Standing Order 45(6).

I now turn to the specific amendments.

Clause 56(1)(ca)

It is clear that the Commission's duty to work towards the elimination of discrimination and of sexual harassment is circumscribed by the definition of those terms in clause 2 of the Bill. It could not really be argued that the duty proposed under the new sub-clause (ca) could be treated as implementing those two primary duties. Indeed I think your principal argument was that the promotion of the objects in the new sub-clause (ca) should be viewed as complementary to sub-clause (b) which requires the Commission to promote equality of opportunity between men and women generally. I am in agreement with you to the extent that in promoting such equality of opportunity, the Commission would be entitled to promote understanding and acceptance of international obligations and the standards contained in international instruments as defined, and would also be entitled to do so under its discretionary powers to engage in research and educational activities under clause 57. Where the Commission had this discretion, it could

legitimately decline to exercise it on the ground of insufficient funds.

However, once that discretion is converted into a duty, funding must be found for that function and a charging effect would follow. I am of the opinion that clause (ca) does impose a new duty on the Commission and that, as its implementation would require extra funding, it has a charging effect.

Clause 56(1)(ea)

This place a duty upon the Commission to examine proposed legislation that the Commission considers may have the effect stated and to report the results of such examination. In arriving at its conclusion whether such legislation may have the stated effect, the Commission is not exercising a discretion but forming a judgement, and is doing so pursuant to a statutory obligation.

As public expenditure will necessarily be incurred, the amendment has a charging effect.

Clause 68A

I will treat the two sub-clauses separately:-

Sub-clause (1)

I am persuaded by your submission that the Government's new clause 80A recognises that the Commission should have the power to bring proceedings under clause 68(1) in the circumstances

stated. I must assume that the Government will not delay in making these Regulations, and am therefore able to conclude that the enactment of this sub-clause in advance of the Regulations will not have a charging effect.

Sub-clause (2)

I think there is a great deal of force in your submission that the Commission would have locus standi to apply for judicial review for appropriate declarations on the authority of the decision of the House of Lords in R.v. Secretary of State for Employment ex parte Equal Opportunities Commission (1994) 2 W.L.R. 409. As in that case, the Commission's implied power to bring such proceedings would flow from its duty to work towards the elimination of discrimination under clause 56(1)(a). I would be confident that no charging effect would arise if in the definition sub-clause (3), discrimination was limited to that falling within sections 4, 5, 6, 7 and 8; but on balance I do not think that the extension of this definition in the formula proposed would have any significant impact upon expenditure. Accordingly, I am of the opinion that this sub-clause will not have a charging effect.


Clause 76(1)

The proposed amendment would clearly widen the scope of the Commission's conciliation function. Under sub-clause (3), the Commission is obliged to conduct an investigation unless satisfied the act is not unlawful or one or other of the provisions of sub-clause (4) applies. This is a case in which the amendment may have a charging effect, and I so rule.

Amendment to section 5AA of the Legal Aid Ordinance

I do not see any answer to the Administration's view that additional funds will be required if the Director of Legal Aid is giving the discretion to waive the means test in the case of claims of unlawful discrimination or sexual harassment under this Bill. I am accordingly of the opinion that this amendment will have a charging effect.

Yours sincerely,



John Swaine
President

cc: Dr the Hon C H LEONG
Mrs Stella HUNG, Home Affairs Branch

Clause 54 and Schedule 4

19. Ms WU proposed to amend the exemption of (i) certain discrimination within the disciplinary services and (ii) of marital status discrimination in employment benefits and civil service benefits to expire in one year, subject to extension by LegCo resolution.

20. Members noted that the Administration considered all these exemptions were reasonable and necessary exceptions. Exceptions for (i) were required whereby the operation of disciplinary forces would not be hampered. With regard to (ii), if the exception for employment benefits were to expire at the end of one year, all employers would no longer be able to provide different levels of housing to employees of different marital status. Employees might lose out because everybody would then receive a flat rate.

21. Ms WU was of the view that complete exemption of discrimination in these matters were unnecessary, unreasonable and subject to abuse. It was therefore proposed to allow one year, subject to extension by LegCo resolution, for necessary adjustments to be made before expiry of these exceptions. With regard to (ii), following expiry of the exception employers might still provide differential benefits based on non-discriminatory criteria, e.g. household size.

Part VII - EOCClause 56(1)

22. Ms WU proposed to put forward a new subclause giving EOC's function of promoting observation of relevant international obligations (including ICCPR, ICESCR and CEDAW) as they related to sex, marital status or pregnancy discrimination.

23. Members noted that the Administration considered that the EOC was already vested with the responsibility to work towards the elimination of discrimination and to promote equality of

opportunity between men and women generally. Reiteration of this function was therefore not needed.

24. Ms. WU was of the view that, despite apparent breadth, the EOC's functions were limited to discrimination as defined in the SDB. In its roles other than law-enforcement (such as research, promotion, and conciliation), the EOC should be clearly empowered to address any matters connected with discrimination under broad, international non-discrimination standards.

25. Ms WU also suggested a new subclause giving the EOC the power to examine any proposed legislation that it considered might affect equality of opportunity, and reporting results to legislation's sponsor. Noting the Administration's view that the EOC could also examine proposed legislation and there was no need to provide explicit provisions in this regard, she pointed out that the subclause was to give the EOC a statutory advisory role. Similar provisions were provided in the Personal Data (Privacy) Bill.

Clause 55 & Schedule 5

Clauses 57(3)

26. Ms. WU proposed to repeal Clause 57(3) which obliged the EOC to seek SHA's approval before it could provide financial assistance to outside research and undertaking. She considered that the sub-clause unnecessarily restricted the EOC's independence. The Administration had adequate financial controls over the EOC in Schedule 5 (sections 15(2), 16(2) and 17(2) of that Schedule). On this basis, the Bills Committee agreed to accept these provisions in Schedule 5 which Ms WU originally proposed to repeal.

Clause 63(4)

27. Ms WU suggested to amend Clause 63(4) to enable EOC to carry out an investigation into named persons or organisations for any purpose connected with its functions (irrespective of whether it believed unlawful acts had occurred); and to give all named persons a

occasions. A similar amendment was passed by the Legislative Council for the Sex Discrimination Bill. The Administration will, therefore, **SUPPORT** this amendment.

3. International Obligations and Instruments: Clause 2 and 60

The Bills Committee has proposed that the Equal Opportunities Commission should have two new powers relating to international obligations and instruments. One is for the Commission to promote the understanding, acceptance and public discussion of them and the other is for the Commission to examine any proposed legislation that :

- (i) may affect the equality of opportunity between those with and without a disability; or
- (ii) affect the understanding and acceptance of relevant international obligations and instruments. In this case, the Commission would report on its examination to the person proposing the legislation and to the Legislative Council.

The relevant international instruments are general declarations of what states should aim to achieve to provide equal

opportunities for those with a disability. The Disability Discrimination Bill, on the other hand, is a comprehensive piece of legislation which spells out clearly what constitutes unlawful behaviour towards people with a disability in specific and clearly defined areas of activity.

We believe it would be more appropriate for the Commission to focus on promoting acceptance and discussion of the Disability Discrimination Ordinance than these more general international documents. However, should the Commission come to the view that it should indeed promote their acceptance or examine legislation which may affect their acceptance, then it could do so under its powers to “work towards the elimination of discrimination” and to “promote equality of opportunity between persons with a disability and persons without a disability”.

A similar amendment was not passed by the Legislative Council in respect of the Sex Discrimination Bill.

The Administration will OPPOSE this amendment on the grounds that it is unnecessary and potentially confusing to the public.

4. Laws and Government programmes : New clause 33A

The Government is bound by the Bill of Rights Ordinance not to discriminate in the discharge of its functions generally and will be bound by the Disability Discrimination Ordinance, in those areas covered by it, by virtue of Clause 5. We have accepted the Bills Committee's suggestion that it should also be made unlawful for the Government to discriminate against a person with a disability in the performance of its functions, subject to certain limited exceptions, (at para C 4 on page 17).

The Bills Committee has, however, proposed an alternative amendment which is much broader and whose impact is much less clear. This would make it unlawful, for example, for any person who performs a function or exercises a power under a law or for the purpose of a Government programme, to discriminate against another person.

**INFORMATION PAPER ON THE EQUAL OPPORTUNITIES
COMMISSION FOR THE LEGCO PANEL ON HOME AFFAIRS
MEETING ON 28 JUNE 1996**

This paper sets out the initial work plans of the Equal Opportunities Commission (EOC) with regard to the implementation of the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO).

I Background

2. The EOC has been formally established on 20 May 1996. The Governor has appointed Dr. Fanny Cheung as the full-time Chairperson and 16 members to the Commission. By virtue of the SDO and the DDO, the EOC is tasked with the responsibility to work towards the elimination of discrimination and the promotion of equality of opportunity between men and women and for people with a disability.

3. It is the target of the EOC to commence operation in September 1996 at which time the provisions of the SDO and the DDO, except those relating to employment, are expected to come into force. The employment-related provisions of the two Ordinances will be implemented after the relevant codes of practice have been approved by the Legislative Council.

II. Phases of EOC's Operation

Preparatory Phase

4. In order to carry out its statutory responsibilities, the EOC will be underpinned by an Office of 66 staff at various ranks. To ensure that the EOC can fulfil its target operational day in September this year, the top priority of the EOC at the moment is to set up the Commission Office and recruit its staff which is required for the implementation of the Ordinances.

5. Staff recruitment is proceeding well. Phase one of the recruitment programme, which ran from 1 to 21 June, attracted over 1,000 applications for the key posts. Shortlisted candidates will be invited to attend recruitment interviews in early July. In parallel, the EOC will also start advertising for the remaining vacancies in early July. The Commission aims to complete its recruitment exercise within two to three months. At the same time, the Commission will draw up its internal operating procedures for enquiries, complaints handling, and conciliation.

Initial Operation

6. 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

7. 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 organisations. 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.

III. Initial Work Plan

Preparation of Codes of Practice on Employment

8. One of the priority tasks of the EOC is to develop two codes of practice on employment pursuant to the SDO and DDO. Even without its staff, two working groups have been set up under the EOC at which members have started working on the draft codes of practice on employment so that

formal consultation with the employment sector, relevant organisations and the public could commence once the staff are in post.

9. These codes of practice will provide guidelines for employers and employees 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 the employment sector to observe the provisions of the Ordinances.

10. The public consultation exercise concerning the codes of practice will also be a valuable public education tool in the sense that the employment sector as well as the public would also have an opportunity to familiarise themselves with the provisions of the Ordinances before the complex employment-related provisions are implemented. It is envisaged that the codes of practice should contain guidelines in the following areas:

- in the areas of recruitment, staff training, transfer or promotion, the standards applied should relate to job requirements and free of bias;
- what constitute genuine occupational qualification and inherent requirements of the job;
- what factors should be taken into account in assessing whether "unjustifiable hardship" would be imposed on the employer in providing services or facilities for a potential employee with a disability;
- equal pay for work of equal value;

- the prevention and handling of complaints about sexual harassment and harassment on the ground of disability in the workplace; and
- employers will also be encouraged to put in place an objective recruitment system.

Publicity and Public Education

11. The EOC have also mapped out an interim publicity strategy to publicise the work of the EOC and the two Ordinances. A Working Group on Publicity and Public Education has been set up to devise and oversee the implementation of publicity plans. The interim publicity and public education strategy covers the following areas of activities:

- a package of publicity materials to publicise the functions and powers of the EOC and the provisions of the two Ordinances;
- a series of training modules targeted at different groups of audience, e.g. women groups, disability groups, employers, employees, educational institutes etc.; and
- commissioning research projects to establish baseline indicators reflecting equal opportunities and discrimination on the basis of gender and disability which will form the basis for future monitoring and more focused research.

Liaison and Communication with Outside Organisations

12. The EOC aims to work closely with other organisations in promoting the concept of equal opportunities and the services that would be provided by the Commission. Since the formal establishment of the EOC, the Chairperson has met with various groups interested in the work of the EOC, these include women's groups, rehabilitation groups, anti-discrimination groups, representatives from chambers of commerce and labour unions. The EOC will continue to build up partnerships with these organisations and establish channels to facilitate regular communication.

Equal Opportunities Commission

June 1996

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

**Minutes of Meeting held on
Friday, 28 June 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 James TO Kun-sun
Hon Zachary WONG Wai-yin
Hon Christine LOH Kung-wai
Hon LEE Cheuk-yan
Hon Andrew CHENG Kar-foo
Hon CHOY Kan-pui, JP
Hon LAU Hon-chuen, JP
Hon LAW Chi-kwong
Hon NGAN Kam-chuen
Dr Hon John TSE Wing-ling
- Members Absent** : Hon LO Suk-ching (Deputy Chairman)
Hon Allen LEE Peng-fei, CBE, JP
Hon LAU Wong-fat, OBE, JP
Hon CHEUNG Hon-chung
Hon Bruce LIU Sing-lee
Hon Mrs Elizabeth WONG, CBE, ISO, JP
- Public Officers Attending** : **Item III (b)**
Mr Michael SUEN, CBE, JP
Secretary for Home Affairs

Action

Ms CHANG King-yiu
Principal Assistant Secretary for Home Affairs

Item IV

Mr Michael SUEN, CBE, JP
Secretary for Home Affairs

Mrs Shelley LAU, JP
Director of Home Affairs

Mr Dominic LAW, JP
Deputy Director of Home Affairs

Mr David PUN
Assistant Director of Education (Services)

Mrs Y Y TANG
Senior Social Work Officer

Dr Constance CHAN
Principal Medical Officer

Mr HO Kwok-cho
Senior Housing Manager/Application

Item V

Mr LEE Lap-sun, JP
Deputy Director of Home Affairs
Home Affairs Department

Mr Victor NG, JP
Assistant Director of Home Affairs

Mr Carlson CHAN
Principal Assistant Secretary for Home Affairs

Action

Attendance by : Item III (a)
Invitation

Equal Opportunities Commission

Dr Fanny CHEUNG. JP
Chairperson

Staff in : Mrs Anna LO
Attendance Chief Assistant Secretary (2) 2

Mr Raymond LAM
Senior Assistant Secretary (2) 6

I. Confirmation of minutes of meetings and matters arising
(LegCo Paper Nos. CB(2) 1477, 1698 & 1699/95-96)

The minutes of the meetings held on 24 May, 25 May and 6 June 1996 were confirmed.

II. Date of next meeting and items for discussion
(Appendix I to LegCo Paper No. CB(2) 1692/95-96)

2. Members agreed that the next regular meeting would be held on Friday, 26 July 1996 at 10:45 a.m. to discuss the following:

Meeting with the Administration on the Third Periodic Report in respect of Hong Kong under Articles 2 to 16 of the International Covenant on Economic, Social and Cultural Rights

(Post-meeting note : It was subsequently agreed at the special meeting on 6 July 1996 to include the "Equal Opportunities (Race) Bill", to be introduced by Mrs Elizabeth WONG, for discussion at the meeting on 26 July 1996.)

3. Members agreed that the item on "Building management and maintenance", which was referred from a meeting of LegCo Members

Action

with Yau Tsim Mong District Board members. would be added to the list of outstanding issues for future discussion.

4. The Chairman reminded members that the special meeting to gauge the views of non-government organisations (NGOs) on the Third Periodic Report in respect of Hong Kong under Articles 2 to 16 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) would be held on 6 July 1996.

III. (a) Work plans of the Equal Opportunities Commission (EOC)
(Appendix II to LegCo Paper No. CB(2) 1692/95-96)

5. At the invitation of the Chairman, Dr Fanny CHEUNG highlighted the salient points of the paper provided by the EOC.

Preparation of code of practice on employment

6. In response to Miss Christine LOH, Dr Fanny CHEUNG explained that informal consultation on the draft code of practice on employment would be conducted in July 1996. It was hoped that the draft codes would be publicised in late September 1996 for a one-month public consultation. After considering the views received in the consultation exercise, further revisions to the draft codes would be considered in late October and November 1996 before the codes were presented to LegCo. At the request of Miss Christine LOH, she undertook to provide a written reply on the detailed preparation time-table for the codes of practice as stated in Section 69 of the Sex Discrimination Ordinance (SDO) and Section 65 of the Disability Discrimination Ordinance (DDO).

EOC

7. Miss Christine LOH hoped that the public would be informed that in the event of dispute over the codes of practice, the interpretation of the court would be final. She added that LegCo should also be included in EOC's informal consultation exercise in July 1996.

Commencement date for code of practice on employment

8. Mr LEE Cheuk-yan stated that as the SDO required two public consultations, he doubted whether the preparation of code of practice on employment could be completed by the end of 1996. He suggested the EOC to provide a concrete time-table in writing and consider a retroactive commencement date for the codes of practice. Dr

Action

EOC

Fanny CHEUNG agreed to look into the suggestion. The Chairman commented that the introduction of a retroactive commencement date for criminal cases was against the general principle of legal justice.

Relationship between EOC and the Administration

9. In reply to Dr John TSE's question on the relationship between the EOC and the Administration, Dr Fanny CHEUNG explained that while the EOC would maintain close communication with the Administration, the views of LegCo and other organisations would also be carefully considered, as the EOC was an independent statutory body.

Position of EOC on recent discrimination incidents

10. Dr John TSE commented that the EOC had a very low profile since its establishment in May 1996. He was disappointed that the EOC had not made any statement on the recent discrimination incidents. Miss Emily LAU added that the EOC should take every opportunity to educate the public on discrimination issues. Keeping silent on the recent discrimination incidents would only have a negative effect on public education.

11. Dr Fanny CHEUNG responded that the EOC had no statutory power to carry out any investigation before the commencement of SDO and DDO. The EOC had discussed the issues and considered it inappropriate to comment, until investigation had been completed, on whether an incident amounted to discrimination. She added that fairness had to be maintained in investigations and mediations. Overseas experience had indicated that premature comment on an incident would affect the result of the legal proceeding. Subject to privacy considerations, reference would be made to precedents in educating the public.

Financial surplus resulting from the late establishment of the EOC

12. In response to Mr LEE Cheuk-yan, Dr Fanny CHEUNG stated that the accumulated surplus resulting from the postponed establishment of EOC was in the region of \$16 million. After deducting the cost for staff seconded from the Home Affairs Branch (HAB) and the cost for a local area network, the remaining surplus would be used on acquiring public educational facilities.

Action

Openness of EOC Meetings

13. Miss Christine LOH suggested the EOC to make reference to the standing orders of the Arts Development Council and consider opening its meetings to the public. In response, Dr Fanny CHEUNG stated that the issue had been considered at the first meeting of the EOC, with reference to meetings of similar bodies like the Housing Authority and Consumer Council. The EOC considered it more appropriate to publicise the agenda before meetings and hold press briefings afterwards.

Other suggestion

14. Dr John TSE suggested the EOC to use international covenants on human rights as yardsticks for discrimination issues.

(b) Equal Opportunities : Policy Implications
(Appendix III to LegCo Paper No. CB(2) 1692/95-96)

15. Mr Michael SUEN presented the salient points of the paper provided by the Administration. With the setting up of the EOC, HAB now assumed a new role as the main point of contact between this independent statutory authority and the government.

Preparatory work of HAB for the establishment of EOC

16. In response to Miss Emily LAU, Mr Michael SUEN stated that a lot of preparatory work for EOC had been carried out by the HAB. The Administration had arranged office accommodation and fitting out work for the EOC. Terms and conditions of service for EOC staff had also been drawn up. Draft codes of practice had been prepared for EOC's consideration.

Draft code of practice on employment

17. Members were generally dissatisfied with the slow progress on the draft codes of practice. In response to Miss Christine LOH, Mr Michael SUEN stated that the draft codes, covering a wide scope, were about to be provided to EOC for finalisation.

Action

Implementation time-table for DDO and SDO

18. In response to members, Mr Michael SUEN stated that the SDO and DDO should take full effect by the end of 1996. He added that the employment related provisions had to commence three months later than other provisions because of the need to prepare the codes of practice. At the request of Mr LEE Cheuk-yan, he undertook to bring into effect the full commencement of SDO and DDO by December 1996.

HAB

19. Mr LEE Cheuk-yan reserved his position on the phased implementation of SDO and DDO. He stated that it would be difficult for the public to understand the difference between employment and non-employment related provisions.

IV. Integration of new immigrants from China into the community
(Appendices IV and V to LegCo Paper No. CB(2) 1692/95-96)

20. Mrs Shelley LAU introduced the paper provided by the Administration.

21. Mr LAW Chi-kwong suggested the Administration to formulate comprehensive policy on new immigrants from China. He added that the HAB should consider setting up a section solely on service provision for new immigrants. In response, Mr Michael SUEN stated that as new immigrants were expected to integrate into the community within a short period, there was no need to set up a new section specifically for service provision to new immigrants. From a survey on new immigrants conducted by the Administration, it was noted that they were mainly found in four districts. Additional resources required for these districts were currently met by internal redeployment. The Administration was formulating proposals within 3 months to further strengthen service in these districts. Endorsement from the ExCo of its proposals would be sought before reporting to the LegCo. Additional funds, if required, would be sought through the annual Resource Allocation Exercise. Mrs Shelley LAU added that the subject of new immigrants was a standing agenda item of her bi-weekly meeting with all District Officers. The subject was also discussed within the Home Affairs Department (HAD) on a weekly basis.

Action

Education

22. As regards complaints that some new arrival children had returned to China because they could not find a school in Hong Kong, Mr David PUN stated that the Education Department (ED) had not received such complaints. The Central Placement Unit and District Education Offices would assist new arrival children in their school placement. Recent discussion with the Education Offices of the four districts where most of these children lived, i.e. Eastern District, Kowloon City, Kwun Tong and Shamshuipo, had not revealed any problem in finding school places for these children. He guessed the complaints arose probably due to some parents could not have their children admitted to schools of their choice.

23. In response to Dr John TSE, Mr PUN explained that the Induction Programmes and the Extension Programmes were introduced in April and October 1995 respectively. Information on these courses were disseminated through various immigration checkpoints, the District Education Offices and the handbook for new immigrants. A total of 6,000 places were offered in the last year and 4,829 children had taken the courses.

24. As regards the problem of children having to attend lower classes as a result of their poor English standard, Mr David PUN stated that about 75% of new arrival children were attending lower classes. The ED had urged the school principals to allow these children to revert to their normal classes once their English standard had improved. The ED had also set up a Review Committee to look into methods and measures to improve education services for new arrival children.

25. Mr Zachary WONG pointed out that there were insufficient secondary school places in Yuen Long, particularly for new arrival children over the age of 15. Mr PUN replied that as a whole, there were adequate secondary school places in Yuen Long District. To assist new arrival children in finding school places, a list of schools in the district could be obtained from the District Education Office. Arrangements could be made by District Education Officers for children to attend interviews at relevant schools if necessary. In Hong Kong, free and compulsory education were provided up to Secondary III. For children over 15 years old, they could request to attend a lower class in secondary schools, evening courses run by Adult Education Section of ED or craft courses offered by the technical institutes of the Vocational Training Council. He undertook to follow-up the matter and urge the schools to be more flexible in admitting students of this age range.

ED

Action

Provision of information

26. As regards the provision of information to new immigrants, Mrs Shelley LAU explained that handbooks were distributed through the Public Enquiry Service Centres located in the 18 districts. District Officers were meeting with other relevant departments on a bi-monthly basis to determine the areas that had to be strengthened. It was identified that more publicity was needed and the Administration was working on it.

HAD

27. Mr LEE Wing-tat commented that the HAD staff's knowledge about the work of other departments should be strengthened to facilitate their referral work. Ideally, 'one-stop' enquiry service should be provided. He added that Putonghua training should be arranged for these staff. Mrs Shelley LAU undertook to strengthen staff training.

Housing

28. Mr LEE Wing-tat commented that the Administration should strengthen its services in the temporary housing estates, where many new immigrants lived. Mrs Shelley LAU agreed to convey the suggestion to the District Offices.

HAD

Social Welfare

29. Mr LAW Chi-kwong stated that many new immigrants were finding it difficult to comprehend the handbook for new arrivals. He suggested that the Social Welfare Department (SWD) should play a more important role in providing service to new immigrants. In response, Mrs Shelley LAU stated that the Steering Committee was looking into Mr LAW Chi-kwong's proposals in his Green Paper. To her knowledge, the International Social Service was providing information service to new immigrants at Lo Wu. Mrs Y Y TANG added that at the Immigration Offices where new immigrants collected their identity cards, new immigrants were informed of the services offered by social workers. In addition to a SWD 24-hour service hotline, 65 family service centres were also providing service to new immigrants.

Medical service

30. In response to the Chairman, Dr Constance CHAN stated that health education on general health issues was provided to the public

Action

through the Central Health Education Unit of the Department of Health. The staff of DH obtained information on new immigrant children at the Immigration Office at Lo Wu for dissemination to its maternal and child health centres. Vaccination to new immigrants was provided through the maternal and child health centres and the Regional Health Offices. The handbook for new immigrants also listed out the addresses and telephone numbers of all general out-patient clinics and maternal and child health centres.

V. Implementation of the new rules for rural elections
(Appendix V to LegCo Paper No. CB(2) 1692/95-96)

31. Mr LEE Lap-sun highlighted the salient points of the paper provided by the Administration. He informed members that more than 90% of the villages had implemented the new rules for rural elections. Full implementation of the new election rules in all rural villages was a matter of priority for all District Offices of HAD.

32. Mr LEE Wing-tat asked the Administration to provide the full list of villages which had not implemented the new election rules, and the time-frame for the villages to implement the new rules. Mr LEE Lap-sun agreed to provide a written reply before the next Panel meeting on 26 July 1996. As regards the time for full implementation of the new election rules in all villages, he stated that as the villages had their own history and tradition, it was practically difficult to set a full completion date. Nevertheless, the Administration would try its best to seek full implementation of the new rules. Mr Zachary Wong stated that he would resort to legal action against the villages, if they did not implement the new election rules by September 1996.

HAD

(Post-meeting note : The written reply from HAD was issued vide LegCo Paper No. CB(2) 1931/95-96).

33. In reply to Mr LEE Wing-tat's question on the correspondences regarding the rural election of Cheung Chau Island tabled at the meeting (Appendix A to these minutes), Mr Victor NG explained that the rural committee of Cheung Chau Island had agreed in early 1995 to implement the new election rules. An election committee was also formed with the assistance of the District Office to co-ordinate arrangements. However, the rural committee suddenly changed its attitude at the end of 1995. In response to this, the Administration had

Action

sternly advised the rural committee that Government would refuse to recognise the status of the kaifong representatives who were not elected in accordance with the Heung Yee Kuk's model rules. An ultimatum was also served on the rural committee in March 1996. Through the joint efforts of the Administration and Heung Yee Kuk, the Cheung Chau Rural Committee had finally accepted the new election rules in April 1996. Registration of voters on the basis of one-person-one-vote had since been in progress. Mr LEE Wing-tat commented that the Administration should issue an ultimatum in such cases at an earlier time in the future.

VI. Any other business

Submissions of the Panel on the Initial Report of the United Kingdom of Great Britain and Northern Ireland in respect of Hong Kong under Article 44 of the Convention on the Rights of the Child (CRC) and Supplementary Report by the United Kingdom of Great Britain and Northern Ireland in respect of Hong Kong under the International Covenant on Civil and Political Rights (ICCPR) (the Submissions)
(LegCo Paper No. CB(2) 1723/95-96)

34. Members considered the draft submissions and agreed on the amendments to be incorporated into the final versions of the submissions (issued vide LegCo Paper No. CB (2)1742/95-96). The final versions of the submissions were endorsed by members and would be submitted to the House Committee on 5 July 1996. Members also agreed that delegations of LegCo Members should attend the United Nations hearings under CRC and ICCPR respectively.

35. The meeting ended at 1:15 p.m.

LegCo Secretariat
3 September 1996

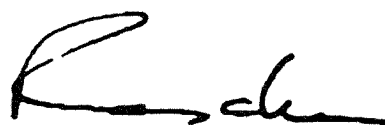
From : Clerk to the Legislative Council
To : Members of the Legislative Council
Ref : CB(3)/M/OR
Tel : 2869 9205
Date : 28 June 1996

**LEGISLATIVE COUNCIL SITTING
ON 3 JULY 1996**

**Motions under Factories and Industrial Undertakings Ordinance
and Sex Discrimination Ordinance**

I forward for Members' information three resolutions which the Secretary for Education and Manpower will move on 3 July 1996 under the Factories and Industrial Undertakings Ordinance and Sex Discrimination Ordinance.

2. The speeches, in both English and Chinese version, which the Secretary for Education and Manpower will deliver when moving the motions, are also attached.



(Ray CHAN)
for Clerk to the Legislative Council

Encl

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 Commissioner for
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年工廠及
工業經營(修訂)規例》。

FACTORIES AND INDUSTRIAL UNDERTAKINGS
(AMENDMENT) REGULATION 1996

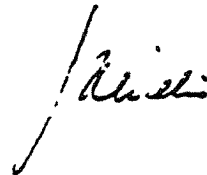
(Made under section 7 of the Factories and
Industrial Undertakings Ordinance
(Cap. 59) subject to the approval
of the Legislative Council)

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.

31st May 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.

1996年工廠及工業經營(修訂)規例

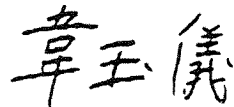
(在立法局批准下根據〈工廠及工業經營條例〉
(第59章)第7條訂立)

1. 釋義

〈工廠及工業經營規例〉(第59章, 附屬法例)第2條現予修訂, 廢除“婦女”的定義。

2. 由青年清潔危險機械

第25(1)及(2)條現予修訂, 廢除“婦女及”而代以“任何”。



勞工處處長

1996年 5 月 31 日

註釋

本規例修訂〈工廠及工業經營規例〉(第59章, 附屬法例)第25條, 以便該條同樣地適用於女性, 猶如適用於男性一樣。

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.

4. The Administration agrees that there is no evidence to suggest that women are more accident prone than their male counterparts in performing

certain dangerous jobs. I therefore propose that the Factories and Industrial Undertakings (Amendment) Regulation 1996, which repeals the references to woman in regulation 25(1) and (2), should be approved by Members.

5. The proposal has been endorsed by the Labour Advisory Board.
6. Mr. President, I beg to move.

草稿

一九九六年七月三日立法局會議席上

教育統籌司王永平就 1996 年工廠及工業經營(修訂)規例

提出動議時致辭全文

主席先生：

我謹依照議事程序表，提出我名下的動議。

2. 一九九五年七月十四日制定的性別歧視條例，把幾類性別歧視列為違法行爲。條例第 12 及第 57 條訂明，當性別是真正的職業資格，以及是為保護女性而作出的作為，則屬例外情況。除非本局以決議方式把這些例外情況的有效期延長一年，否則這些例外情況在性別歧視條例制定一年後便會終止生效。

3. 工廠及工業經營規例第 25 條規定，當機械或傳動裝置在運行時，婦女不准清潔該機械或傳動裝置的危險部分。性別歧視條例附表 3 亦將這項規例，列為條例第 12 及第 57 條所訂明的例外情況。

4. 政府當局認為並無證據顯示，在從事某些危險工作時，女性比男性較容易發生意外。因此，我建議本局應通過廢除 1996 年工廠及工業經營(修訂)規例第 25(1)及(2)條有關婦女的字眼。
5. 勞工顧問委員會已通過支持這項修訂建議。
6. 主席先生，我謹提出動議。

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

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
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.

31st May 1996.

Explanatory Note

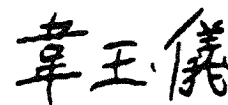
This Regulation amends regulation 46(1) of the Construction Sites (Safety) Regulations (Cap. 59 sub. leg.) in order to make that regulation apply equally to women as it does to men.

1996年建築地盤(安全)(修訂)規例

(在立法局批准下根據《工廠及工業經營條例》
(第59章)第7條訂立)

1. 青年清潔危險機械

《建築地盤(安全)規例》(第59章, 附屬法例)第46(1)條現予修訂, 廢除“婦女或”而代以“任何”。



勞工處處長

1996年 5 月 31 日

註釋

本規例修訂《建築地盤(安全)規例》(第59章, 附屬法例)第46(1)條, 以便該條同樣地適用於女性, 猶如適用於男性一樣。

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.

4. The Administration agrees that there is no evidence to suggest that women are more accident prone than their male counterparts in performing

certain dangerous jobs. I therefore propose that the Construction Sites (Safety) (Amendment) Regulation 1996, which repeals the reference to woman in regulation 46(1), should be approved by Members.

5. The proposal has been endorsed by the Labour Advisory Board.
6. Mr. President, I beg to move.

草稿

一九九六年七月三日立法局會議席上

教育統籌司王永平就 1996 年建築地盤(安全)(修訂)規例

提出動議時致辭全文

主席先生：

我謹依照議事程序表，提出我名下的動議。

2. 一九九五年七月十四日制定的性別歧視條例，把幾類性別歧視列為違法行爲。條例第 12 及第 57 條訂明，當性別是真正的職業資格，以及是為保護女性而作出的行爲，則屬例外情況。除非本局以決議方式把這些例外情況的有效期延長一年，否則這些例外情況在性別歧視條例制定一年後便會終止生效。

3. 建築地盤(安全)規例第 46 條規定，建築地盤內的機械或工業裝置在運行時，婦女不准清潔該機械或工業裝置的危險部件。性別歧視條例附表 3 亦將這項規例，列為條例第 12 及第 57 條所訂明的例外情況。

4. 政府認為並無證據顯示，在從事某些危險工作時，女性比男性較容易發生意外。因此，我建議本局應通過廢除 1996 年建築地盤(安全)(修訂)規例第 46(1)條有關婦女的字眼。
5. 勞工顧問委員會已通過支持這項修訂建議。
6. 主席先生，我謹提出動議。

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 discriminatory

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.

4. During the current one-year grace period the Labour Department has conducted a thorough review of the Women and Young Persons (Industry) Regulations and assessed the implications of removing those women-specific provisions which are incompatible with the Sex Discrimination Ordinance. As the exercise required extensive and time-consuming research and analysis of similar employment legislations in other countries, and Hong Kong's obligations under various International Labour Conventions, the review was only completed in April this year. The report on the review by the Labour Department was put to the subcommittee set up by this Council for the purpose of examining my present motion at its meeting on 19 June 1996.

5. The review has identified three options to deal with the issue. The first is to remove the employment restrictions in the Regulations. The second is to extend these restrictions to male workers. The third is to preserve the women-specific employment restrictions.

6. It will be inappropriate to remove all existing employment protection for women across the board. Equally, it will be inappropriate to extend all existing employment restrictions to male workers. The prohibition on employment in dangerous trades is a clear example. Therefore, different approaches may have to be adopted for different employment restrictions

7. Furthermore, there is a political dimension to amend regulation 4 of the Women and Young Persons (Industry) Regulations which prohibits the employment of women in underground and tunnelling works. Repeal of this regulation would mean that Hong Kong has to denounce the International Labour Convention No. 45 on Underground Work (Women) Convention. The Chinese side will need to be consulted through the Joint Liaison Group if the International Labour Convention No. 45 is to be denounced, as it involves Hong Kong's international rights and obligations.

8. Statutory restrictions over certain aspects such as working hours, overtime employment and compulsory rest days are likely to be controversial. Legislative control in these areas for both men and women in all economic sectors would mean improved benefits for employees but, at the same time, higher labour cost and less flexibility for employers.

9. I wish to point out that the review report prepared by the Labour Department represents no more than the initial assessment by an internal working group. It merely sets out the possible approaches to resolving the incompatibility between the Women and Young Persons (Industry) Regulations and the Sex Discrimination Ordinance. The Administration has not taken a final view on these important issues. We will have to consult the Labour Advisory Board, and other parties concerned extensively before deciding on the way forward.

10. Given the complexity and far-reaching implications of the subject, plus the need to consult widely and extensively, it is necessary to seek an

extension of the grace period for another year. I am grateful that the subcommittee set up to examine my present motion has indicated its support to extending the grace period under section 57(3) of the Sex Discrimination Ordinance for another year. I confirm that the Administration will undertake to draw up a timetable on the consultation and legislative procedures involved and, to make regular progress reports on the matter to the Manpower Panel of this Council.

11 Mr. President, I beg to move.

Ref : CB1/SS/20/95

**Paper for the House Committee Meeting
on 28 June 1996**

**Report of the Subcommittee on
Resolutions under section 7 of
the Factories and Industrial Undertakings Ordinance (Cap.59) and
section 57(4) of the Sex Discrimination Ordinance (Cap.480)**

PURPOSE

This paper reports on the deliberations of the 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).

BACKGROUND

2. The Sex Discrimination Ordinance, which was enacted on 14 July 1995, renders sex discrimination unlawful in employment and other specified fields of activity. Exceptions are however provided 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. A list of statutory provisions specified in Schedule 3 to the Ordinance imposing certain employment restrictions on women is at **Appendix I**. The aforesaid exceptions will expire in one year's time after the enactment of the Ordinance, unless they are extended by resolution of this Council for another year.

3. Members have noted that the Secretary for Education and Manpower (SEM) has given notice to move the following three Resolutions on 26 June 1996:

Two Resolutions under section 7 of the Factories and Industrial Undertakings Ordinance (Cap.59)

4. The Administration is of the view that there is no evidence to suggest that women are more accident prone than their male counterparts in performing

certain dangerous jobs. It is therefore proposed that regulation 25 of the Factories and Industrial Undertakings Regulations (Cap. 59 sub. leg.) and regulation 46 of the Construction Sites (Safety) Regulations (Cap. 59 sub. leg.) be amended to remove the prohibition on the employment of women in dangerous jobs such as cleaning the dangerous part of any machinery. As a result of the amendment, the two regulations will apply equally to men and women.

Resolution under section 57(4) of the Sex Discrimination Ordinance (Cap. 480)

5. Section 57(3) of the Ordinance provides for a one-year grace period to exempt inter alia the provisions listed in Schedule 3 from the application of the Ordinance. Section 57(4) further provides that this grace period may be extended for another year by resolution of this Council. In his draft speech in moving the motion, SEM has outlined the Administration's reasons for proposing to extend the grace period in respect of the Women and Young Persons (Industry) Regulations (Cap. 57 sub. leg.).

DELIBERATIONS

6. The major concerns expressed by the Subcommittee are summarized in the following paragraphs.

Two Resolutions under section 7 of the Factories and Industrial Undertakings Ordinance (Cap.59)

7. Although members consider the proposed Resolutions generally acceptable, concerns have been raised about whether the safety and well-being of women workers would be jeopardized as a result of removing the exceptions. They therefore urge the Administration 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.

8. On the question of whether the employer can henceforth require or even compel a female worker to perform certain dangerous tasks which were hitherto prohibited by law, the Administration has advised that such requirement by the employer may constitute a major change in the worker's duties and terms of employment. Reference may be made to the Employment Ordinance which contains provisions on the contractual relationship between employers and employees.

Resolution under section 57(4) of the Sex Discrimination Ordinance (Cap.480)

Women and Young Persons (Industry) Regulations

9. Since the Administration has been allowed a period of one year to review and take adaptive measures in respect of the statutory provisions of the Women and Young Persons (Industry) Regulations stipulated in Schedule 3 to the Ordinance, members query the grounds for seeking a further extension of one year under section 57(4) of the Ordinance.

10. In reply, the Administration has explained that a number of options are being considered to deal with each of the employment restrictions imposed by the Regulations. These include the retention or removal of the restriction, or the extension of the restriction to the non-industrial sector to cover both sexes. The need to assess the impact on the working population in different economic sectors, Hong Kong's obligations under various International Labour Conventions and manpower constraints at the Labour Department are some of the reasons given for not being able to conduct a timely review within the one-year grace period.

11. Members do not consider the Administration's explanation acceptable. They also express strong dissatisfaction towards the lack of good progress in the review of the Women and Young Persons (Industry) Regulations in the past year. Members are of the view that the Administration should be in a position to gauge the complexity of the issues involved and devise a reasonable time-table to complete its work. They also cast serious doubt on whether the Administration will be able to complete its review of the Regulations and propose legislative amendments in good time when so little has been done so far and no clear policy decision has yet been taken.

12. At the request of the Subcommittee, the Administration agrees to submit a time-table as soon as possible detailing its proposed courses of action and the legislative time-table. It will also submit periodic progress reports on a monthly basis to the Panel on Manpower.

13. The Subcommittee has noted that if the Legislative Council does not approve the extension of the one-year grace period, the statutory exceptions in the Women and Young Persons (Industry) Regulations will expire one year after the enactment of the Ordinance and these provisions may become unlawful thereafter. Hence, members share the view that there is virtually little choice but to support the proposed extension.

Dutiable Commodities (Liquor) Regulations

14. In the course of scrutinising the proposed Resolution, the Subcommittee has found that the extension of the aforesaid grace period, if approved, will also apply to regulation 29 of the Dutiable Commodities (Liquor) Regulations (Cap 109 sub.leg.) currently listed in Schedule 3 to the Sex Discrimination Ordinance. However, no information from the Administration was available there and then on the proposed course of action on the said regulation 29.

15. In response to the Subcommittee's request for clarification, the Recreation and Culture Branch has advised that approval of the Governor in Council will be sought in early July 1996 to remove the gender connotation in regulation 29 of the Dutiable Commodities (Liquor) Regulations and the amendment regulation will be gazetted at around mid July 1996. If considered necessary, Members may still form a Subcommittee to study the subsidiary legislation after it has been tabled at a future sitting of this Council.

LATEST POSITION

16. In order that the House Committee can be adequately informed of the Subcommittee's deliberations, the Administration will withdraw its motion to move the three Resolutions on 26 June 1996 and seek the President's consent to move these Resolutions on 3 July 1996.

RECOMMENDATION

17. The Subcommittee recommends that the Resolutions proposed to be moved on 3 July 1996 under section 7 of the Factories and Industrial Undertakings Ordinance and section 57(4) of the Sex Discrimination Ordinance be supported for the reasons advanced in the foregoing paragraphs.

ADVICE SOUGHT

18. Members are invited to support the recommendation of the Subcommittee at paragraph 18 above.

Statutory provisions imposing restrictions on the employment of women

Women and Young Persons (Industry) Regulations (Cap 57, sub. leg.)

Regulation 4 prohibits women from being employed in underground work in any mine or quarry, or in any other industrial undertaking involved in tunnelling work.

Regulation 5 prohibits women from being employed in dangerous trades.

Regulation 6 restricts the carrying of weights by women in industrial undertakings.

Regulation 8 restricts the hours of employment of women employed in industrial undertakings.

Regulation 10 restricts overtime work of women employed in industrial undertakings.

Regulation 11 restricts the shift work of women employed in industrial undertakings.

Regulation 13 prohibits work during meal or rest intervals for women employed in industrial undertakings.

Regulation 14 prohibits work on rest days for women employed in industrial undertakings.

Factories and Industrial Undertakings Regulations (Cap 59, sub. leg.)

Regulation 25(1) prohibits women from cleaning any dangerous parts of machinery in a notifiable workplace while the machine is in motion.

Regulation 25(2) prohibits women from cleaning any mill-gearing in a notifiable workplace while the mill-gearing is in motion.

Construction Sites (Safety) Regulations (Cap 59, sub. leg.)

Regulation 46(1) prohibits women from cleaning the dangerous parts of any machinery or plant in construction sites while the machinery or plant is in motion by the aid of any mechanical power.

Cont'd P.2....

Appendix II

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

From : Legal Adviser of the Legislative Council Secretariat

To : Members of the Legislative Council

Ref : LS/S/28/95-96

Tel : 2869 9204

Date : 1 July 1996

LEGISLATIVE COUNCIL - SITTING ON 3 JULY 1996

**District Court Equal Opportunities Rules (L.N. 236 of 1996)
Proposed amendment by Hon LEE Cheuk-yan**

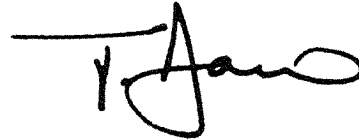
As reported at the House Committee meeting on 28 June 1996, Hon LEE Cheuk-yan has given notice to move a resolution at the Legislative Council sitting on 3 July 1996 to amend the above Rules to clarify that they will apply to proceedings by or against the Government.

2. The Rules are subsidiary legislation made by the District Court Rules Committee under the District Court Ordinance. Their purpose is to regulate the practice of the District Court in proceedings under the Sex and Disability Discrimination Ordinances. For example, one of the Rules (Rule 6) deals with rights of audience (i.e. who may appear and address the Court). It allows a wider range of persons (e.g. trade union representatives, relatives etc.) to act for a party in proceedings under the Sex and Disability Discrimination Ordinances. Normally in the District Court only barristers and solicitors may appear for a party.

3. However the Rules do not expressly state whether they apply to proceedings by or against the Government. This makes the position unclear because the Rule-making power in the District Court Ordinance states that Rules will not apply to the Government unless expressly so stated. The purpose, therefore, of Hon LEE Cheuk-yan's amendment is to provide express clarification that the Rules will apply to proceedings by or against the Government.

4. The Judiciary Administrator's Office has confirmed that it has no strong views on the proposed amendment and is happy to leave the matter to the Law Draftsman. The Law Draftsman has been consulted and has assisted in the preparation of the amendment. In Legal Adviser's view the proposed amendment does not involve any change of legal policy. It is a drafting improvement and can properly be supported by Members on that basis.

5. This proposed amendment has nothing to do with the date of commencement of the Rules.

A handwritten signature in black ink, appearing to read 'Jonathan Daw', with a horizontal line extending to the left of the first letter.

(Jonathan Daw)
Legal Adviser



香港職工會聯盟

HONG KONG CONFEDERATION OF TRADE UNIONS

油麻地砵蘭街101-107號砵蘭大廈三樓(2字)

2/F., 101-107, PORTLAND ST., PORTLAND BLDG., YAUMATI, KLN, H.K. TEL : 2770 8668 FAX.:2770 7388

各位立法局同僚:

本局於去年六月及七月分別通過《性別歧視條例》及《殘疾歧視條例》時，就《地方法院條例》作出相應修訂，授權地方法院委員會訂立法院規則；而有關的《地方法院平等機會規則》已於1996年6月5日提交立法局省覽（即刊登於憲報的1996年第236號法律公告）。

然而，由於《地方法院條例》第73B(7)及73C(7)條的規定，加上《地方法院平等機會規則》並無明確規定有關規則適用於涉及官方的法律程序；所以，為免生疑問，本人在諮詢本局法律事務部的意見後，決定於七月三日立法局會議上提出決議案，就有關的附屬法例作出技術性修訂，明確指出《地方法院平等機會規則》適用於所有由官方提出或針對官方的法律程序。據我所了解，政務科及衛生福利科並不反對該決議案。

隨函附上《地方法院條例》第73B(7)及73C(7)條的條文及本人提交的決議案內容供閣下參考。

我衷心希望各位同僚能於七月三日支持該決議案。

祝 工作愉快

Lee Cheuk Yan's.
amendment to
rules in relation to
jurisdiction under
Sex Discrimination

李卓人 啓

一九九六年七月一日

Ord - ask for
support on 3rd March

決議

(根據《釋義及通則條例》(第1章)第34(2)條)

地方法院平等機會規則

議決將於1996年6月5日提交立法局會議省覽的《地方法院平等機會規則》(即刊登於憲報的1996年第236號法律公告)修訂，在第2條之後加入 —

“2A. 適用範圍

本規則適用於所有由官方提出或針對官方的法律程序。”。

《防止賄賂條例》

12 公共機構

《防止賄賂條例》(第201章)的附表現予修訂，加入——
“75. 平等機會委員會。”

《Dangerous Goods (General) Regulations》

13 Supervisors to be employed in danger buildings

《Dangerous Goods (General) Regulations》(第295章，附屬法例)第36條現予修訂，廢除兩度出現的“male”。

《吸毒者治療及康復條例》

14 Supplying drugs, etc. to patients

《吸毒者治療及康復條例》(第326章)第17(5)條現予修訂，廢除“female shall not be searched under subsection (4) except by a female”而代以“person shall not be searched under subsection (4) except by a person of the same sex”。

《地方法院條例》

15 加入條文

《地方法院條例》(第336章)現予修訂，加入——

“73B. Rules in relation to jurisdiction under Sex Discrimination Ordinance

(1) The Rules Committee may make rules regulating the practice of the Court in the exercise of its jurisdiction under the Sex Discrimination Ordinance (67 of 1995) and the forms of proceedings therein.

(2) The power to make rules under subsection (1) shall extend to all matters of procedure or practice or matters relating to or concerning the effect or operation in law of any procedure or practice in any case within the cognizance of the Court as to which rules of the Supreme Court have been or might be made for cases within the cognizance of the Supreme Court and shall include power to make rules—

- (a) as to proceedings by or against the Crown;
- (b) as to the persons who may appear in, conduct, defend and address the Court in, any proceedings therein;
- (c) to make special provision for any proceedings in the Court where regulations made under section 89 of the Sex Discrimination Ordinance (67 of 1995) apply to the proceedings.

(3) Each party to any proceedings in the Court in the exercise of its jurisdiction under the Sex Discrimination Ordinance (67 of 1995) shall bear its own costs unless the Court otherwise orders on the ground that—

- (a) the proceedings were brought maliciously or frivolously; or
 - (b) there are special circumstances which warrant an award of costs.
- (4) Without prejudice to the generality of the provisions of subsections (1) and (2), the power to make rules under this section shall extend to—
- (a) prescribing the place or places which shall be the venue or venues for proceedings to which this section relates;
 - (b) requiring the judge or judges sitting at such venue or venues to give priority, to such extent as may be specified in the rules, to hearing and disposing of proceedings to which this section relates;
 - (c) empowering any such judge, at any stage of any proceedings, of his own motion to order that any claim which is—
 - (i) beyond the jurisdiction of the Court; and
 - (ii) within the jurisdiction of the tribunal within the meaning of the Labour Tribunal Ordinance (Cap. 25), be transferred to that tribunal.
- (5) The Court in the exercise of its jurisdiction under the Sex Discrimination Ordinance (67 of 1995) shall not be bound by the rules of evidence and may inform itself on any matter in such manner as it sees fit, with due regard to the rights of the parties to proceedings therein to a fair hearing, the need to determine the substantial merits of the case and the need to achieve a prompt hearing of the matters at issue between the parties.
- (6) Subject to subsection (5), any rule made in accordance with the provisions of this section may be made so as to modify, with respect to proceedings in the Court, any rule of law or practice as to the proof of any matter or as to the reception or admissibility of any matter in evidence.
- (7) No rule made in accordance with the provisions of this section shall apply to any proceedings by or against the Crown except in so far as it expressly purports so to do.
- (8) It is hereby declared that—
- (a) subject to paragraph (c), this section shall not of itself operate to prevent—
 - (i) the making of any rules—
 - (A) under the provisions of any other section of this Ordinance; and
 - (B) which relate, whether in whole or in part, to the jurisdiction conferred on the Court by virtue of the Sex Discrimination Ordinance (67 of 1995);
 - (ii) any rules made under the provisions of any other section of this Ordinance from applying to and in relation to such jurisdiction,
 - (b) where there is any conflict or inconsistency between—
 - (i) any rules made under subsection (2)(b); and
 - (ii) any law and practice regulating the description of persons who may appear in, conduct, defend and address the Court, in any proceedings therein,
 then those rules shall, to the extent of that conflict or inconsistency, as the case may be, prevail over that law and practice;
 - (c) where there is any conflict or inconsistency between any rules made under the provisions of this section and any rules made under the provisions of another section of this Ordinance, then those first-mentioned rules shall, to the extent of that conflict or inconsistency, as the case may be, prevail over those second-mentioned rules.
- (9) For the avoidance of doubt, it is hereby declared that no rule made in accordance with this section shall empower the Court to hear and determine any proceedings involving any claim beyond its jurisdiction.”

District Court Ordinance

4 Section added

The District Court Ordinance (Cap. 336) is amended by adding—

"73C. Rules in relation to jurisdiction under Disability Discrimination Ordinance

(1) The Rules Committee may make rules regulating the practice of the Court in the exercise of its jurisdiction under the Disability Discrimination Ordinance (of 1995) and the forms of proceedings therein.

(2) The power to make rules under subsection (1) shall extend to all matters of procedure or practice or matters relating to or concerning the effect or operation in law of any procedure or practice in any case within the cognizance of the Court as to which rules of the Supreme Court have been or might be made for cases within the cognizance of the Supreme Court and shall include power to make rules as to proceedings by or against the Crown.

(3) Without prejudice to the generality of the provisions of subsections (1) and (2), the power to make rules under this section shall extend to—

- (a) prescribing the place or places which shall be the venue or venues for proceedings to which this section relates;
- (b) requiring the judge or judges sitting at such venue or venues to give priority, to such extent as may be specified in the rules, to hearing and disposing of proceedings to which this section relates;
- (c) empowering any such judge, at any stage of any proceedings, of his own motion, to order that any claim which is—
 - (i) beyond the jurisdiction of the Court; and
 - (ii) within the jurisdiction of the tribunal within the meaning of the Labour Tribunal Ordinance (Cap. 25), be transferred to that tribunal;
- (d) prohibiting the Court from making any order as to costs against a party to any proceedings to which this section relates in such cases or circumstances as may be specified in the rules.

(4) Any rule made in accordance with the provisions of this section may be made so as to modify, with respect to proceedings in the Court, any rule of law or practice as to the proof of any matter or as to the reception or admissibility of any matter in evidence.

(5) No rule made in accordance with the provisions of this section shall apply to any proceedings by or against the Crown except in so far as it expressly purports so to do.

(6) It is hereby declared that—

- (a) subject to paragraph (b), this section shall not of itself operate to prevent—
 - (i) the making of any rules—
 - (A) under the provisions of any other section of this Ordinance; and
 - (B) which relate, whether in whole or in part, to the jurisdiction conferred on the Court by virtue of the Disability Discrimination Ordinance (of 1995);
 - (ii) any rules made under the provisions of any other section of this Ordinance from applying to and in relation to such jurisdiction;
- (b) where there is any conflict or inconsistency between any rules made under the provisions of this section and any rules made under the provisions of another section of this Ordinance, then those first-mentioned rules shall, to the extent of that conflict or inconsistency, as the case may be, prevail over those second-mentioned rules.

(7) For the avoidance of doubt, it is hereby declared that no rule made in accordance with this section shall empower the Court to hear and determine any proceedings involving any claim beyond its jurisdiction."

《地方法院條例》

4. 加入條文

《地方法院條例》(第336章)現予修訂,加入——

"73C. Rules in relation to jurisdiction under Disability Discrimination Ordinance

(1) The Rules Committee may make rules regulating the practice of the Court in the exercise of its jurisdiction under the Disability Discrimination Ordinance (of 1995) and the forms of proceedings therein.

(2) The power to make rules under subsection (1) shall extend to all matters of procedure or practice or matters relating to or concerning the effect or operation in law of any procedure or practice in any case within the cognizance of the Court as to which rules of the Supreme Court have been or might be made for cases within the cognizance of the Supreme Court and shall include power to make rules as to proceedings by or against the Crown.

(3) Without prejudice to the generality of the provisions of subsections (1) and (2), the power to make rules under this section shall extend to—

- (a) prescribing the place or places which shall be the venue or venues for proceedings to which this section relates;
- (b) requiring the judge or judges sitting at such venue or venues to give priority, to such extent as may be specified in the rules, to hearing and disposing of proceedings to which this section relates;
- (c) empowering any such judge, at any stage of any proceedings, of his own motion, to order that any claim which is—
 - (i) beyond the jurisdiction of the Court; and
 - (ii) within the jurisdiction of the tribunal within the meaning of the Labour Tribunal Ordinance (Cap. 25), be transferred to that tribunal;
- (d) prohibiting the Court from making any order as to costs against a party to any proceedings to which this section relates in such cases or circumstances as may be specified in the rules.

(4) Any rule made in accordance with the provisions of this section may be made so as to modify, with respect to proceedings in the Court, any rule of law or practice as to the proof of any matter or as to the reception or admissibility of any matter in evidence.

(5) No rule made in accordance with the provisions of this section shall apply to any proceedings by or against the Crown except in so far as it expressly purports so to do.

(6) It is hereby declared that—

- (a) subject to paragraph (b), this section shall not of itself operate to prevent—
 - (i) the making of any rules—
 - (A) under the provisions of any other section of this Ordinance; and
 - (B) which relate, whether in whole or in part, to the jurisdiction conferred on the Court by virtue of the Disability Discrimination Ordinance (of 1995);
 - (ii) any rules made under the provisions of any other section of this Ordinance from applying to and in relation to such jurisdiction;
- (b) where there is any conflict or inconsistency between any rules made under the provisions of this section and any rules made under the provisions of another section of this Ordinance, then those first-mentioned rules shall, to the extent of that conflict or inconsistency, as the case may be, prevail over those second-mentioned rules.

(7) For the avoidance of doubt, it is hereby declared that no rule made in accordance with this section shall empower the Court to hear and determine any proceedings involving any claim beyond its jurisdiction."

Speech by Christine Loh
Legislative Council, 10 July 1996

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
Second Reading Adjournment

Mr. President, I move the second reading of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996.

This Bill is one of 3 private members' bills introduced today on the subject of equal opportunities. The others are the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, sponsored by the Hon. Lau Chin-shek, and the Equal Opportunities (Race) Bill sponsored by the Hon. Elizabeth Wong.

Taken together, these 3 bills revive the legislative project that was launched in 1994 by Anna Wu's Equal Opportunities Bill. Our project is to give the community comprehensive and effective legislation against unfair discrimination.

The Sex and Disability Discrimination (Miscellaneous Provisions) Bill makes important improvements to the existing Sex Discrimination Ordinance, and makes several parallel amendments to the Disability Discrimination Ordinance.

Almost all the amendments contained in the Bill were recommended last year by the Bills Committee that met weekly for many months to study those 2 Ordinances before they were enacted. Many of the amendments also implement suggestions made by the UK Equal Opportunities Commission, on the basis of more than a decade of experience with closely similar laws.

The Bill's amendments matter not only to victims of sex and disability discrimination, but to the promotion of equal opportunities generally. This is because the Sex Discrimination Ordinance establishes the Equal Opportunities Commission, and is regarded by the Administration as the model for all future legislation on equal opportunities.

Regrettably, the Ordinance as it stands is a badly flawed model. Its flaws reflect the ulterior purpose for which it was originally put forward by the Administration: not to combat discrimination, but to control and contain pressure to legislate against discrimination.

So far, the Ordinance has effectively served that ulterior purpose. It helped the Administration defeat Anna Wu's Bill last year, and it has provided a handsome screen for government inertia and delay ever since. It has now been the phantom Ordinance for more than a year, on the lawbooks but without any legal effect in the community. When the Administration finally brings it into effect — whenever that may be — it will force victims of discrimination to negotiate a minefield of exceptions and limitations to their rights. Of many examples, I will mention only the Ordinance's wholly arbitrary \$150,000 cap on damage awards for employment discrimination.

Now is the time to take this important Ordinance away from the Administration and make it serve the community as it should. This Bill will do so, and I recommend it to Members.

**President's Ruling on
Sex and Disability Discrimination
(Miscellaneous Provisions) Bill 1996
presented by Miss Christine LOH**

Introduction

Miss Christine LOH has presented me with the draft Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and asked for my opinion as to whether the proposed bill would have any charging effect within the meaning of Standing Order 23 of the Standing Orders of the Legislative Council.

Administration's views on whether the proposed bill has any charging effect

2. When consulted, the Administration expresses the view that the proposed bill would have charging effect to the tune of \$30.6 million in the first year and a cumulative addition of \$15.3 million per annum thereafter. The reasons advanced by the Administration are as follows:

- (a) Clauses 10 and 24 of the bill seek to replace the current exception provided in Schedule 5 of the Sex Discrimination Ordinance in respect of differential treatment between persons of different marital status arising from a provision of the Civil Service Regulations (CSRs). However, clause 10 covers only one aspect of the CSRs which prohibits the concurrent receipt of double benefits by a married couple but does not prevent married officers from becoming eligible for certain benefits even when their spouses have already received the same benefits. There will therefore be financial implications.
- (b) Clauses 13 and 30 of the bill seek to add discretionary duties to the Equal Opportunities Commission (EOC) to promote international standards set out in the relevant international instruments and to examine and report on proposed legislation. Two other clauses, namely, clauses 18 and 35, if enacted, will enable the EOC to seek a declaration that a provision of law is inconsistent with the Hong Kong Bill of Rights Ordinance or with article VII(5) of the Hong Kong

Letters Patent. They will also enable EOC to intervene in proceedings under the Sex and Disability Discrimination Ordinance.

3. When arguing that there are financial implications in the above clauses, the Administration quoted the following extract from its predecessor's ruling in respect of the Sex Discrimination Bill:

“Where a new discretion is conferred, the [Equal Opportunities] Commission is of course free not to do the act, in which case no question of public expenditure will arise; but it is equally free to do the act, in which case the question of public expenditure will arise. It is in those circumstances that the effect of an amendment may be to dispose of or charge public revenue within the meaning of Standing Order 45(6).”

Miss LOH's response to the Administration's views

4. Miss LOH has advanced very sound legal arguments refuting the Administration's views that clauses 10 and 24 have charging effect. Her arguments have also been accepted by the Counsel to the Legislature as plausible. I am also satisfied with her arguments although I am of the view that the provisions in these two clauses are subject to challenge in court of law.

5. Miss LOH argues that the duties set out in the proposed clauses 1 and 30 are discretionary in nature. Committee stage amendments similar in nature proposed to the Sex Discrimination Bill in the previous session sought to impose additional statutory duties on the EOC and were ruled by my predecessor as having charging effect. As clauses 13 and 30 of the bill seek to give new statutory discretion to the EOC, they should not have any charging effect.

6. As regards clauses 18 and 35 of the bill, Miss LOH says that the additional powers proposed to be given to the EOC in these two clauses are similar to those in new clause 68A proposed to be added to the Sex Discrimination Bill in the previous session. As new clause 68A proposed to be added to the Sex Discrimination Bill has been ruled by my predecessor as having no charging effect, clauses 18 and 35 of the bill should not have any charging effect either.

My opinion

7. I have discussed with Miss LOH her submission. Whilst accepting her legal arguments that the proposed clauses 10 and 24 may have been drafted in such a way that they have already covered the point made by the Administration regarding civil servants being still able to claim benefits which their spouses have already received and to which both they themselves and their spouses are not entitled, I am of the view that it cannot be completely sure that this interpretation will be accepted by the court. To make it entirely foolproof that these two clauses will not give rise to possible double benefits enjoyed by civil servants under all circumstances and to eliminate any possibility of these two clauses having a charging effect, I proposed and Miss LOH agreed that the words "or has received" be inserted after "receives" in clause 10 of the bill. Subject to this revision, I am of the opinion that clauses 10 and 24 would not have any charging effect.

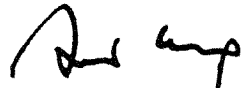
8. As regards clauses 13 and 30 of the bill, although the provisions in these two clauses are similar to the amendments proposed to clause 56(1) of the Sex Discrimination Bill in the last session and such amendments have been ruled by my predecessor as having charging effect. However, such amendments to the Sex Discrimination Bill sought to impose additional statutory duties on the EOC whereas clauses 13 and 30 of Miss LOH's present bill give only new discretionary duties to the EOC. When forwarding the extract quoted in paragraph 3 above, the Administration has failed to also include in the quote the following from the same ruling of my predecessor :

"Where the Commission had this discretion, it could legitimately decline to exercise it on the ground of insufficient funds."

I agree with my predecessor's view. As clauses 13 and 30 of the bill impose only discretion on the EOC, I am of the opinion they do not have any charging effect.

9. Clauses 18 and 35 of the bill also give new statutory discretion to the EOC. For the reason that I have given in the previous paragraph, I am of the opinion that clauses 18 and 35 of the bill would not have any charging effect.

10. However, I drew Miss LOH's attention to paragraph 11 of the Explanatory Memorandum of her bill which says "Clause 13 gives the Equal Opportunity Commission statutory authority to undertake additional functions....". Although the Explanatory Memorandum is not part of the bill, it can be used by the court in the interpretation of the ordinance after the bill has been enacted. On my suggestion, Miss LO has agreed to replace "statutory authority" in this paragraph with "a statutory discretion". For the same reason, Miss LOH has also made similar changes to paragraph 24 of the Explanatory Memorandum, which describes the purpose of clauses 18 and 35.



Andrew WONG
President

13 July 1996

Supplementary Information to the LexCo Panel on Home Affairs
on the Preparation of Codes of Practice on Employment
under the Sex Discrimination Ordinance and the Disability
Discrimination Ordinance

Sections 69 and 65 of the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO) respectively provide that the Equal Opportunities Commission may issue codes of practice. The Commission has decided that a code of practice on employment will be issued under each Ordinance. In developing a code of practice relating to employment, the Commission shall consult with organisations representing employers and workers and any other organisations as appear to the Commission to be appropriate, and publish the code for general public consultation. Furthermore, the codes of practice will need to be approved by the Legislative Council.

Having regard to the requirements of the SDO and the DDO, and based on the target of the Equal Opportunities Commission for employment-related provisions of the two Ordinances to take effect before the end of the year, the following time-frame will be adopted by the Commission in the preparation of the relevant codes of practice -

1996	Action
July	<ul style="list-style-type: none"> • Commission to agree on the codes of practice
August to September	<ul style="list-style-type: none"> • consult the employment sector and relevant organisations on codes
October	<ul style="list-style-type: none"> • publish the codes for general consultation • consult LegCo Panel on Home Affairs on the codes
November	<ul style="list-style-type: none"> • finalise the codes and table in the Legislative Council approval
December	<ul style="list-style-type: none"> • promulgate codes of practice • implement employment-related provisions of the SDO and DDO

Equal Opportunities Commission
July 1996

**Home Affairs Panel
Equal Opportunities (RACE) Bill
For discussion on 26th July, 1996.**

Introduction

1 The Equal Opportunities (Race) Bill was read the second time on 10th July. Debate on the Bill has been adjourned.

Purpose

2 The purpose of this Bill is to render discrimination on the ground of race unlawful and to make provision for relevant remedies. The objective is to eliminate, as far as it is possible, all forms of racial discrimination in Hong Kong. In doing so, the Bill also intends to give effect to a variety of international obligations applicable to Hong Kong on the same subject.

3 Many in Hong Kong maintain that race relations are not a problem in this beautiful city. If this were true, then the passage of the Bill would be no big deal for any of us. If not, then it would be all the more necessary to support this Bill so as to appreciate the true value of social integration and cohesion in Hong Kong in our effort to remove racial prejudice.

The Bill

4 The Bill has six parts and I shall highlight some of the key areas seriatim below.

Part I sets out the objects of the Bill in detail to assist in interpretation. In particular, it provides that the definition of Race includes colour, descent, ethnic, or national origin and nationality. Because a principal purpose of the Bill is to give effect to certain international instruments, the interpretation is consistent with the standards under the international obligations applicable to Hong Kong.

Part II deals with discrimination on the ground of race. It includes the work place; it covers both direct and indirect discrimination and makes discrimination unlawful in such areas as education, access to places, services, facilities etc. It also prohibits discrimination in the form of racial vilification.

Part III defines other unlawful acts, including victimization and certain advertisements.

Part IV provides for general exceptions to the bill—eg. where race is a genuine occupational qualification for dramatic and artistic roles that demand racial authenticity and for services to promote the welfare of a particular race etc.

Part V provides for implementation and enforcement. Discriminatory acts or practices made unlawful by the Bill are Civil wrongs and triable in the district court.

Part VI sets out miscellaneous matters and provides for rules of liability. It removes an anomaly by amending the Hong Kong Bill of Rights Ordinance to make it applicable to all legislation, not merely to legislation invoked by the Government or public authorities.

Appeal for Support

5 We know from historical facts that when a society is sensitive to the needs of all groups in its midst, including those of minority groups, the result is social harmony.

6 Hong Kong is an open , progressive and dynamic society where people of different race colour and creed live in peace and harmony. Yet, here and there you might see examples of unfortunate racial prejudice which tarnishes Hong kong's image.

7 Many countries around the world have all encompassing anti-discrimination laws.

8 I believe that the introduction of a piece of domestic legislation to ensure full participation in all spheres of activities by the people of Hong Kong , of whatever race, is the true meaning of Hong Kong people governing Hong Kong. Those who love Hong Kong are not necessarily only those of ethnic Chinese origin. Equal treatment of all groups of people in society will establish the effectiveness of a cohesive society.

9 Thus, the recognition and enjoyment, by all peoples , on an equal footing, of human rights include fundamental freedoms in the political, economic, social, cultural and any other field of public life. These rights must be promoted and protected .

10. This Bill is , in fact, no stranger to this Council as in 1994, then Legislator , the Hon Anna Wu, attempted to introduce a similar Bill which revisits this Council today. I commend this Bill to this Council. and recommend that a Bill's

Committee be formed in the next Legislative Year to consider in depth the details therein.

AAAAAAAAAAAAAAAA

本函編號 OUR REF. : EOC/COM/03
來函編號 YOUR REF :
電 話 TEL. NO. : 2511 8123
圖文傳真 FAXLINE : 2511 8142

9 August 1996

The Hon Ho Chun-yan, Albert
Chairman, LegCo Panel on Home Affairs
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr. Ho,

**Draft Codes of Practice on Employment
under the Sex Discrimination Ordinance and
the Disability Discrimination Ordinance for Consultation**

In accordance with section 69(3) and section 65(3) of the Sex Discrimination Ordinance (Cap. 480) and the Disability Discrimination Ordinance (Cap. 487) respectively, two draft Codes of Practice on Employment have been issued for consultation with employees' and employers' associations, women's and rehabilitation groups until 7 September 1996. A copy of the draft codes is enclosed for Legislative Council Members' information.

The purpose of this consultation exercise is to solicit the views of the employment sector, through employees' and employers' associations, and the relevant concern groups on the draft codes of practice on employment. Following this exercise, the codes of practice, as appropriately revised, will be published for general consultation with members of the public. Our target date is late September at which time we will formally invite Members of the legislative to comment on the codes of practice. Thereafter, the codes of practice will be introduced to the Legislative Council in November for approval.

In the interim, Members of this Council are welcomed to make comments they may have on the draft codes of practice, which will be taken into account when we modify the codes for subsequent stages of consultation.

Yours sincerely



(Fanny Mui-ching Cheung
Chairperson,
Equal Opportunities Commission)

c.c. All Members

本函檔號 OUR REF

來函檔號 YOUR REF EOC/COM/03

電話 TEL. NO 2511 8123

圖文傳真 FAXLINE 2511 8142

香港中環昃臣道 8 號立法局大樓
立法民政事務委員會主席
何俊仁議員

何議員：

《性別歧視條例》及《殘疾歧視條例》僱傭實務守則初稿
諮詢文件

根據《性別歧視條例》(香港法例第 480 章)第 69(3)條及《殘疾歧視條例》(香港法例第 487 章)第 65(3)條，委員會已頒布兩份僱傭實務守則初稿，以便於一九九六年九月七日前諮詢僱員及僱主組織、婦女及復康團體的意見。現隨函附上兩份守則初稿，以供立法局各議員參考。

是次諮詢的目的是諮詢各關注團體，及透過僱員和僱主組織諮詢僱傭界別對僱傭實務守則初稿的意見。收集意見後，我們將於九月底公布經修訂的實務守則，並諮詢公眾人士的意見，屆時我們將正式邀請立法局各議員就兩份守則向本委員會發表意見。其後，該實務守則將於十一月提交立法局審議通過。

現階段，歡迎各立法局議員向本委員會提出對實務守則初稿的意見，以便本委員會在其後的諮詢階段中考慮接納該些意見，修改守則的內容。

平等機會委員會主席
(張妙清博士)

一九九六年八月九日
副本送立法局各議局

Ref : CP/C 820/96

Tel : 2869 9225

Date : 23 August 1996

From : Assistant Secretary (Complaints)5
Legislative Council Secretariat

To : Hon Members of the Legislative Council

Views on age discrimination

Upon Hon CHEUNG Man-kwong's instruction, I forward herewith a letter from the Association for the Advancement of Feminism expressing views on age discrimination for your information, please.



(Kenneth KWOK)
Assistant Secretary (Complaints)5

50550-T(C)1



新 婦 女 協 進 會
ASSOCIATION FOR THE ADVANCEMENT OF FEMINISM

致. 香港中環
皇后大道
立法局大樓
立法局議員秘書處

敬啟者.

隨函附上本會對政府最近發表有關年齡歧視的諮詢文件的回應。盼 閣下能代為派發給各立法局議員，謝謝。

此致。
立法局秘書處。

封整群

1996年8月1日

港府為回應多條反歧視條例草案，於一九九五年八月成立年齡歧視問題工作小組，由多個政府部門組成，進行調查、研究，邀請嶺南學院公共政策研究中心進行實況調查，並到海外進行考察。至今年六月，政府發表年齡歧視諮詢文件。

令人遺憾的是，整份諮詢文件充滿偏見、資料不全面，名曰諮詢，但其實已告訴公眾，政府認為那一個是最佳方案。

就諮詢文件的內容，新婦女協進會有如下回應：

1. 關於統計分析。勞工處先後做了三次調查報章的招聘廣告，分別是九五年的七月、九五年的十月及九六年的一月。諮詢文件強調三次調查沒有把年齡列為招聘條件的廣告比率，分別是83%，86.3%及80.7%，給人的印象是沒有歧視的比率也頗高。不過，我們的看法是，即使是1%的歧視也是不對的，何況是有接近20%的歧視率，情況其實相當嚴重。政府實有避重就輕之嫌。如果我們從實際數字看，那三次列明有年齡要求的招聘廣告依次為3538個、3560個及3857個。這些令人歎息的數字，諮詢文件則隻字不提。另外，諮詢文件也隱瞞了是從哪些報章選取廣告樣本。不同報章的廣告客戶，會產生不同數量的年齡歧視廣告，直接影響招聘廣告中的年齡歧視的準確性。

我們更要指出，存在於招聘廣告中的年齡歧視，只彰顯了問題的一少部份。它們並未能反映存在於其他招聘方式中的年齡歧視（如張貼街招、採用僱傭公司），也未能反映存在於招聘過程中的年齡歧視，（如篩選、面試等）。政府強調招聘廣告年齡歧視問題並不「嚴重」，只是轉移視線，誤導公眾。

2. 有關實況調查。調查由嶺南學院公共政策研究中心負責，在九六年一月至三月向電話住戶（2000次）、求職人士（929次）、僱主（1597間）進行調查。調查結果是45歲或以上的失業率較高，年長人士亦較難找到工作，還有他們加薪幅度較小、被解僱的機會較高、較少擔任有晉升機會的工作。諮詢文報道了調查結果對年長求職者或工人不利後，卻強調參考年長工人的加薪幅度較小及晉升機會較低時，必須考慮到他們的薪金已達頂點或最高的薪酬級別，雖然該項調查並無確實的資料支持這個論點。而在最後一段更提醒大家必須注意：「但調查另外一些結果則顯示就業方面並不存在年齡歧視問題。」政府這些注腳，除了是歪曲了調查報告，也不啻承認了自己的偏見：不存在年齡歧視問題。

3. 有關處理就業方面的年齡歧視問題的三個方案。政府雖強調「採取開放的態度」，但第一個方案，政府就提出了「維持現狀」。政府並無理據支持這個方案，只提出如維持現狀，政府會研究有效的監察方法，及確定政府日後在什麼情況下才應作出干預。第二個方案是立法禁止就業方面的年齡歧視。政府只列出五大段立法的壞處，連一句立法的優點也付之厥如，可見政府在撰寫諮詢文件時已有不欲立法的立場。第三個方案是非立法方式，將公眾教育和自我規管兩種方法結合起來，政府認為比立法更能改變人們對平等就業機會的看法。政府又單獨列舉僱主團體不支持立法，大部份僱主支持自我規管，而對社會團體大力爭取及支持立法的觀點隻字不提。

對於政府不開放、帶欺瞞性及偏頗的態度，新婦女協進會強調：

(一) 就業上的年齡歧視，已是不爭的事實，從政府統計處的數字、學術報告、民間調查，幾年來已累積了大量的數據，政府絕不能抹煞年齡歧視的事實，及顧左右而言他，企圖得過且過。

(二) 年齡歧視對女性尤其不利。女性往往因懷孕、育兒而停職。到子女長大，欲返回勞動市場時，年齡歧視大大障礙了她們的工作機會。除了工作機會外，年齡歧視亦使婦女的工作條件、薪酬、福利有逐漸下降(downward mobility)的效果。在一些行業例如服務性行業，年紀較大的女性求職者在轉業或再就業時，往往需轉至工作條件較差的工作崗位。

(三) 立法禁止就業上的年齡歧視已是刻不容緩，去年政府已用不光采的手段阻撓年齡歧視法案的通過，今年政府切勿重施故技，並應配合社會的需求，幫助推動禁止年齡歧視成為法例。

(四) 立法的精神是阻嚇某些惡行的發生，以減少受害者，不等於百分之一百杜絕以身試法者，因此，立法禁止年齡歧視的同時，公眾教育同樣重要，尤其是僱主方面的教育。政府曾做過大量的海外經驗資料搜集及動用數十萬元進行外地考察，相信在立法及公眾教育方面，有許多可以借鏡的地方。

一九九六年八月一日

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

本署編號 OUR REF. : HAB/CR/1/2/21 Pt 35

來函編號 YOUR REF :

Fax Cover Sheet

DATE:

TO: Mr Adam Mayes **FAX:** 25376937

FROM: Ms. Cora HO **PHONE:** 2835 2120
AS(3)1/HAB **FAX:** 2834 6176 (Conf.)
2591 6002 (Open)

Number of pages including cover sheet:

Please notify Miss Carole Tsui at 2835 1370 if message received is incomplete.

Message

Dear Mr Mayes,

Attached is a draft highlighting issues relating to the proposed legislation against discrimination on the ground of family status for your information please. This represents our preliminary thinking and we shall be happy to discuss.

Should you have any questions on the draft, please free feel to contact Ms CHANG King-yiu, Principal Assistant Secretary of Home Affairs Branch at 28351373.

Yours faithfully,

(Ms' Cora HO)

for Secretary for Home Affairs

Proposed Legislation Against Discrimination on the Ground of Family Status

Definition

“family status” means the status of having responsibility for the care of any immediate family member; and includes “marital status”;

“immediate family member” means a person who is related to the person concerned by blood, marriage, adoption or affinity;

Scope : to be modelled on SDO

It is unlawful to discriminate a person on the ground of a person’s family status in the areas of employment (including barristers-pupillage relationships), education, provision of goods, facilities and service, management and disposal of premises, eligibility to vote for or be elected or appointed to advisory bodies, activities of clubs, and activities of Government.

General Exception

It would not be unlawful to do an act which is to afford persons of a particular family status measures intended to meet their special needs.

Specific Exceptions

Employment : to allow for employers to provide employees with accommodation of varying standards if such standards are determined according to the size of an employee's family; and to restrict employment of relatives of employees where there is a significant likelihood of collusion and resulting damage to the business.

Education : to allow educational institutions to provide bona fide benefits, including concessions, by reasons of his or her family status; and to admit students by complying with public admission schemes or schemes imposed by law or acting in good faith in favour of a relative or another person who is employed by or who is a student at that educational institution.

Provision of service : to give differential treatment to a person in relation to the provision of credit facilities involving the assessment of risk based on reference to data from a reliable source.

-0-0-0-

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
Carole Petersen
Andrew Byrnes

From : Adam Mayes
(Direct line:2521-6820)

Date : 6/9/96

Total pages : 3 (including this page)

Government proposal on family status discrimination

Following our internal EOB meeting yesterday, I met this morning with HAB's Chang King-yiu and HWB's Laurence Ho Wing-him (Anne Shepherd's replacement). I will follow up later with some more detailed notes on our discussion, but I would be grateful for your early comments on one issue raised by government's proposal.

HAB wants to know urgently if we have a major disagreement with their proposed new definition of family status. HAB's first thoughts about the proposed coverage of family status discrimination are attached, including the new definition. They have narrowed it compared to ours on the ground that they cannot be seen to give any recognition to de facto marriages or single-sex partnerships.

Should we care about the difference between the definitions -- how important is the discrimination their definition fails to cover? How accurate is their perception that our definition gives "recognition" to de facto spouses and single-sex partnerships?

As background, I should explain that they propose to deal with family status by inserting it into the SDO. Marital status would be subsumed under the new definition of family status. Our Miscellaneous Provisions Bill would be the vehicle, i.e. government would move family status amendments at committee-stage of our Bill instead of introducing a new government bill to amend the SDO.

Thanks and regards,



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 : Chang King-yiu (HAB) From : Adam Mayes
 Laurence Ho Wing-him (HWB) (Direct line:2521-6820)

Date : 11/9/96 Total pages : 11 (including this page)

Sex and Disability Discrimination (Miscellaneous Provisions) Bill
Indirect discrimination provisions

You asked for further information about the Australian experience with similar provisions. The following documents are attached:

- Copy of sec. 8 of the Aus Capital Territory's Anti- Discrimination Act 1991 (one of the state and territory models for the later federal amendments concerning indirect discrimination). [1 page]
- Extract from a 1994 summary of proposed, Government amendments to the federal Sex Discrimination Act 1984 (not sure if this summary originates from the federal Human Rights Commission or from the Government). [2 pages]
- Text and explanatory memo of the federal amendments, as eventually adopted in 1995 (handwritten changes represent further committee stage amendments). [5 pages]
- Extract from the federal Sex Discrimination Commissioner's fact sheet describing the 1995 amendments. [2 pages]

As you recall, the provisions in the Bill are also based on recommendation 3.3 of the UK EOC's "Equal Treatment for Men and Women: Strengthening the Acts" (1988), of which I believe you have a copy.

Looking forward to hearing from Security Branch. Let me know who the contact person is, and I'll forward some information for their consideration in advance of meeting.

Regards,



PART II — DISCRIMINATION TO WHICH ACT APPLIES

SECTION 7 GROUNDS

7(1) [Attributes] This Act applies to discrimination on the ground of any of the following attributes:

- (a) sex;
- (b) sexuality;
- (c) transsexuality;
- (d) marital status;
- (e) status as a parent or carer;
- (f) pregnancy;
- (g) race;
- (h) religious or political conviction;
- (i) impairment;
- (ia) membership or non-membership of an association or organisation of employers or employees;
- (j) association (whether as a relative or otherwise) with a person identified by reference to an attribute referred to in another paragraph of this subsection.

History

S 7(1) amended by No 25 of 1993, s 4

7(2) [Characteristic or presumption] A reference in this Act to an attribute that referred to in subsection (1) shall be read as including a reference to—

- (a) a characteristic that persons with that attribute generally have;
- (b) a characteristic that persons with that attribute are generally presumed to have;
- (c) such an attribute that a person is presumed to have; and
- (d) such an attribute that the person had in the past but no longer has.

SECTION 8 WHAT CONSTITUTES DISCRIMINATION

8(1) [Treatment, condition or requirement] For the purposes of this Act, a person discriminates against another person if—

- (a) the person treats or proposes to treat the other person unfavourably because the other person has an attribute referred to in section 7; or
- (b) the person imposes or proposes to impose a condition or requirement that has, or is likely to have, the effect of disadvantaging persons because they have an attribute referred to in section 7.

8(2) [Reasonable condition or requirement] Paragraph (1)(b) does not apply to a condition or requirement that is reasonable in the circumstances.

- (c) whether the disadvantage is disproportionate to the result sought by the person who imposes or proposes to impose the condition or requirement.

SECTION 9 IMPAIRMENT — GUIDE DOGS ETC.

9(1) [Unfavourable treatment] For the purposes of this Act, a person discriminates against another person on the ground of impairment if the discriminator treats the other person unfavourably because that person possesses or is accompanied by a guide dog, a hearing dog or some other aid associated with the impairment, whether or not it is the discriminator's practice to treat unfavourably persons who possess or are accompanied by dogs or other things.

9(2) [Operation of sec 8] Nothing in this section shall be taken to limit the operation of section 8 in relation to discrimination on the ground of impairment.

9(3) [Liability] Nothing in this Act shall be taken to affect the liability of a person who is blind or deaf or has any other impairment for any injury, loss or damage caused by a guide dog, hearing dog or other aid.

9(4) [Definitions] In this section—

“blind” includes partially blind;

“deaf” includes partially deaf;

“guide dog” means a dog that has been trained in the guidance of the blind and is, or is to be, used for the guidance of a blind person;

“hearing dog” means a dog that has been trained in the assistance of the deaf and is, or is to be, used for the assistance of a deaf person.

PART III — UNLAWFUL DISCRIMINATION

Division 1 — Discrimination in work

SECTION 10 APPLICANTS AND EMPLOYEES

10(1) [Applicants] It is unlawful for an employer to discriminate against a person—

- (a) in the arrangements made for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment; or
- (c) in the terms or conditions on which employment is offered.

10(2) [Employees] It is unlawful for an employer to discriminate against an employee—

- (a) in the terms or conditions of employment that the employer affords the employee;

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 : Lee Cheuk-yan
Lau Chin-shek
Elizabeth Wong
Emily Lau
Zachary Wong
John Tse
Anna Wu
Andrew Byrnes
Carole Petersen

From : Adam Mayes
(Direct line:2521-6820)

Date : 11/9/96 Total pages : 2 (including this page)

Meeting with Admin

The main points arising in my 6 Sept. meeting with HAB's Chang King-yiu and HWB's Laurence Ho Wing-him are as follows.

On family status discrimination[#]:

- 1 HAB wants to know urgently if we have a major disagreement with their proposed new definition of family status. They have narrowed it to exclude any recognition of de facto marriages or single-sex partnerships.
- 2 HAB wants us to undertake to drop EOB family status Part in favour of family status CSAs to the Misc Prov Bill. They want this undertaking as soon as they show us drafting instructions for their CSAs. They will not proceed to draft their CSAs until they have that undertaking. If we cannot make such an undertaking on the basis of their drafting instructions, they will drop the idea of putting family status into the SDO and will instead put forward a freestanding Family Status Discrimination Bill.

Christine and Lee Cheuk-yan feel that we can make such an undertaking after seeing Admin's drafting instructions. I suggest we can at that time seek to gazette a replacement Equal Opportunities (Sexuality and Age) Bill, without withdrawing our existing Bill, thereby making a gesture of good faith while preserving our options as a practical matter.

On age discrimination and sexuality discrimination, I told them we would *not* split these EOB Parts into 2 separate Bills.

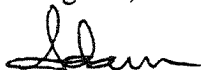
On the Sex and Disability Discrimination (Miscellaneous Provisions) Bill.

* The background to this (as discussed in our internal 5 Sep meeting) is that HAB proposes to deal with family status by inserting it into the SDO: marital status would be subsumed under a new, widened definition of family status. Admin would use our Miscellaneous Provisions Bill as the vehicle to make family status amendments to the SDO, i.e. they would move CSAs on family status at committee-stage of the Misc. Prov. Bill.

- 1 Commencement dates: Admin's position is unchanged in principle, but they regard as a moot point so long as EOC keeps to its announced timetables.
- 2 Small employer exception: Admin will fight hard against any further reduction of ex duration. Admin considers that because the exc. runs from enactment, the Ordinance delayed commencement has already in effect shortened the exc. by more than a year.
- 3 International agreements: Admin strongly objects to adding any express reference to CEDAW, ICCPR, ILO Conventions, etc. into the EOC's functions. Their view is that in principle, SDO and DDO should be self-contained, and in practice, Admin would have to find extra resources for the EOC to carry out the expanded functions.

Exceptions concerning Security Branch: The Branch will contact us to discuss these (breakthrough in itself!). They are concerned about removing the SDO's Sched. 5 excluded services and the exc. for acts safeguarding security of Hong Kong.
- 5 Formal investigations: I will continue working with Admin on this. They still view streamlining the investigation process as a threat to civil rights, but only in regard to investigations into natural persons i.e. individual humans. They have no concerns about streamlining investigations into corporations and other organisations.
- 6 Reinstatement: Based on Labour Advisory Board's recommendation. Admin is agreeable to authorising reinstatement as a remedy *provided* it is conditional on mutual agreement between the employer and the person seeking reinstatement.
- 7 \$150,000 damages cap: HAB's official position remains unchanged, but unofficially "its up to the Legco majority." I take this to mean they won't lobby on this issue.
- 8 EOC litigation power: I will continue working with Admin on this. They want this power to remain conditional on regulations made by SHA, but offered to commit to a tight timetable to table the regs. I told them that aside from timing, we need to be confident that: (1) the regs will only provide technical details, without imposing new limits on the power as a matter of policy; and (2) the EOC will be able to challenge discriminatory laws (e.g. under the BORO).

Regards,



來函檔號 Your Ref:
本函檔號 Our Ref LS/B/89/95-96
電話 Tel 2869 9468
圖文傳真 Fax: 2877 5029

立法局秘書處法律事務部
Legislative Council Secretariat
Legal Service Division

16 September 1996

Mr Adam Mayes
Room 322, 3/F, West Wing
Central Government Offices
11 Ice House Street
Central
Hong Kong

Dear Adam,

Sex and Disability (Miscellaneous Provisions) Bill 1996

Thank you for your faxes of September 11 and 12.

What procedural obstacles would Members face in trying to remove limitations in regulations proposed by SHA under s.89 of the SDO

S.35 of Cap. 1 provides that where any ordinance provides that subsidiary legislation shall be subject to the approval of the LegCo, the LegCo may by resolution amend such subsidiary legislation. S.3 of Cap. 1 defines "amend" to include repeal, add to or vary.

S.89 of the SDO provides -

- "(1) The Secretary for Home Affairs may make regulations -
- (a) where any person may bring proceedings under section 76(1) but has not done so, empowering the Commission, in such circumstances as are specified in the regulations, to bring and maintain those proceedings if the Commission were that person;
 - (b) specifying which of the remedies referred to in section 76(3) shall be obtainable by the Commission in any such proceedings;

- (c) for the purposes of enabling the Commission to bring and maintain any such proceedings (including any related purposes), specifying modifications to which any provisions of this Ordinance (including any subsidiary legislation) shall be read.”

Under s.35 of Cap. 1, regulations proposed by SHA, under s.89(1)(a) of the SDO, for example, with their scope being confined to proceedings brought under Part III of the SDO or proceedings brought against firms with more than 5 employees or impose a requirement for advance approval of proceedings by SHA, could be amended by LegCo so long as the President of LegCo considered that the amendment motion was not out of order within the meaning of SO 22(2)(k).

Again, as far as s.35 of Cap. 1 is concerned, regulation proposed by SHA, under s.89(1)(b) of the SDO, to cap the maximum amount of damages obtainable in such proceedings, would also be subject to LegCo’s power to amend, applying the same considerations as above.

LegCo SOs do not provide for the criteria the President has to take into account when considering the “order” point under SO 22(2)(k). There is no precedent in LegCo directly on the point. However, I should think whether the amendment motion is within the scope or relevant to the original motion would be an important consideration. And, if the amendment was to extend scope of application or remove restrictions, I should think the amendment motion would be relevant to the original motion. However, as you will appreciate the issue of relevance inevitably involves a question of degree which, ultimately, is for the President to decide.

The power to amend subsidiary legislation under s.35 of Cap. 1 is also subject to SO 23. In order to constitute a charge upon public funds, the motion must have the object or 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. And of course, it is relevant to state that it is for the LegCo President to rule whether or not a motion has a charging effect.

It appears that the amendments proposed to extend the scope to enable the EOC to bring proceedings beyond Part III and remove the restriction on the EOC to bring proceedings against firms with more than 5 employees are likely to face challenges under SO 23. One possible ground of challenge is that the extension or removal will entail more litigations and hence increase the costs of the administration of justice. However, the relevant causes of action which fall to be litigated within the existing courts system may not necessarily create a "charging effect".

Argument may also be raised under SO 23 that the proposed amendments would have the effect of having greater expenditure of public money on legal aid. However, is such expenditure new and distinct? Part I of Schedule 2 to the Legal Aid Ordinance provides that legal aid may be granted in civil proceedings in the Court of Appeal, High Court and District Court. This provision is, in my opinion, wide enough to encompass the kind of likely actions proposed in the amendments. Any expenditure incurred cannot therefore be regarded as new and distinct. In addition, one could also argue that the SDO has already provided for these likely actions.

New clause 21 of the Bill

The revised clause is fine to me.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Stephen Lam". The signature is fluid and cursive, with the first name "Stephen" and the last name "Lam" clearly distinguishable.

(Stephen Lam)
Assistant Legal Adviser

**Paper for the House Committee Meeting
on 20 September 1996**

**Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
(Member's Bill)**

Legal Service Division Report

Objects of the Bill

To -

- (a) specify 1 September 1996 as the latest date for the Sex Discrimination Ordinance (Cap. 480) (SDO) and Disability Discrimination Ordinance (Cap. 487) (DDO) to come into effect;
- (b) use a different test to identify indirect discrimination in the two Ordinances;
- (c) reduce the period of exemption for small employers from complying with the employment provisions in the two Ordinances;
- (d) repeal the provision in the SDO which provides an exemption for any act done to safeguard Hong Kong security;
- (e) repeal the provisions in the SDO which provide an exemption for death and retirement benefits and substitute it by an exception which only applies to provision in relation to death or retirement benefits made before the commencement of the relevant section in so far as any such provision continues for that person on and after that commencement;
- (f) repeal certain provisions in the two Ordinances which provide further exceptions to them respectively or provide for the expiry of certain further exceptions Schedule 5 to the SDO in one to two years time after the enactment of Ordinance;
- (g) remove the \$150,000 limit on damage awards for employment related sex discrimination or harassment and enable the court to grant a wider spectrum of remedies in respect of claims brought under the SDO;
- (h) enable the Equal Opportunities Commission (EOC) to bring court proceedings in its own name;

- (i) simplify the procedure for formal investigations by the EOC, and enable the EOC to accept binding undertakings in cases where a voluntary resolution is possible;
- (j) give the EOC authority to carry out functions to promote international standards relevant to the Ordinances and examine and report on proposed legislation.

LegCo Brief Reference

2. Hon Christine Loh Kung-wai is the Member in charge of the Bill. There is no LegCo Brief issued in respect of the Bill. Members may refer to a paper provided by Hon Christine Loh Kung-wai to LegCo Panel on Home Affairs (LegCo Paper No.CB(2)1346/95-96) and LegCo Panel on Welfare Services (LegCo Paper No.CB(2)1471/95-96) for details.

First Reading Date

3. 10 July 1996.

Comments

Commencement dates

4. The Bill specifies 1 September 1996 as the commencement date for both Ordinances. The responsible policy Secretaries remain able to commence the Ordinances by stages, provided each Ordinance is fully in force by the specified date. However, since it would not be possible for this Bill to be enacted before 1 September 1996, appropriate amendments to the Bill would be necessary for achieving the legislative intent.

Indirect discrimination

5. 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 Bill amends the definition to include -

- (a) in addition to conditions and requirements that are indirectly discriminatory, practices and policies of that type; and
- (b) any practice, policy, condition or requirement that disadvantages a person because of sex or disability and is unreasonable in the circumstances.

Exceptions for small employers

6. Both Ordinances exempt small employers, i.e. those with five or fewer employees, for a period of three years period after the Ordinances' enactment. The Bill reduces the duration of these exceptions by half. The LegCo may extend either exception by resolution for another year.

Exception for security of Hong Kong

7. The SDO provides an exception for any act done to safeguard Hong Kong's security. The Bill repeals this exception.

Exception for death and retirement benefits

8. The SDO does not apply to death and retirement benefits provided by employers, partnerships, trade unions, etc. The Bill replaces this general exception with a narrower "grandfather" type exception. It is proposed that, in general, the SDO will not apply to provision in relation to death or retirement benefits made before the commencement of the relevant section in so far as any such provision continues for that person on and after that commencement.

Further exceptions

9. The SDO makes several exceptions by listing them as "further exceptions" in Schedule 5. The Bill provides for the expiry of several of these scheduled exceptions in one to two years after the Bill's enactment. The exceptions set to expire relate to -

(a) small house policy in the New Territories;

(b) certain practices of the disciplined services; and

(c) public housing under the Home Ownership Scheme and the Private Sector Participation Scheme.

10. The Bill also replaces three other scheduled exceptions with similar exceptions, relating to double benefits for married persons, reproductive technology and adoption, in the SDO.

11. The DDO also permits the making of "further exceptions" by schedule, but the schedule is empty now. The Bill repeals the relevant schedule and its associated provisions.

Remedies obtainable in civil proceedings

12. The Bill removes the \$150,000 limit on damage awards for employment related sex discrimination or harassment and enables the court to grant a wider spectrum of remedies in respect of claims brought under the SDO.

Civil proceedings by the EOC

13. At present, the Ordinances authorise the EOC to bring proceedings in its own name after the relevant policy Secretaries have made regulations to govern such proceedings. No such regulations have yet been made. 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 Hong Kong Bill of Rights Ordinance or the Letters Patent in relation to the types of discrimination that concern the EOC. In addition to enabling the EOC to bring proceedings in its own name, the Bill also enables the EOC, with leave of the court hearing proceedings to -

- (a) intervene in proceedings of the types it may bring itself; and
- (b) take over proceedings that have been abandoned by an individual who was carrying them on with EOC assistance.

Formal investigations by the EOC

14. 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. The Bill repeals the requirement that the EOC has to 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. The Bill also enables the EOC 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.

Miscellaneous changes

15. The Bill gives the EOC express authority to carry out two additional functions of promoting international standards relevant to the Ordinances and examining and reporting on proposed legislation.

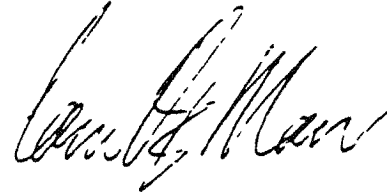
16. The Bill also makes technical amendments to ensure that any time during which the EOC attempts to conciliate a person's complaint does not count against the time limit for the person to bring court proceedings in respect of the complaint.

Public consultation

17. LegCo members on Home Affairs and Welfare Services were briefed about the Bill on 24 May 1996 and 6 June 1996 respectively.

Recommendation

18. The Bill proposes important changes in policy areas respecting the operation of the SDO and DDO. Members are recommended to form a Bills Committee to study it in detail.

A handwritten signature in black ink, appearing to read "Stephen Lam".

(Stephen Lam)
Assistant Legal Adviser
22 August 1996

**Paper for the House Committee Meeting
on 20 September 1996**

**Equal Opportunities
(Family Responsibility, Sexuality and Age) Bill
(Member's Bill)**

**Equal Opportunities (Race) Bill
(Member's Bill)**

Legal Service Division Report

Objects of the Bills

The main object of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill ("the EO(FRS&A)B") 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.

2. The main object of the Equal Opportunities (Race) Bill ("the EO(R)B") is to render discrimination on the ground of race unlawful in various areas and to make provision for remedies for such discrimination.

LegCo Brief Reference

3. Hon LAU Chin-shek is the Member in charge of the EO(FRS&A)B. Hon Mrs Elizabeth WONG CHIEN Chi-lien is the Member in charge of the EO(R)B. There are no LegCo Briefs issued in respect of the Bills. Members may refer to papers provided by Hon LAU Chin-shek and Mrs Elizabeth WONG CHIEN Chi-lien to the LegCo Panel on Home Affairs (LegCo Paper No. PL 1108/95-96 regarding the EO(FRS&A)B and CB(2)1916/95-96 regarding the EO(R)B) and LegCo Panel on Manpower (LegCO Paper No. CB(1)1652/95-96 regarding the EO(FRS&A)B) for background information.

First Reading Date

4. 10 July 1996.

Background

5. The Equal Opportunities Bill ("the 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. A Bills Committee was formed to study the EOB. In the 1994-95 legislative session, the Administration introduced the Sex Discrimination Bill ("the SDB") and Disability Discrimination Bill ("the DDB") which addressed discrimination on the grounds of sex and disability. The same Bills Committee studied the two Government bills as well. In response to the introduction of 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 which included the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and Equal Opportunities (Race) Bill. These three bills were eventually voted down by the Council. The SDB and DDB were passed, with amendments, by the Council.

Comments

General observations

6. Both Bills reproduce, with several technical changes, the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and Equal Opportunities (Race) Bill. They also incorporate many of the proposed Committee Stage Amendments agreed by the Bills Committee studying the EOB. Both Bills specify 1 September 1996 as the commencement date for both Ordinances. However, since it would not be possible for the Bills to be enacted before 1 September 1996, appropriate amendments to the Bills would be necessary for achieving the legislative intent. Both Bills bind the Government.

The EO(FRS&A)B

7. 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.

“Sexuality” is defined to mean heterosexuality, homosexuality (including lesbianism) and bisexuality. “Age”, in relation to a person, means the chronological age of the person.

8. The Bill covers both direct and indirect discrimination.

9. The Bill renders unlawful discrimination on the grounds of family responsibility or family status, sexuality and age in the following areas, including employment, education, provision of goods, services and facilities, and provision of accommodation. The Bill further renders unlawful harassment and vilification on the ground of sexuality. 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 (\$10,000). There are specific exceptions to each ground of discrimination and general exceptions to the Bill. Discriminatory acts or practices made unlawful by the Bill are civil wrongs triable in the District Court. Once the court is satisfied that a person has unlawfully discriminated against another person, it may make an order which it considers just and appropriate in the circumstances.

10. The Bill also amends the Hong Kong Bill of Rights Ordinance (Cap. 383) to make the Ordinance applicable to all legislation, not merely to legislation invoked by the Government or public authorities.

The EO(R)B

11. Under the Bill, “race” is defined to include colour, descent, ethnic or national origin and nationality.

12. The Bill covers both direct and indirect discrimination.

13. The Bill renders unlawful discrimination on the ground of race in the following areas, including employment, education, provision of goods, services and facilities, and provision of accommodation. The Bill further renders unlawful racial harassment and vilification. Serious racial vilification involving a threat of or an incitement to physical harm is a criminal offence punishable by a fine at level 3 (\$10,000). There are specific exceptions to racial discrimination in certain areas and general exceptions to the Bill. Discriminatory acts or practices made unlawful by the Bill are civil wrongs triable in the District Court. Once the court is satisfied that a person has unlawfully discriminated against another person, it may make an order which it considers just and appropriate in the circumstances.

14. The Bill also amends the Hong Kong Bill of Rights Ordinance (Cap. 383) to make the Ordinance applicable to all legislation, not merely to legislation invoked by the Government or public authorities.

Public consultation

15. At the LegCo Home Affairs Panel meeting held on 29 March 1996 and LegCo Manpower Panel meeting, held on 24 June 1996, members were briefed respectively about the EO(FRS&A)B. At the LegCo Home Affairs Panel meeting held on 26 July 1996, members were briefed about the EO(R)B.

Recommendation

16. The two Bills propose to expand the current scope of anti-discrimination law which only covers sex and disability. Members may wish to form a Bills Committee to study them in detail. Furthermore, in light of the similarities of the general principles involved in the two Bills, Members may also wish to consider whether the same Bills Committee should study the two Bills together.



(Stephen Lam)
Assistant Legal Adviser
17 September 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, SOUTHERN CENTRE
130 HENNESSY ROAD,
WAN CHAI,
Hong Kong

權號 OUR REF HAB/CR/1/2/21

權號 YOUR REF

話 TEL NO 2835 1373

傳真 FAXLINE 2591 6002

20 September 1996

Mr HO Chun-yan
Convenor, Home Affairs Panel
Legislative Council
8 Jackson Road
Central

Dear Mr Ho,

Commencement of the Sex Discrimination Ordinance

Pursuant to our discussion with the Home Affairs Panel in June regarding the commencement of the Sex Discrimination Ordinance, you may wish to note that over 65 sections of the Ordinance have been brought into effect today. I enclose for your information a commencement notice as approved by the Secretary and a press statement to be released to explain the statutory provisions covered under the commencement notice.

I would also like to draw your attention to the commencement notice which brings into operation the District Court Equal Opportunities Rules. These Rules will facilitate court proceedings for cases filed under the Sex Discrimination Ordinance.

As we explained to the Home Affairs Panel, the first phase of the commencement programme would be effective this month when the Equal Opportunities Commission, which is tasked to implement the Sex Discrimination Ordinance, has completed recruitment of its core office staff. The remaining provisions, which are employment-related, will take effect after the employment code of practice has been approved by the Legislative Council. Consultations on the draft code are under way and the Commission proposes to submit the code to the Legislative Council in November for approval.

Yours sincerely,



(Ms CHANG King-yiu)
for Secretary for Home Affairs

c.c. Members, Legislative Council

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 2835 1373

來函檔號 YOUR REF

電話 TEL NO 2591 6002

圖文傳真 FAXLINE

香港中環
吳臣道 8 號
立法局
立法局民政事務委員會召集人
何俊仁議員

何議員：

〈性別歧視條例〉的生效日期

我們曾於六月間就〈性別歧視條例〉的生效日期與貴委員會進行討論。相信你也有興趣知道，該條例中超過 65 條的條文已於今天生效。現隨信附上一份經政務司批准的生效日期公告和一份即將發表有關該公告所涵蓋的法定條文的新聞稿，以供參閱。

此外，亦請你留意隨附的另一份生效日期公告，該公告指定〈地方法院平等機會規則〉今天開始生效。上述規則將有助法院處理根據〈性別歧視條例〉而提出的訴訟個案。

我們先前已向貴委員會解釋，〈性別歧視條例〉會分期生效。當負責執行〈性別歧視條例〉的平等機會委員會在本月完成其主要職員的招聘時，第一期所包括的條文便會生效，而餘下與僱傭有關的條文，將會於僱傭實務守則獲立法局通過後正式生效。該委員會現正就僱傭實務守則初稿進行諮詢，並打算於十一月間把該守則提交立法局通過。

政務司
(張琮瑤代行)

附件隨函

副本分送：立法局各位議員

一九九六年九月二十日

SEX DISCRIMINATION ORDINANCE (CAP. 480)
(COMMENCEMENT) (NO. 2) NOTICE 1996

Under section 1(2) of the Sex Discrimination Ordinance, I appoint 20 September 1996 as the day on which the Ordinance (other than the provisions specified in the Schedule) shall come into operation.

SCHEDULE

1. Part III (Discrimination and Sexual Harassment in Employment Field).
2. Section 36(1), (2) and (4) (Discrimination by, or in relation to, barristers).
3. Section 40(6) (Other sexual harassment).
4. Section 46(1) and (3) (Liability of employers).
5. Section 46(2) (Liability of principals) in so far as that subsection relates to an agent who is also an employee of his principal.
6. Section 47(2) (Aiding unlawful acts) in so far as that subsection relates to an employee or employer.
7. Sections 63, 64, 67, 68 and 69 and Schedule 6 (already in operation on 20 May 1996).
8. Schedule 2 (Provision in relation to death or retirement to which this Ordinance shall apply).
9. Schedule 3 (Provisions specified for purposes of section 12(2)(g)).

0. Any other provision of the Ordinance in so far as that provision makes reference to -

- (a) Part III or any section or provision contained within that Part; and
- (b) any section or Schedule mentioned in items 2, 3, 4, 5, 6, 8 and 9.

Secretary for Home Affairs.

12 September 1996.

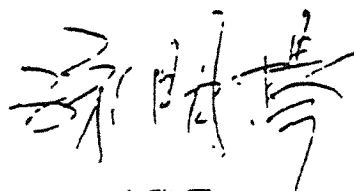
(生效日期)(第2號)公告

本人現根據〈性別歧視條例〉第1(2)條，指定1996年9月20日為該條例(附表所指明的條文除外)開始實施的日期，

附表

1. 第Ⅲ部(在僱傭範疇的歧視及性騷擾)；
2. 第36(1)、(2)及(4)條(大律師所作或與大律師有關的歧視)。
3. 第40(6)條(其他性騷擾)；
4. 第46(1)及(3)條(僱主的法律責任)；
5. 在第46(2)條(主事人的法律責任)關乎代理人(而該代理人亦為其主事人的僱員)的範圍內的該條。
6. 在第47(2)條(協助他人作出違法作為)述及僱員或僱主的範圍的該條。
7. 第63、64、67、68及69條及附表6(已於1996年5月20日實施)；
8. 附表2(本條例所適用的就死亡或退休而作的付款)。
9. 附表3(為第12(2)(g)條的施行而指明的條文)。
10. 在本條例任何其他條文對 —
 - (a) 第Ⅲ部的條文或該部內的任何條次或條文；及
 - (b) 第2、3、4、5、6、8及9項述及的任何條次或附表，

作出提述的範圍內的該等其他條文，



政務司

1996年9月12日

Laws to fight sex and disability discrimination take effect today

Over 65 sections in each of the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO) have come into force today (Friday).

“With the gazettal of the commencement notices today, it is now unlawful to discriminate against a person in specified areas of activity on the grounds of gender, marital status or disability,” a Government spokesman said.

These areas include education, provision of goods, facilities, or services, disposal or management of premises, eligibility to vote for and to be elected or appointed to advisory bodies, activities of clubs and activities of Government.

It is also unlawful to discriminate against a pregnant woman, the associate of a person with a disability or sexually harass a person in these areas of activity.

Aggrieved persons may seek the assistance of the Equal Opportunities Commission (EOC) which is an independent statutory body responsible for the implementation of the two Ordinances.

Among its statutory functions and duties as provided for under the SDO and the DDO, the EOC will handle complaint cases lodged under the Ordinances, conduct investigations and facilitate the settlement of complaints through conciliation between the parties in dispute. It may also provide legal or other forms of assistance.

Remaining provisions of the SDO and the DDO, prohibiting discrimination and harassment in the employment field, will come into force when the relevant codes of practice on employment, issued by the EOC, are approved by the Legislative Council.

Subject to public consultation which will start later this month, the employment codes of practice are expected to be introduced into the Legislative Council for approval later this year.

The provision of the DDO which relates to granting building approvals will not come into operation until the "Design Manual: Barrier Free Access 1996" being prepared by the Planning, Environment and Lands Branch is ready for adoption towards the end of the year.

The design manual will apply to newly constructed private buildings and those undergoing substantial alteration. Government departments will also follow it in the design and construction of government and public buildings.

Meanwhile, a separate commencement notice which brings the District Court Equal Opportunities Rules into immediate operation is also gazetted today.

End/Friday, September 20, 1996
NNNN

性別及殘疾歧視條例今日生效

《性別歧視條例》及《殘疾歧視條例》二各有超過六十五條今日（星期五）開始生效，生效日期公告已於憲報刊登。

政府發言人說：「由即日起，在特定範圍內，因任何人的性別、婚姻狀況或殘疾加以歧視，均屬違法。」

這些範圍包括教育；貨品、設施及服務的提供；房產的處置和管理；諮詢團體的投票資格和被選入或委入該等團體；及會社和政府的活動。

在這些範圍內，對懷孕婦女或與殘疾者有聯繫的人士加以歧視，或對他人作出騷擾，亦屬違法。

受屈人士可向負責執行該兩條條例的獨立法定機構——平等機會委員會，尋求協助。

《性別歧視條例》及《殘疾歧視條例》訂明有關平等機會委員會的法定功能及職責，包括處理根據這兩條條例提出的投訴、進行調查及促進涉及糾紛的有關方面以調解方式解決問題。委員會亦可提供法律或其他形式的協助。

性別和殘疾歧視兩條條例內餘下關於禁止僱傭方面的歧視及騷擾的條文，將於平等機會委員會所發出有關僱傭的實務守則獲立法局通過後生效。

該兩份實務守則將於本月底前展開公眾諮詢，預計今年稍後提交立法局通過。

《殘疾歧視條例》中與批准建築物有關的條文須待規劃環境地政科年底前完成「設計手冊：暢通無阻的通道1996」後才生效。

設計手冊一般適用於新興建和正進行大規模改動的私人樓宇，政府部門在設計和興建政府和公共樓宇時也會遵循。

此外，一則訂明《地方法院平等機會規則》即時生效的公告，亦於今日在政府憲報刊登。

一九九六年九月二十日〈星期五〉

DISTRICT COURT EQUAL OPPORTUNITIES RULES (L.N. 236 OF 1996)
(COMMENCEMENT) NOTICE 1996

Under rule 1 of the District Court Equal Opportunities Rules, I
appoint 20 September 1996 as the day on which the Rules shall come
into operation.

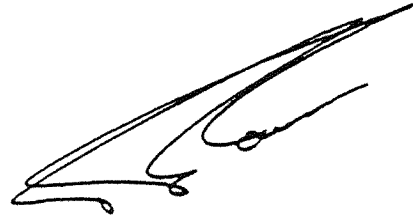


Acting Chief Justice.

12 September 1996.

地方法院平等機會規則(1996年第236號法律公告)
1996年(生效日期)公告

本人現根據〈地方法院平等機會規則〉第1條，指定1996年9月20日
為該規則開始實施的日期。



署理首席大法官

1996年9月12日



本函編號 OUR REF

來函編號 YOUR REF

電 話 TEL NO

圖文傳真 FAXLINE

EOC/COD/01 & 02

2511 8123

2511 8142

1 October 1996

The Hon Christine Loh Kung-wai
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong.

Christina
Dear Miss Loh,

**Draft Codes of Practice on Employment
under the Sex Discrimination Ordinance and
the Disability Discrimination Ordinance for Public Consultation**

In accordance with section 69(3) and section 65(3) of the Sex Discrimination Ordinance (Cap. 480) and the Disability Discrimination Ordinance (Cap. 487) respectively, two draft Codes of Practice on Employment have been issued for consultation with employees' and employers' associations, women's and rehabilitation groups in August. Feedback and comments from the consultation have been carefully considered and the drafts codes appropriately revised.

The second round of consultation with members of the public has now commenced. I am pleased to enclose a copy each of the draft Codes of Practice on employment for your comments.

Please send your comments in writing on the above codes of practice to our office by 23 October 1996.

Yours sincerely,

(Fanny Mui-ching Cheung)
Chairperson,
Equal Opportunities Commission



本函編號 OUR REF EOC/COD/01-&02
來函編號 YOUR REF
電 話 TEL NO 2511 8123
圖文傳真 FAXLINE 2511 8142

致陸恭蕙議員

陸議員：

有關〈性別歧視條例〉及〈殘疾歧視條例〉下的
僱傭實務守則(初稿)的公眾諮詢

根據〈性別歧視條例〉第 69(3)條(香港法例第 480 章)及〈殘疾歧視條例〉第 65(3)條(香港法例第 487 章)，兩份僱傭實務守則(初稿)已於 8 月期間，諮詢僱員和僱主組織，以及婦女和復康團體。委員會已仔細考慮上述團體的回應和意見，並對初稿作出適當的修訂。

第二輪公眾諮詢現正開始，隨信附上經修訂的實務守則供各位參閱。

請於 1996 年 10 月 23 日前，把對上述實務守則的書面意見送交委員會。



平等機會委員會主席
張妙清博士
一九九六年十月一日

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
Carole Petersen
Andrew Byrnes

From : Adam Mayes
(Direct line:2521-6820)

Date : 15/10/96

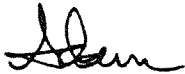
Total pages : ~~4~~4 (including this page)

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

I have formulated the following, possible compromise amendments to the Bill in the hopes of meeting HAB's main objections 'in principle.'

I hope to give them to Ms. Chang King-yiu at the end of this week, so I would be grateful for your comments in the next 2 or 3 days.

Thanks and regards,



I. EOC litigation power

HAB objections:

- 1) Practical necessity for SHA to retain power to make regulations for implementation.
- 2) Strongly object to EOC power to litigate under BORO and ICCPR. Privately acknowledge this is purely a political problem -- don't want new BORO references.

Outline of proposed compromise:

- 1) SHA may make regs, but EOC litigation power arises from SDO itself, not from the regs.
- 2) Expressly preserve judicial review power under EOC general functions, as in UK -- BORO and ICCPR not mentioned, but declarations can be sought by jud. rev.
- 3) Problem: I don't see any way to authorise intervention in BORO/ICCPR cases other than by mentioning the BORO. OK to drop this?

"82A. Commission may bring proceedings in its own name

(1) Where any person may bring proceedings under section 76(1) but has not done so, the Commission may, in such circumstances, bring proceedings in its own name, as if the Commission were that person.

(2) This section is without prejudice to the Commission's power to bring proceedings by way of judicial review pursuant to its functions under section 64(1).

82B. Commission may intervene in proceedings

The Commission may, where it considers it to be appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, intervene in proceedings in which a claim under section 76(1) is an issue;

AB suggestion

"89. Regulations to enable Commission to bring certain proceedings

or b) interp or effect of a law of the UK which gives effect to a relevant int'l oblig or stat'd is arise

- (1) For the purposes of enabling the Commission -
 - (a) to bring and maintain proceedings under section 82A(1);
 - (b) to maintain proceedings under section 85(5A)[#],and for any related purposes, the Secretary for Home Affairs may make regulations -
 - (i) specifying which of the remedies referred to in section 76(3) and (4)[@] shall be obtainable by the Commission in any such proceedings;
 - (ii) specifying modifications to which any provisions of this Ordinance (including any subsidiary legislation) shall be read.
- (2) Any regulations made under this section shall be subject to the approval of the Legislative Council."

[#] EOC's new power to take over abandoned proceedings

[@] New remedy clauses, i.e. (3) just and approp order in circ's, (4) list: declar'n, in'n, reinstmt, prom'n, actual or pun'v damages, void contract.

HAB objections:

- 1) Regard powers as duplicative. (This is not their basic objection, however.)
- 2) Strongly object to express references made to human rights treaties. Again, privately acknowledge this is purely a political problem.

Outline of proposed compromise: Don't name the treaties...

13. Functions and powers of Commission

Section 64 is amended -

(a) by adding -

“(1A) Without prejudice to the generality of subsection (1), the Commission may -

- (a) promote the understanding and acceptance, and the public discussion, of relevant international obligations and standards; and
- (b) examine any proposed legislation (including subsidiary legislation) that the Commission considers may affect equality of opportunity between men and women or affect understanding and acceptance of relevant international obligations and standards, and report the results of the examination to the person proposing the legislation and to the Legislative Council.”.

(b) by adding -

“(5) In subsection (1A), “relevant international obligations and standards” () means -

- (a) obligations applicable to Hong Kong under international treaties to take appropriate steps, including legislative measures, to eliminate discrimination (within the meaning of those treaties and not limited to discrimination falling within section 4, 5, 6, 7 or 8) on the grounds of sex, marital status and pregnancy; and
- (b) standards contained in other international instruments relevant to the Commission's functions mentioned in section 64(1)(a), (b) and (c)[#].”.

[#] These are working towards elim of discrim . promoting e.o between women and men generally, and working towards elim of sexual har't.

I. EOC litigation power

HAB objections:

- 1) Practical necessity for SHA to retain power to make regulations[†] for implementation.
- 2) Strongly object to EOC power to litigate under BORO and ICCPR. Privately acknowledge this is purely a political problem -- don't want new BORO references.

Outline of proposed compromise:

- 1) SHA may make regs, but EOC litigation power arises from SDQ itself, not from the regs.
- 2) Expressly preserve judicial review power under EOC general functions, as in UK -- BORO and ICCPR ~~not mentioned~~, but declarations can be sought by jud. rev.
- 3) Problem: I don't see any way to authorise intervention in BORO/ICCPR cases other than by mentioning the BORO. OK to drop this?

"82A. Commission may bring proceedings in its own name

(1) Where any person may bring proceedings under section 76(1) but has not done so, the Commission may, in such circumstances, bring proceedings in its own name, as if the Commission were that person. |

(2) This section is without prejudice to the Commission's power to bring proceedings by way of judicial review pursuant to its functions under section 64(1).

82B. Commission may intervene in proceedings

The Commission may, where it considers it to be appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, intervene in proceedings in which ^a claim under section 76(1) ~~is at issue~~."

"89. Regulations to enable Commission to bring certain proceedings

- (1) For the purposes of enabling the Commission -
 - (a) to bring and maintain proceedings under section 82A(1);
 - (b) to maintain proceedings under section 85(5A)[‡],

and for any related purposes, the Secretary for Home Affairs may make regulations -

- (i) specifying which of the remedies referred to in section 76(3) and (4)[§] shall be obtainable by the Commission in any such proceedings;
- (ii) specifying modifications to which any provisions of this Ordinance (including any subsidiary legislation) shall be read.

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

2238

[†] EOC's new power to take over abandoned proceedings

[‡] New remedy clauses, i.e. (3) just and approp. order in circ's, (4) list: declar'n, inj'n, reinstmt, prom'n. actual or put'v damages, void contract.

II. new EOC functions (promote int'l standards, examine proposed leg)

HAB objections:

- 1) Regard powers as duplicative. (This is not their basic objection, however.)
- 2) Strongly object to express references made to human rights treaties. Again, privately acknowledge this is purely a political problem.

Outline of proposed compromise: Don't name the treaties...

13. Functions and powers of Commission

Section 64 is amended -

(a) by adding -

“(1A) Without prejudice to the generality of subsection (1), the Commission may -

- (a) promote the understanding and acceptance, and the public discussion, of relevant international obligations and standards; and
- (b) examine any proposed legislation (including subsidiary legislation) that the Commission considers may affect equality of opportunity between men and women or affect understanding and acceptance of relevant international obligations and standards, and report the results of the examination to the person proposing the legislation and to the Legislative Council”.

(b) by adding -

“(5) In subsection (1A), “relevant international obligations and standards” () means -

- (a) obligations applicable to Hong Kong under international treaties to take appropriate steps, including legislative measures, to eliminate discrimination (within the meaning of those treaties and not limited to discrimination falling within section 4, 5, 6, 7 or 8) on the grounds of sex, marital status and pregnancy; and
- (b) standards contained in other international instruments relevant to the Commission's functions mentioned in section 64(1)(a), (b) and (c).”.

* These are working towards elim. of discrim., promoting e.o. between women and men generally, and working towards elim. of sexual har't.

ROBERT W. H. WANG & Co.

SOLICITORS NOTARIES AGENTS FOR TRADE MARKS & PATENTS



8TH & 16TH FLOORS
NINE QUEEN'S ROAD CENTRAL
HONG KONG
TELEPHONE (852) 2843 7333
FAX (852) 2845 5566 (8TH FLOOR)
(852) 2845 2504 (16TH FLOOR)
LEXIS E-MAIL ADDRESS:
rw@rwandc.com

ANNA H.Y. WU * ROBERT W.H. WANG * MICHAEL DALTON * ANDREW W.H. WANG * K.W. HUI * ROGER K.N. WONG * CHRISTOPHER H.T. CHAN JEREMY D. LEVY	胡紅玉 王惟翰 陶耀敬 尤惟博 許國威 王學牛 陳勇泰 李蔚新	+ JULIAN J. TOBIN * STEPHEN K.P. LO ANTHONY F. HILL Consultants * MIMI HO LESLIE L. SIMON * CHRISTOPHER J. KING	杜麗生 盧紀平 岑文尼 * Associates FOREY IP NAVIN K. AGGARWAL RICHARD BOWKY KIM C. K. TOH	張秀芬 吳少雲 黃寶儀 高潔強 顧建 杜川彰	EDWINA L.K. CHUNG DOROTHY T. SIRON C.H. FANG PAUL P.C. FONG JACQUILINE KY CHING MARIA S.I. TONG * PETER C.N. LI STEVEN J. BURT GORDON NG	張麗雄 龔奕玉 彭志雄 方解哲 程樹輝 洪湘雲 李占昂 梁兆輝 吳君傑
--	--	---	--	---	--	---

INTERCHANGE NO. 009050 CENTRAL I
SINGAPORE OFFICE
50 RAFFLES PLACE
#12-05 SHRELL TOWER
SINGAPORE 048623
TELEX RS 42670
FAX (65) 2253065
TELEPHONE (65) 2250125

Our Ref **AW**

Date 16th October 1996

Your Ref.

FAX TRANSMISSION

To: Adam Fax No. 2537 6937

From: Anna Wu No. of pages: .

CONFIDENTIALITY NOTICE

This facsimile transmission is intended only for the use of whom it is addressed and may contain information that is confidential under applicable laws. If you are not the intended recipient, that any use, review, disclosure or copying of this information have received this transmission in error, please notify us immediately by facsimile or telex and return to us the copy received by mail.

Thank you.

Hi Adam,

MESSAGE

On the EOC's power to litigate, I support your outline proposal. On No.3, I think it will be very difficult to get intervention rights in BORO/ICCPR cases. On a practical front, it may be better to drop this if absolutely necessary. On point 2 relating to express preservation of judicial review power, I really don't know what the outcome will be. Obviously it would be nice to reserve it specifically. If, however, this does not get through, I wonder if it would affect future inherent rights of the EOC. I would feel more comfortable if this is checked out in detail with Andrew and Carole.

On a separate issue relating to equal pay for equal work and equal pay for equal value, I wonder if the amendment bill on the SDO has provided anything on these topics.

Regards,
Anna Wu

/pk
(10 96 23)

王惟翰律師樓 香港皇后大道中4號4及16樓

* Notary Public * Admitted in Singapore * Not ordinarily resident in Hong Kong

2240

LEGISLATIVE COUNCIL BRIEF

**EQUAL OPPORTUNITIES :
DISCRIMINATION IN EMPLOYMENT
ON THE GROUND OF AGE**

INTRODUCTION

At the meeting of the Executive Council on 15 October 1996, the Council ADVISED and the Governor ORDERED that the Government should not proceed with any legislative measures against age discrimination in employment for the present, but should instead concentrate on a programme of publicity, public education and self-regulation.

BACKGROUND AND ARGUMENT

2. On 4 June 1996, having considered a memorandum on the subject, 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.

The public consultation exercise

3. The public consultation paper on age discrimination in employment was issued on 7 June 1996. It proposed three possible broad options for public comment, i.e -

- (a) retain the status quo, and take no particular Government measures other than to monitor the situation closely and on a regular basis;

- (b) introduce age discrimination legislation similar to that described in the paper; and
- (c) adopt a non-legislative approach, being a combination of public education and self-regulation.

Outcome and assessment of the public consultation exercise

4. By the end of the two-month public consultation period, 68 submissions had been received on this subject, with the majority (48 submissions or 70%) coming from individuals. Of the group submissions, 5(7%) were from employer groups, 4(6%) from employee groups and 11(16%) from other groups, including the Democratic Party and the Democratic Alliance for the Betterment of Hong Kong. The DP submission contained some 5,000 signatures and a submission from a group of Employees Retraining Scheme retrainees contained 21 signatures. Also, during the public consultation period, the Hon John Tse of DP carried out a survey which indicated that 57% of the respondents supported legislation to prohibit age discriminatory practices.

5. An analysis of the submissions shows that 25 (36% consisting of 20 individual submissions and 5 group submissions) supported the option of legislation, 11 (16% made up of 6 individual submissions and 5 group submissions) supported public education while 16 (24% made up of 7 individual submissions and 9 group submissions) supported a combination of public education and legislation. There were also 16 (24%, of which 15 were individual submissions) who did not express a preference either way. A detailed breakdown of the submissions is at Annex A.

6. Many who supported the legislative approach proposed that such legislation should be modelled on that in Australia and New Zealand. A number of submissions which supported the legislative approach recommended that the remit of the Equal Opportunities Commission (EOC) could be expanded to cover this area, while those which opposed this approach considered it prudent to obtain experience from the operation of the Sex and Disability Discrimination Ordinances before considering additional equal opportunities legislation.

7. The relatively low response rate to the public consultation paper suggests that this is not a pressing issue to the community. It is also clear from the analysis in paragraphs 5 and 6 above and Annex A that the views expressed are divided. While the majority is in support of the legislative option, there is a substantial body of opinion which believes that public education and self-regulation are the answer to the problem.

8. We have taken into account the outcome of the public consultation exercise. We recognise the arguments for legislation, i.e. that it will

- (a) send a clear signal that the Government is committed to dealing with what many regard as an important human rights issue; and
- (b) help change attitudes towards employing older persons by providing legal sanctions against discrimination.

9. On the other hand, there are cogent reasons why it would not be appropriate to introduce such legislation, at least at this stage. Firstly, discrimination on the ground of age is apparently not considered as such a serious human rights issue as discrimination on the ground of sex or disability. For example, it is not one of the common forbidden grounds in international instruments. Also, a significant number of countries (e.g. the European Community countries, Japan, the Republic of Korea and Singapore) do not have specific age discrimination legislation.

10. Secondly, when we visited Australia and New Zealand, where such legislation does exist, it was made very clear that age discrimination in employment legislation is not regarded as a substitute for public education. Also, while such legislation may do away with the more blatant cases of abuse, it will neither create nor guarantee jobs.

11. Thirdly, there is a very real risk that such legislation could lead to over-regulation and unnecessary litigation. Overseas experience suggests that this may not act in the interests of employees.

12. Finally, the employment provisions of the Disability Discrimination Ordinance and the Sex Discrimination Ordinance have not yet been implemented pending the approval of the Employment Codes of Practice. The Codes of Practice are being finalized by the EOC. We believe that it would be prudent to await the implementation of the employment sections of the two Ordinances for a period of time so as to assess their impact on employers, employees and on the community at large, before considering any additional discrimination legislation.

13. On balance, we believe that the more prudent approach, at least for the time being, would be to deal with this matter through a sustained programme of publicity, public education and self-regulation.

Proposed Publicity, Public Education and Self-regulation Programme

14. As stated in paragraph 13 above, we believe the preferred option should be a sustained programme of publicity, public education and self-regulation. We believe the programme should include the following elements -

- non-statutory guidelines for employers on how to deal with recruitment and employment issues in a non-age-discriminatory manner;
- advertisements and Announcements of Public Interest (APIs); and
- information leaflets or publications aimed at various sectors of the public.

15. We shall soon be considering how best to draw up and implement the proposed programme. We would expect to commence the programme in early 1997. Once the programme has been running for a reasonable length of time, we will evaluate it to establish whether or not public attitudes and perceptions have changed since its inception. Depending upon the result of the evaluation, we shall re-examine the question of legislation at a later date

FINANCIAL AND STAFFING IMPLICATIONS

16. The Secretary for Education and Manpower will absorb the financial and staffing requirements arising from the proposed publicity, public education and self-regulation programme within his global allocation for 1996-97. He has secured additional resources at an estimated cost of \$2 million a year to continue the programme in subsequent years.

ECONOMIC IMPLICATIONS

17. The non-statutory guidelines for employers will be drawn up following full consultation with employer and employee groups and should have no significant effect on the economy. The introduction of age discrimination legislation on the other hand would be seen as introducing artificial constraints that would hinder the free play of market forces, impose rigidities on employers' operations, and also add to the cost of doing business. There would be no benefit to employees if employers were discouraged from creating jobs to the scale initially intended. Such legislation would affect the ability of the economy to respond to externally induced fluctuations.

PUBLICITY

18. We will announce the way forward to the media. The relevant Panel of the Legislative Council will be briefed. The public education, publicity and self-regulation programme will be substantive and sustained, and funds are available for it to begin as soon as practicable. We shall consult employers' and employees' groups on the proposed guidelines.

EMB CR 1/3231/95 LX
Mr A M Reynolds
PAS(EM)5
2810 3036

Annex A

EQUAL OPPORTUNITIES:
DISCRIMINATION IN EMPLOYMENT ON THE GROUND OF AGE

Breakdown of Submissions

	No. of <u>Submissions</u>	<u>Groups</u>	<u>From</u> <u>Individuals *</u>
(a) For legislation only	25	5	20 (1)
(b) For public education only	11	5	6 (1)
(c) For a combination of public education and legislation	16	9	7 (1)
(d) Others:			
- personal experience of age discrimination	6	-	6 (2)
- giving example of age discrimination	6	1	5 (3)
- "age discrimination is wrong"	3	-	3 (-)
- unintelligible	<u>1</u>	<u>-</u>	<u>1 (1)</u>
Total:	68	20	48 (9)

* figures in brackets denotes the respective numbers of anonymous submissions.

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 : Chang King-yiu (HAB) From : Adam Mayes
 Laurence Ho Wing-him (HWB) (Direct line:2521-6820)

Date : 22/10/96 Total pages : 3 (including this page)

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

Further proposals

In response to your comments in our September meeting and telephone discussions since, attached please find further proposals for committee-stage amendments to the Bill. These concern: the new EOC functions; the EOC litigation power; and the new EOC power to take over proceedings abandoned by an EOC-assisted claimant.

If you consider the proposals acceptable in principle, please pass them to the Law Draftsman (still Geoffrey Fox?) for comments on the drafting.

In regard to the formal investigation power, we consider that the compromise (as compared to last year's proposals at SDO and DDO committee-stage) which is now contained in the Bill strikes the appropriate balance, by retaining the requirement that the EOC form a belief that the person or organisation under investigation has committed specific unlawful acts, but making that requirement a prerequisite to compulsory demands for information, rather than to the initial launch of the investigation (see cl. 14-15 and 32-33 of the Bill).

We believe that formal investigations need not invariably have an inquisitorial character; many could be in the nature of audits carried out on a cooperative basis. Cooperative investigations are impossible, however, if the EOC is required to begin by alleging unlawful acts by the person or organisation under investigation! Moreover, as explained earlier, the existing requirement prevents investigations where there is structural evidence of inequality (e.g. in the composition of the workforce), but no evidence at the outset of specific unlawful acts as the cause. We do not believe that investigation subjects need such disabling safeguards in view of the many opportunities they already have to oppose, appeal or seek judicial review of investigations, and in view of the very weak sanctions finally at stake.

As I mentioned before, there is an alternative approach to investigations. If EOC has a strong litigation power (as we are proposing), it would make sense to sever formal investigations from sanctions altogether. If the EOC sought to impose legal sanctions, it would do so in the courts; investigations by contrast would become purely information-gathering and public education exercises. Trying to achieve all these very different purposes with a single power will yield predictably unsatisfactory results, as has been the case in the UK where both discrimination commissions want the power reformed or scrapped. We are reluctant to proceed with this more radical approach without the Administration's cooperation, however.

I hope this is helpful. Regards,



Replace clause 3:

3. Interpretation

Section 2 is amended by adding -

““relevant international obligations and standards”
() means -

- (a) obligations applicable to Hong Kong under international treaties to take appropriate steps, including legislative measures, to eliminate discrimination (within the meaning of those treaties and not limited to discrimination falling within section 4, 5, 6, 7 or 8) on the grounds of sex, marital status and pregnancy; and
- (b) standards contained in other international instruments relevant to the Commission’s functions mentioned in section 64(1)(a), (b) and (c).”.

Replace clause 13:

13. Functions and powers of Commission

Section 64 is amended by adding -

- “(1A) Without prejudice to the generality of subsection (1), the Commission may -
- (a) promote the understanding and acceptance, and the public discussion, of relevant international obligations and standards; and
 - (b) examine any proposed legislation (including subsidiary legislation) that the Commission considers may affect equality of opportunity between men and women or affect understanding and acceptance of relevant international obligations and standards, and report the results of the examination to the person proposing the legislation and to the Legislative Council.”.

Replace clause 18:

18. Sections added

The following are added -

“82A. Commission may bring proceedings in its own name

(1) Where any person may bring proceedings under section 76(1) but has not done so, the Commission may, in such circumstances, bring proceedings in its own name, as if the Commission were that person.

(2) This section is without prejudice to the Commission’s power to bring proceedings by way of judicial review pursuant to its functions under section 64(1).”.

82B. Commission may intervene in proceedings

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

- (a) a claim under section 76(1) is an issue; or
- (b) the interpretation or effect of a law which gives effect to relevant international obligations and standards is raised.”.

Replace clause 19:

19. 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) In determining whether to grant leave under paragraph (a) for the Commission to take over and maintain any proceedings, the court hearing the proceedings shall consider -
- (i) any representations made by the person who has withdrawn from the proceedings;
 - (ii) the nature of assistance received by that person under subsection (2), and the resources expended by the Commission in providing that assistance; and
 - (iii) the public interest in obtaining a resolution of any question of principle raised by the case.
- (c) 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.”.

Replace clause 21:

21. Regulations to empower Commission to bring certain proceedings

Section 89 is repealed and the following substituted -

“89. Regulations to enable Commission to bring certain proceedings

- (1) For the purposes of enabling the Commission -
 - (a) to bring and maintain proceedings under section 82A(1);
 - (b) to maintain proceedings under section 85(5A)
 and for any related purposes, the Secretary for Home Affairs may make regulations -
 - (i) specifying which of the remedies referred to in section 76(3) and (4) shall be obtainable by the Commission in any such proceedings;
 - (ii) specifying modifications to which any provisions of this Ordinance (including any subsidiary legislation) shall be read.
- (2) Any regulations made under this section shall be subject to the approval of the Legislative Council.”

**LegCo Panel on Home Affairs
Meeting on Friday, 25 October 1996**

**Public consultation on the Codes of Practice on Employment under
the Sex Discrimination Ordinance and Disability Discrimination Ordinance**

Introduction

This paper provides information on the public consultation conducted by the Equal Opportunities Commission (EOC) on the proposed Codes of Practice on Employment under the Sex Discrimination Ordinance (SDO) and Disability Discrimination Ordinance (DDO). These two Codes have been previously circulated to all Members of the Legislative Council.

Background

2. The SDO and DDO came into effect on 20 September 1996 with the exception of the employment-related provisions under both Ordinances and the provision on building approvals under the DDO. The Government has indicated that the employment-related provisions will be brought into operation after the EOC has issued Codes of Practice on Employment under the two Ordinances.

3. The EOC has published for public consultation Codes of Practice on Employment under the two Ordinances.

Consultation

4. Prior to publishing the Codes of Practice on Employment for public consultation, the EOC had issued drafts of the Codes for consultation with the relevant associations and organizations. This first round of consultation lasted for four weeks from 9 August to 7 September 1996. During this period, the EOC met with over 130 representatives from a wide range of organizations representing employers, workers, concern groups, women's groups, and rehabilitation groups (see Annex A) and received 33 written submissions (see Annex B). Based on the comments received, the draft Codes were revised and

formally released for public consultation, referred to in para 3 above. This consultation exercise also lasted for four weeks, from 25 September to 23 October 1996.

5. In the second round of consultation, a total of 92,000 copies of the revised Codes, in Chinese and English, were distributed to the 18 District Offices and relevant organizations and concern groups. In addition to printed copies, the Codes are also available in Braille and on audio tapes to cater for people with visual impairment.

6. For the second round of consultation, 26 meetings have been arranged with employers' organizations, employees' organizations, political groups, concern groups and District Boards (see Annex C). During this period, the Codes of Practice were also introduced in public speeches at conferences, luncheon meetings, and official ceremonies, as well as on radio talk shows (see Annex D). A number of advertisements have been placed on television and in newspapers during the consultation period to invite members of the public to submit their comments to the EOC.

Comments Received

7. At the time of preparing this report (17.10.96), the consultation meetings and written submissions received so far indicated that the revised Codes were generally welcomed as an improvement to the first draft. The comments relevant to both Codes cover the following aspects:-

- legal status of the Codes,
- minimum standard vs. good management practice and difficulty of small businesses to comply with all the recommendations,
- employers' liability,
- employees' role and responsibilities,
- implementation of equal pay for work of equal value,
- improvement on the Chinese version of the Codes, and
- the highlighting of the benefits to employers on implementing the Codes.

8. With specific reference to the SDO, the main enquiries relate to areas of discrimination against pregnant women, sexual harassment, requirement of photographs and ID cards at the shortlisting stage, and dress codes.

9. With specific reference to the DDO, the main enquiries relate to areas of the meaning of 'unjustifiable hardship' and 'reasonable accommodation', confidentiality of medical information, harassment against an 'associate', misinterpretation of 'genuine occupational qualification', dismissal as a result of acquiring or developing a disability through occupational injuries, and job sharing as an option in hiring persons with a disability.

10. During the consultation period, the EOC also received general comments on the two Ordinances and the work of the EOC.

Submission to the Legislative Council

11. At the end of the consultation exercise, the two Codes will be revised as appropriate and be laid on the table of the Legislative Council, in accordance with section 69(4) of the SDO and section 65(4) of the DDO. It is the intention of the EOC to publish the Codes of Practice on Employment in the Gazette and introduce them into the Legislative Council in November 1996.

Equal Opportunities Commission
17 October 1996

Draft Codes of Practice on Employment under the SDO and DDO

First Round Consultation

List of organizations with whom consultation meetings were held:-

	<u><i>Name of Organization</i></u>	<u><i>Date</i></u>
1.	Hong Kong Council of Social Service a) Committee on the Disability Discrimination Ordinance b) Working Group on Women Service	20.8.96
2.	Hong Kong Federation of Trade Unions	20.8.96
3.	Federation of Hong Kong & Kowloon Labour Unions	21.8.96
4.	Human Rights Monitor	21.8.96
5.	Hong Kong Institute of Human Resources Management	27.8.96
6.	Hong Kong Confederation of Trade Unions	29.8.96
7.	Employers' Federation of Hong Kong	30.8.96
8.	Hong Kong Women's Coalition on Equal Opportunities	2.9.96
9.	Labour Advisory Board	2.9.96
10.	Hong Kong NGO Liaison Group on Women's Issues	4.9.96
11.	Rehabilitation Advisory Committee (Sub-committee on employment)	5.9.96
12.	Hong Kong General Chamber of Commerce (Human Resources Committee)	10.9.96

Draft Codes of Practice on Employment under the SDO and DDO**First Round Consultation****List of written submissions received:-**

	<u>Name of Organization/Individual</u>	<u>Date</u>
1.	The Chinese Chamber of Commerce	19.8.96
2.	The Federation of Hong Kong & Kowloon Labour Unions	21.8.96
3.	Professor NG Mun-hon	27.8.96
4.	Mr Martin Hayton, Hong Kong Telecom, Member of LAB	27.8.96
5.	Hong Kong Women's Coalition on Equal Opportunities	2.9.96
6.	Association for the Advancement of Feminism	2.9.96
7.	Education Department	2.9.96
8.	Civil Service Branch	2.9.96
9.	The Chinese Manufacturers' Association of Hong Kong	3.9.96
10.	Federation of Hong Kong Industries	5.9.96
11.	Hong Kong Civil Servants' General Union	5.9.96
12.	Hong Kong Industrial Relations Association	6.9.96
13.	Hong Kong AIDS Foundation	6.9.96
14.	Social Welfare Department	6.9.96
15.	Advisory Council on AIDS	6.9.96
16.	Marks & Spencer	6.9.96
17.	Hong Kong Blind Union	6.9.96
18.	Hong Kong Aircraft Engineering Company Ltd.	6.9.96
19.	Hong Kong Council of Social Service	6.9.96
20.	Commissioner for Labour	6.9.96
21.	AIDS Concern	6.9.96
22.	Employers' Federation of Hong Kong	6.9.96
23.	Hong Kong Association of Banks	6.9.96
24.	The Hong Kong General Chamber of Commerce	6.9.96
25.	Hong Kong Baptist Hospital	6.9.96
26.	HIV Information & Drop-in Centre	7.9.96

27.	Hong Kong PHAB Association	7.9.96
28.	The Hong Kong Association of Business and Professional Women	9.9.96
29.	Rehabilitation Advisory Committee - Sub-committee on Employment	9.9.96
30.	Union Bank of Switzerland	9.9.96
31.	The Honourable Christine LOH Kung-wai	11.9.96
32.	Ms LEUNG Oi-sie, Elsie	11.9.96
33.	Hong Kong Institute of Human Resource Management	12.9.96

**Codes of Practice on Employment under the SDO and DDO
for Public Consultation**

Second Round Consultation

List of organizations with whom consultation meetings have been arranged:-

<u>Name of Organization</u>	<u>Date</u>
1. Democratic Party - Women's Committee	27.9.96
2. Chinese Manufacturers' Association	30.9.96
3. Tun Mun District Board	1.10.96
4. Hong Kong Federation of Insurers - Legal Working Group	3.10.96
5. Southern District Board	3.10.96
6. Eastern District Board	3.10.96
7. Various women's organizations:	4.10.96
- Association for the Advancement of Feminism	
- Hong Kong Federation of Women's Centre	
- Hong Kong Association of Business and Professional Women	
- Association of Women for Action and Research	
- Hong Kong Council of Social Service (Women's Service)	
8. Representatives of universities and tertiary educational institutions:	8.10.96
- Chinese University of Hong Kong	
- City University of Hong Kong	
- Hong Kong Baptist University	
- The Hong Kong Institute of Education	
- Hong Kong Polytechnic University	
- The Hong Kong University of Science and Technology	
- Lingnan College	
- Open Learning Institute	
- The University of Hong Kong	

9. Hong Kong Council of Social Service - Working Group on Women Services:	8.10.96
- Caritas	
- Hong Kong Young Women's Christian Association	
- Hong Kong Christian Service	
- Neighbourhood Advice-Action Council	
- Tsuen Wan Ecumenical Social Service Centre	
- St. James' Settlement	
- Family Ideal Community Education Project	
10. North District Board	10.10.96
11. Kowloon City District Board	10.10.96
12. Frontier	11.10.96
13. Movement Against Discrimination	12.10.96
14. Member agencies of the Hong Kong Council of Social Service - Disability Committee	12.10.96
15. Sai Kung District Board	15.10.96
16. Rehabilitation Advisory Committee	15.10.96
17. Wan Chai District Board	15.10.96
18. Federation of Hong Kong and Kowloon Labour Unions	16.10.96
19. Central and Western District Board	17.10.96
20. Sham Shui Po District Board	17.10.96
21. Yau Tsim Monkok District Board	17.10.96
22. Sha Tin District Board	17.10.96
23. Employers' and trade associations:	18.10.96
- Hong Kong Association of Banks	
- Hong Kong General Chamber of Commerce	
- Federation of Hong Kong Industries	
- Employers' Federation of Hong Kong	
- British Chamber of Commerce	
- Association of Retailers and Tourism Services	
- Indian Chamber of Commerce	
- Austrian Chamber of Commerce	
24. Tai Po District Board	22.10.96
25. Kwai Tsing District Board	22.10.96
26. Hong Kong Association for Democracy and People's Livelihood	24.10.96

**Codes of Practice on Employment under the SDO and DDO
for Public Consultation**

Second Round Consultation

A. Public speeches made at conference, luncheon meetings and official ceremonies

<i><u>Organizer</u></i>	<i><u>Event</u></i>	<i><u>Date</u></i>
1. Hong K Centre	men's Publicity programme on gender equality	29.9.96
2. Rotary C	Club meeting	30.9.96
3. Labour D	Seminar on Open Employment for People with a Disability	1.10.96
4. Lions Club of Tai Ping Sha, Hong Kong	Luncheon meeting	10.10.96
5. Arts with the Disabled Association Hong Kong	ARTability '96	12.10.96
6. Hong Kong Council of Social Services	Signing Ceremony of Community Charter on AIDS	14.10.96
7. Marks & Spencer	Human Resources Management Conference	17.10.96

B. Radio/TV talk shows:

	<u>Media Organization</u>	<u>Programme</u>	<u>Date</u>
1.	RTHK	Talk About	2.10.96
2.	Commercial Radio	Heart of the Matter	5.10.96
3.	RTHK	Hong Kong Today	14.10.96
4.	RTHK	Hong Kong Spirit	17.10.96 & 18.10.96

C. Press advertisements

	<u>Newspaper</u>	<u>Date</u>
1.	Sing Tao Daily	25.9.96 & 15.10.96
2.	Oriental Daily News	25.9.96 & 17.10.96
3.	Apple Daily	25.9.96, 26.9.96, 3.10.96 & 8.10.96
4.	Ming Pao	25.9.96, 26.9.96, 8.10.96 & 17.10.96
5.	Hong Kong Economic Times	25.9.96 & 15.10.96
6.	Economic Journal	25.9.96, 3.10.96 & 17.10.96
7.	Wen Wei Po	25.9.96, 26.9.96 & 15.10.96
8.	South China Morning Post	25.9.96, 3.10.96, 8.10.96 & 17.10.96

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

Minutes of Meeting
held on Friday, 25 October 1996 at 8:30 a.m.
in Conference Room A of the Legislative Council Building

- Members Present** : Hon Albert HO Chun-yan (Chairman)
Hon LO Suk-ching (Deputy Chairman)
Hon LEE Wing-tat
Hon Zachary WONG Wai-yin
Hon LEE Cheuk-yan
Hon LAW Chi-kwong
Hon Bruce LIU Sing-lee
Hon NGAN Kam-chuen
Dr Hon John TSE Wing-ling
- Member Attending** : Hon Fred LI Wah-ming
- Members Absent** : Hon Emily LAU Wai-hing
Hon James TO Kun-sun
Hon Christine LOH Kung-wai
Hon CHEUNG Hon-chung
Hon Ambrose LAU Hon-chuen, JP
Hon Mrs Elizabeth WONG CHIEN Chi-lien, CBE, ISO, JP
- Public Officers Attending** : **Item III**
Mr Michael SUEN, CBE, JP
Secretary for Home Affairs

Mr Peter P Y LEUNG
Principal Assistant Secretary for Home Affairs

Action

Attendance by Invitation : **Item IV**
Equal Opportunities Commission

Dr Fanny CHEUNG, JP
Chairperson

Mrs Angela HO
Chief Executive

Mr Frederick TONG Kin-sang
Director of Disability Division

Clerk in Attendance : Mrs Anna LO
Chief Assistant Secretary (2) 2

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Raymond LAM
Senior Assistant Secretary (2) 6

I. Confirmation of minutes of meetings and matters arising
(LegCo Paper Nos. CB(2) 130, 187 and 197/96-97)

The minutes of the meetings held on 1, 3 and 4 October 1996 were confirmed.

II. Date of next meeting and items for discussion
(LegCo Paper No. CB(2) 192/96-97(01))

2. Members agreed that the next regular meeting would be held on Friday, 22 November 1996 at 10:45 a.m. to discuss the following:

Action

- (a) Integration of new immigrants from China into the community
- (b) Problems encountered by divorced women in recovering alimony
- (c) Implementation of the new rules for rural elections

Hon LAW
Chi-kwong

Mr LAW Chi-kwong would provide a paper on item 2(b).

III. Handover Ceremony
(LegCo Paper No. CB(2) 192/96-97(02))

3. Mr Michael SUEN presented the salient points of the paper provided by the Administration. He stated that the Handover Ceremony (the Ceremony) would provide an opportunity to promote Hong Kong to the world. The Administration was responsible for the organisation of the Ceremony and ancillary events. While 2,600 reporters had indicated their wish to cover events on the handover, the Administration anticipated that the number of reporters and other media-related personnel would eventually increase to about 6,000.

4. In response to Members, Mr Michael SUEN replied that the Administration had not raised and did not intend to raise the issue of cost sharing for the Ceremony with China or United Kingdom (UK) because it considered that, in line with internationally accepted practice, Hong Kong should bear all the costs incurred. However, the matter had been discussed at the recent meeting of the Expert Group on the Preparation of the Transitional Budget and Related Matters of the Joint Liaison Group. Some members considered that the issue of cost sharing should be raised with China and UK, the incoming and outgoing sovereign powers respectively.

5. As regards the estimated economic benefits from the Ceremony, Mr Michael SUEN stated that hotel occupancy rate, usually around 80% in the summer, would possibly reach 100% and consequently generate substantial economic benefits to Hong Kong. He undertook to provide estimates of economic benefits after the meeting.

HAB

6. In response to Mr LEE Cheuk-yan, Mr Michael SUEN explained that, apart from cubicles/booths which had to be rented, most facilities and services, including video/audio signals and satellite uplinking, would be provided free-of-charge by the Press and

Action

Broadcasting Centre (PBC) The PBC would operate for a period of a few weeks around 30 June 1997

7. In response to Mr NGAN Kam-chuen, Mr Michael SUEN explained that the cultural, entertainment and community activity programmes, none of which had any connection with the Birthday of Her Majesty the Queen, would mostly be organised jointly with community organisations.

8 Mr Fred LI and Mr Zachary WONG expressed reservation over funding for item IV (cultural, entertainment and community activity programmes) and item V(a) (pre-ceremony reception and dinner). They considered the proposed funding excessive and should be reduced. To illustrate their point, they drew comparison with the funding for district festivals organised by District Boards and the expenditure of a Comprehensive Social Security Assistance recipient on his/her meals.

9. Members noted that the funding request for the handover ceremony and related activities would be considered at the Finance Committee meeting in the same afternoon.

IV. Codes of Practice on Employment under Sex Discrimination Ordinance (SDO) and Disability Discrimination Ordinance (DDO) (LegCo Paper No. CB(2) 192/96-97(03))

10. Representatives of Equal Opportunities Commission (EOC) presented the salient points of EOC's paper. They informed Members that the Codes would apply to all employers, with certain exceptions, in Hong Kong, including the Hong Kong Government. By 24 October 1996, 44 written submissions had been received on the Codes.

Legal status of the codes

11. On the question of legal status of the codes, Dr Fanny CHEUNG informed Members that employers had to give justifiable grounds for not following the guidelines and recommended good practices in the codes. Failure to implement the recommendations outlined in the codes could be used as evidence in a court of law. Mr Stephen LAM added that while the codes were not legally binding, they would be taken into consideration by the court in any proceedings under the SDO and DDO.

Action

Minimum standards for the codes

12. Dr John TSE commented that the codes should be written in a more easily comprehensible and user-friendly way. Instead of merely stating "good management practice", minimum standards should be set out for employers to follow. Dr Fanny CHEUNG responded that in order to maintain flexibility in implementation for organisations of different sizes, and to allow different management styles for organisations, recommendations on good management practice were more appropriate than minimum standards.

Legislative time-table

13. In response to the Chairman, Dr Fanny CHEUNG explained that the codes, which would be revised where appropriate, would be presented in November 1996 to LegCo.

Disability Discrimination Ordinance

Pre-employment medical examination

14. In response to Mr LAW Chi-kwong's question on paragraph 12.10.2 of the code on DDO, Dr Fanny CHEUNG explained that in a pre-employment medical examination, a medical doctor would mainly examine whether an applicant was physically fit for a job and free from infectious disease. With the possible adoption of the suggestion for employers to inform applicants about details of the medical examination, applicants would be in a better position to judge the relevance of the medical examination to the job.

Exception where absence of disability is Genuine Occupational Qualification

15. Mr LAW Chi-kwong expressed reservation on paragraph 11.12.2 of the code on DDO. Dr Fanny CHEUNG responded that paragraph 11.12 was drawn up in accordance with Section 12 of the DDO. Footnotes 17 and 18 in paragraph 11.12 made reference to this Section.

Guidelines for dismissals, redundancies and other unfavourable treatment of employees

16. In response to Mr LEE Cheuk-yan's question on paragraph 15.1.3 of the code on DDO, Dr Fanny CHEUNG explained that the phrase "or not materially different" was added to avoid possible abuse by employers in the interpretation of "same circumstances".

Action

Sex Discrimination Ordinance

Equal pay for work of equal value

17. Mr LEE Cheuk-yan remarked that the incorporation of the word "consider" in paragraph 12.8 of the code on SDO would possibly result in a loophole allowing employers to keep on claiming that they were considering to implement, but without actually implementing, the guideline. He commented that this was incompatible with the spirit of the SDO on "equal pay for work of equal value". Representatives of EOC responded that the code was not incompatible with the SDO, which had no mention of "equal pay for work of equal value". The word "consider" was incorporated to recognise the difficulties of small businesses in complying with all the guidelines. Dr Fanny CHEUNG hoped that bigger organisations would take the lead in adopting the guidelines. The EOC was planning to conduct a study on "equal pay for work of equal value", which would commence in early 1997 and it was hoped that the study would be completed by the end of 1997. Mr Stephen LAM confirmed that there was no mention of "equal pay for work of equal value" in the SDO. The situation in UK differed from that in Hong Kong because of the UK Equal Pay Act 1970. In determining whether an incident amounted to discrimination, reference should be made to Parts III and IV of the SDO and DDO respectively.

Equal Pay Act

18. Mr Bruce LIU suggested EOC to consider introducing a Equal Pay Act similar to those in the UK and the United States. Dr Fanny CHEUNG agreed that any recommendation to Government in this respect would be made in conjunction with the issue of "equal pay for work of equal value".

EOC

Policy statement on elimination of sexual harassment in employment

19. Mr Bruce LIU proposed EOC to provide employers with suggested versions of policy statement prohibiting sexual harassment at work. He added that employers should be provided with the definition of sexual harassment and examples of behaviour amounting to sexual harassment. Dr Fanny CHEUNG responded that EOC was producing training modules to

- (a) assist employers in formulating policy statement on sexual harassment at work and training suitable staff to administer complaint procedures regarding sexual harassment; and

Action

- (b) promote female workers' understanding about sexual harassment

V. **Submission to the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) on the Third Periodic Report in respect of Hong Kong under Articles 2 to 16 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)**
(LegCo Paper Nos. CB(2) 192/96-97(04) and CB(2) 222/96-97)

20. Members considered the draft submission to UNCESCR and agreed that the number of legal immigrants from China who had waited for more than ten years before approval for settlement in Hong Kong should be incorporated into the submission. Subject to this addition, the submission was endorsed by members present and would be submitted to the House Committee on 1 November 1996. Members also agreed that a delegation of LegCo Members should attend the hearings of the UNCESCR on 26 and 27 November 1996.

21. The meeting ended at 10:30 a.m.

Legislative Council Secretariat
16 November 1996

MEMORANDUM FOR THE LABOUR ADVISORY BOARD

**Proposed amendments to the
Women and Young Persons (Industry) Regulations**

Introduction

The Women and Young Persons (Industry) Regulations ("the Regulations"), made under the Employment Ordinance, aim to protect the health and welfare of female and young workers in industry. The Regulations also prohibit women from working in dangerous trades, restrict their normal and overtime working hours, and provide for weekly rest days. A summary of these protective provisions for women workers is given in the *Appendix*.

Problem

2. Upon enactment of the Sex Discrimination Ordinance (SDO) on 14 July 1995, the protective provisions for women under the Regulations are regarded as discriminatory and will become void after a grace period of one year. The grace period has been extended for one year to 13 July 1997 by a resolution of the Legislative Council. It is necessary to remove any incompatibility between the SDO and the Regulations by 13 July 1997.

Advice sought

3. Members will be asked to advise whether the proposal in paragraph 8 should be accepted.

Background

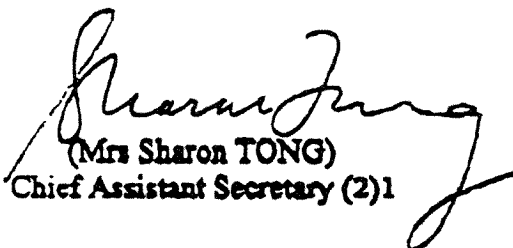
4. The Labour Department has conducted a review to explore ways to reconcile the incompatibility between the SDO and the Regulations.

Ref : CB2/PL/SE
Tel : 2869 9254
Date : 25 October 1996
From : Chief Assistant Secretary (2)1
Council Business Division 2
Legislative Council Secretariat
To : Hon James TO Kun-sun (Chairman)
Hon Mrs Selina CHOW, OBE, JP (Deputy Chairman)
Hon CHEUNG Man-kwong
Hon Emily LAU Wai-hing
Hon LI Wah-ming
Dr Hon Philip WONG Yu-hong
Hon Howard YOUNG, JP
Hon Zachary WONG Wai-yin
Hon Andrew CHENG Kar-foo
Hon CHEUNG Hon-chung
Hon HO Chun-yan
Hon IP Kwok-him
Dr Hon LAW Cheung-kwok
Hon Bruce LIU Sing-lee
Hon LO Suk-ching
Hon Margaret NG
Hon TSANG Kin-shing
Hon Lawrence YUM Sin-ling

LegCo Panel on Security

Meeting on 28 October 1996

I enclose for Members' reference the Chinese version of LegCo Paper No. CB(2) 207/96-97(02) and (03). Please bring these along to the meeting on 28 October 1996 at 8:30 am.


(Mrs Sharon TONG)
Chief Assistant Secretary (2)1

Encl

c.c. Dr Hon LEONG Che-hung, OBE, JP (Non-Panel Member)
Hon Christine LOH Kung-wai (Non-Panel Member)
Hon CHAN Kam-lam (Non-Panel Member)
Hon LAU Chin-shek (Non-Panel Member)
Legal Adviser

Three options have been identified:

- (a) preserving the existing women-specific employment restrictions;
- (b) removing the restrictive provisions relating to female workers; and
- (c) extending the employment protection to male workers.

5. Option (a) does not appear feasible in view of the overriding effect of the SDO. Unless the SDO is amended, the protective provisions in the Regulations will be repealed in July 1997. In the current climate for equal opportunities, it is unlikely that an amendment to the SDO to attain such effect will have the support of the Legislative Council.

6. Option (b) is technically simple and will satisfy the requirements of the SDO. However, it may leave women workers unprotected in certain aspects of employment currently covered by the Regulations and give rise to public concern. It will also affect Hong Kong's obligation under International Labour Convention No. 45 on underground work for women. A declaration to cease to apply this Convention in Hong Kong will be required.

7. Under Option (c), there could be considerable variation in the extension of some or all of the provisions under the Regulations to both male and female workers. Variations in this option will have different economic implications. The Administration will need to collect sufficient details of existing practices of various trades and occupations before making its recommendations for consultation with the Board and other relevant organizations. The Census and Statistics Department is now conducting a survey on the patterns of working hours and overtime premium of our labour force. The Labour Department is collecting information on hours of work legislation and enforcement experience from our neighbouring countries of comparable economic development.

Proposal

8. As it will take some time before a view can be taken on the way forward in respect of Option (c), we propose to proceed with Option (b) first (i.e. removal of all provisions which are considered to be discriminatory) in order to remove any inconsistency between the Regulations and the SDO before the deadline of 13 July 1997. Members will be consulted on the need to introduce protective provisions for the

2 一俟政府當局備妥議程項目V的資料文件，當即送交議員。

總主任(1)3 楊少紅

連附件

副本致：周梁淑怡議員
陳鑑林議員
鄭明訓議員
葉國謙議員
保安事務委員會委員
助理法律顧問5

work force under Option(c) in the light of the information collected under paragraph 7 above.

Economic, Financial and Staffing Implications

9. There will be no economic, financial and staffing implications in respect of Option (b).

Labour Department
October 1996

檔 號：CB1/PL/MP

電 話：2869 9246

日 期：一九九六年十月二十五日

發文者：總主任(1)3

受文者：劉千石議員(主席)
陳婉嫻議員(副主席)
倪少傑議員
司徒華議員
夏佳理議員
梁智鴻議員
張文光議員
馮檢基議員
何敏嘉議員
唐英年議員
田北俊議員
李卓人議員
陳榮燦議員
鄭耀棠議員
羅致光議員
李啓明議員
梁耀忠議員
廖成利議員
莫應帆議員
曾健成議員

立法局人力事務委員會

一九九六年十月二十八日下午二時三十分舉行的會議

繼發出立法局CB(1)178/96-97號文件後，現隨文附上政府當局就議程項目IV所提供的資料文件，供委員參閱。請帶同上述文件出席會議。

2272

**A Summary of Protective Provisions for Women
in the Women and Young Persons (Industry) Regulations**

Regulation 4: No woman shall be employed on underground work in any mine or quarry or in any industrial undertaking involving a tunneling operation.

Regulation 5: No woman shall be employed in any dangerous trade (e.g. boiler chipping, manufacturing process using arsenic, lead, mercury etc.).

Regulation 6: No woman shall be permitted to carry out any load which is unreasonably heavy having regard to her age and physical development.

Regulation 8(1)(a): The working hours (exclusive of overtime) shall neither exceed 8 in any day nor 48 in any week.

Regulation 8(1)(b): The period of employment shall not exceed 10 hours between 6 a.m. and 11 p.m.

Regulation 8(1)(c): An interval of at least half an hour for a meal or rest is required for continuous work of more than 5 hours.

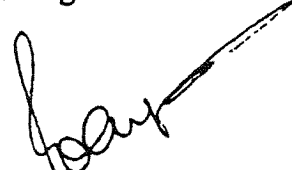
Regulation 10: Overtime employment shall not exceed 2 hours in any day or 200 in any year.

Regulation 11: No woman shall be employed in any scheme of shift work between 8 p.m. and 11 p.m. unless certain conditions (e.g. provision of a suitable room for dining and rest) are complied with.

Regulation 13: No woman shall be required to work during an interval allowed for a meal or rest.

Regulation 14: No woman shall be employed on more than 6 days in any week.

2. The Administration's information paper for Agenda Item V will be issued as soon as available.



(Miss Polly YEUNG)
Chief Assistant Secretary (1)3

Encl.

c.c. Hon Mrs Selina CHOW, OBE, JP
Hon CHAN Kam-lam
Hon Paul CHENG Ming-fun
Hon IP Kwok-him
Members of the Security Panel
ALAS

2274

Proposals discussed at the LAB meeting on Monday, October 28, 1996

Proposal	Main Contents	Remarks
<p>Additional Provisions of the Occupation Safety and Health Bill</p>	<ul style="list-style-type: none"> • An employer has a duty of care for the safety and health of his employees; • The general duties provisions will apply to the non-industrial sector but the proposed general duties provisions in the new bill do not provide for any penalty clause; • Provisions on suspension notices and improvement notices will be included in the Occupational Safety and Health Bill; • The occupier is required to ensure the safety and health of those people who work in his workplace but are not his employees, • The Bill shall bind the Government in respect of its obligations as the employer of civil servants; • It will be an offence for any person to intentionally prevent, obstruct or delay the provision of aid to an employee who has sustained an injury or illness in a workplace; and • The provisions of a subsidiary regulation or code of practice made under the proposed bill shall prevail over any possible inconsistency in those made under the FIUO. 	<p>LAB 30/96</p> <p><i>Accepted</i></p>

Proposal	Main Contents	Remarks
<p>A Proposal to Amend Regulation 5(3) of the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations</p>	<ul style="list-style-type: none"> • Regulation 5(3) of the F&IU(OS&SS) Regulation is sometimes referred to as "Grandfather Rule" in that serving safety officers immediately before the introduction of the new relevant legislation are allowed to be registered despite their lack of required qualifications and/or experience; and • In view of the increasing difficulty in verifying whether an applicant was in fact employed as a safety officer at the time when a particular industry was designated, it is proposed that a provision should be made to the effect that in respect of a designated industry, the operation of regulation 5(3) will lapse after 12 months from the date the new regulation comes into force. 	<p>LAB 31/96 <i>Accepted</i></p>
<p>Proposed Occupational Safety and Health (Display Screen Equipment) Regulation</p>	<ul style="list-style-type: none"> • This paper proposed to make a new Occupational Safety and Health (Display Screen Equipment) Regulation under the Occupational Safety and Health Bill to regulate the use of Display Screen Equipment (DSE) through the establishment of a new system of statutory control and specific requirements; • The new Regulation is proposed to be brought into effect 12 months after it has been made so as to allow time for proprietors to make the necessary preparations; and • A proprietor who contravenes a provision of the proposed Regulation is liable to a fine of \$50,000 but not any imprisonment term. An employee who commits an offence is liable to a fine of \$10,000 but not any imprisonment term. 	<p>LAB 32/96 <i>Employers to seek more views from trades concerned</i></p>

Proposal	Main Contents	Remarks
Proposed Occupational Safety and Health (Personal Protective Equipment)	<ul style="list-style-type: none"> This paper proposed to make a new Personal Protective Equipment Regulation (PPER) under the proposed Occupational Safety and Health Bill to provide suitable personal protective equipment to employees through the establishment of a systematic statutory control. The PPER will apply to all industrial and non-industrial undertakings with certain exceptions; and It is proposed to bring PPER into effect 12 months after it has been made so as to allow time for employers to make the necessary preparations. Both the Occupational Safety and Health Council and the Labour Department will provide guidance on the proposed regulation and training courses on the safety requirements and standards. 	<p>LAB 33/96</p> <p><i>Accepted</i></p>
A Proposal to Revise the Legal Sanctions under the Factories and Industrial Undertakings Ordinance and Other Measures to Reduce Accidents	<ul style="list-style-type: none"> To increase the maximum fine from \$200,000 to \$500,000 and the imprisonment term from 12 months to 18 months under section 6A of the FIUO; To increase the current penalties for employees under section 6B of the FIUO ⁽¹⁾ from \$10,000 to \$25,000; and In addition to the proposed increase in the penalty clause, a number of non-legislative measures are also proposed to be taken in order to reduce accidents. 	<p>LAB 34/96</p> <p><i>Jail term remains at 12 months as agreed by members</i></p>

Proposal	Main Contents	Remarks
A Proposal to Clarify the Entitlement of Employees on Fixed-term Contract to Long Service Payment	<ul style="list-style-type: none"> • An employee on a fixed term contract shall be taken to be dismissed for the purpose of claiming LSP only if the contract is not renewed by his employer on terms and conditions not less favourable than the existing contract; and • Notwithstanding the above, the right of an employee on a fixed-term contract to LSP shall not be prejudiced if he would have been entitled to LSP on grounds of old age or ill health when the contract expires. 	LAB 35/96 <i>Agreed to clarify the unclear provision on entitlement of employees on fixed-term contracts to LSP.</i>
A Proposal to Amend the Women and Young Persons (Industry) Regulations Consequential to the Enactment of the Sex Discrimination Ordinance	<ul style="list-style-type: none"> • Upon the enactment of the Sex Discrimination Ordinance, the protective provisions for women under the Regulations are regarded as discriminatory and will become void after the grace period which ends on 13.7.97. The Labour Department has conducted a review to explore ways to reconcile the incompatibility between the SDO and the WYP(1)R. The following three options have been identified: <ul style="list-style-type: none"> (a) preserving the existing women-specific employment restriction; (b) removing the restrictive provisions relating to female workers; and (c) extending the employment protection to male workers. • As option (a) does not appear feasible in view of the overriding effect of the SDO and more in-depth studies are required before a view can be taken on the way forward in respect of option (c), it is proposed to proceed with option (b) first in order to remove any inconsistency between the WYP(1)R and the SDO before the deadline. 	LAB 36/96 <i>Agreed</i>

Proposal	Main Contents	Remarks
A Proposal to Revise the Licence Fees of Employment Agencies under the Employment Agency Regulations	<ul style="list-style-type: none"> The proposal seeks to revise the licence fees of employment agencies with a view to achieving full recovery of cost. The fees for issuing a full licence will be revised from \$1,400 to \$1,870 and that for duplicate licence from \$280 to \$360. The proposed licence fees are expected to take effect in January 1997. 	LAB 37/96 <i>Accepted</i>

- Ends -

一九九六年十月廿八日勞工顧問委員會會議上討論的各項建議

①

建議項目	主要內容	備註
有關職業及健康條例草案的新增條文	<ul style="list-style-type: none"> • 僱主有責任照顧僱員的安全和健康； • 一般責任條文將適用於非工業行業但當局在新條例草案內建議的一般責任條文不會訂明任何罰則條款； • 職業安全及健康條例草案內將加入有關暫時停工通知書及敦促改善通知書的條文； • 工作場地的佔用人必須確保在工作場地工作的人的安全及健康，即使佔用人不是僱主； • 條例草案須就政府身為公務員的僱主所負的責任加以約束； • 任何人如蓄意阻止、妨礙或延遲向在工作場地受傷或患病 	<p>LAB 30/96 接受建議</p>

建議項目	主要內容	備註
	<p>的僱員提供救助,即屬犯罪;及</p> <ul style="list-style-type: none"> 建議條例草案制定的附屬規例的條文或工作守則與根據工廠及工業經營條例制定的條文或工作守則有任何不一致的地方,應以前者為準。 	
<p>建議修訂工廠及工業經營(安全主任及安全智導員)規例第5(3)條</p> <p>2281</p>	<ul style="list-style-type: none"> 工廠及工業經營(安全主任及安全智導員)規例第5(3)條通常稱為「君師傅規則」。在新規例實施前已受僱為安全主任的人士,即使沒有所需學歷及/或經營,也可註冊;及由於要證實申請人是否真的在某個工業成為指定工業時已受僱為安全 	<p>LAB 31/96 接受建議</p>

建議項目	主要內容	備註
	<p>主任，將會越來越困難，現建議制訂一條條文，就一個指定工業來說，在新規例指定某一新工業的生效日期起計12個月後，本規例第5(3)條的實施便告失效。</p>	
<p>建議中的職業安全及健康(顯示熒幕設備)規例</p>	<ul style="list-style-type: none"> • 這文件建議在職業安全及健康條例草案下，制訂一條新的職業安全及健康(顯示熒幕設備)規例，透過成立一個新的法律管制^{制度}及明確的規定來規管顯示熒幕設備的使用；及 • 現建議新規例在制定後12個月才實施，以給予業主時間作出所 	<p>LAB 32/96 僱主代表須 多作諮詢有 關行業</p>

建議項目	主要內容	備註
	<p>需準備;及</p> <ul style="list-style-type: none"> 任何東主如違反建議規例的條文,可被罰款50,000元,但不會判處監禁。僱員如犯罪可被罰款10,000元,但同樣不會判處監禁。 	
<p>建議中的職業安全及健康(個人防護裝備)規例</p> <p>2283</p>	<ul style="list-style-type: none"> 這文件建議在擬議的職業安全及健康條例草案下制定一條新的個人防護裝備規例,透過有系統的法定規管,為僱員提供適當的個人防護裝備。除了某些範圍外,這條規例將適用於所有工業及非工業經營;及 現建議新規例在制定後12個月 	<p>LAB 33/96</p> <p>接受建議</p>

建議項目	主要內容	備註
	<p>需準備。職業安全健康局及勞工處將負責提供有關上述規例的指引和有關安全規定與標準的訓練課程。</p>	
<p>建議修訂工廠及工業經營條例下的法定刑罰和採取其他措施減少意外</p>	<ul style="list-style-type: none"> • 現建議將工廠及工業經營條例第6A條內的最高罰款由200,000元增至500,000元,及將監禁期由12個月增至18個月; • 增加現時工廠及工業經營條例第6B(1)條內的僱員罰則由1萬至2萬5千元級 • 除了建議增加刑罰外,亦建議採取非立法措施減少意外。 	<p>LAB 34/96 委員同意監禁期維持12個月</p>
<p>建議澄清根據定期合約受僱的僱員領取長期服</p>	<ul style="list-style-type: none"> • 就領取長期服務金的資格來說,只有在僱手不以和現時合約相同或較佳的條件與定期合約受僱的 	<p>LAB 35/96 同意有需要</p>

建議項目	主要內容	備註
	<p>僱員續約,才可把僱員視作遭解僱,及</p> <ul style="list-style-type: none"> 儘管有上述規定,但如果根據定期合約受僱的僱員,在合約期滿時因年老或健康欠佳而拒絕僱主續約的建議,他領取長期服務金的權利不應受影響。 	<p>澄清有因固定合約員工領取長期服務金的資格</p>
<p>性別歧視條例的制訂所引發修訂婦女及青年(工業)規例的建議</p>	<ul style="list-style-type: none"> 性別歧視條例制訂後,本規例內保障婦女的條文被視為帶有性別歧視成份,當一年寬限期屆滿後,這些條文將告無效。勞工處進行了一次檢討,尋找方法消除性別歧視條例和本規例互不相容的地方,並研究出以下三個方案 	<p>LAB 36/96 同意建議</p>

3271

2544
+852

2285

建議項目	主要內容	備註
	<p>(a) 保留這些指定適用於婦女的僱傭規限；</p> <p>(b) 撤銷規例內有關女性工人的僱傭規限；及</p> <p>(c) 擴大僱傭保障的範圍至包括男性工人。</p> <p>由於性別歧視條例的效力凌駕於本規例，所以方案(a)似乎並不可行，而當局需要時間才可以就應否落實方案(c)一事提出意見，故現建議先進行方案(b)，在限期前消弭本規例和性別歧視條例彼此抵觸的地方。</p>	

建議項目	主要內容	備註
調整職業介紹所規例所規定的職業介紹所牌照費用的建議	<ul style="list-style-type: none">• 這建議旨在調整職業介紹所的牌照費，以收回全部成本。簽發牌照費用將由 1,400 元調整至 1,870 元；而簽發分行牌照費用則由 280 元調整至 360 元。調整收費建議預計會在 1997 年 1 月起生效。	LAB 37/96 接受建議
2287		

Ref: CB2/SS/22/95

Paper for the House Committee

**Report of the Subcommittee on
Subsidiary Legislation gazetted from 5 July to 13 September 1996**

Purpose

This paper reports on the deliberations of the Subcommittee at its last meeting held on 29 October 1996.

Background

2. An interim report on the deliberations of the Subcommittee up to and including the seventh meeting held on 23 October 1996 was submitted to the House Committee for consideration on 25 October 1996 (LegCo Paper No. CB(2) 205/96-97). This paper reports on the deliberations and conclusions reached on the two outstanding items of subsidiary legislation at the eighth meeting held on 29 October 1996.

Deliberations of the Subcommittee

Dutiable Commodities (Liquor) (Amendment) Regulation 1996 (L.N. 329)

3. The Administration reported that the Liquor Licensing Board of the Regional Council has no comments on the proposed amendment to extend the hours to 11:00 p.m. or midnight but the Liquor Licensing Board of the Urban Council is not in favour of any changes.

4. While noting the different view points of the two Liquor Licensing Boards, members agree that the Subcommittee's proposed amendment does not in any way infringe upon the autonomy of the two Municipal Councils as the Liquor Licensing Boards have complete discretion whether to approve applications for exemption. Taking into consideration various factors involved, members agree to extend the hours to 10:00 p.m. only and that the Chairman should move on behalf of the Subcommittee a resolution to that effect at the Legislative Council sitting on 6 November 1996. The Legal Service Division has drafted the resolution and a copy is at the Appendix.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General
Clauses Ordinance (Cap. 1))

DUTIABLE COMMODITIES (LIQUOR)(AMENDMENT) REGULATION 1996

RESOLVED that section 1 of the Dutiable Commodities (Liquor)(Amendment) Regulation 1996, published as Legal Notice No. 329 of 1996 and laid on the table of the Legislative Council on 2 October 1996, be amended by repealing “repealing “female” and substituting “person”” and substituting “repealing “8 p.m.” and “female” and substituting “10 p.m.” and “person” respectively”.

11. Members agreed that in view of the further information provided by the Administration and the HKSA, it would be inappropriate to repeal the commencement notice. However the matter should be closely monitored and followed-up. There may be a need to amend the Ordinance if a satisfactory reply is not provided.

Advice Sought

12. Members are invited to:

- (a) support the resolution in respect of the Dutiable Commodities (Liquor) (Amendment) Regulation 1996 to be moved by the Chairman of the Subcommittee at the Legislative Council sitting on 6 November 1996; and
- (b) note the position in respect of the Professional Accountants (Amendment) Ordinance 1995 (85 of 1995) (Commencement) Notice 1996.

Legislative Council Secretariat
4 November 1996



本函編號 OUR REF EOC/CR/ORD/02 & 04
來函編號 YOUR REF
電 話 TEL NO 2511 8123
圖文傳真 FAXLINE 2511 8142

12 November, 1996

The Hon. Christine Loh Kung-wai
LegCo Panel on Home Affairs
Legislative Council

Christine
Dear Miss Loh,

**Re: Rules and Codes of Practice under Sex Discrimination Ordinance
and Disability Discrimination Ordinance**

I am writing to you in respect of rules made, and the Codes of Practice on Employment ("the Codes") to be published, by the Equal Opportunities Commission ("the Commission") under the Sex Discrimination Ordinance, Cap. 480 ("SDO"), and the Disability Discrimination Ordinance, Cap. 487 ("DDO").

You may recall that my colleagues and I attended an extended meeting of the LegCo Panel on Home Affairs on 25 October 1995 to give a briefing on the Codes of Practice on Employment under the SDO and DDO.

The rules and the Codes will be published in the Gazette on 15 November 1996 and will be laid on the table of the

Legislative Council on 20 November 1996. It is intended that the rules be brought into operation on 20 December 1996, to co-incide with the operation of the employment related provisions of the SDO and DDO. We hope to be able to bring the Codes into operation at about the same time.

Briefly, there are two sets of rules made under each of the SDO and DDO. These are made pursuant to section 88 and section 85 of the two Ordinances respectively, and are as follows:

- (i) the Sex Discrimination (Formal Investigations) Rules;
- (ii) the Sex Discrimination (Investigation and Conciliation) Rules;
- (iii) the Disability Discrimination (Formal Investigations) Rules; and
- (iv) the Disability Discrimination (Investigation and Conciliation) Rules.

Under the SDO and DDO, the Commission is empowered to conduct formal investigations. The rules at (i) and (iii) above, which are prescriptive in nature, deal with formal investigations. They prescribe the manner in which notice of a formal investigation under section 71(3) of the SDO / section 67(3) of the DDO is to be given; the form of a notice requiring persons to provide information under section 72(1) of the SDO / section 68(1) of the DDO; the form of enforcement notices issued pursuant to section 77(2) of the SDO / section 73(2) of the DDO; and the manner of service of all such notices.

The Commission is also charged with the duty of investigating into complaints in writing and providing conciliation to effect a settlement. The rules at (ii) and (iv) above are procedural, and relate to the lodgement of complaints in writing under section 84(1) of the SDO / section 80(1) of the DDO, as well as the Commission's conduct of investigation into such complaints and the conciliation thereof.

As for the Codes, they provide detailed explanations on the unlawful acts and certain key expressions under the two Ordinances, recommend good management practices which will help to prevent or eliminate discrimination and other unlawful acts in employment, and set out the responsibilities of employers and employees under the Ordinances.

The unlawful acts explained in the Code under the SDO include discrimination on the grounds of sex, marital status and pregnancy, sexual harassment and victimisation. Those explained in the Code under the DDO include discrimination, harassment, victimisation and vilification on the ground of disability. The meaning of “genuine occupational qualification”, a key expression used in both the SDO and DDO, is explained in the Codes. For the Code under the DDO the meaning of the expressions “inherent requirements of jobs”, “reasonable accommodation” and “unjustifiable hardship” are also explained.

Guidance is given in the Codes for the prevention and elimination of discrimination and other unlawful acts in employment. In particular, the Codes recommend the use of “consistent selection criteria” in various aspects of employment, such as recruitment, promotion, transfer, training, dismissal and redundancy as well as the setting out of terms and conditions of employment. The Codes also recommend employers to develop equal employment opportunities policies in the workplace and provide guidance on how this should be done. The Code under the SDO has a separate section on eliminating sexual harassment in employment.

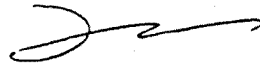
In the course of preparing the Codes the Commission has conducted two rounds of consultation and, for each round, issued a draft of each Code. During these consultation exercises employers’ and employees’ organisations, trade associations, labour unions, women groups, disability groups and social service agencies were consulted. In addition, in the second round of consultation, the District Boards and political groups were consulted, and members of the public were invited, through the mass media, to submit their views to the Commission.

A total of 105 written submissions were received during the two consultation exercises, with 35 received in the first exercise and 70 in

the second. The views expressed in the consultation meetings and written submissions have been considered carefully and incorporated in the final version of the Codes where appropriate.

I hope that the above helps explain the purposes of the Rules and the Codes. I am writing similar letters to all other Members of the Legislative Council so as to keep them informed.

Yours sincerely,



Fanny Mui-ching Cheung, Ph.D., J.P.
Chairperson

Enclosures

- Code of Practice on Employment under the SDO
- Code of Practice on Employment under the DDO
- 4 sets of Rules under the SDO and DDO

cc: Secretary for Home Affairs
Secretary for Health and Welfare
Mrs. Anna Lo, Clerk to the LegCo Panel on Home Affairs

RESTRICTED

SEX DISCRIMINATION (FORMAL INVESTIGATIONS) RULES

(Made by the Equal Opportunities Commission under section 88 of the Sex Discrimination Ordinance (Cap. 480))

1. Commencement

These Rules shall come into operation on 20 December 1996.

2. Interpretation

Where, under section 67 of the Ordinance, the Commission has delegated its functions or powers relating to a formal investigation, any reference in these Rules to the Commission is a reference to the delegate to whom the relevant function or power has been delegated.

3. Service of notices

In these Rules, a reference to a person being served with a notice is a reference to service on that person being effected -

- (a) by delivering it to him personally;
- (b) by sending it by ordinary post to his last known residence or place of business;
- (c) where the person is a body (whether corporate or unincorporate), by delivering it to the

secretary or an officer of the body at its registered office or principal office or by sending it by ordinary post to that secretary or such an officer at that office; or

- (d) where the person is acting by a solicitor, by delivering it at, or by sending it by ordinary post to, the solicitor's address for service.

4. Notice of holding of formal investigation

Where, under section 71 of the Ordinance, the Commission is required to give notice of the holding of a formal investigation -

- (a) to any person named in the terms of reference for the investigation; or
- (b) where the terms of reference are revised, to any person named in the revised terms of reference,

the notice served on such person shall set out the terms of reference.

5. Requirement to furnish or give information or produce documents

Where, under section 72(1) of the Ordinance, the Commission requires a person to furnish written information or give oral information or produce documents, the notice served on him shall

be in the form set out in Schedule 1 or in a form to the like effect with such modifications or variations as the circumstances may require.

6. Enforcement notice

An enforcement notice served on a person for the purposes of section 77(2) of the Ordinance shall be in the form set out in Schedule 2 or in a form to the like effect with such modifications or variations as the circumstances may require.

SCHEDULE 1

[s. 5]

NOTICE TO FURNISH WRITTEN INFORMATION OR GIVE
ORAL INFORMATION AND PRODUCE DOCUMENTS

(Under section 72(1) of the Sex Discrimination
Ordinance (Cap. 480))

To A.B. of [

For the purposes of the formal investigation being conducted by the Equal Opportunities Commission ("the Commission") the terms of reference of which [were given to you in a notice dated]/[are set out in the Schedule to this Notice], you are required, under section 72(1) of the Sex Discrimination Ordinance (Cap. 480) ("the Ordinance") -

- (a) [to furnish the following information (description of information to follow) -]

RESTRICTED

-
-
-

(b) [to attend at *(insert time)* on *(insert date)* at *(insert place)* and [give oral information about]/ [give oral evidence about, and produce all documents in your possession or control relating to] [the following matters] [the matter of] *(specify the matters or matter)* -

-
-
-
-
-
-

2. The information described in paragraph 1(a) must be furnished *(specify the time or times at which, and the manner and form in which, the information is to be furnished)*.

Dated this day of 19

This Notice was issued by [the Commission] [*(name delegate)*] to whom the Commission has under section 67(1) of the Ordinance delegated its functions under section 72(1) of the Ordinance].

[Service of this Notice was authorized in writing under section 72(2) (a) of the Ordinance.]

[Having regard to the terms of the reference of the investigation and section 72(2) (b)/section 79 of the

Ordinance, service of this Notice does not require the consent of the Chief Secretary.]

[Commission]

[Delegate]

SCHEDULE

TERMS OF REFERENCE OF INVESTIGATION

SCHEDULE 2

[s. 6]

ENFORCEMENT NOTICE

(Issued under section 77 of the Sex Discrimination Ordinance (Cap. 480))

To A.B. of []

In the course of a formal investigation the Equal Opportunities Commission ("the Commission") has become satisfied that you were committing/had committed an act/acts to which section 77(2) of the Sex Discrimination Ordinance (Cap. 480) ("the Ordinance") applies, namely (*insert particulars of acts*) -

-
-

RESTRICTED

You are therefore required, without prejudice to your other duties under this or any other Ordinance, under section 77(2) of the Ordinance, not to commit any act which is [an unlawful discriminatory act under *(insert reference to relevant Part of provision of the Ordinance)*] [an unlawful act of harassment under *(insert reference to relevant Part or provision of the Ordinance)*] [a contravention of section 42 of the Ordinance] [an act which is in contravention of section 43/44/45 of the Ordinance by reference to Part III/Part IV thereof].

If compliance with the above requirement involves changes in any of your practices or other arrangements, you are further required under section 77(2) of the Ordinance to inform the Commission [in the manner specified in this Notice] that you have effected those changes and what those changes are [and to take the following steps for the purpose of making that information available to other persons concerned, namely *(specify steps to be taken)*].

[You are further required under section 77(3) of the Ordinance to furnish to the Commission [in the manner specified in this Notice] with the following information, in

order for it to verify that this Notice has been complied with
(description of information to follow) -]

[The information to be furnished by you to the Commission
under this Notice must be furnished as follows (specify the time
or times at which, and the manner and form in which, the information, or
information of a particular description, is to be furnished) -]

Dated this day of 19

[Commission]

[Delegate]



Chairperson,
Equal Opportunities Commission.

8 November 1996.

Explanatory Note

The Sex Discrimination Ordinance (Cap. 480) provides that
a notice of the holding of a formal investigation under
section 71, notice for requiring information under section 72
and an enforcement notice under section 77 must be given in a

RESTRICTED

form and the manner prescribed by the Equal Opportunities Commission ("the Commission").

2. Accordingly, the Commission -

- (a) in section 3 specifies the manner of service of those notices;
- (b) in section 4 specifies the manner in which notice of investigation is to be given to certain persons in cases in which general notice of the investigation is not given;
- (c) in section 5 prescribes the form of a notice requiring a person to furnish or give information or produce documents;
- (d) in section 6 prescribes the form of an enforcement notice.

性別歧視(正式調查)規則

(由平等機會委員會根據《性別歧視條例》
(第480章)第88條訂立)

1. 生效日期

本規則自1996年12月20日起實施。

2. 釋義

凡委員會已根據本條例第67條，將其關於一項正式調查的職能或權力轉授，則在本規則中提述委員會，即提述已獲轉授有關職能或權力的人。

3. 通知的送達方式

在本規則中，提述某人獲送達通知，即提述以下列方式，將該通知送達該人 —

- (a) 將該通知面交該人；
- (b) 以普通郵遞方式將該通知寄往該人最後為人所知的居所或業務地點；
- (c) 如該人是團體(不論其屬法人團體或並非法人團體)，則於其註冊辦事處或主要辦事處將該通知交付其秘書或高級人員，或以普通郵遞方式將該通知寄往該辦事處送交其秘書或高級人員；或
- (d) 如該人由律師代為行事，則將該通知送交該律師供送達文件的地址，或以普通郵遞方式將該通知寄往該地址。

4. 進行正式調查的通知

凡根據本條例第71條，委員會須就調查的進行 —

- (a) 向正式調查的調查範圍所點名的人給予通知；或
- (b) (如調查範圍經修改)向經修改的調查範圍所點名的，給予通知，

則送達該人的通知，須列出調查範圍。

5. 關於提交或提供資料或出示文件的規定

凡委員會根據本條例第72(1)條，規定某人提交書面資料、以口頭提供資料或出示文件，則送達該人的通知，須符合附表1所列格式，或符合按情況作出所需的變通或更改的具有相類效果的格式。

6. 執行通知

為施行本條例第77(2)條而送達某人的執行通知，須符合附表2所列格式，或符合按情況作出所需的變通或更改的具有相類效果的格式。

附表 1

關於提交書面資料或提供口頭資料
以及出示文件的通知

(根據《性別歧視條例》(第 480 章)第 72(1)條送達)

致：A.B.，地址為 ()

平等機會委員會(“委員會”)現正進行一項正式調查，調查範圍
(已藉日期為.....年.....月.....日的通知而向你發給) / (載於本通知的
附表)，現為該項正式調查的目的，根據《性別歧視條例》(第 480 章)
 (“條例”)第 72(1)條，規定你 —

(a) (提交以下資料(在下面描述有關資料) —)

“
“
“
“
“

(b) (於(註明日期時間)，親臨(註明地點)，並(提供關
於以下事宜的口頭資料) / (提供關於以下事宜的口
頭證供，以及出示關於以下事宜並由你所管有或控制
的所有文件) (指明有關事宜)) —

“
“
“
“
“

2. 第1(a)段所描述的資料，須按以下規定提交 (指明有關資料須在何時以及以何方式和形式提交)，

日期：....年....月....日

本通知由〔委員會發出〕〔(註明獲轉授職能的人的姓名)發出，委員會已根據條例第67(1)條，將其在條例第72(1)條下的職能轉授給他〕，

〔本通知的送達已根據條例第72(2)(a)條獲得書面批准。〕

〔在顧及該項調查範圍及條例第72(2)(b)/79條的條文後，本通知的送達無須得到布政司同意。〕

〔委員會〕

〔獲轉授職能的人〕

附表

調查範圍

執行通知

(根據〈性別歧視條例〉(第 480 章)第 77 條發出)

致：A.B.，地址為〔〕

鑑於在進行正式調查的過程中，平等機會委員會(“委員會”)已信納你當時正在/曾經作出〈性別歧視條例〉(第 480 章)(“條例”)第 77(2)條所適用的一項/多於一項作為，即〔註明有關作為的詳情〕—

※

※

※

※

因此，在不影響你在條例或任何其他條例的其他責任下，現根據條例第 77(2)條，規定你不得作出任何〔根據(註明條例有關部或條文的提述)屬違法的歧視性作為〕〔根據(註明條例有關部或條文的提述)，屬違法的騷擾作為〕〔違反條例第 42 條的作為〕〔參照條例第 III / IV 部，屬違反條例第 43/44/45 條的作為〕。

如因遵從上述規定而涉及改變你的處事實務或其他安排，則現根據條例第 77(2)條，進一步規定你〔按本通知指明的方式〕通知委員會，表示你已經實行該等改變及該等改變為何，以及〔採取下列步驟，以將該等資料提供予其他有關人士(指明將予採取的步驟)〕。

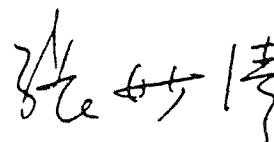
〔現根據條例第 77(3)條，進一步規定你〔按本通知指明的方式，〕向委員會提交下列資料，以便委員會核實本通知已獲遵從(在下面描述有關資料)—〕

〔你須根據本通知提交予委員會的資料，須按以下規定提供(指該資料或屬某項特定類別的資料須在何時以及以何方式和形式提交)〕 —

日期：....年....月....日

〔委員會〕

〔獲轉授職能的人〕



平等機會委員會主席

1996年 11 月 8 日

註釋

〈性別歧視條例〉(第480章)規定，根據第71條發出的進行正式調查通知、根據第72條發出的規定提交資料通知，以及根據第77條發出的執行通知，須以平等機會委員會(“委員會”)訂明的方式和形式發出。

2. 因此，委員會 —

- (a) 在本規則第3條中，指明送達上述通知的方式；
- (b) 在第4條中，指明如沒有給予調查的一般通知時，須以何種方式將調查通知給予某些人士；
- (c) 在第5條中，訂明規定某人提交或提供資料或出示文件的通知的格式；
- (d) 在第6條中，訂明執行通知的格式。

DISABILITY DISCRIMINATION (FORMAL INVESTIGATIONS) RULES

(Made by the Equal Opportunities Commission under
section 85 of the Disability Discrimination
Ordinance (Cap. 487))

1. Commencement

These Rules shall come into operation on 20 December
1996.

2. Interpretation

Where, under section 67 of the Sex Discrimination
Ordinance (Cap. 480), the Commission has delegated its
functions or powers relating to a formal investigation, any
reference in these Rules to the Commission is a reference to
the delegate to whom the relevant function or power has been
delegated.

3. Service of notices

In these Rules, a reference to a person being served with
a notice is a reference to service on that person being
effected -

- (a) by delivering it to him personally;
- (b) by sending it by ordinary post to his last
known residence or place of business;
- (c) where the person is a body (whether corporate
or unincorporate), by delivering it to the
secretary or an officer of the body at its

registered office or principal office or by sending it by ordinary post to that secretary or such an officer at that office; or

- (d) where the person is acting by a solicitor, by delivering it at, or by sending it by ordinary post to, the solicitor's address for service.

4. Notice of holding of formal investigation

Where, under section 67 of the Ordinance, the Commission is required to give notice of the holding of a formal investigation -

- (a) to any person named in the terms of reference for the investigation; or
- (b) where the terms of reference are revised, to any person named in the revised terms of reference,

the notice served on such person shall set out the terms of reference.

5. Requirement to furnish or give information or produce documents

Where, under section 68(1) of the Ordinance, the Commission requires a person to furnish written information or give oral information or produce documents, the notice served on him shall be in the form set out in Schedule 1 or in a form

to the like effect with such modifications or variations as the circumstances may require.

6. Enforcement notice

An enforcement notice served on a person for the purposes of section 73(2) of the Ordinance shall be in the form set out in Schedule 2 or in a form to the like effect with such modifications or variations as the circumstances may require.

SCHEDULE 1

[s. 5]

NOTICE TO FURNISH WRITTEN INFORMATION OR GIVE ORAL INFORMATION AND PRODUCE DOCUMENTS

(Under section 68(1) of the Disability Discrimination Ordinance (Cap. 487))

To A.B. of []

For the purposes of the formal investigation being conducted by the Equal Opportunities Commission ("the Commission") the terms of reference of which [were given to you in a notice dated]/[are set out in the Schedule to this Notice], you are required, under section 68(1) of the Disability Discrimination Ordinance (Cap. 487) ("the Ordinance")-

(a) [to furnish the following information (description of information to follow) -]

-
-
-

-
-
-
-
-
-
-

(b) [to attend at *(insert time)* on *(insert date)* at *(insert place)* and [give oral information about]/ [give oral evidence about, and produce all documents in your possession or control relating to] [the following matters] [the matter of] *(specify the matters or matter) -]*

2. The information described in paragraph 1(a) must be furnished *(specify the time or times at which, and the manner and form in which, the information is to be furnished).*

Dated this day of 19

This Notice was issued by [the Commission] [*(name delegate)*] to whom the Commission has under section 64(1) of the Ordinance delegated its functions under section 68(1) of the Ordinance].

[Service of this Notice was authorized in writing under section 68(2)(a) of the Ordinance.]

[Having regard to the terms of the reference of the investigation and section 68(2)(b)/section 75 of the Ordinance, service of this Notice does not require the consent of the Chief Secretary.]

[Commission]

[Delegate]

SCHEDULE

TERMS OF REFERENCE OF INVESTIGATION



SCHEDULE 2

[s. 6]

ENFORCEMENT NOTICE

(Issued under section 73 of the Disability Discrimination Ordinance (Cap. 487))

To A.B. of []

In the course of a formal investigation the Equal Opportunities Commission ("the Commission") has become satisfied that you were committing/had committed an act/acts to which section 73(2) of the Disability Discrimination Ordinance (Cap. 487) ("the Ordinance") applies, namely (*insert particulars of acts*) -

-
-

-
-

You are therefore required, without prejudice to your other duties under this or any other Ordinance, under section 73(2) of the Ordinance, not to commit any act which is [an unlawful discriminatory act under *(insert reference to relevant Part of provision of the Ordinance)*] [an unlawful act of harassment under *(insert reference to relevant Part or provision of the Ordinance)*] [a contravention of section 41 of the Ordinance] [a contravention of section 42/43/44/45/46/47 of the Ordinance by reference to Part III/Part IV of the Ordinance].

If compliance with the above requirement involves changes in any of your practices or other arrangements, you are further required under section 73(2) of the Ordinance to inform the Commission [in the manner specified in this Notice] that you have effected those changes and what those changes are [and to take the following steps for the purpose of making that information available to other persons concerned, namely *(specify steps to be taken)*].

[You are further required under section 73(3) of the Ordinance to furnish to the Commission [in the manner

specified in this Notice] with the following information, in order for it to verify that this Notice has been complied with (description of information to follow) -]

[The information to be furnished by you to the Commission under this Notice must be furnished as follows (specify the time or times at which, and the manner and form in which, the information, or information of a particular description, is to be furnished) -]

Dated this day of 19

[Commission]

[Delegate]



Chairperson,
Equal Opportunities Commission.

8 November, 1996.

Explanatory Note

The Disability Discrimination Ordinance (Cap. 487) provides that a notice of the holding of a formal investigation under section 67, notice for requiring information under section 68 and an enforcement notice under section 73 must be given in a form and the manner prescribed by the Equal Opportunities Commission ("the Commission").

2. Accordingly, the Commission -

- (a) in section 3 specifies the manner of service of those notices;
- (b) in section 4 specifies the manner in which notice of investigation is to be given to certain persons in cases in which general notice of the investigation is not given;
- (c) in section 5 prescribes the form of a notice requiring a person to furnish or give information or produce documents;
- (d) in section 6 prescribes the form of an enforcement notice.

殘疾歧視(正式調查)規則

(由平等機會委員會根據〈殘疾歧視條例〉
(第487章)第85條訂立)

1. 生效日期

本規則自1996年12月20日起實施。

2. 釋義

凡委員會已根據〈性別歧視條例〉(第480章)第67條，將其關於一項正式調查的職能或權力轉授，則在本規則中提述委員會，即提述已獲轉授有關職能或權力的人。

3. 通知的送達方式

在本規則中，提述某人獲送達通知，即提述以下列方式，將該通知送達該人 —

- (a) 將該通知面交該人；
- (b) 以普通郵遞方式將該通知寄往該人最後為人所知的居所或業務地點；
- (c) 如該人是團體(不論其屬法人團體或並非法人團體)，則於其註冊辦事處或主要辦事處將該通知交付其秘書或高級人員，或以普通郵遞方式將該通知寄往該辦事處送交其秘書或高級人員；或
- (d) 如該人由律師代為行事，則將該通知送交該律師供送達文件的地址，或以普通郵遞方式將該通知寄往該地址。

4. 進行正式調查的通知

凡根據本條例第67條，委員會須就調查的進行 —

- (a) 向正式調查的調查範圍所點名的人給予通知；或
- (b) (如調查範圍經修改)向經修改的調查範圍所點名的人給予通知，

則送達該人的通知，須列出調查範圍。

5. 關於提交或提供資料或出示文件的規定

凡委員會根據本條例第68(1)條，規定某人提交書面資料、以口頭提供資料或出示文件，則送達該人的通知，須符合附表1所列格式，或符合按情況作出所需的變通或更改的具有相類效果的格式。

6. 執行通知

為施行本條例第73(2)條而送達某人的執行通知，須符合附表2所列格式，或符合按情況作出所需的變通或更改的具有相類效果的格式。

關於提交書面資料或提供口頭資料
以及出示文件的通知

(根據《殘疾歧視條例》(第487章)第68(1)條送達)

致：A.B.，地址為 ()

平等機會委員會(“委員會”)現正進行一項正式調查，調查範圍
(已藉日期為....年....月....日的通知而向你發給) / (載於本通知的
附表)，現為該項正式調查的目的，根據《殘疾歧視條例》(第487章)
 (“條例”)第68(1)條，規定你 —

(a) (提交以下資料(在下面描述有關資料) —)

※
※
※
※
※

(b) (於(註明日期時間)，親臨(註明地點)，並(提供關
於以下事宜的口頭資料) / (提供關於以下事宜的口
頭證供，以及出示關於以下事宜並由你所管有或控制
的所有文件)(指明有關事宜)) —

※
※
※
※
※

2. 第1(a)段所描述的資料，須按以下規定提交(指明有關資料須在何時以及以何方式和形式提交)。

日期：.....年.....月.....日

本通知由〔委員會發出〕〔(註明獲轉授職能的人的姓名)發出，委員會已根據條例第64(1)條，將其在條例第68(1)條下的職能轉授給他〕。

〔本通知的送達已根據條例第68(2)(a)條獲得書面批准。〕

〔在顧及該項調查範圍及條例第68(2)(b)/75條的條文後，本通知的送達無須得到布政司同意。〕

〔委員會〕

〔獲轉授職能的人〕

附表

調查範圍

執行通知

(根據〈殘疾歧視條例〉(第487章)第73條發出)

致：A.B.，地址為〔 〕

鑑於在進行正式調查的過程中，平等機會委員會(“委員會”)已信納你當時正在/曾經作出〈殘疾歧視條例〉(第487章)(“條例”)第73(2)條所適用的一項/多於一項作為，即〔註明有關作為的詳情〕—

※

※

※

※

因此，在不影響你在條例或任何其他條例的其他責任下，現根據條例第73(2)條，規定你不得作出任何〔根據(註明條例有關部或條文的提述)屬違法的歧視性作為〕〔根據(註明條例有關部或條文的提述)，屬違法的騷擾作為〕〔違反條例第41條的作為〕〔參照條例第Ⅲ/Ⅳ部，屬違反條例第42/43/44/45/46/47條的作為〕。

如因遵從上述規定而涉及改變你的處事實務或其他安排，則現根據條例第73(2)條，進一步規定你〔按本通知指明的方式〕通知委員會，表示你已經實行該等改變及該等改變為何，以及〔採取下列步驟，以將該等資料提供予其他有關人士(指明將予採取的步驟)〕。

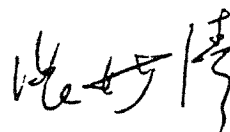
〔現根據條例第73(3)條，進一步規定你〔按本通知指明的方式，〕向委員會提交下列資料，以便委員會核實本通知已獲遵從(在下面描述有關資料)—〕

〔你須根據本通知提交予委員會的資料，須按以下規定提供（指明該資料或屬某項特定類別的資料須在何時以及以何方式和形式提交）—〕

日期：.....年.....月.....日

〔委員會〕

〔獲轉授職能的人〕



平等機會委員會主席

1996年 11 月 8 日

註釋

〈殘疾歧視條例〉(第487章)規定，根據第67條發出的進行正式調查通知、根據第68條發出的規定提交資料通知，以及根據第73條發出的執行通知，須以平等機會委員會(“委員會”)訂明的方式和形式發出。

2. 因此，委員會 —

- (a) 在本規則第3條中，指明送達上述通知的方式；
- (b) 在第4條中，指明如沒有給予調查的一般通知時，須以何種方式將調查通知給予某些人士；
- (c) 在第5條中，訂明規定某人提交或提供資料或出示文件的通知的格式；
- (d) 在第6條中，訂明執行通知的格式。

**SEX DISCRIMINATION (INVESTIGATION AND
CONCILIATION) RULES**

(Made by the Equal Opportunities Commission under
section 88 of the Sex Discrimination
Ordinance (Cap. 480))

1. Commencement

These Rules shall come into operation on 20 December 1996.

2. Interpretation

(1) In these Rules -

"class member" (申 訴 委 託 人), in relation to a representative complaint, means any person on whose behalf that complaint is lodged;

"conference" (會 議) means a conference held for the purposes of section 84 of the Ordinance;

"representative complaint" (代 表 申 訴) means a representative complaint referred to in section 84(2) of the Ordinance.

(2) Where, under section 67 of the Ordinance, the Commission has delegated its functions or powers under section 84 of the Ordinance, any reference in these Rules to the Commission is a reference to the delegate to whom the relevant function or power has been delegated.

3. Representative complaints

(1) A representative complaint alleging that another person has done an unlawful act may be lodged by -

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

4. Determination of representative complaints

- (1) The Commission may determine that any complaint lodged with it should not be a representative complaint.

(2) The Commission may make a determination under subsection (1) only if it is satisfied that it is in the interests of justice to do so for any of the following reasons -

- (a) the costs that would be incurred (whether by the Commission or class members) if the complaint were to continue as a representative complaint are likely to exceed the costs that would be incurred if each class member lodged a separate complaint;
- (b) the representative complaint will not provide an efficient and effective means of dealing with the complaints of the class members;
- (c) the complaint was not brought in good faith as a representative complaint; or
- (d) it is otherwise inappropriate that the complaints be pursued by means of a representative complaint.

5. Commission may require information

(1) The Commission may, for the purposes of investigating into an act and in endeavouring to settle the matter to which the act relates, by notice in writing served on a person require that person to furnish such information as specified in the notice, and in the notice specify a place, time, period or date for furnishing such information.

(2) Any person who, without reasonable excuse, refuses or fails to comply with a notice served on him under subsection (1) commits an offence and is liable on conviction to a fine at level 4.

6. Restriction on disclosure of information

(1) The information furnished to the Commission by a person ("the informant") in response to a notice served on him under section 5 shall not be disclosed by the Commission, any member of the Commission or a committee, employee of the Commission, conciliator or any person who has been such a member, employee or conciliator, except -

- (a) with the informant's consent;
- (b) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates;
- (c) in a report under section 8(4);
- (d) to members of the Commission or a committee, employees of the Commission or conciliators or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons; or
- (e) subject to section 84(6) of the Ordinance, for the purposes of any court proceedings.

(2) Any person who discloses information in contravention of subsection (1) commits an offence and is liable on conviction to a fine at level 4.

7. Directions to attend conference

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

(2) The persons the Commission may, under subsection (1), direct to attend a conference are -

- (a) any person, who in the opinion of the Commission is likely to be able to provide information relevant to the investigation; or
- (b) any person whose presence at the conference is, in the opinion of the Commission, likely to be conducive to the settlement of the matter.

(3) The Commission may pay the reasonable and necessary expenses of the journey to and from the place of the conference, of a person directed to attend under subsection (1).

(4) Where a body of persons, whether corporate or unincorporate, is directed under subsection (1) an officer or employee of that body may attend on behalf of that body.

(5) A person who, without reasonable excuse, refuses or fails to attend a conference as directed under subsection (1) commits an offence and is liable on conviction to a fine at level 4.

8. Procedure at conference

(1) A conference is to be held in private.

(2) The person presiding at a conference may determine its order of proceedings and the manner of conducting it.

(3) Unless the person presiding at a conference consents -

- (a) an individual is not entitled to be represented at the conference by another person (unless otherwise provided in any provision in the Disability Discrimination Ordinance (Cap. 487) which is applicable to the particular case);

(b) a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than an officer or employee of that body.

(4) Where the person presiding at a conference -

(a) is of the opinion that a matter cannot be settled by conciliation;

(b) has endeavoured to settle a matter by conciliation but has not been successful; or

(c) is of the opinion that the nature of a matter is such that it should be referred to the Commission,

he shall refer the matter to the Commission together with a report relating to any investigation made into the matter.

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



Chairperson,
Equal Opportunities Commission.

8 November, 1996.

Explanatory Note

The Sex Discrimination Ordinance (Cap. 480) provides that the Equal Opportunities Commission ("the Commission") may for the purposes of section 84, prescribe the persons who may lodge a representative complaint, the matters to be taken into account by the Commission in determining a complaint should not be a representative complaint, require persons to furnish information, restrict the disclosure of information so furnished, direct persons to attend conferences and regulate the procedure of such conferences.

2. Accordingly, the Commission -

- (a) in section 3 specifies the persons who may lodge a representative complaint;
- (b) in section 4 specifies the matters to be taken into account in determining a complaint should not be a representative complaint;
- (c) in section 5 specifies the manner in which persons may be required to furnish information;
- (d) in section 6 specifies the manner in which disclosure of information is restricted;
- (e) in section 7 specifies the manner in which persons may be directed to attend a conference;
- (f) in section 8 specifies the procedure to be followed at a conference.

性別歧視(調查及調解)規則

(由平等機會委員會根據《性別歧視條例》
(第480章)第88條訂立)

1. 生效日期

本規則自1996年12月20日起實施。

2. 釋義

(1) 在本規則中 —

“代表申訴”(representative complaint)指本條例第84(2)條所提述的代表申訴；

“申訴委託人”(class member)就代表申訴而言，指由他人代表為提出該申訴的人；

“會議”(conference)指為施行本條例第84條而舉行的會議。

(2) 凡委員會已根據本條例第67條，將其在本條例第84條下的職能或權力轉授，則在本規則中提述委員會，即提述已獲轉授有關職能或權力的人。

3. 代表申訴

(1) 指稱另一人已作出違法作為的代表申訴 —

(a) 可由因該作為而感到受屈的人，代表該人本身以及代表另一名或另一些亦因該作為而感到受屈的人提出；

(b) 可由2名或多於2名因該作為而感到受屈的人，代表他們本身以及代表另一名或另一些亦因該作為而感到受屈的人提出；或

(c) 可由某人代表另一名或另一些因該作瀆而感到受屈的人提出。

(2) 代表申訴只可以在以下情況提出 —

(a) 各申訴委託人的申訴是針對同一人的；

(b) 如所有申訴均是關乎同一、相類似或有關情況的，或均是在同一、相類似或有關情況下產生的；

(c) 如所有申訴均引起某個實質共通的法律爭議或事實爭議；及

(d) 得到所有申訴委託人的同意。

(3) 代表申訴須 —

(a) 描述或以其他方式識別申訴委託人和述明申訴委託人的人數；

(b) 指明代表申訴委託人提出的申訴性質；

(c) 指明申訴委託人的申訴的共通法律問題及事實問題。

4. 代表申訴的裁定

(1) 委員會可裁定向它提出的某宗申訴不應屬代表申訴。

(2) 委員會只可在因以下任何理由而信納根據第(1)款作出裁定，是合乎公正原則的情況下，才可以如此作出裁定 —

(a) 如該申訴作為代表申訴繼續進行，所會招致(不論是委員會或申訴委託人所招致)的開支，相當可能超過每名申訴委託人各自提出獨立申訴所招致的開支；

(b) 該代表申訴，不會為處理有關的申訴委託人的申訴，提供有效率和有效益的方法；

(c) 該申訴並不是真誠地作為代表申訴而提出的；或

(d) 因其他情由，有關申訴藉代表申訴方式進行，並不適當。

5. 委員會可規定提交資料

(1) 委員會可為對某項作為的調查和為致力解決該作為所關乎的事項的目的，藉送達予某人的書面通知，規定該人提交該通知所指明的資料，而委員會亦可在通知中指明提交該資料的地點、時間、限期或日期。

(2) 任何人如無合理辯解而拒絕或不遵從根據第(1)款送達予他的通知，即屬犯罪，一經定罪，可處第4級罰款。

6. 對披露資料的限制

(1) 委員會、委員會或小組委員會的任何成員、委員會任何僱員、任何調解人或曾是上述成員、僱員或調解人的人，均不得披露由某人（“提供資料的人”）為回應根據第5條送達予他的通知而向委員會提交的資料，但在以下情況下披露，則不在此限——

(a) 在得到提供資料的人同意下披露；

(b) 以委員會發表的摘要或其他一般陳述方式披露，而提供資料的人或資料所關乎的任何其他人的身分，不能從中辨識；

(c) 由根據第8(4)條提交的報告披露；

(d) 向委員會或小組委員會的成員、委員會的僱員或調解人披露，或在為妥善執行委員會職能而屬必要的範圍內，向其他人披露；或

(e) 在符合本條例第84(6)條的規定下，為任何法律程序的目的而披露。

(2) 任何人在違反第(1)款的情況下披露資料，即屬犯罪，一經定罪，可處第4級罰款。

7. 出席會議的指示

(1) 委員會可為對某項作為進行調查和為努力解決該作為所關乎事項的目的，藉書面通知而指示第(2)款提述的任何人，在該通知指明的時間及地點出席會議。

(2) 委員會可根據第(1)款指示出席會議的人為 —

(a) 委員會認為相當可能有能力提供與調查有關的資料的人；或

(b) 委員會認為如果出席會議，便相當可能有助解決有關事項的人。

(3) 委員會可支付根據第(1)款被指示出席的人往返會議地點合理和必需的交通費用。

(4) 如某團體(不論其屬法人團體或並非法人團體)根據第(1)款被指示出席會議，可由該團體的高級人員或僱員，代表該團體出席。

(5) 任何人如無合理辯解而拒絕或不按根據第(1)款作出的指示出席會議，即屬犯罪，一經定罪，可處第4級罪款。

8. 會議的程序

(1) 會議不得公開進行。

(2) 主持會議的人，可決定議事程序及進行方式。

(3) 除非主持會議的人同意，否則 —

(a) 任何個人無權在會議上由另一人代表(除非〈殘疾歧視條例〉(第487章)任何條文另有規定，而且該條文適用於該特定個案)；

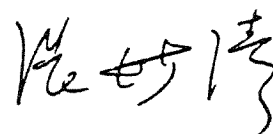
(b) 任何團體(不論其屬法人團體或並非法人團體)無權在會議上由不是其高級人員或僱員的人代表。

(4) 凡主持會議的人 —

- (a) 認為某事項不能夠藉調解解決；
- (b) 已努力藉調解解決該事項，但不成功；或
- (c) 認為以該事項的性質而論，應交由委員會處理，

他須將該事項交由委員會處理，並同時提交一份關於對該事項進行的調查的報告。

(5) 為第(4)款的目的而提交的報告，不得包括或描述在會議進行過程中的任何發言或所做的任何事情。



平等機會委員會主席

1996年 11 月 8 日

註釋

〈性別歧視條例〉(第480章)規定，平等機會委員會(“委員會”)可為第84條的目的，訂明可提出代表申訴的人、委員會裁定申訴不應該屬代表申訴時須予考慮的事宜、規定有關人士提交資料、限制披露所提交的資料、指示有關人士出席會議，以及規管此等會議的程序。

2. 因此，委員會 —

- (a) 在本規則第3條中，指明可提出代表申訴的人；

- (b) 在第4條中，指明在鑑定申訴不應該屬代表申訴時須予考慮的事宜；
- (c) 在第5條中，指明可規定有關人士提交資料的方式；
- (d) 在第6條中，指明限制披露資料的方式；
- (e) 在第7條中，指明可指示有關人士出席會議的方式；
- (f) 在第8條中，指明在會議中所須依循的程序。

**DISABILITY DISCRIMINATION (INVESTIGATION AND
CONCILIATION) RULES**

(Made by the Equal Opportunities Commission under
section 85 of the Disability Discrimination
Ordinance (Cap. 487))

1. Commencement

These Rules shall come into operation on 20 December 1996.

2. Interpretation

(1) In these Rules -

"class member" (申 訴 委 託 人), in relation to a representative complaint, means any person on whose behalf that complaint is lodged;

"conference" (會 議) means a conference held for the purposes of section 80 of the Ordinance;

"representative complaint" (代 表 申 訴) means a representative complaint referred to in section 80(2) of the Ordinance.

(2) Where, under section 67 of the Sex Discrimination Ordinance (Cap. 480), the Commission has delegated its functions or powers under section 80 of the Ordinance, any reference in these Rules to the Commission is a reference to the delegate to whom the relevant function or power has been delegated.

3. Representative complaints

(1) A representative complaint alleging that another person has done an unlawful act may be lodged by -

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

4. Determination of representative complaints

(1) The Commission may determine that any complaint lodged with it should not be a representative complaint.

(2) The Commission may make a determination under subsection (1) only if it is satisfied that it is in the interests of justice to do so for any of the following reasons -

- (a) the costs that would be incurred (whether by the Commission or class members) if the complaint were to continue as a representative complaint are likely to exceed the costs that would be incurred if each class member lodged a separate complaint;
- (b) the representative complaint will not provide an efficient and effective means of dealing with the complaints of the class members;
- (c) the complaint was not brought in good faith as a representative complaint; or
- (d) it is otherwise inappropriate that the complaints be pursued by means of a representative complaint.

5. Commission may require information

(1) The Commission may, for the purposes of investigating into an act and in endeavouring to settle the matter to which the act relates, by notice in writing served on a person require that person to furnish such information as specified in the notice, and in the notice specify a place, time, period or date for furnishing such information.

(2) Any person who, without reasonable excuse, refuses or fails to comply with a notice served on him under subsection (1) commits an offence and is liable on conviction to a fine at level 4.

6. Restriction on disclosure of information

(1) The information furnished to the Commission by a person ("the informant") in response to a notice served on him under section 5 shall not be disclosed by the Commission, any member of the Commission or a committee, employee of the Commission, conciliator or any person who has been such a member, employee or conciliator, except -

- (a) with the informant's consent;
- (b) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates;
- (c) in a report under section 8(4);
- (d) to members of the Commission or a committee, employees of the Commission or conciliators or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons; or
- (e) subject to section 80(6) of the Ordinance, for the purposes of any court proceedings.

(2) Any person who discloses information in contravention of subsection (1) commits an offence and is liable on conviction to a fine at level 4.

7. Directions to attend conference

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

(2) The persons the Commission may, under subsection (1), direct to attend a conference are -

- (a) any person, who in the opinion of the Commission is likely to be able to provide information relevant to the investigation; or
- (b) any person whose presence at the conference is, in the opinion of the Commission, likely to be conducive to the settlement of the matter.

(3) The Commission may pay the reasonable and necessary expenses of the journey to and from the place of the conference, of a person directed to attend under subsection (1).

(4) Where a body of persons, whether corporate or unincorporate, is directed under subsection (1) an officer or employee of that body may attend on behalf of that body.

(5) A person who, without reasonable excuse, refuses or fails to attend a conference as directed under subsection (1) commits an offence and is liable on conviction to a fine at level 4.

8. Procedure at conference

(1) A conference is to be held in private.

(2) The person presiding at a conference may determine its order of proceedings and the manner of conducting it.

(3) Unless the person presiding at a conference consents -

- (a) an individual is not entitled to be represented at the conference by another person (unless otherwise provided in any provision in the Ordinance which is applicable to the particular case);

(b) a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than an officer or employee of that body.

(4) Where the person presiding at a conference -

(a) is of the opinion that a matter cannot be settled by conciliation;

(b) has endeavoured to settle a matter by conciliation but has not been successful; or

(c) is of the opinion that the nature of a matter is such that it should be referred to the Commission,

he shall refer the matter to the Commission together with a report relating to any investigation made into the matter.

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



Chairperson,
Equal Opportunities Commission.

8 November, 1996.

Explanatory Note

The Disability Discrimination Ordinance (Cap. 487) provides that the Equal Opportunities Commission ("the Commission") may for the purposes of section 80, prescribe the persons who may lodge a representative complaint, the matters to be taken into account by the Commission in determining a complaint should not be a representative complaint, require persons to furnish information, restrict the disclosure of information so furnished, direct persons to attend conferences and regulate the procedure of such conferences.

2. Accordingly, the Commission -

- (a) in section 3 specifies the persons who may lodge a representative complaint;
- (b) in section 4 specifies the matters to be taken into account in determining a complaint should not be a representative complaint;
- (c) in section 5 specifies the manner in which persons may be required to furnish information;
- (d) in section 6 specifies the manner in which disclosure of information is restricted;
- (e) in section 7 specifies the manner in which persons may be directed to attend a conference;
- (f) in section 8 specifies the procedure to be followed at a conference.

殘疾歧視(調查及調解)規則

(由平等機會委員會根據《殘疾歧視條例》
(第487章)第85條訂立)

1. 生效日期

本規則自1996年12月20日起實施。

2. 釋義

(1) 在本規則中 —

“代表申訴”(representative complaint)指本條例第80(2)條所提述的代表申訴；

“申訴委託人”(class member)就代表申訴而言，指由他人代表為提出該申訴的人；

“會議”(conference)指為施行本條例第80條而舉行的會議。

(2) 凡委員會已根據《性別歧視條例》(第480章)第67條，將其在第80條下的職能或權力轉授，則在本規則中提述委員會，即提述已獲轉授有關職能或權力的人。

3. 代表申訴

(1) 指稱另一人已作出違法作為的代表申訴 —

(a) 可由因該作為而感到受屈的人，代表該人本身以及代表另一名或另一些亦因該作為而感到受屈的人提出；

(b) 可由2名或多於2名因該作為而感到受屈的人，代表他們本身以及代表另一名或另一些亦因該作為而感到受屈的人提出；或

- (c) 可由某人代表另一名或另一些因該作為而感到受屈的人提出。
- (2) 代表申訴只可以在以下情況提出 —
- (a) 各申訴委託人的申訴是針對同一人的；
 - (b) 如所有申訴均是關乎同一、相類似或有關情況的，或均是在同一、相類似或有關情況下產生的；
 - (c) 如所有申訴均引起某個實質共通的法律爭議或事實爭議；及
 - (d) 得到所有申訴委託人的同意。
- (3) 代表申訴須 —
- (a) 描述或以其他方式識別申訴委託人和述明申訴委託人的人數；
 - (b) 指明代表申訴委託人提出的申訴性質；
 - (c) 指明申訴委託人的申訴的共通法律問題及事實問題。

4. 代表申訴的裁定

- (1) 委員會可裁定向它提出的某宗申訴不應屬代表申訴。
- (2) 委員會只可在因以下任何理由而信納根據第(1)款作出裁定，是合乎公正原則的情況下，才可以如此作出裁定 —
 - (a) 如該申訴作為代表申訴繼續進行，所會招致(不論是委員會或申訴委託人所招致)的開支，相當可能超過每名申訴委託人各自提出獨立申訴所招致的開支；
 - (b) 該代表申訴，不會為處理有關的申訴委託人的申訴，提供有效率和有效益的方法；

- (c) 該申訴並不是真誠地作為代表申訴而提出的；或
- (d) 因其他情由，有關申訴藉代表申訴方式進行，並不適當。

5. 委員會可規定提交資料

(1) 委員會可為對某項作為的調查和為致力解決該作為所關乎的事項的目的，藉送達予某人的書面通知，規定該人提交該通知所指明的資料，而委員會亦可在通知中指明提交該資料的地點、時間、限期或日期。

(2) 任何人如無合理辯解而拒絕或不遵從根據第(1)款送達予他的通知，即屬犯罪，一經定罪，可處第4級罰款。

6. 對披露資料的限制

(1) 委員會、委員會或小組委員會的任何成員、委員會任何僱員、任何調解人或曾是上述成員、僱員或調解人的人，均不得披露由某人（“提供資料的人”）為回應根據第5條送達予他的通知而向委員會提交的資料，但在以下情況下披露，則不在此限——

- (a) 在得到提供資料的人同意下披露；
- (b) 以委員會發表的摘要或其他一般陳述方式披露，而提供資料的人或資料所關乎的任何其他人的身分，不能從中辨識；
- (c) 由根據第8(4)條提交的報告披露；
- (d) 向委員會或小組委員會的成員、委員會的僱員或調解人披露，或在為妥善執行委員會職能而屬必要的範圍內，向其他人披露；或
- (e) 在符合本條例第80(6)條的規定下，為任何法律程序的目的而披露。

(2) 任何人在違反第(1)款的情況下披露資料，即屬犯罪，一經定罪，可處第4級罰款。

7. 出席會議的指示

(1) 委員會可為對某項作為進行調查和為努力解決該作為所關乎事項的目的，藉書面通知而指示第(2)款提述的任何人，在該通知指明的時間及地點出席會議。

(2) 委員會可根據第(1)款指示出席會議的人為 —

(a) 委員會認為相當可能有能力提供與調查有關的資料的人；或

(b) 委員會認為如果出席會議，便相當可能有助解決有關事項的人。

(3) 委員會可支付根據第(1)款被指示出席的人往返會議地點合理和必需的交通費用。

(4) 如某團體(不論其屬法人團體或並非法人團體)根據第(1)款被指示出席會議，可由該團體的高級人員或僱員，代表該團體出席。

(5) 任何人如無合理辯解而拒絕或不按根據第(1)款作出的指示出席會議，即屬犯罪，一經定罪，可處第4級罪款。

8. 會議的程序

(1) 會議不得公開進行。

(2) 主持會議的人，可決定議事程序及進行方式。

(3) 除非主持會議的人同意，否則 —

(a) 任何個人無權在會議上由另一人代表(除非〈殘疾歧視條例〉(第487章)任何條文另有規定，而且該條文適用於該特定個案)；

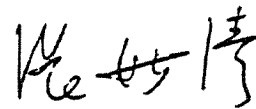
(b) 任何團體(不論其屬法人團體或並非法人團體)無權在會議上由不是其高級人員或僱員的人代表。

(4) 凡主持會議的人 —

- (a) 認為某事項不能夠藉調解解決；
- (b) 已努力藉調解解決該事項，但不成功；或
- (c) 認為以該事項的性質而論，應交由委員會處理，

他須將該事項交由委員會處理，並同時提交一份關於對該事項進行的調查的報告。

(5) 為第(4)款的目的而提交的報告，不得包括或描述在會議進行過程中的任何發言或所做的任何事情。



平等機會委員會主席

1996年 11 月 8 日

註釋

〈殘疾歧視條例〉(第487章)規定，平等機會委員會(“委員會”)可為第80條的目的，訂明可提出代表申訴的人、委員會裁定申訴不應該屬代表申訴時須予考慮的事宜、規定有關人士提交資料、限制披露所提交的資料、指示有關人士出席會議，以及規管此等會議的程序。

2. 因此，委員會 —

- (a) 在本規則第3條中，指明可提出代表申訴的人；

- (b) 在第4條中，指明在裁定申訴不應該屬代表申訴時須予考慮的事宜；
- (c) 在第5條中，指明可規定有關人士提交資料的方式；
- (d) 在第6條中，指明限制披露資料的方式；
- (e) 在第7條中，指明可指示有關人士出席會議的方式；
- (f) 在第8條中，指明在會議中所須依循的程序。

DRAFT

LEGCO QUESTION NO. 3

Date of sitting : 13.11.96

Asked by : Hon Ms CHAN Yuen-han

Replied by : SEM

Question :

Regarding the Labour Advisory Board's recent endorsement of the Government's proposal to repeal the provisions in the Women and Young Persons (Industry) Regulations applying to women, will the Government inform this Council :

- (a) having regard to the fact that the provisions in section 4 of the Regulations were formulated for the purpose of implementing the Underground Work (Women) Convention (International Labour Convention No. 45) in Hong Kong, whether the present proposal to repeal the Regulations is in breach of the above Convention; if so, of the remedial measures which will be taken by the Government and the timetable for the implementation of such measures; and
- (b) whether, in putting forward the proposal to repeal the Regulations, the Government has sought the medical sector's opinion as to whether the repeal of the provisions in the Regulations relating to carrying of weights by women may result in women suffering from gynaecological diseases (such as excessive menstrual flow, menstrual pain, stoppage of menstruation and prolapse of uterus) while moving heavy objects at work; if so, what the details are; if not, why not?

Reply :

Mr President,

Before I reply to the specific parts of the Question, I should point out that Regulations 4 and 6 are two of the eight Regulations containing women-specific employment restriction provisions under the Women and Young Persons (Industry) Regulations. These provisions will become legally incompatible with the Sex Discrimination Ordinance(SDO), after the grace period for exempting such provisions from the application of the SDO expires on 13 July 1997 under Section 57 of the Ordinance. It is therefore technically necessary to repeal these provisions under these Regulations before the aforesaid date in order to render the entire set of Regulations compatible with the SDO.

As regards Part (a) of the Question, Regulation 4 of the Women and Young Persons (Industry) Regulations prohibits the employment of women (and young persons) from underground work in any mine or quarry, or in any industrial undertaking involving a tunnelling operation.

This Regulation is in line with International Labour Convention (ILC) No.45 which prohibits the employment of female workers from underground work in any mines. ILC No. 45 was ratified by the United Kingdom (UK) in 1936 and extended to Hong Kong without modification in 1950 by virtue of UK's ratification of ILC No.83, which provides that a ratifying member should make a declaration on the extent to which the provisions of a prescribed list of ILCs should be applied to its

Non-Metropolitan Territories. In 1988, UK denounced ILC No. 45 on the ground of providing equal employment opportunities for men and women. The Convention, however, continues to apply to Hong Kong by virtue of the above declaration made by UK under ILC No. 83 in 1950. Following the repeal of Regulation 4 of the Women and Young Persons (Industry) Regulations, the UK has to make a declaration to the International Labour Organisation that ILC No. 45 ceases to apply to Hong Kong.

As regards Part (b) of the Question, Regulation 6 of the Women and Young Persons (Industry) Regulations prohibits a woman (or young person) employed in an industrial undertaking from carrying any load which is unreasonably heavy having regard to his or her age and physical development.

In putting forward the proposal to the Labour Advisory Board, medical advice was not sought on the impact of the repeal of Regulation 6 of the Women and Young Persons (Industry) Regulation on the health of women. This is because the repeal of the women-specific provision under this Regulation will not amount to a reduction of the protection of female workers in respect of carrying of heavy weights, as the same protection is already in place under Section 6A of the Factories and Industrial Undertakings Ordinance. The latter provision, which was brought into effect in 1990 (i.e. after the making of the Women and Young Persons (Industry) Regulations), prescribes the general duties of a proprietor to ensure the health and safety at work of all persons (both male and female) employed in industrial undertakings. Such duties include the duty to ensure safety and absence of risks to health in connection with the use, handling, storage and transportation of articles and substances. Under

this provision, no worker, male or female, should be permitted to carry any load which is unreasonably heavy to damage his or her safety and health.

**INFORMATION NOTE
FOR THE LEGISLATIVE COUNCIL
SEX DISCRIMINATION ORDINANCE
(Cap 480)**

**Sex Discrimination
(Proceedings by the Equal Opportunities Commission) Regulation**

Introduction

Section 89 of the Sex Discrimination Ordinance (SDO) provides that the Secretary for Home Affairs may make regulation to empower the Equal Opportunities Commission (EOC) to bring court proceedings in its own name. The Secretary will move a motion at the Legislative Council sitting on 18 December 1996 to seek Members' approval of the Sex Discrimination (Proceedings by the Equal Opportunities Commission) Regulation at Annex.

Background

2. Over 60 non-employment related provisions of the SDO took effect in September 1996. The employment related provisions will be brought into force by the end of the year after the Council's approval of the EOC's codes of practice on employment. We intend to bring into effect the Regulation, made under section 89 of the Ordinance, at the same time.

The Regulation

3. Paragraph 1 of the Regulation at Annex provides for the Regulation to come into operation on a day to be appointed by the Secretary for Home Affairs by notice in the Gazette.

4. Paragraph 2 provides that the EOC may bring proceedings in its own name where the case raises a question of principle and it is in the interests of justice to do so, and when it appears to the EOC that the claim is well founded.

5. Paragraph 3 provides that the EOC may apply for any remedies available to a claimant under section 76(3) of the SDO, including damages, declaration that the act which is the subject of the proceedings is an unlawful act and injunction in respect of such act.

Legislative Timetable

6. The Regulation will be tabled in this Council on 20 November 1996. The Secretary for Home Affairs will move a motion at the Legislative Council sitting on 18 December 1996 to seek Members' approval of the Regulation which, if passed, will be gazetted and take effect on 20 December 1996.

Consultation

7. The EOC was consulted on 6 November 1996 and supported the Regulation.

Home Affairs Branch

Date of Issue: 14 November 1996

Subject Officer: Ms Chang King-yiu (Telephone: 2835 1373)

**SEX DISCRIMINATION (PROCEEDINGS BY EQUAL
OPPORTUNITIES COMMISSION) REGULATION**

(Made under section 89 of the Sex Discrimination Ordinance
(Cap. 480) subject to the approval of the
Legislative Council)

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice in the Gazette.

**2. Circumstances in which Commission
may bring proceedings**

The circumstances in which the Commission may bring proceedings for the purposes of section 76(1) of the Ordinance (as if it were a person who may have brought proceedings under that section but has not done so), are where -

(a) the case raises a question of principle; and

(b) it is in the interests of justice to do so,

and it appears to the Commission that the claim of the person is well founded.

**3. Remedies Commission may seek
in proceedings brought by it**

In any proceedings brought under section 2, the Commission may apply for any remedy available to a claimant under section 76(3) of the Ordinance including -

(a) a declaration that the act which is the subject of the proceedings is an unlawful act or an

- injunction in respect of such act or both a declaration and an injunction; and
- (b) damages arising out of the act to which the claim relates.



Secretary for Home Affairs.

14 November 1996.

Explanatory Note

Section 76 of the Sex Discrimination Ordinance (Cap. 480) sets out the matters in respect of which a person may bring civil proceedings under that Ordinance. Section 89 empowers the Secretary for Home Affairs to specify in regulations -

- (a) the circumstances in which the Equal Opportunities Commission may bring proceedings if a person who is entitled to bring proceedings under section 76 does not do so; and
- (b) the remedies which the Equal Opportunities Commission may seek to obtain in such proceedings.

2. Accordingly, this Regulation empowers the Equal Opportunities Commission -

- (a) to bring such proceedings where a question of principle is involved and it is in the interests of justice to do so and it appears that the claim is well founded; and
- (b) in any such proceedings to claim damages, seek an injunction or a declaration or both.

Note on statutory details

a) New definitions to be added to SDO s. 2(1).

““family status” () means -

- (a) marital status;
- (b) the status of being a particular family member;
- (c) the status of being a family member of a particular person;
- (d) the status of having responsibility for the care of a family member, whether or not that family member is a dependent, other than in the course of paid employment;

“family member” (), in relation to a person, means a person specified in Part I of Schedule 1A, but does not include a person specified in Part II of that Schedule.”

b) New Schedule 1A to be added to the SDO.

“SCHEDULE 1A

[S 2(1), 66, 90]

PART I

FAMILY MEMBERS IN RELATION TO A PERSON

1. Any person who is related to the first-mentioned person by blood, marriage, affinity or adoption.
2. ~~Any person~~ who is wholly or mainly dependent on the first-mentioned person.
3. ~~Any person~~ who is a member of the household of the first-mentioned person.

PART II

NOT FAMILY MEMBERS IN RELATION TO A PERSON

1. Any person who is the ~~husband or wife~~ of the first-mentioned person other than by a valid marriage within the meaning of section 3[#] of the Intestates' Estates Ordinance (Cap. 73).”

c) SDO s. 66 to be amended to require the EOC to keep Schedule 1A under review, and to enable the EOC to draw up and submit to the Governor proposals for amending Schedule 1A, in the same way as now provided for Schedules 3 and 5.

d) SDO s. 90 to be amended to enable Governor in Council to amend Schedule 1A by notice in the Gazette, but any such notice shall be subject to approval by LegCo (as now provided for Schedule 5).

* S 3 of Cap 73 defines a “valid marriage” as

- (a) a marriage celebrated or contracted in accordance with the provisions of the Marriage Ordinance (Cap 181),
- (b) a modern marriage validated by the Marriage Reform Ordinance (Cap 178),
- (c) a customary marriage declared to be valid by the Marriage Reform Ordinance (Cap 178),
- (d) a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed

Proposal on scope of “family status” definition

1. Administration to adopt wide, EOB definition of family status, but subject to a specific exclusion of de facto spouse relationships. (See following Note for statutory details.)
2. Administration to request EOC to review the exclusion of de facto spouse relationships as soon as practicable.
3. In 2d Reading debate, Administration --
 - (a) to announce EOC’s target date to complete the review;
 - (b) to undertake to consider with an open mind any EOC recommendations arising from the review; and
 - (c) to undertake to respond to any such recommendations within 6 months after EOC makes them.

OFFICE OF CHRISTINE LOH, LEGISLATIVE COUNCILLOR

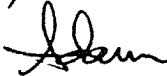
Room 322, 3/F, West Wing, Central Government Offices
11 Ice House Street, Central, Hong Kong
Tel. (852) 2537-2485 Fax (852) 2537-6937

FACSIMILE TRANSMISSION FORM

To : Mr. Chan King-yiu From : Adam Mayes
(Direct line: 2521-6820)

Date : 21/11/96 Total pages : 3 (including this page)

Draft proposal on family status is attached; please call me for an explanation of the context.

Thanks & regards,


**AN EXPLANATORY NOTE ON THE CODES OF PRACTICE AND
RULES UNDER THE SEX DISCRIMINATION ORDINANCE AND
DISABILITY DISCRIMINATION ORDINANCE**

BACKGROUND

On 6 November 1996 the Equal Opportunities Commission ("EOC") approved two Codes of Practice on Employment ("the Codes"), under the Sex Discrimination Ordinance, Cap. 480 ("SDO") and the Disability Discrimination Ordinance, Cap. 487 ("DDO").

2. On 8 November 1996 the EOC made four sets of rules under the same Ordinances. Two sets of rules were made under the SDO as follows:

- (i) the Sex Discrimination (Formal Investigations) Rules; and
- (ii) the Sex Discrimination (Investigation and Conciliation) Rules;

and two sets of rules were made under the DDO as follows:

- (iii) the Disability Discrimination (Formal Investigations) Rules; and
- (iv) the Disability Discrimination (Investigation and Conciliation) Rules.

3. The Codes and the rules were gazetted on 15 November 1996 under Gazette No. 46/1996, with the rules being gazetted under Legal Supplement No. 2 (L.N. No. 472 - 475 of 1996) and the Codes under General Notice (G.N. 5203 and 5204). They were all tabled in the Legislative Council on 20 November 1996.

4. Save for any resolution by the Legislative Council to extend the period of its consideration of the rules and Codes and/or to amend them, the rules will come into operation on 20 December 1996 and the Codes on 18 December 1996. This timetable was intended to facilitate the bringing into

effect, by the government, of the employment related provisions of the SDO and DDO before the end of this year.

5. This note addresses the purpose of the rules and the major factors relevant to the preparation of the Codes, to assist the Legislative Council in considering them.

RULES UNDER THE SDO AND DDO

6. The rules are made by the EOC pursuant to section 88 of the SDO and section 85 of the DDO. They are necessary for standardising the operating procedures of the EOC's functions.

7. The Sex Discrimination (Formal Investigations) Rules and the Disability Discrimination (Formal Investigations) Rules ("Formal Investigations Rules") are similar to each other in nature and content, as are the Sex Discrimination (Investigation and Conciliation) Rules and the Disability Discrimination (Investigation and Conciliation) Rules ("Investigation and Conciliation Rules").

Formal Investigations Rules

8. The Formal Investigations Rules are prescriptive in nature, and arise out of the formal investigation function of the EOC.

9. Under both section 70(1) of the SDO and section 66(1) of the DDO the EOC may, if it thinks fit, and shall if required by the Chief Secretary, conduct a formal investigation for any purpose connected with the carrying out of its functions.

10. Where the terms of reference of such formal investigation confine it to the activities of persons named in the terms of reference, the EOC is required to give such persons notice in the prescribed manner. This also applies to formal investigations in respect of non-compliance with enforcement notices. Section 4 of the Formal Investigations Rules prescribes the manner in which notice of the holding of a formal investigation is to be given to persons.

11. Both the SDO and DDO also provide that the EOC may issue notices requiring persons to furnish written information, give oral evidence and produce documents for the purpose of a formal investigation. Such notices are required to be in the prescribed form and to be served in the prescribed manner. Section 5 of the Formal Investigations Rules prescribes the form of notices requiring persons to provide information to the EOC. The form is set out in Schedule 1.

12. The prescribed manner of service of the notices referred to in the preceding paragraph is found in section 3 of the Formal Investigations Rules, which prescribes the manner of service of all notices referred to in the rules, and includes personal service and service by ordinary post.

13. The legislation also requires that, where the EOC issues an enforcement notice, such enforcement notice must be in the prescribed form and served on a person in the prescribed manner. Section 6 of the Formal Investigations Rules prescribes the form of such enforcement notices, which is set out in Schedule 2.

Investigation and Conciliation Rules

14. The Investigation and Conciliation Rules are procedural in nature, and relate to the investigation and conciliation function of the EOC.

15. Pursuant to section 84 of the SDO and section 80 of the DDO, the EOC must investigate and endeavour, by conciliation, to effect a settlement where a complaint in writing has been lodged with it in respect of an alleged unlawful act. Under the legislation, the EOC's power to investigate into acts complained of is for the purpose of conciliation.

16. Under section 88 of the SDO and section 85 of the DDO, the EOC may make rules in respect of a number of matters which relate to the investigation and conciliation process.

17. Pursuant to section 84(2) of the SDO and section 80(2) of the DDO, a representative complaint may be lodged with the EOC in

accordance with rules made by the EOC. Section 88(1)(a) of the SDO and section 85(1)(b) of the DDO provide that the EOC may make rules prescribing who may lodge representative complaints.

18. Section 3 of the Investigation and Conciliation Rules prescribes the persons, and categories of persons, who may lodge such representative complaints with the EOC. It envisages three categories of representative complaints, and allows for non-aggrieved persons to lodge complaints with the consent of the aggrieved person(s). This is to ensure that the objective of conciliation under the legislation is met.

19. Under the legislation, the EOC may decide not to investigate into a complaint where it determines, in accordance with rules made under section 88 of the SDO and section 85 of the DDO, that such complaint should not be a representative complaint. Section 88(1)(e) of the SDO and section 85(1)(c) of the DDO enable the EOC to make rules prescribing matters which are to be taken into account by it in determining whether a complaint should not be a representative complaint.

20. Such matters as are referred to in the preceding paragraph are prescribed in section 4 of the Investigation and Conciliation Rules. Section 4 ensures that any determination by the EOC must be in the interests of justice.

21. The legislation also provides that the EOC may make rules requiring persons to furnish information for the purpose of investigation and conciliation, and allows the EOC to restrict the disclosure of such information.

22. Section 5 of the Investigation and Conciliation Rules provides that where the EOC requires such information to be provided to it, it shall serve a notice in writing on the person to furnish the information specified in the notice at a particular place, time, period or date. The section also prescribes it is an offence for failure to furnish such information, where the failure is without reasonable excuse.

23. Section 6 of the Investigation and Conciliation Rules restricts

disclosure of such information by the EOC and persons connected with the EOC, except in the limited instances set out in section 6, and prescribes it is an offence to disclose such information.

24. Under the legislation, the EOC is also enabled to make rules directing persons to attend conferences for the purpose of investigation and conciliation. Section 7 of the Investigation and Conciliation Rules prescribes the category of persons who may be directed to attend such a conference, by notice in writing, and allows for the EOC to pay the reasonable and necessary travelling expenses for their attendance. The section also prescribes failure to attend a conference, without reasonable excuse, is an offence.

25. The EOC may also make rules regulating the procedure of conferences held for the purpose of investigation and conciliation of complaints. Section 8 of the Investigation and Conciliation Rules prescribes the procedure to be followed at such conferences and ensures that confidentiality and privacy are maintained.

THE CODES

26. In the course of preparing the Codes, the EOC conducted two rounds of consultations in accordance with the provisions under the SDO and DDO. The first round was in August and September 1996, during which employers' and employees' organisations, trade associations, womens' groups, disability groups and other professional and concern groups were consulted on a draft of the Codes. Twelve meetings with over 130 representatives from various organisations were held and 35 written submissions were received thereafter.

27. The draft Codes were revised, based on the comments received during the first round of consultations, and released again for a second round of consultations in September and October 1996. During the second round of consultations, apart from the organisations approached in the first exercise, the 18 District Boards and some political groups were also consulted. In addition, members of the public were invited, through the

mass media, to submit their views to the Commission. A total of 27 meetings were held with organisations, and 70 written submissions were received from 43 organisations and 27 individuals.

28. Useful comments were obtained during the two rounds of consultations, which resulted in a clearer explanation of terms, the inclusion of better illustrative examples, the removal of unnecessary burdens of proof, more comprehensive coverage, a closer correlation with the legal provisions of the Ordinances, improved presentation and a better balance of the interests of employers and employees / job applicants in the final version of the Codes.

29. There were a few areas where many comments were received, one being the difficulty that small businesses may encounter in complying with the good management practices recommended in the Codes. It was argued that small businesses, with less resources and expertise than large businesses and less structured human resources management, are less capable of following all the recommended steps relating to staff recruitment and management. On the other hand, concerns were expressed that no employers, large or small, should be allowed to practise discrimination in employment.

30. The Codes encourage all employers to follow the recommendations contained therein, unless there are justifiable grounds for not doing so (para. 2.3 of each Code). The Codes recognise that small businesses may require simplified procedures and may not always be able to carry out all the recommendations, but require them to ensure that their practices comply with the SDO and DDO and the spirit of the Codes (para. 2.4 of each Code).

31. Another area that attracted divergent comments relates to the principle of equal pay for work of equal value (paras. 12.5 - 12.8 of the Code under the SDO and paras. 13.5 - 13.7 of the Code under the DDO). It was argued that there is a lack of local expertise and established method to assess whether two jobs are of equal value and that, even if there were not, such assessment would be a very complex and costly exercise. On the other hand, there were also submissions that the Codes should stipulate a

time frame within which employers were expected to implement the principle.

32. In view of these limitations, the Codes encourage employers to consider progressive implementation of equal pay for work of equal value and, in particular, encourage large organisations in both the public and private sectors to take the lead (para. 12.8 of the Code under the SDO and para. 13.7 of the Code under the DDO). The EOC has also undertaken to commission a feasibility study next year to study the basis on which the principle of equal pay for work of equal value may be implemented in Hong Kong.

33. A further point that many raised is the need for public education and training. The EOC has already commissioned the development of three training modules: on the promotion of equal opportunities in the workplace between men and women; on sexual harassment; and on understanding the DDO and the provision of facilities for persons with a disability. The EOC is developing a good management practice series consisting of pamphlets on specific topics related to the Codes. The EOC will also develop other education and publicity materials for public dissemination, give talks and organise seminars on the two Ordinances and the Codes for interested audiences.

Equal Opportunities Commission
26 November 1996

LegCo Paper No. CB(2) 723/96-97
(These minutes have been seen by
the Administration and Equal
Opportunities Commission)

Ref : CB2/SS/2/96

**Subcommittee on the Rules and Codes of Practice on Employment
under the Sex Discrimination Ordinance and
the Disability Discrimination Ordinance
gazetted on 15 November 1996 and
Resolution under Section 89 of the Sex Discrimination Ordinance**

**Minutes of the Meeting
held on Thursday, 28 November 1996 at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Michael HO Mun-ka (Chairman)
Hon Zachary WONG Wai-yin
Hon James TIEN Pei-chun, OBE, JP
Hon CHAN Yuen-han
Hon LAW Chi-kwong
Hon LEUNG Yiu-chung
Dr Hon John TSE Wing-ling
- Members Absent** : Dr Hon LEONG Che-hung, OBE, JP
Hon Christine LOH Kung-wai
Hon LEE Cheuk-yan
Hon MOK Ying-fan
- Public Officer Attending** : Ms CHANG King-yiu
Principal Assistant Secretary (Home Affairs)³

Action

- Attendance :** **Item II**
by Invitation
- Equal Opportunities Commission
Dr Fanny CHEUNG Mui-ching
Chairperson
- Mr Frederick K S TONG
Director (Disability)
- Miss Alexandra PAPADOPOULOS
Legal Adviser
- Miss LAM Siu-wai
Senior Equal Opportunities Officer
- Clerk in :** Mrs Anna LO
Attendance Chief Assistant Secretary (2)2
- Staff in :** Mr Stephen LAM
Attendance Assistant Legal Adviser 4
- Mr Colin CHUI
Senior Assistant Secretary (2)2
-

I. Election of Chairman

Mr Michael HO was elected Chairman of the Subcommittee.

II. Briefing by Equal Opportunities Commission (EOC)
(LegCo Paper No CB(2) 542/96-97(02))

2. With reference to its paper at LegCo Paper No CB(2) 542/96-97(02), EOC briefed members on the Rules and Codes of Practice on Employment under the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO) gazetted on 15 November 1996.

3. The salient points of discussion between members and EOC were stated in paragraphs 4 - 15.

Action

Sex Discrimination (Investigation and Conciliation) Rules (L.N. 473 of 1996)

Representative complaints
(Section 3 of the Rules)

4. On the question of who could be representative complainants, EOC stated that section 3(1) of the Rules prescribed the persons, and categories of persons, who might lodge representative complaints which had to meet the four requirements under section 3(2) of the Rules. Section 4 of the Rules empowered EOC to determine that any complaint lodged with it should not be a representative complaint. Such determination had to be in the interests of justice for any of the reasons set out at section 4(2) of the Rules.

Directions to attend conference
(Section 7 of the Rules)

5. EOC pointed out that section 7(2) of the Rules prescribed the persons who might be directed to attend conference for the purpose of investigation and conciliation. EOC would pay the reasonable and necessary travelling expenses for their attendance. The conference venue could be anywhere agreed by the parties concerned.

Disability Discrimination (Formal Investigation) Rules (L.N. 474 of 1996)

EOC 6. ALA4 pointed out that, under para 2 of Schedule 1 to the Disability Discrimination (Formal Investigation) Rules, reference to section 64(1) of DDO should be changed to section 67(1) of SDO. EOC agreed to move a resolution to effect this legislative amendment.

Codes of Practice on Employment under SDO and DDO

"Exception where sex is a Genuine Occupational Qualification (GOQ)"
(para 10.6.7 of the Code under SDO)

EOC 7. Members considered that the references to a person of a particular sex made in this paragraph should be neutralised. EOC responded that it had no objection to the proposed changes, if any.

Action

Equal pay for work of equal value

(Para 12.5 - 12.8 of the Code under SDO and
para 13.5 - 13.7 of the Code under DDO)

8. Members had divergent views on the principle of equal pay for work of equal value and its implementation. The majority of members supported the principle, but had different views on the time frame within which employers were expected to implement the principle. They were particularly concerned about the provisions in para 12.8 of the Code under SDO and para 13.7 of the Code under DDO which stated, inter alia, "Employers should maintain the principle of equal pay for equal work and are encouraged to *consider progressive implementation of equal pay for equal value*". There were various proposals to amend the words in italics as follows -

- (a) delete the word "consider";
- (b) substitute the words with:
"adopt active measures to implement";
"implement as soon as possible"; or
"consider in the near future progressive implementation of".

9. Mr James TIEN pointed out that the Hong Kong General Chamber of Commerce and Hong Kong Federation of Employers, whilst supporting equal pay for equal work, were not agreeable to the provisions on equal pay for work of equal value. Moreover, overseas countries had experienced difficulties in implementing the principle of equal pay for work of equal value. He therefore proposed the deletion of all the provisions on this principle in the Codes.

10. EOC explained that, in view of the limitations set out at para 31 of its paper, the Codes encouraged employers to consider progressive implementation of equal pay for work of equal value and, in particular, encouraged large organisations in both the public and private sectors to take the lead. EOC had also undertaken to commission a feasibility study in 1997 to study the basis on which the principle of equal pay for work of equal value might be implemented in Hong Kong. The study would cover the following aspects:

- (a) local and overseas experience in implementing such principle;
- (b) employment situation in Hong Kong;
- (c) advantages and disadvantages of methods to implement the principle;
and

Action

(d) methods to be adopted in Hong Kong and the expertise required.

50C EOC would put forward suggestions for employers to implement the principle after completion of the study.

Considerations for individual differences in pay
(Para 12.12 of the Code under SDO and
para 13.8 of the Code under DDO)

11. EOC stated that the considerations at para 12.12 of the Code under SDO and para 13.8 of the Code under DDO were useful in dealing with individual complaint cases on differences in pay for equal work or work of equal value.

12. Some members were concerned about the relevance of “the existence of internal labour shortage in a particular job classification” and “economic factors, such as a temporary shortage in a particular type of skilled labour” in considering differences in pay for equal work. ALA4 said that the two considerations were relevant when there was a GOQ for a particular job classification. For example, the two considerations were relevant to explain the higher pay for female counsellors if sex was a GOQ for counsellors (i.e. male and female counsellors were required for clients of the respective sex) and there was a greater market demand for female counsellors. EOC agreed with ALA4’s explanation but pointed out that a GOQ was not relevant in explaining differences in pay for work of equal value which implied at least two job classifications. The two considerations arose from internal and external demands respectively and the example of the consideration of “economic factors”, i.e. a temporary shortage in a particular type of skilled labour, was only relevant in considering differences in pay for work of equal value.

Workplace policies
(Para 12.15.4 of the Code under SDO)

13. Mr LEUNG Yiu-chung considered that employers should consult their employees when introducing grooming codes. The words “where practicable” should therefore be deleted. EOC explained that these words allowed flexibility to cater for the different circumstances of various employers. In situations where the dress code of an international company was determined at its overseas head office and was part of the company’s franchise, there would be little scope for staff consultation. EOC had balanced the interests of the employers and employees. Consultees in the two rounds of consultations did not raise any objection to this provision of the Code. Employers would be disadvantaged in defending themselves in court if the words were deleted. Dr LAW Chi-kwong opined that the words could be retained unless, with these words, employers could abuse the provision to the disadvantages of employees.

Action

Guidelines for grievance procedures
(para 15 of the Code under SDO)

14. EOC said that, according to para 15.1.2 of the Code under SDO, employers could designate either an internal grievance procedure or an officer to deal with complaints concerning sex discrimination, sexual harassment or victimisation within an organisation. Such options were necessary in view of employers' different circumstances, e.g. small employers who were unable to draw up an internal grievance procedure might designate a complaint-handling officer. The complaint-handling officer was the one responsible for handling complaints and could have other supporting staff to help him/her discharge such duties. In reply to the question whether it was a good management practice for a large employer to designate an officer to deal with such complaints rather than an internal grievance procedure, EOC stressed that the options allowed flexibility to cater for different circumstances of employers and pointed out that the court had jurisdiction to decide whether a complaint-handling officer was sufficient having regard to the circumstances of the employer concerned.

Public education and training

15. EOC briefed members on its public education and training programmes set out at para 33 of its paper. Mr James TIEN said that the Hong Kong General Chamber of Commerce would organise seminars to assist small- or medium-sized organisations to understand and comply with the Codes.

III. Briefing by the Administration

Sex Discrimination (Proceedings by the Equal Opportunities Commission) Regulation

16. Ms CHANG King-yiu went over the LegCo Brief on the Sex Discrimination (Proceedings by the Equal Opportunities Commission) Regulation. She pointed out that EOC did not intend to seek damages. The Administration would not include damages as a remedy provided that this would not affect the availability of alternative remedies including declarations and injunctions.

17. ALA4 pointed out that he was discussing with the Administration on this point and other drafting issues. He would provide members with his correspondence with the Administration on these issues.

Action

(Post-meeting note: The Administration agreed to take out paragraph 3(b) (on damages) of the Regulation. The exchange of correspondence between ALA4 and the Administration was circulated to members vide LegCo Paper No. CB(2) 579/96-97.)

IV. Conclusion

18. ALA4 pointed out that any amendment to the Rules and Codes of Practice studied by the Subcommittee had to be put forward to the LegCo within the scrutiny period ending on 18 December 1996. The deadline for notice of amendment was 11 December 1996, if the scrutiny period was not extended. There was no such time limit for the study of the Regulation since the Administration, as requested by Members at the House Committee meeting on 22 November 1996, had withdrawn its motion to move the Regulation on 18 December 1996. Nevertheless, the effective date of the Regulation should be in line with that of the Rules and Code of Practice under SDO.

19. Members supported the Rules and Regulation, subject to the technical amendments mentioned in paras 6, 16 and 17 above. As members present generally supported the Codes of Practice, save for a few provisions on which there would not be consensus, they agreed to endorse the Codes in order not to delay their commencement before the end of the year. In the circumstances, it was not necessary to extend the scrutiny period of the Rules and Codes of Practice as suggested by the House Committee on 22 November 1996. Individual members who would like to move amendments to the Codes of Practice could do so in his own name within the scrutiny period of the Codes.

20. In case it was necessary, a tentative meeting was scheduled on 3 December 1996 at 10:45 a.m. in Conference Room A of the Legislative Council Building. Subject to no further views to the contrary from members, the Subcommittee would report back to the House Committee on 6 December 1996 supporting the Rules, Codes of Practice and Regulation.

(Post-meeting note: On the instruction of the Chairman, the tentative meeting was not required and thus cancelled. The Subcommittee report was endorsed at the House Committee meeting on 6 December 1996.)

21. Ms CHANG King-yiu said that the Administration would revert to its original proposal to move the resolution on the Regulation on 18 December 1996, with a view to bringing the Regulation into operation on 20 December 1996, when the remaining provisions of SDO would take effect. She would address ALA4's concerns and provide members with the revised version of the Regulation.

Action

(Post-meeting note: The revised version of the Regulation was circulated to members vide Appendix II to LegCo Paper No. CB(2)590/96-97.)

22. The meeting ended at 5:05 pm.

LegCo Secretariat

13 December 1996

Ref : CB2/SS/2/96
Tel : 2869 9252
Date : 30 November 1996
From : Chief Assistant Secretary (2) 2
To : Hon Michael HO Mun-ka (Chairman)
Dr Hon LEONG Che-tung, OBE, JP
Hon Zachary WONG Wai-yin
Hon Christine LOH Kung-wai
Hon James TIEN Pei-chun, OBE, JP
Hon LEE Cheuk-yan
Hon CHAN Yuen-han
Hon LAW Chi-kwong
Hon LEUNG Yiu-chung
Hon MOK Ying-fan
Dr Hon John TSE Wing-ling

**Subcommittee on the Rules and Codes of Practice on Employment
under Sex Discrimination Ordinance and
Disability Discrimination Ordinance
gazetted on 15 November 1996 and
Resolution under Section 89 of Sex Discrimination Ordinance**

At its meeting on 28 November 1996, the Subcommittee has studied the captioned Rules, Codes of Practice and Regulation. Apart from some technical amendments, the Rules and Regulation are in order. The Codes of Practice are generally acceptable, except some provisions on which the Subcommittee has no consensus. In order not to delay the commencement of the Codes of Practice and in view of the fact that amendments can be made to these Codes at any time by resolution, the Subcommittee has decided to let them go. In the circumstances, it will not be necessary to extend the scrutiny period of the subsidiary legislation and resolution in question. Individual Members of the Subcommittee who would like to move amendments to these Rules, Codes of Practice and Regulation could do so in his own name. The deadline for amendments is 11 December 1996.

2. In case it is necessary, a tentative meeting is scheduled on 3 December 1996 at 10.45 am in Conference Room A.

3. If there are no further views to the contrary from Members by 3 December 1996, the Subcommittee will submit its report to the House Committee on 6 December 1996.

4. Also attached for Members' information is the exchange of correspondence between our Assistant Legal Adviser and the Administration on the Sex Discrimination (Proceedings by the Equal Opportunities Commission) Regulation dated 19, 20, 22 and 29 November 1996.



(Mrs Anna LO)
Chief Assistant Secretary (2) 2

Encls.

c.c. ALA4

Sub/96/1202/CB(2)/79

來函編號 Your Ref:
本函編號 Our Ref: LS/S/15/96-97
電 話 Tel: 2869 9468
圖文傳真 Fax: 2877 5029

立法局書寫處法律事務部
Legislative Council Secretariat
Legal Service Division

19 November 1996

Secretary for Home Affairs
Home Affairs Branch
31/F, Southorn Centre
130 Hennessy Road
Wanchai
Hong Kong

(Attn : Ms Chang King-yiu)

Dear Ms Chang,

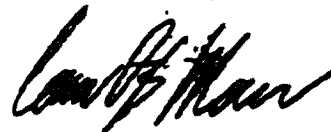
**Sex Discrimination
(Proceedings by the Equal Opportunities Commission) Regulation**

We are scrutinising the legal and drafting aspects of the Regulation. We should be grateful for your comments on the following points -

- (a) What is the legal justification for empowering the EOC to apply for damages in respect of injury suffered by a person who has not brought proceedings under section 76(1) of the SDO?
- (b) Who will be the ultimate beneficiary of the damages awarded to the EOC under section 3(b) of the Regulation?

Upon request in your letter of 14 November 1996 to our Mrs Justina Lam, this item will be discussed by Members at the House Committee meeting to be held on 22 November 1996. In order to facilitate our report to the meeting, it is appreciated for your reply by close of play today.

Yours sincerely,



(Stephen LAM)
Assistant Legal Adviser

布政司署
政務科
香港灣仔
奕業街一百三十號
律政中心
三十一樓



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

傳真 OUR REF. : KAS/CE/1/2/96

電話 YOUR REF : LS/14/96-97

電話 TEL NO. : 2835 1373

傳真 FACSIMILE : 2591 6002

20 November 1996

Mr Stephen LAM
Legal Service Division
Legislative Council Secretariat
8 Jackson Road
Central
Your faxline : 2877 5029

Dear Mr Lam,

**Sex Discrimination
(Proceedings by the Equal Opportunities Commission) Regulation**

I refer to your letter of 19 November.

Our intention is to specify in the Regulation that all remedies available to a claimant in relation to a tort under section 76(3) of the Sex Discrimination Ordinance should be obtainable by the Equal Opportunities Commission. Hence the inclusion of the remedy of damages. Nevertheless, the Commission has advised that it would not seek compensatory damages in respect of 'injury' suffered by a person by virtue of unlawful conduct under the Ordinance. It is also unlikely that a court would award the Commission such damages.

Notwithstanding the above, as injunctions and declarations are, according to legal advice, discretionary remedies alternative to damages, it is necessary to include damages as a remedy to ensure that these alternative remedies will be obtainable by the Commission.

Yours sincerely,

(Ms CHANG King-yiu)
for Secretary for Home Affairs

URGENT BY FAX No. : 25916002

⑬

來函編號 Your Ref:
本署編號 Our Ref: LS/S/15/96-97
電 話 Tel: 2869 9468
傳真號碼 Fax: 2877 5029

立法局秘書處法律事務部
Legislative Council Secretariat
Legal Service Division

CA3(2)Z

Ms Anne LO

22 November 1996

Secretary for Home Affairs
Home Affairs Branch
31/F, Southern Centre
130 Hennessy Road
Wanchai
Hong Kong

(Attn : Ms Chang King-yiu)

Dear Ms Chang,

**Sex Discrimination
(Proceedings by the Equal Opportunities Commission) Regulation**

Thank you for your letter of 20 November 1996.

We should be grateful for your further clarification on the points below -

Paragraph 2 of your letter

Are you saying that the EOC will only be seeking exemplary damages?

Paragraph 3 of your letter

Section 17 of the Supreme Court Ordinance (Cap. 4) provides that -

"Where the Court of Appeal or the High Court has jurisdiction to entertain an application for an injunction or specific performance, it may award damages in addition to, or in substitution for, an injunction or specific performance."

Hence, it is clear that the High Court has power to grant an injunction in addition to or in substitution for damages.

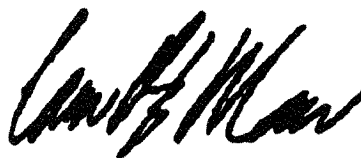
Order 15, rule 16 of the Rules of Supreme Court Ordinance (Cap. 4 sub. leg.) provides that -

"No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed."

Hence, it is clear that a court will not refuse to grant a successful party to proceedings a declaration as to his rights because he is seeking or could seek alternative remedies, including a claim for damages.

From the above analysis, it is apparent that under the existing law, the court may grant an injunction or a declaration in addition to or in substitution for damages. Therefore, I wonder whether or not it is necessary, from a legal point of view, to include section 3(a) and (b) in the proposed Regulation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Stephen Lam', written in a cursive style.

(Stephen LAM)
Assistant Legal Adviser

布政司署
政務科
香港灣仔
軒尼詩道一百三十號
政府中心
三十一樓



GOVERNMENT SECRETARIAT
HOME AFFAIRS BRANCH
31ST FLOOR, SOUTHERN CENTRAL
138 HENNESSY ROAD,
WAN CHAI
Hong Kong

本署編號 OUR REF. : HAB/CR/1/2/38

閣下編號 YOUR REF. :

電話 TEL. NO. : 2835 1373

傳真 FAX. NO. : 2591 6002

29 November 1996

Mr Stephen Lam,
Legal Service Division,
Legislative Council Secretariat,
8 Jackson Road,
Central

Dear Mr Lam,

**Sex Discrimination
(Proceedings by the Equal Opportunities Commission) Regulation**

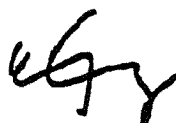
I refer to your letter of 22 November and the meeting of the Legislative Council Sub-committee on 28 November 1996.

Our legal adviser has now confirmed that injunctions and declarations will be obtainable by the Equal Opportunities Commission (EOC) even without the specification of damages as a remedy under the Regulation. As the EOC has advised earlier that they do not intend to seek damages under the Sex Discrimination Ordinance, we agree to take out paragraph 3(b) (on damages) of the Regulation but retain paragraph 3(a) to make it clear that injunctions and declarations are obtainable by the Commission.

/.....

As the Sub-committee decided not to extend the examination period of the EOC's Codes of Practice on Employment, we will revert to our original proposal to move the resolution on the Regulation on 18 December 1996, with a view to bringing the Regulation into operation on 20 December 1996, when the remaining provisions of the Sex Discrimination Ordinance will take effect.

Yours sincerely,



(Ms CHANG King-yiu)
for Secretary for Home Affairs

LEGCO QUESTION NO.2 (ORAL QUESTION)

Date of sitting: 4 December 1996

Asked by: Hon Lau Chin-shek

Replied by : SHA

Question:

In view of the extension of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to Hong Kong on 14 October this year, will the Government inform this Council:

- a) whether it will introduce relevant legislation in order to comply with the spirit of Article 11.1(d) of the CEDAW regarding the right to "equal remuneration.....in respect of work of equal value";
- b) given the fact that each signatory state to the CEDAW is required to submit its first report on the status of women in its country one year after signing the Convention, whether the first such report on Hong Kong will be submitted next year by the British Government, the Hong Kong Special Administrative Region (HKSAR) Government or the Chinese Government; and
- c) whether the Sino-British Joint Liaison Group has deliberated on the respective roles of the HKSAR Government and the Chinese Government regarding the submission of reports on the status of women in Hong Kong after the change of sovereignty?

Reply:

Mr President,

Pursuant to the agreement reached at the 37th plenary session of the Joint Liaison Group, the United Nations have been notified of the extension to Hong Kong of the Convention on the Elimination of All Forms of Discrimination Against Women, which many refer to as the CEDAW. The extension took effect on 14 October 1996.

(a) Article 11.1 of the CEDAW requires States Parties to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure the equality of men and women. In anticipation of the extension of the Convention to Hong Kong, the Sex Discrimination Ordinance was enacted in July last year. The Ordinance specifically prohibits discrimination against women in the field of employment. Article 11.1(d) of the CEDAW refers to the need to ensure 'the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value'. In this regard, under section 69 of the Sex Discrimination Ordinance, the Equal Opportunities Commission has prepared a Code of Practice on Employment which provides practical guidance covering, inter alia, the specific requirement for the right to equal pay for work of equal value. The Code has been tabled in this Council and is currently being examined by a Sub-committee.

(b)&(c) Under the Convention, States Parties undertake to submit to the Secretary-General of the United Nations periodic reports on measures which they have adopted to give effect to the provisions of the Convention and on the progress made. In the case of Hong Kong, the first report will be due in mid October 1997. In accordance with the agreement reached at the Sino-British Joint Liaison Group, for reports on Hong Kong which are due after 30 June 1997, the Hong Kong Special Administrative Region Government will submit a draft report to the Central People's Government of China and that the report will be incorporated into and form part of the report to be submitted to the United Nations by China, who is a State Party to CEDAW.

The Legislative Council

LegCo Paper No. CB(3) 305/96-97

Ref. : CB(3)/M/OR
Tel : 2869 9205
Date : 5 December 1996
From : Clerk to the Legislative Council
To : Members of the Legislative Council

Sitting on 18 December 1996

Motion under the Sex Discrimination Ordinance (Cap 480)

I forward for Members' consideration a resolution which the Secretary for Home Affairs will move on 18 December 1996 under the Sex Discrimination Ordinance (Cap 480).

2. The speech, in both English and Chinese versions, which the Secretary for Home Affairs will deliver when moving the motion, is also attached.



(Ray CHAN)
for Clerk to the Legislative Council

Encl.

立法局

立法局 CB(3)305/96-97 號文件

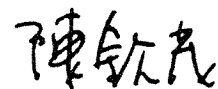
檔號： CB(3)/M/OR
電話： 2869 9205
日期： 一九九六年十二月五日
由： 立法局秘書
致： 立法局各議員

一九九六年十二月十八日
立法局會議

就《性別歧視條例》(第 480 章) 動議的議案

政務司擬於一九九六年十二月十八日立法局會議席上根據《性別歧視條例》動議決議案。現謹將有關決議案奉上，以供考慮。

2. 政務司在動議上述議案時將會發表的演辭的中英文稿本亦一併附上。



立法局秘書
(陳欽茂代行)

連附件

SEX DISCRIMINATION ORDINANCE

RESOLUTION

(Under section 89 of the Sex Discrimination Ordinance
(Cap. 480))

RESOLVED that the Sex Discrimination (Proceedings by Equal
Opportunities Commission) Regulation, made by the Secretary
for Home Affairs on 3 December 1996, be approved.

性別歧視條例

決議

(根據《性別歧視條例》(第480章)第89條)

議決批准政務司於1996年 12月 3日訂立的《性別歧視(平等機會委員會提出的法律程序)規例》。

**SEX DISCRIMINATION (PROCEEDINGS BY EQUAL
OPPORTUNITIES COMMISSION) REGULATION**

(Made under section 89 of the Sex Discrimination Ordinance
(Cap. 480) subject to the approval of the
Legislative Council)

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice in the Gazette.

**2. Circumstances in which Commission
may bring proceedings**

The circumstances in which the Commission may bring proceedings for the purposes of section 76(1) of the Ordinance (as if it were a person who may have brought proceedings under that section but has not done so), are where -

(a) the case raises a question of principle; and

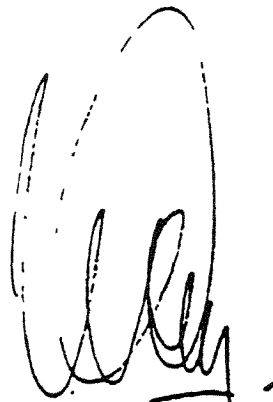
(b) it is in the interests of justice to do so,

and it appears to the Commission that the claim of the person is well founded.

**3. Remedies Commission may seek
in proceedings brought by it**

In any proceedings brought under section 2, the Commission may apply for any remedy available to a claimant under section 76(3) of the Ordinance including a declaration that the act which is the subject of the proceedings is an

unlawful act or an injunction in respect of such act or both a declaration and an injunction.



Secretary for Home Affairs.

3 December 1996.

Explanatory Note

Section 76 of the Sex Discrimination Ordinance (Cap. 480) sets out the matters in respect of which a person may bring civil proceedings under that Ordinance. Section 89 empowers the Secretary for Home Affairs to specify in regulations -

- (a) the circumstances in which the Equal Opportunities Commission may bring proceedings if a person who is entitled to bring proceedings under section 76 does not do so; and
- (b) the remedies which the Equal Opportunities Commission may seek to obtain in such proceedings.

2. Accordingly, this Regulation empowers the Equal Opportunities Commission -

- (a) to bring such proceedings where a question of principle is involved and it is in the

interests of justice to do so and it appears
that the claim is well founded; and

- (b) in any such proceedings to seek an injunction
or a declaration or both.

性別歧視(平等機會委員會提出的法律程序)規例

(在立法局批准下根據〈性別歧視條例〉
(第480章)第89條訂立)

1. 生效日期

本規例自政務司以憲報公告指定的日期起實施。

2. 委員會可提出法律程序的情況

委員會可為施行本條例第76(1)條而提出法律程序(猶如委員會是根據該條可提出法律程序但沒有這樣做的人一樣)的情況為下列情況——

(a) 該案帶出一個原則問題；及

(b) 為公正起見應提出法律程序，

並且委員會覺得該人的申索具備充分理由。

3. 委員會在其提出的法律程序中
可尋求的補救

在根據第2條提出的法律程序中，委員會可申請申索人根據本條例第76(3)條可獲得的補救，包括作出指該法律程序的標的作為是違法作為的宣布，或就該作為而作出強制令，或既作出宣布，又作出強制令。

政務司

1996年 12月 3日

註釋

根據《性別歧視條例》(第480章)，有關人士可就某些事宜提出民事法律程序，而該條例第76條將該等事宜列明。第89條授權政務司訂立規例，指明——

- (a) 在某人有權根據第76條提出法律程序但沒有這樣做的情況下，平等機會委員會可提出法律程序的情況；及
- (b) 平等機會委員會在該等法律程序中可尋求獲得的補救。

2. 據此，本規例授權平等機會委員會作出下列事項——

- (a) 凡涉及原則問題和為公正起見應提出法律程序，並且凡委員會覺得該申索具備充分理由，平等機會委員會可提出該等法律程序；及
- (b) 平等機會委員會可在該等法律程序中尋求作出強制令或宣布或作出兩者。

Speech by SHA
(18 December 1996)

**Sex Discrimination
(Proceedings by the Equal Opportunities Commission) Regulation**

Mr President,

I move the resolution standing in my name on the Order Paper. The resolution is to the effect that the Sex Discrimination (Proceedings by the Equal Opportunities Commission) Regulation made under section 89 of the Sex Discrimination Ordinance be approved.

2. The Sex Discrimination (Proceedings by the Equal Opportunities Commission) Regulation, if passed, will enable the Equal Opportunities Commission to bring court proceedings in its own name when it appears to the Commission that the claim is well founded, and where the case raises a question of principle and it is in the interests of justice to do so.

3. The Regulation will also enable the Commission in any such proceedings to seek a declaration that the act which is the subject of the proceedings is an unlawful act or an injunction in respect of such act or both.

4. Mr President, I beg to move.

政務司致辭全文

(一九九六年十二月十八日)

〈性別歧視(平等機會委員會提出的法律程序)規例〉

主席先生：

我謹依照議事程序表，動議通過我名下的決議案。提出這個決議案是爲了尋求議員批准根據〈性別歧視條例〉第 89 條所訂立的〈性別歧視(平等機會委員會提出的法律程序)規例〉。

2. 〈性別歧視(平等機會委員會提出的法律程序)規例〉如獲得通過，平等機會委員會便可以在認爲有關申索個案具備充分理由、有關個案涉及原則問題，以及提出訴訟是爲求公正時，以委員會的名義提出法律程序。

3. 上述規例亦使該委員會可在該等法律程序中尋求作出指法律程序所涉及的作爲是違法作爲的宣布或針對有關作爲的強制令或作出兩者。

4. 主席先生，我謹提出動議。

**Paper for the House Committee Meeting
on 6 December 1996**

**Legal Service Division Report on
Resolution under Section 89 of the
Sex Discrimination Ordinance (Cap. 480)**

Members will recall that the Secretary for Home Affairs gave notice on 20 November 1996 to move the above resolution at the Legislative Council sitting to be held on 18 December 1996. However, in light of the forming of a subcommittee to study the resolution and Rules and Codes of Practice under the two anti-discrimination Ordinances, the Administration has deferred moving the resolution until the subcommittee has completed its study. Now, the subcommittee has completed the study of the resolution, Rules and Codes of Practice.

2. The Secretary for Home Affairs has given notice to move the above resolution on 18 December 1996 to seek Legislative Council's approval of the Sex Discrimination (Proceedings by Equal Opportunities Commission) Regulation made by the Secretary for Home Affairs.

3. Under section 89 of the Sex Discrimination Ordinance (Cap. 480) ("the Ordinance"), the Secretary for Home Affairs is empowered to make regulations specifying, inter alia -

- (a) the circumstances in which the Equal Opportunities Commission ("the EOC") may bring proceedings if a person who is entitled to bring proceedings under section 76 of the Ordinance (claims under Part III or IV) does not do so; and
- (b) the remedies which the EOC may seek to obtain in such proceedings.

4. This Regulation specifies that -

- (a) the EOC may bring proceedings referred to in paragraph 2(a) above where the case raises a question of principle, it is in the interests of justice to do so, and it appears to the Commission that the claim is well founded; and

- (b) in any such proceedings the EOC may apply for any remedy obtainable by a claimant in the High Court, including a declaration or an injunction or both

5 Members may note that, in the previous motion, the Regulation proposed that the EOC may apply for any remedy obtainable by a claimant in the High Court, including a declaration, an injunction and damages. As a result of our enquiries, the Administration has agreed that it is not necessary to include damages as a remedy in the Regulation because the EOC does not intend to seek damages in such proceedings under the Ordinance.

6 The legal and drafting aspects of the resolution are in order.

Prepared by

LAM Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
3 December 1996

CB2/SS/2/96

**Paper for the House Committee Meeting
on 6 December 1996**

**Report of the Subcommittee
on the Rules and Codes of Practice on Employment
under the Sex Discrimination Ordinance and
the Disability Discrimination Ordinance
gazetted on 15 November 1996 and
Resolution under Section 89 of the Sex Discrimination Ordinance**

Purpose

This paper reports on the deliberations of the Subcommittee on the Rules and Codes of Practice on Employment under the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO) gazetted on 15 November 1996 and Resolution under Section 89 of the SDO.

Background

The Rules

2. There are four sets of rules made by the Equal Opportunities Commission (EOC) under section 88 and section 85 of SDO and DDO respectively. They are -

- (a) the Sex Discrimination (Formal Investigations) Rules;
- (b) the Sex Discrimination (Investigation and Conciliation) Rules;
- (c) the Disability Discrimination (Formal Investigations) Rules; and
- (d) the Disability Discrimination (Investigation and Conciliation) Rules.

The two sets of Rules under SDO are almost identical to those two under DDO. These Rules are necessary for standardising the operating procedures of EOC's functions. The Formal Investigations Rules are prescriptive in nature and arise out of the formal investigation function of EOC. The Investigation and Conciliation Rules are procedural in nature and relate to the investigation and

conciliation function of EOC. The Rules will come into operation on 20 December 1996.

The Codes

3. Under section 69 of SDO and section 65 of DDO, EOC may issue codes of practice for the elimination of discrimination. The Codes of Practice on Employment under SDO and DDO provide detailed explanations on the unlawful acts and certain key expressions under the two Ordinances, recommend good management practices which will help to prevent or eliminate discrimination and other unlawful acts in employment, and set out the responsibilities of employers and employees under the Ordinances. The two Codes are substantially the same.

4. A failure on the part of a person to observe the Codes does not render him liable in any proceedings. But in any proceedings under SDO or DDO, relevant provisions of the Codes shall be admissible in evidence for the determination of any questions arising from the proceedings.

5. Two rounds of consultations on the Codes were conducted by EOC and the LegCo Panel on Home Affairs was consulted in the second round.

Sex Discrimination (Proceedings by the Equal Opportunities Commission) Regulation

6. Section 89 of SDO provides that the Secretary for Home Affairs may make regulation to empower EOC to bring court proceedings in its own name where the case raises a question of principle and it is in the interests of justice to do so. The Secretary intends to bring into effect the Regulation at the same time as the Codes of Practice on Employment.

The Subcommittee

7. At the House Committee meeting on 22 November 1996, Members agreed to form a subcommittee to study the Rules, Codes and Regulation. Under the chairmanship of Hon Michael HO, the Subcommittee has held one meeting with EOC and the Administration. The membership list of the Subcommittee is at **Appendix I**.

Deliberations of the Subcommittee

The Rules

8. After clarification on two sections of the Sex Discrimination (Investigation and Conciliation) Rules, namely section 3 on representative complaints and section 7 on directions to attend conference, members support the four sets of Rules, subject to the amendment mentioned in paragraph 9.

9. The inappropriate reference to section 64(1) of DDO in paragraph 2 of Schedule 1 to the Disability Discrimination (Formal Investigation) Rules (L.N. 474 of 1996) should be amended to section 67(1) of SDO. EOC has agreed to move a resolution to effect this legislative amendment.

The Codes

Issues of Concern

Exception where sex is a Genuine Occupational Qualification (GOQ)
(Para 10.6.7 of the Code under SDO)

10. Members consider that the references to a person of a particular sex made in this paragraph should be neutralised. EOC has no objection to this proposal.

Equal pay for work of equal value
(Para 12.5 - 12.8 of the Code under SDO and
para 13.5 - 13.7 of the Code under DDO)

11. Members have divergent views on the principle of equal pay for work of equal value and its implementation. The majority of members support the principle, but have different views on the time frame within which employers are expected to implement the principle. They are particularly concerned about the provisions in para. 12.8 of the Code under SDO and para. 13.7 of the Code under DDO which state, inter alia, "Employers should maintain the principle of equal pay for equal work and are encouraged to *consider progressive implementation of equal pay for equal value*". There are various proposals to amend the words in italics as follows -

- (a) delete the word "consider";
- (b) substitute the words with:
 - "adopt active measures to implement";
 - "implement as soon as possible"; or
 - "consider in the near future progressive implementation of".

12. A member points out that the Hong Kong General Chamber of Commerce and Hong Kong Federation of Employers, whilst supporting equal pay for equal work, are not agreeable to the provisions on equal pay for work of equal value. Moreover, overseas countries have experienced difficulties in implementing the principle of equal pay for work of equal value. He therefore proposes the deletion of all the provisions on this principle in the Codes.

13. EOC realises that there is a lack of local expertise and established method to assess whether two jobs are of equal value and such assessment will be a very complex and costly exercise. In view of these limitations, the Codes encourage employers to consider progressive implementation of equal pay for work of equal value and, in particular, encourage large organisations in both the public and private sectors to take the lead. EOC has undertaken to commission a feasibility study in 1997 to study the basis on which the principle of equal pay for work of equal value may be implemented in Hong Kong.

Considerations for individual differences in pay
(Para 12.12 of the Code under SDO and
para 13.8 of the Code under DDO)

14. Some members have expressed concern in the relevance of the considerations of “the existence of internal labour shortage in a particular job classification” and “economic factors, such as a temporary shortage in a particular type of skilled labour” in considering differences in pay for equal work or work of equal value.

Workplace policies
(Para 12.15.4 of the Code under SDO)

15. A member considers that employers *should* consult their employees when introducing grooming codes. The words “where practicable” should therefore be deleted. EOC explains that these words allow flexibility to cater for the different circumstances of various employers.

16. EOC is studying the LegCo Legal Service Division’s comments on the Chinese text of the Codes. Appropriate amendments will be moved accordingly.

Conclusion

17. In view of the fact that members present at the meeting generally support the Codes of Practice, save for a few provisions on which there will not be consensus, they agree to endorse the Codes in order not to delay their commencement before the end of the year. Individual members who would

like to move amendments could do so in his own name within the scrutiny period of the Codes. The deadline for notice of amendments is 11 December 1996.

Sex Discrimination (Proceedings by the Equal Opportunities Commission) Regulation

18. As EOC does not intend to seek damages under SDO, it is agreed to take out section 3(b) (on damages) of the Regulation. A motion on the revised Regulation at **Appendix II** will be moved by the Secretary for Home Affairs at the LegCo sitting on 18 December 1996. (The motion on the original Regulation has been withdrawn.)

Recommendation

19. The Subcommittee recommends to support the Rules, Codes and Regulation. In the circumstances, it is not necessary to extend the scrutiny period of the Rules and Codes as suggested by the House Committee on 22 November 1996.

Advice Sought

20. Members are invited to support the recommendation of the Subcommittee at paragraph 19 above.

LegCo Secretariat
5 December 1996

**Subcommittee on the Rules and Codes of Practice on Employment
under the Sex Discrimination Ordinance and
the Disability Discrimination Ordinance
gazetted on 15 November 1996 and
Resolution under Section 89 of the Sex Discrimination Ordinance**

Membership List

Hon Michael HO Mun-ka (Chairman)

Dr Hon LEONG Che-hung, OBE, JP

Hon Zachary WONG Wai-yin

Hon Christine LOH Kung-wai

Hon James TIEN Pei-chun, OBE, JP

Hon LEE Cheuk-yan

Hon CHAN Yuen-han

Hon LAW Chi-kwong

Hon LEUNG Yiu-chung

Hon MOK Ying-fan

Dr Hon John TSE Wing-ling

**SEX DISCRIMINATION (PROCEEDINGS BY EQUAL
OPPORTUNITIES COMMISSION) REGULATION**

(Made under section 89 of the Sex Discrimination Ordinance
(Cap. 480) subject to the approval of the
Legislative Council)

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice in the Gazette.

**2. Circumstances in which Commission
may bring proceedings**

The circumstances in which the Commission may bring proceedings for the purposes of section 76(1) of the Ordinance (as if it were a person who may have brought proceedings under that section but has not done so), are where -

- (a) the case raises a question of principle; and
 - (b) it is in the interests of justice to do so,
- and it appears to the Commission that the claim of the person is well founded.

**3. Remedies Commission may seek
in proceedings brought by it**

In any proceedings brought under section 2, the Commission may apply for any remedy available to a claimant under section 76(3) of the Ordinance including a declaration that the act which is the subject of the proceedings is an

unlawful act or an injunction in respect of such act or both a declaration and an injunction.

Secretary for Home Affairs.

1996.

Explanatory Note

Section 76 of the Sex Discrimination Ordinance (Cap. 480) sets out the matters in respect of which a person may bring civil proceedings under that Ordinance. Section 89 empowers the Secretary for Home Affairs to specify in regulations -

- (a) the circumstances in which the Equal Opportunities Commission may bring proceedings if a person who is entitled to bring proceedings under section 76 does not do so; and
- (b) the remedies which the Equal Opportunities Commission may seek to obtain in such proceedings.

2. Accordingly, this Regulation empowers the Equal Opportunities Commission -

- (a) to bring such proceedings where a question of principle is involved and it is in the

interests of justice to do so and it appears
that the claim is well founded; and

- (b) in any such proceedings to seek an injunction
or a declaration or both.

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
Carole Petersen
Andrew Byrnes

From : Adam Mayes
(Direct line:2521-6820)

Date : 6/12/96

Total pages : 8 (including this page)

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

I think we should consider regazetting the Bill, incorporating amendments agreed with Admin as well as some other amendments that may be useful. In particular, I recommend we incorporate the amendments below, and would like to know what you think. I put a star by the really important amendments.

2. The amendments agreed with Admin are at Annex A. They are:
 - a) Clauses 7, 8 and 9 — amend them to implement the originally agreed grandfather exception for pre-existing pension schemes;
 - b) Clause 9A — new Clause to create permanent exceptions in respect of double housing benefits, reproductive technology and adoption (the latter 2 items are correspondingly deleted from the existing Scheduled exceptions).
3. There are several amendments that were rejected by Admin, but which may be worth incorporating anyway. They are at Annex B, and serve the following purposes:
 - a) Clause 18, EOC litigation power — delete reference to the Bill of Rights, and substitute language that could encompass judicial review under Chapter III of the Basic Law (what an optimist!).
 - b) Clause 18, EOC litigation power — delete “in such circumstances,” which means nothing and is, I think, a leftover fragment of Sec. 89 of the SDO on which the Clause is based. Instead, substitute the only circumstance actually mentioned in SHA’s regulations under Sec. 89, namely that the “case raise a question of principle”. nb
 - c) Clause 18, EOC intervention power — delete it. Admin sees possible abuse by EOC here; they argue that if a claimant wanted the EOC involved in a case, s/he would’ve asked for assistance, ergo intervention will always be unwelcome to the claimant (no one doubts it will be unwelcome to the respondent). We will have to fight for the litigation power in this Clause, better not to confuse such an important issue by including in the same Clause an intervention power that no one understands.
 - d) Clause 19, EOC power to take over abandoned proceedings — amend to make it subject to court approval and conditions. Admin still opposes it, but it will look better in case Admin moves a CSA to repeal it.

- e) Clause 21, SHA Regulations for EOC litigation — might as well keep it rather than repeal it, since the regs are subject to Legco approval. Clause 18 already ensures that the power arises from the principal ordinance, not the regulations. Amend it to cover proceedings taken over by EOC under Clause 19 as well.
 - f) Clause 29, 39 and 40, repealing DDO Schedule of exceptions — might as well accede to HWB's requests to keep the Schedule, because it's empty now, adding items will require Legco approval, and HWB's been reasonable all along.
4. There are a few amendments that I haven't discussed with Admin. At Annex C, these are:
- a) Clauses 2 and 25, SDO & DDO commencement dates — might as well delete these, since both ordinances should be fully in force by the time the Bill is examined.
 - b) Clauses 7 and 28, small employer exceptions — amend these to repeal the exceptions outright. The Bill now sets their expiry for 14 Jan/3 Feb, which will certainly arrive before the Bill is examined; and enables Legco to extend them by a resolution made *before* they expire, which will be impossible as the Bill won't be enacted in time. I suggest the Bill simply repeal the exceptions as of its enactment. The originally intended Legco debate over extending the exceptions will almost certainly still take place, by way of a debate on an opposing CSA moved by LP or Admin.
 - c) Clause 24, SDO Schedule of exceptions — the whole Sched is set to expire in 1-2 years. Housing Branch has advised that expiry of the HOS exception (item 6 in the Sched) is no longer a problem because they've revamped their policy to avoid discrimination. So why wait, let's delete item 6 with immediate effect. The only items left in the Schedule will be the disciplined services work restrictions (item 1) and the Small House Policy (item 2).

If you agree, I'll make the changes and forward the revised Bill to Admin for comment and to the Law Draftsman for certification.

Thanks and regards,



Recommended amendments agreed with Admin

7. Discrimination against applicants or employees

Section 11 is amended -

(a) [see Annex C]

(ab) 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) see Annex C].

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.”.

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).”.

Recommended amendments discussed but not agreed with Admin

18. Sections added

The following are added -

“82A. Commission may bring proceedings in its own name

(1) Where any person may bring proceedings under section 76(1) but has not done so, the Commission may, in such circumstances if the case raises a question of principle, bring proceedings in its own name as if the Commission were that person.

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

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

~~(b) article VII (5) of the Hong Kong Letters Patent 917 to 1993 as it relates to discrimination on the grounds of sex, marital status or pregnancy.~~

~~(3) In this section, “discrimination” (————) means—~~

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

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

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

This section is without prejudice to the Commission’s power to bring proceedings by way of judicial review pursuant to its functions under section 64(1).

~~82B. Commission may intervene in proceedings~~

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

~~(a) a claim under section 76(1); or~~

~~(b) a declaration of the kind referred to in section 82A(2), is an issue.”.~~

19. 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.”.

21. Regulations to empower Commission to bring certain proceedings

Section 89 is repealed and the following substituted -

“89. Regulations for proceedings by the Commission

- (1) In relation to proceedings by the Commission under section 82A(1) or 85(5A), the Secretary for Home Affairs may make regulations specifying -
- (a) which of the remedies referred to in section 76(3) and (4) are obtainable by the Commission;
 - (b) modifications to which any provisions of this Ordinance (including any subsidiary legislation) are to be read.
- (3) Any regulations made under this section are subject to the approval of the Legislative Council.”.

~~**29. Further exceptions**~~

~~Section 60 is repealed.~~

~~**39. Amendment of Schedules**~~

~~Section 87(2) is amended by repealing everything after “Schedule 3” and substituting “or 4.”.~~

~~**40. Further exceptions to this Ordinance**~~

~~Schedule 5 is repealed.~~

Recommended amendments not previously discussed with Admin

2. ~~Short title and commencement~~

~~Section 1(2) of the Sex Discrimination Ordinance (Cap. 480) is repealed and the following substituted—~~

~~“(2) The Secretary for Home Affairs may, by notice in the Gazette, appoint—~~

~~(a) a day; or~~

~~(b) different days in respect of different provisions,~~

~~for the coming into operation of this Ordinance and such a day, or the later or last of such different days, shall be a day no later than 1 September 1996.~~

~~(3) Subject to subsection (2), this Ordinance shall come into operation on 1 September 1996.”.~~

7. Discrimination against applicants or employees

Section 11 is amended -

(a) by repealing subsections (3), (7), (8) and (9).

(ab) [see Annex A]

~~(b) by repealing subsection (7) and substituting—~~

~~“(7) Subject to subsection (8), subsection (3) shall expire 18 months after the day on which this Ordinance is enacted.”;~~

~~(c) by repealing subsection (9) and substituting—~~

~~“(9) Prior to the expiry of subsection (3) under subsection (7) the Legislative Council may, by resolution, amend subsection (7) to extend subsection (3) for a period of 1 year.”.~~

24. Further exceptions to this Ordinance

Schedule 5 is amended -

(a) in Part 1, in section 1, by repealing the definitions for “allowance”, “benefit” and “reproductive technology procedure”;

(b) in Part 2, by repealing items 3, 4, 5, 6, 7 and 8.

25. ~~Short title and commencement~~

~~Section 1(2) of the Disability Discrimination Ordinance (Cap. 487) is repealed and the following substituted—~~

~~“(2) The Secretary for Health and Welfare may, by notice in the Gazette, appoint—~~

~~(a) a day; or~~

~~(b) different days in respect of different provisions,~~

~~for the coming into operation of this Ordinance and such a day, or the later or last of such different days, shall be a day no later than 1 September 1996.~~

~~(3) Subject to subsection (2), this Ordinance shall come into operation on 1 September 1996.”.~~

28. Discrimination against applicants or employees

Section 11 is amended by repealing subsections (3), (5), (6) and (7).-

~~(a) by repealing subsection (5) and substituting-~~

~~“(5) Subject to subsection (5A), subsection (3) shall expire 18 months after the day on which this Ordinance is enacted.~~

~~(5A) Prior to the expiry of subsection (3) under subsection (5) the Legislative Council may, by resolution, amend subsection (5) to extend subsection (3) for a period of 1 year.”;~~

~~(b) by repealing subsection (7).~~

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 : 6/12/96

Total pages : 4 (including this cover page)

A BILL

To

Make further and better provision for the elimination of discrimination, as regards terms and conditions of employment between men and women.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. Short title

This Ordinance may be cited as the Equal Pay Ordinance 1996.

Sex Discrimination Ordinance

2. Section added

The following is added to Sex Discrimination Ordinance (Cap. 480) -

“76A. Proceedings in respect of equal pay

(1) Schedule 9 shall have effect for purposes of this section.

(2) Where in any proceedings under section 11(1)(b) it is proved that a person has offered employment to a woman at an establishment in Hong Kong on terms that, if accepted, would be modified by operation of an equality clause referred to in Schedule 9, then that person shall be presumed to have discriminated against her.

(3) Where in any proceedings under section 11(2)(b) it is proved that a person has done an act that contravenes a term of a contract under which he employs a woman at an establishment in Hong Kong, being a term modified or included by operation of an equality clause referred to in Schedule 9, then that person shall be presumed to have discriminated against her.

(4) Provisions of this section or of Schedule 9 framed with reference to women and their treatment relative to men shall be read as applying equally in a converse case to men and their treatment relative to women, and for that purpose shall have effect with such modifications as are necessary.”

3. Schedule added

The following is added -

“SCHEDULE 9

[s. 76A]

EQUAL PAY

1. If the terms of a contract under which a woman is employed at an establishment in Hong Kong do not include (directly or by reference to a collective agreement or otherwise) an equality clause they shall be deemed to include one:

2. An equality clause is a provision which relates to terms (whether concerned with pay or not) of a contract under which a woman is employed (the "woman's contract"), and has the effect that -

- (a) where the woman is employed on like work with a man in the same employment -
 - (i) if (apart from the equality clause) any term of the woman's contract is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable; and
 - (ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed, the woman's contract shall be treated as including such a term;
- (b) where a woman is employed on work rated as equivalent with that of a man in the same employment -
 - (i) if (apart from the equality clause) any term of the woman's contract determined by the rating of the work is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable; and
 - (ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed and determined by the rating of the work, the woman's contract shall be treated as including such a term;
- (c) where a woman is employed on work which, not being work in relation to which paragraph (a) or (b) applies, is, in terms of the demands made on her (for instance under such headings as effort, skill and decision), of equal value to that of a man in the same employment -
 - (i) if (apart from the equality clause) any term of the woman's contract is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable; and
 - (ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed, the woman's contract shall be treated as including such a term.

3. An equality clause shall not operate in relation to a variation between the woman's contract and the man's contract if the employer proves that the variation is genuinely due to a material factor which is not the difference of sex and that factor -

- (a) in the case of an equality clause falling within subsection (2)(a) or (b), must be a material difference between the woman's case and the man's; and
- (b) in the case of an equality clause falling within subsection (2)(c), may be such a material difference.

4. A woman is to be regarded as employed on like work with men if, but only if, her work and theirs is of the same or a broadly similar nature, and the differences (if any) between the things she does and the things they do are not of practical importance in relation to terms and conditions of employment; and accordingly in comparing her

work with theirs regard shall be had to the frequency or otherwise with which any such differences occur in practice as well as to the nature and extent of the differences.

5 A woman is to be regarded as employed on work rated as equivalent with that of any men if, but only if, her job and their job have been given an equal value, in terms of the demand made on a worker under various headings (for instance effort, skill, decision), on a study undertaken with a view to evaluating in those terms the jobs to be done by all or any of the employees in an undertaking or group of undertakings, or would have been given an equal value but for the evaluation being made on a system setting different values for men and women on the same demand under any heading.

[cf 1970 c 41 s 1(1) to (5) U.K.]”

Explanatory Memorandum

This Bill amends the Sex Discrimination Ordinance (Cap. 480) to avoid any doubt that equal pay is required for work of equal value, and to enable a complainant to make an equal pay claim under the Ordinance by relying on the principles that have been developed in U.K. law.

2. Clause 3 adds a new Schedule 9 containing the major provisions of the U.K. Equal Pay Act 1970 (1970 c. 41 U.K.).

3. Clause 2 adds a new section concerning proceedings in respect of employment contracts. The new section provides that proof of the elements of a successful equal pay claim under U.K. law (set out in Schedule 9) gives rise to a presumption of unlawful discrimination under the Ordinance. The presumption is subject to any defences or exceptions provided elsewhere in the Ordinance.

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
Carole Petersen
Andrew Byrnes

From : Adam Mayes
(Direct line 2521-6820)

Date : 10/12/96

Total pages : 4 (including this page)

Reinstatement

Lee Cheuk-yan is putting in an Unfair Dismissal Bill which provides in detail for the remedies of "reinstatement" (to the same job) and "re-engagement" (to a comparable new job). The UDB (a new acronym to throw around!) is substantially copied from Part V of the UK Employment Protection (Consolidation) Act 1978 (c. 44). A copy of the remedies provisions (Clauses 12-14, 3 pages) is attached. The bill is awaiting the President's ruling on charging effect.

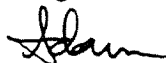
I wonder if you think it would be desirable to harmonize these remedies with the provisions in the various Discrimination Ordinances and Equal Opportunities Bills? Would we do better to follow the brief Australian model now in the DDO, or the explicit UK model in the UDB?

(You will recall that DDO provides generally that the Court may make an order which it consider just and appropriate in the circumstances (s. 73(3)), and specifically that the Court may order the respondent to employ, re-employ or promote the claimant (s. 73(4)(c)-(d)).)

Incidentally, Lee is also preparing a bill to insert the EOB's provisions on trade union discrimination into the Employment Ordinance.

Thanks very much for any comments and suggestions you may have.

Regards,



11. Complaint to the Labour Tribunal

(1) A complaint may be presented to the Labour Tribunal against an employer by any person (in this Ordinance referred to as the complainant) that he was unfairly dismissed by the employer.

(2) The Labour Tribunal shall not consider a complaint under subsection (1) unless it is presented to the Labour Tribunal—

- (a) before the end of the period of 3 months beginning with the effective date of termination, or
- (b) within such further period as the Labour Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months

[*cf. 1978 c. 44 s. 67 U K*]

12. Remedies for unfair dismissal

(1) Where on a complaint under section 11 the Labour Tribunal finds that the grounds of the complaint are well-founded, it shall explain to the complainant what orders for reinstatement or re-engagement may be made under section 13 and in what circumstances they may be made, and shall ask the complainant whether he wishes the Labour Tribunal to make such an order, and if he does express such a wish the Labour Tribunal may make an order under section 13.

(2) Notwithstanding subsection (1), if on a complaint under section 11 the Labour Tribunal finds that the grounds of the complaint are well-founded and no order is made under section 13, the Labour Tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with section 14, to be paid by the employer to the complainant

[*cf. 1978 c. 44 s. 68 U K*]

13. Order for reinstatement or re-engagement

(1) An order under this section may be an order for reinstatement (in accordance with subsections (2) and (3)) or an order for re-engagement (in accordance with subsection (4)), as the Labour Tribunal may decide, and in the latter case may be on such terms as the Labour Tribunal may decide.

(2) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if the complainant had not been dismissed, and on making such an order the Labour Tribunal shall specify—

- (a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of reinstatement,
- (b) any rights and privileges, including seniority and pension rights, which must be restored to the complainant, and

(c) the date by which the order must be complied with.

(3) Without prejudice to the generality of subsection (2), if the complainant would have benefited from an improvement in the terms and conditions of employment had the complainant not been dismissed, an order for reinstatement shall require the complainant to be treated as if the complainant had benefited from that improvement from the date on which the complainant would have done so but for being dismissed.

(4) An order for re-engagement is an order that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which the complainant was dismissed or other suitable employment, and on making such an order the Labour Tribunal shall specify the terms on which re-engagement is to take place including—

- (a) the identity of the employer;
- (b) the nature of the employment;
- (c) the remuneration for the employment;
- (d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of re-engagement;
- (e) any rights and privileges, including seniority and pension rights, which must be restored to the employee; and
- (f) the date by which the order must be complied with.

(5) In exercising its discretion under this section the Labour Tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account the following considerations, that is to say—

- (a) whether the complainant wishes to be reinstated;
- (b) whether it is practicable for the employer to comply with an order for reinstatement; and
- (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order the reinstatement of the complainant.

(6) If the Labour Tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and if so on what terms; and in so doing the Labour Tribunal shall take into account the following considerations, that is to say—

- (a) any wish expressed by the complainant as to the nature of the order to be made;
- (b) whether it is practicable for the employer or, as the case may be, a successor or associated employer to comply with an order for re-engagement; and
- (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order the re-engagement of the complainant and if so on what terms;

and except in a case where the Labour Tribunal takes into account contributory fault under paragraph (c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.

[*cf.* 1978 c. 44 s. 69 U.K.]

14. Compensation for unfair dismissal

(1) Subject to subsection (2), where the Labour Tribunal makes an award of compensation for unfair dismissal under section 12(2), the award shall consist of—

- (a) a basic award calculated in accordance with subsections (3) to (7); and
- (b) a compensatory award calculated in accordance with subsection (8).

(2) Where the reason or the principal reason for the dismissal was one of those specified in section 7(1), the award of compensation shall include a special award calculated in accordance with subsection (9).

(3) Subject to subsections (4) to (7), and subject to a maximum of 30 times of the monthly pay of the complainant, the amount of the basic award shall be calculated by multiplying the monthly pay of the complainant by the number of years of service by 1.5.

(4) Where the Labour Tribunal finds that the employer has unreasonably refused to reinstate or re-engage the complainant, it shall increase the amount of the basic award to such an extent as it considers just and equitable having regard to that finding.

(5) Where the Labour Tribunal finds that the complainant has unreasonably refused to be reinstated or re-engaged by the employer, it shall reduce the amount of the basic award to such an extent as it considers just and equitable having regard to that finding.

(6) Where the Labour Tribunal finds that the dismissal was to some extent caused or contributed by the complainant, it shall reduce or further reduce the amount of the basic award to such an extent as it considers just and equitable having regard to that finding.

(7) The amount of the basic award shall be reduced or, be further reduced, by the amount of any severance payments or other similar payments already paid by the employer to the complainant.

(8) Subject to a maximum of 30 times of the monthly pay of the complainant, the amount of the compensatory award shall be such amount as the Labour Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. The said loss shall be taken to include—

- (a) immediate loss of wages of the complainant, including notice not given;
- (b) future loss of wages having regard to how long the complainant is likely to be unemployed;
- (c) loss of fringe benefits of the complainant;
- (d) loss of pension and similar rights;
- (e) any contractual severance payment.

(9) Subject to a maximum of 30 times of the monthly pay of the complainant, the amount of the special award shall be such amount as the Labour Tribunal considers just and equitable having regard to the level of participation and importance of the position the complainant held in the union activities.

(10) In this section, “the monthly pay of the complainant” (申訴人每月薪酬) means the monthly average of the wages of the complainant over a period of 12 months immediately preceding the effective date of termination.

Ref : CB2/SS/2/96

**Subcommittee on the Rules and Codes of Practice on Employment
under the Sex Discrimination Ordinance and
the Disability Discrimination Ordinance
gazetted on 15 November 1996 and
Resolution under Section 89 of the Sex Discrimination Ordinance**

**Minutes of the Meeting
held on Thursday, 12 December 1996 at 4:00 pm
in Conference Room B of the Legislative Council Building**

Members Present : Hon Michael HO Mun-ka (Chairman)
Hon Zachary WONG Wai-yin
Hon James TIEN Pei-chun, OBE, JP
Hon LEE Cheuk-yan
Hon CHAN Yuen-han
Dr Hon John TSE Wing-ling

Members Absent : Dr Hon LEONG Che-hung, OBE, JP
Hon Christine LOH Kung-wai
Hon LAW Chi-kwong
Hon LEUNG Yiu-chung
Hon MOK Ying-fan

Clerk in Attendance : Mrs Anna LO
Chief Assistant Secretary (2)2

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Colin CHUI
Senior Assistant Secretary (2)2

Action

I. **Proposed Amendments to the Codes of Practice on Employment under the Sex Discrimination Ordinance (SDO) & the Disability Discrimination Ordinance (DDO)**

(Para 12.8 of the Code under SDO and para 13.7 of the Code under DDO)

The Chairman recapitulated that, while the Subcommittee generally supported the Codes under SDO and DDO, members at the last meeting had divergent views on the principle of equal pay for work of equal value and its implementation. They were particularly concerned about the provisions in para 12.8 of the Code under SDO and para 13.7 of the Code under DDO which stated, inter alia, "Employers are encouraged to *consider progressive implementation of equal pay for equal value*". At that meeting there was no consensus on the various proposals to amend the words in italics. After much deliberation and discussion since the last meeting, members had compromised to substitute the words in italics with "progressively implement". The purpose of this meeting was to consider the proposed motions (tabled at the meeting) which sought to effect the amendments.

2. At the Chairman's request, ALA4 briefed members on the proposed motions. On the question of notice period for extending the scrutiny period of or moving amendments to the Codes, he pointed out that as the Codes were not subsidiary legislation, the notice period was governed by Standing Order No. 21(1). It required that a notice of motion should be given not less than 12 clear days (not five clear days as advised at the last meeting) before the sitting at which such motion was considered; and also empowered the President to dispense with such notice. As such the Subcommittee had to seek the President's waiver of such notice if it intended to move the proposed motions on 18 December 1996.

3. Mr James TIEN said that, according to the Chairperson of Equal Opportunities Commission (EOC), the implementation of equal pay for equal value was a highly controversial issue in drawing up the Codes. A EOC meeting would therefore be necessary to discuss the proposed motions. Members of the Liberal Party would support the proposed motions if EOC agreed with them. In the event that EOC could not meet to discuss the motions before the sitting on 18 December 1996 or EOC did not accept the proposed amendments, members of the Liberal Party would abstain from voting on the amendments.

4. Other members present supported the proposed motions. The Subcommittee agreed to move the proposed motions on 18 December 1996 and would seek President's waiver of the notice period required under SO 21(1) in order not to delay the commencement of the Codes before the end of this year

Action

II. Disability Discrimination (Formal Investigation) Rules (L.N. 474 of 1996)

5. ALA4 recapitulated that, at the last meeting, EOC agreed to move a resolution to amend para 2 of Schedule 1 to the Disability Discrimination (Formal Investigation) Rules in order to correct an inappropriate reference to power of delegation. He understood from EOC that it would, instead of moving such resolution, re-gazette the amended Rules on 20 December 1996 with the commencement date (20 December 1996) remained unchanged.

(Post-meeting note: The Administration subsequently reverted to its original proposal to move a resolution on 18 December 1996 to effect the legislative amendment.)

6. The meeting ended at 4:25 pm.


LegCo Secretariat
8 January 1997

Ref : CB2/SS/2/96
Tel : 2869 9252
Date : 13 December 1996
From : Clekr to Subcommittee
To : Dr Hon LEONG Che-hung, OBE, JP
Hon Christine LOH Kung-wai
Hon LAW Chi-kwong
Hon LEUNG Yiu-chung
Hon MOK Ying-fan

**Subcommittee on the Rules and Codes of Practice on Employment
under the Sex Discrimination Ordinance and
the Disability Discrimination Ordinance
gazetted on 15 November 1996 and
Resolution under Section 89 of the Sex Discrimination Ordinance**

Members are invited to note that at its urgent meeting held at 4:00 pm on 12 December 1996, the Subcommittee decided to move the attached motions substituting the words "consider progressive implementation of" with "progressively implement" in para. 12.8 and 13.7 of the respective Codes under the Sex Discrimination Ordinance and Disability Discrimination Ordinance. (Para.11 of the Subcommittee's report to the House Committee on 6.12.96 (LegCo Paper No. CB(2) 635/96-97) refers.)

2. In order not to delay the commencement of the Codes, the Subcommittee also maintained the decision not to extend the scrutiny period beyond 18 December 1996. In this connection, the President's approval is being sought to dispense with the notice required for motions under SO21(1).



(Mrs Anna LO)
Clerk to Subcommittee

c.c. Hon Michael HO Mun-ka (Chairman))
Hon Zachary WONG Wai-yin)
Hon James TIEN Pei-chun, OBE, JP) w/o encl.
Hon LEE Cheuk-yan)
Hon CHAN Yuen-han)
Dr Hon John TSE Wing-ling)
ALA4)

SEX DISCRIMINATION ORDINANCE

RESOLUTION

(Under section 69(5) of the Sex Discrimination Ordinance (Cap. 480))

**CODE OF PRACTICE ON EMPLOYMENT
UNDER THE SEX DISCRIMINATION ORDINANCE**

RESOLVED that the Code of Practice on Employment issued under section 69 of the Sex Discrimination Ordinance, published as Government Notice No. 5203 of 1996 and laid on the table of the Legislative Council on 20 November 1996, be amended, in paragraph 12.8, by repealing “consider progressive implementation of” and substituting “progressively implement”.

殘疾歧視條例

決議

(根據《殘疾歧視條例》(第 487 章)第 65(5)條)

《殘疾歧視條例》備備實務守則

議決將於 1996 年 11 月 20 日提交立法局會議省覽的《殘疾歧視條例》備備實務守則(即刊登於憲報的 1996 年第 5204 號公告)修訂，在第 13.7 段中，廢除“考慮”。

DISABILITY DISCRIMINATION ORDINANCE

RESOLUTION

(Under section 65(5) of the Disability Discrimination Ordinance (Cap. 487))

CODE OF PRACTICE ON EMPLOYMENT
UNDER THE DISABILITY DISCRIMINATION ORDINANCE

RESOLVED that the Code of Practice on Employment issued under section 65 of the Disability Discrimination Ordinance, published as Government Notice No. 5204 of 1996 and laid on the table of the Legislative Council on 20 November 1996, be amended, in paragraph 13.7, by repealing “consider progressive implementation of” and substituting “progressively implement”.

性別歧視條例

決議

(根據《性別歧視條例》(第 480 章)第 69(5)條)

《性別歧視條例》僱傭實務守則

議決將於 1996 年 11 月 20 日提交立法局會議省覽的《性別歧視條例》僱傭實務守則(即刊登於憲報的 1996 年第 5203 號公告)修訂，在第 12.8 段中，廢除“考慮”。

The Legislative Council

LegCo Paper No. CB(3) 360/96-97


Ref. : CB(3)/M/OR
Tel : 2869 9205
Date : 16 December 1996
From : Clerk to the Legislative Council
To : Members of the Legislative Council

Sitting on 18 December 1996

Motion under the Sex Discrimination Ordinance

I forward for Members' consideration a resolution which the Secretary for Home Affairs will move on 18 December 1996 under the Sex Discrimination Ordinance.

2. The speech, in both English and Chinese versions, which the Secretary for Home Affairs will deliver when moving the motion, is also attached.



(Ray CHAN)
for Clerk to the Legislative Council

Encl.

立法局

立法局 CB(3)360/96-97 號文件

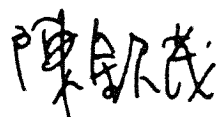
檔號： CB(3)/M/OR
電話： 2869 9205
日期： 一九九六年十二月十六日
由： 立法局秘書
致： 立法局各議員

一九九六年十二月十八日
立法局會議

就《性別歧視條例》動議的議案

政務司擬於一九九六年十二月十八日立法局會議席上根據《性別歧視條例》動議決議案。現謹將有關決議案奉上，以供考慮。

2. 政務司在動議上述議案時將會發表的演辭的中英文稿本亦一併附上。



立法局秘書
(陳欽茂代行)

連附件

SEX DISCRIMINATION ORDINANCE

RESOLUTION

(Under section 69(5) of the Sex Discrimination
Ordinance (Cap. 480))

CODE OF PRACTICE ON EMPLOYMENT

RESOLVED that the Code of Practice on Employment issued under section 69 of the Sex Discrimination Ordinance, published as Government Notice No. 5203 of 1996 and laid on the table of the Legislative Council on 20 November 1996, be amended in the Chinese text -

- (a) in paragraph 6.2.6 by adding “受” after “對” ;
- (b) in paragraph 6.2.7 by adding “等” after “該” ;
- (c) in paragraph 6.2.8 by repealing “向” and substituting “為從事” ;
- (d) in paragraph 8 by adding “8.1.” before “(” ;
- (e) in paragraph 11.8 by repealing “實事求是” and substituting “依據事實” ;
- (f) in paragraph 15.1.3 by adding “如適當的話,” before “建” ;
- (g) in paragraph 15.1.4 by adding “原則” after “至” ;

- (n) in paragraph 17.1 by adding “完全” after “能”；
- (i) in paragraph 18.1 by adding “因此,” before “可”
where it secondly appears;
- (j) in paragraph 18.2 by repealing “判斷” and
substituting “認識”；
- (k) in paragraph 18.3 by adding “或” before “是”；
- (l) in paragraph 19.3 by repealing “以下” and
substituting “這裏簡述的”；
- (m) in paragraph 21.4.1 by repealing “因素” and
substituting “角色”；
- (n) in paragraph 24.3 by repealing “應” and substituting
“宜”；
- (o) by repealing paragraph 25.1 and substituting -
“25.1. 僱員有責任協助建立一個不容性騷擾出現的工作環
境，他們可憑著對性騷擾問題的警覺性和敏銳力，及確
保本身及同事的操守行為不會冒犯他人，在防止性騷擾
方面發揮積極作用。”；
- (p) in paragraph 25.10 by repealing “應儘” and
substituting “宜盡”。

性別歧視條例

決議

(根據《性別歧視條例》
(第480章)第69(5)條)

備備實務守則

議決將於1996年11月20日提交立法局會議審覽的根據《性別歧視條例》第69條發出的《備備實務守則》(即刊登於憲報的1996年第5203號政府公告)的中文文本修訂 —

- (a) 在第6.2.6段中，在“對”之後加入“受”；
- (b) 在第6.2.7段中，在“該”之後加入“等”；
- (c) 在第6.2.8段中，廢除“向”而代以“為從事”；
- (d) 在第8段中，在“<”之前加入“8.1.”；
- (e) 在第11.8段中，廢除“實事求是”而代以“依據事實”；
- (f) 在第15.1.3段中，在“連”之前加入“知適當的
話，”；
- (g) 在第15.1.4段中，在“密”之後加入“原則”；

- (h) 在第17.1段中，在“能”之後加入“完全”；
- (i) 在第18.1段中，在第二次出現的“可”之前加入“因此，”；
- (j) 在第18.2段中，廢除“判斷”而代以“認識”；
- (k) 在第18.3段中，在“是”之前加入“或”；
- (l) 在第19.3段中，廢除“以下”而代以“這裏簡述的”；
- (m) 在第21.4.1段中，廢除“因素”而代以“角色”；
- (n) 在第24.3段中，廢除“應”而代以“宜”；
- (o) 廢除第25.1段而代以 —

“25.1. 僱員有責任協助建立一個不害性騷擾出現的工作環境，他們可憑著對性騷擾問題的警覺性和敏銳力，及確保本身及同事的操守行為不會冒犯他人，在防止性騷擾方面發揮積極作用。”；
- (p) 在第25.10段中，廢除“應儘”而代以“宜盡”。

Speech by Mr Michael M.Y. SUEN, Secretary for Home Affairs
in the Legislative Council on 18 December 1996

**Motion to amend the
Code of Practice on Employment
under the Sex Discrimination Ordinance**

Mr President,

I move that the Chinese text of the Code of Practice on Employment under the Sex Discrimination Ordinance, tabled in this Council on 20 November 1996, be amended as set out in the proposed Resolution of the Legislative Council circulated to Members.

The purpose of the amendments is to better achieve consistency of translation between the English and the Chinese texts of the Code of Practice.

Mr President, I beg to move.

一九九六年十二月十八日立法局會議席上
政務司孫明揚致辭全文

動議修訂《性別歧視條例》下
的僱傭實務守則

主席先生：

我謹依照提交各位議員傳閱的二法局決議案所載建議，動議修訂《性別歧視條例》僱傭實務守則的中文文本。該守則已在本年11月20日提交本局審覽。

這次修訂的目的，是要在翻譯方面，使守則的中文文本更為一致。

主席先生，我謹提出動議。

The Legislative Council

LegCo Paper No. CB(3) 361/96-97

Ref. : CB(3)/M/OR

Tel : 2869 9205

Date : 16 December 1996

From : Clerk to the Legislative Council

To : Members of the Legislative Council

Sitting on 18 December 1996

**Motions under Section 65(5) of the Disability Discrimination Ordinance and
Section 34(2) of the Interpretation and General Clauses Ordinance**

I forward for Members' consideration two resolutions which the Secretary for Health and Welfare will move on 18 December 1996 under section 65(5) of the Disability Discrimination Ordinance and section 34(2) of the Interpretation and General Clauses Ordinance relating to the Disability Discrimination (Formal Investigations) Rules.

2. The speeches, in the draft English version, which the Secretary for Health and Welfare 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

Encl.

立法局

立法局 CB(3)361/96-97 號文件

檔號 CB(3)/M/OR

電話： 2869 9205

日期： 一九九六年十二月十六日

由： 立法局秘書

致： 立法局各議員

一九九六年十二月十八日

立法局會議

**就《殘疾歧視條例》第 65(5)條及《釋義及通則條例》第 34(2)條
動議的議案**

衞衛生福利司擬於一九九六年十二月十八日立法局會議席上根據《殘疾歧視條例》第 65(5)條，及《釋義及通則條例》第 34(2)條，就有關《殘疾歧視（正式調查規則）動議兩項決議案。現謹將該兩項決議案奉上，以供考慮。

2. 衞衛生福利司在動議上述兩項議案時將會發表的英文演辭的稿本亦一併附上，供各位議員參閱。演辭稿本的中譯本亦將盡快奉上。



立法局秘書
(陳欽茂代行)

連附件

DISABILITY DISCRIMINATION ORDINANCE

RESOLUTION

(Under section 65(5) of the Disability Discrimination Ordinance (Cap. 487))

CODE OF PRACTICE ON EMPLOYMENT

RESOLVED that the Code of Practice on Employment issued under section 65 of the Disability Discrimination Ordinance, published as Government Notice No. 5204 of 1996 and laid on the table of the Legislative Council on 20 November 1996, be amended -

- (1) in the English text, in paragraph 11.5.1 by repealing "develop" where it secondly appears;
- (2) in the Chinese text -
 - (a) in paragraph 3.1.3 by repealing "弱聽人" where it secondly appears and substituting "麥女";
 - (b) in paragraph 6.1.3 by repealing "刻意" and substituting "不必要地";
 - (c) in paragraph 6.2.7 by adding "對" before "該";
 - (d) in paragraph 7.1 -
 - (i) by repealing "因";
 - (ii) by repealing "而遭受另一人(歧視者)歧視, 該名人士可能成爲受害人" and substituting

“，僱傭範疇中「使人受害」的歧視行為可能出現”；

- (e) in paragraph 11.11 -
 - (i) by adding “一些” before “調” where it first appears;
 - (ii) by repealing “等” where it first appears and substituting “些”；
- (f) in paragraph 11.12.3 by repealing “慣用” and substituting “工作”；
- (g) in paragraph 11.18 by adding “可” before “包”；
- (h) in paragraph 12.8 by repealing “實事求是，以客觀務實的態度” and substituting “依據事實，按求職者的技能及能力”；
- (i) in paragraph 12.15 by adding “合理地” before “必”；
- (j) in paragraph 15.1 by adding “在任何其他方面” before “的”；
- (k) in paragraph 16.1.3 by adding “如適當的話，” before “建”；
- (l) in paragraph 16.1.4 by repealing “規定” and substituting “原則”；
- (m) in paragraph 18.1 by adding “完全” before “有”；
- (n) in paragraph 19.2 by repealing “判斷” and substituting “認識”；
- (o) in paragraph 19.3 by adding “或” before “是”；

- (p) in paragraph 21.3 by repealing “應” and substituting “宜” ;
- (q) in paragraph 21.4 by repealing “應” and substituting “宜” .

殘疾歧視條例

決議

(根據《殘疾歧視條例》
(第487章)第65(5)條)

儲備實務守則

議決將於1996年11月20日提交立法局會議省覽的根據《殘疾歧視條例》第65條發出的《儲備實務守則》(即刊登於憲報的1996年第5204號政府公告)修訂 —

- (1) 在英文文本中，在第11.5.1段中，廢除第二次出現的“develop”；
- (2) 在中文文本中 —
 - (a) 在第3.1.3段中，廢除第二次出現的“弱聽人”而代以“聾女”；
 - (b) 在第6.1.3段中，廢除“刻意”而代以“不必要地”；
 - (c) 在第6.2.7段中，在“該”之前加入“對”；
 - (d) 在第7.1段中 —
 - (i) 廢除“因”；

- (ii) 廢除“而遭受另一人(歧視者)歧視，該名人士可能成為受害人”而代以“、僱傭範疇中「使人受害」的歧視行為可能出現”；
- (e) 在第11.11段中 —
 - (i) 在第一次出現的“調”之前加入“一些”；
 - (ii) 廢除第一次出現的“等”而代以“些”；
- (f) 在第11.12.3段中，廢除“慣用”而代以“工作”；
- (g) 在第11.18段中，在“包”之前加入“可”；
- (h) 在第12.8段中，廢除“實事求是，以客觀務實的態度”而代以“依據事實，按求職者的技能及能力”；
- (i) 在第12.15段中，在“必”之前加入“合理地”；
- (j) 在第15.1段中，在“的”之前加入“在任何其他方面”；
- (k) 在第16.1.3段中，在“建”之前加入“如適當的話，”；
- (l) 在第16.1.4段中，廢除“規定”而代以“原則”；
- (m) 在第18.1段中，在“有”之前加入“完全”；
- (n) 在第19.2段中，廢除“判斷”而代以“認識”；

- (o) 在第 19.3 段中，在“是”之前加入“或”；
- (p) 在第 21.3 段中，廢除“應”而代以“宜”；
- (q) 在第 21.4 段中，廢除“應”而代以“宜”。

Speech for the Secretary for Health and Welfare

at LegCo sitting on 18 December 1996

(Code of Practice on Employment)

Mr President, I move the resolution standing in my name on the Order Paper.

To ensure consistency of the Chinese and English versions of the Code of Practice on Employment under the Disability Discrimination Ordinance (G.N. 5204) which was introduced into this Council on 20 November 1996, I propose a textual amendment to the gazetted English version of the Code and a total of seventeen textual amendments to the Chinese version as specified in my resolution.

Mr President, I beg to move.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General
Clauses Ordinance (Cap. 1))

DISABILITY DISCRIMINATION (FORMAL INVESTIGATIONS) RULES

RESOLVED that the Disability Discrimination (Formal
Investigations) Rules, published as Legal Notice No. 474 of
1996 and laid on the table of the Legislative Council on 20
November 1996, be amended in the form of Notice in Schedule
1, by repealing "section 64(1) of the Ordinance" and
substituting "section 67 of the Sex Discrimination
Ordinance (Cap. 480)".

釋義及通則條例

決議

(根據《釋義及通則條例》(第1章)第34(2)條)

殘疾歧視(正式調查)規則

議決將於1996年11月20日提交立法局會議省覽的《殘疾歧視(正式調查)規則》(即刊登於憲報的1996年第474號法律公告)修訂，在附表1的通知格式中，廢除“條例第64(1)條”而代以“《性別歧視條例》(第480章)第67條”。

Speech for the Secretary for Health and Welfare

at LegCo Sitting on 18 December 1996

Disability Discrimination (Formal Investigations) Rules

Mr President,

I move the resolution standing in my name on the Order Paper.

The Disability Discrimination (Formal Investigations) Rules (L.N. 474/1996) were introduced into this Council on 20 November. The purpose of this amendment is to rectify a textual error in the form of Notice in Schedule 1 to the rule. This is to reflect, correctly, the proper source under which the Equal Opportunity Commission has delegated its function to a person to serve a notice to furnish information for the purpose of an investigation.

Mr President, I beg to move.

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

本署檔號 OUR REF HAB/CR/1/2/21 Pt 37

來函檔號 YOUR REF

TEL NO 2835 1373

FAXLINE 2591 6002

20 December 1996

Mr HO Chun-yan
Convenor, Home Affairs Panel
Legislative Council
8 Jackson Road
Central

Dear Mr HO,

Full Operation of the Sex Discrimination Ordinance

Following the Legislative Council's approval of the Code of Practice on Employment under the Sex Discrimination Ordinance on 18 December, you may wish to note that the remaining provisions of the Ordinance prohibiting discrimination and sexual harassment in the employment field have been brought into effect today. I enclose at Annex A a copy of the relevant commencement notice gazetted today.

I would also like to draw your attention to the commencement notice which brings into operation the Sex Discrimination (Proceedings by Equal Opportunities Commission) Regulation. The Regulation enables the Equal Opportunities Commission to bring court proceedings in its own name in prescribed circumstances. The Regulation was approved by the Legislative Council on 18 December. The commencement notice, also gazetted today, is at Annex B. A press statement explaining the full operation of the Ordinance and the commencement of the Regulation is at Annex C for your reference.

Yours sincerely,

(Ms CHANG King-yiu)
for Secretary for Home Affairs

c c Members, Legislative Council

2454

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

本署檔號 OUR REF HAB/CR/1/2/21 Pt 37
來函檔號 YOUR REF
電 話 TEL NO 2835 1373
圖文傳真 FAXLINE 2591 6002

中環
昃臣道 8 號
立法局
民政事務委員會召集人
何俊仁議員

何議員：

《性別歧視條例》全面實施

繼立法局於十二月十八日通過《性別歧視條例》僱傭實務守則後，該條例其餘有關在僱傭方面禁止歧視及性騷擾的條文，定於今日起生效。現夾附今日刊登憲報的有關生效日期公告副本(附件 A)，以供參閱。

同時於今日開始生效的，還有《性別歧視(平等機會委員會提出的法律程序)規例》。根據該規例的規定，平等機會委員會可在指明的情況下，以本身名義提出法律程序。該規例於十二月十八日獲立法局通過，而有關的生效日期公告亦於今日刊登憲報，現載於附件 B。公布《性別歧視條例》已全面實施和《性別歧視(平等機會委員會提出的法律程序)規例》已開始生效的新聞稿載於附件 C，以供參閱。

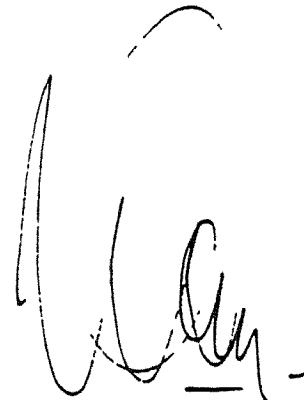
政務司
(張琮瑤代行)

副本送：立法局議員

一九九六年十二月二十日

SEX DISCRIMINATION ORDINANCE (CAP. 480)
(COMMENCEMENT) (NO. 3) NOTICE 1996

Under section 1(2) of the Sex Discrimination Ordinance, I appoint 20 December 1996 as the day on which the provisions of the Ordinance that have not come into operation shall come into operation.

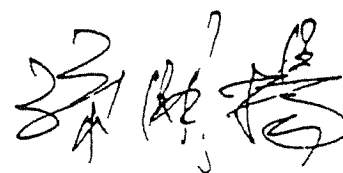


Secretary for Home Affairs.

18th December 1996.

性別歧視條例(第480章)1996年
(生效日期)(第3號)公告

本人現根據《性別歧視條例》第1(2)條，指定1996年12月20日為該
條例尚未實施的條文開始實施的日期

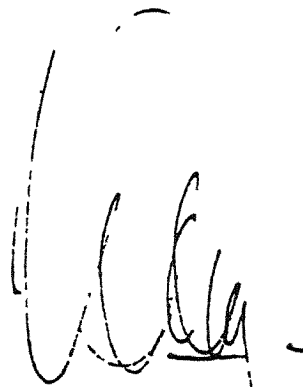


政務司

1996年12月 10 日

SEX DISCRIMINATION (PROCEEDINGS BY EQUAL OPPORTUNITIES
COMMISSION) REGULATION (L.N. 539 OF 1996)
(COMMENCEMENT) NOTICE 1996

Under section 1 of the Sex Discrimination (Proceedings by
Equal Opportunities Commission) Regulation, I appoint 20 December
1996 as the day on which the Regulation shall come into
operation.

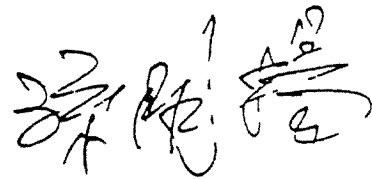


Secretary for Home Affairs.

18th December 1996.

性別歧視(平等機會委員會提出的法律程序)規例
(1996年第 539 號法律公告)
1996年(生效日期)公告

本人現根據〈性別歧視(平等機會委員會提出的法律程序)規例〉第
1條，指定1996年12月20日為該規例開始實施的日期。



政務司

1996年12月18日

Sex Discrimination Ordinance In Full Effect From Today

The entire Sex Discrimination Ordinance (SDO) becomes effective today (Friday) with the commencement of the provisions prohibiting discrimination and sexual harassment in the employment field

A spokesman for the Home Affairs Branch said that following the Legislative Council's approval of the Code of Practice on Employment under the SDO on December 18, the Government has brought into effect these remaining provisions of the Ordinance. A commencement notice to this effect was gazetted today

"With the SDO in full force now, it is unlawful to discriminate against a person in specified areas of activity including employment, education, provision of goods, facilities and services, disposal and management of premises, eligibility to vote for and to be elected or appointed to advisory bodies, activities of clubs, and activities of Government. Sexual harassment in these areas of activity is also unlawful under the Ordinance," he pointed out.

On the Code of Practice on Employment under the SDO, the spokesman said it was prepared and issued by the Equal Opportunities Commission (EOC).

"The Code provides practical guidelines to facilitate compliance by both employers and employees with the Ordinance. Non-compliance with the Code, although not unlawful by itself, is admissible as evidence in court," he said.

The spokesman said aggrieved persons may seek the assistance of the EOC which has started full operation since September 1996. "The Commission will, as required under the SDO, handle complaints, conduct investigations and encourage conciliation between parties in dispute to effect a settlement as far as possible," he said, adding that the EOC may also provide legal or other forms of assistance to those aggrieved.

Meanwhile, a separate commencement notice which brings the Sex Discrimination (Proceedings by Equal Opportunities Commission) Regulation into immediate operation is also gazetted today. The Regulation was approved by the Legislative Council on December 18.

"The Regulation will enable the EOC to bring court proceedings in its own name when it appears to the Commission that the claim is well founded, and where the case raises a question of principle and it is in the interest of justice to do so," the spokesman said

He noted that the Regulation will also enable the EOC in any such proceedings to seek a declaration by the court that the act, which is the subject of the proceedings, is an unlawful act or seek an injunction in respect of such act or both

dated 20 12 96

《性別歧視條例》全面生效

隨着《性別歧視條例》中在僱傭方面禁止歧視及性騷擾的條文今日(星期五)起生效，該條例也由即日起全面實施。

政務科發言人表示，繼立法局於十二月十八日通過根據《性別歧視條例》而制訂的僱傭實務守則後，政府隨之將條例的僱傭部分實施。有關的生效日期公告已刊登於今日的憲報。

發言人說：「鑑於《性別歧視條例》現已全面生效，任何人士在特定範疇內，對他人加以歧視，即屬違法。這些範疇包括僱傭；教育；貨品、設施及服務的提供；房產的處置和管理；諮詢團體的投票、被選入或委入該等團體的資格；會社的活動；及政府的活動。根據條例的規定，在這些範疇內對任何人作出性騷擾，也屬違法。」

發言人說，根據《性別歧視條例》而訂立的僱傭實務守則，會由平等機會委員會擬備及在稍後發出。

他說：「該守則為僱主及僱員提供實務性的指引，協助他們遵守條例的規定。雖然不遵從守則此舉本身並非違法，但在法庭上可獲接納為證據。」

發言人說，受屈人士可向已於今年九月開始運作的平等機會委員會尋求協助。

他說：「條例訂明委員會將處理投訴、進行調查和促進涉及糾紛的有關方面盡量以調解方式解決問題。」他又表示，委員會亦可為受屈者提供法律或其他形式的協助。

此外，今日憲報亦刊登《性別歧視(平等機會委員會提出的法律程序)規例》的即時生效公告。有關規例已於十二月十八日獲立法局通過。

發言人說：「該規例使平等機會委員會可以在認為有關申索個案具備充分理由、有關個案涉及原則問題，以及提出訴訟是為求公正時，以委員會的名義提出法律程序。」

他指出，上述規例亦使委員會可在該等法律程序中向法庭尋求作出指法律程序所涉行為屬違法行為的宣布，或尋求針對有關行為的禁制令，或作出這兩項頒令。

完

一九九六年十二月二十日(星期五)

Ref : CB2/BC/55/95
Tel : 2869 9252
Date : 3 January 1997
From : Clerk to Bills Committee
To : Hon Members of the Legislative Council

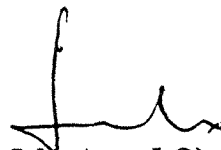
**Bills Committee on
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill,
Equal Opportunities (Race) Bill and
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

At the House Committee meeting held on 20 December 1996, Members agreed to try out a new arrangement under a pilot scheme to help speed up the scrutiny of bills. Under this pilot scheme, preparatory work will be initiated for the first four Bills Committees on the waiting list at any one time. The preparatory work includes the election of the chairman and invitation to the public for views or representations on the bills concerned. By advancing the invitation for representations, interested parties will have more time to prepare their representations which is usually done after a Bills Committee is activated. As the Bills Committee on Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, Equal Opportunities (Race) Bill, and Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 is now at the fourth position on the waiting list, preparatory work will commence.

2. The decision to form a Bills Committee on Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, Equal Opportunities (Race) Bill, and Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 was made at the House Committee meeting on 30 September 1996. A list of Members who have indicated their intention to join the Bills Committee is in **Appendix I**.

3. Other Members who wish to join the Bills Committee are requested to complete and return the reply slip in **Appendix III** to the LegCo Secretariat on or before **10 January 1997**. Members are reminded that according to House Rule 23, it will be for the Chairman to decide whether to accept late membership on grounds of indisposition or absence from Hong Kong.

4. For background information on the Bill, Members may wish to refer to -
- (a) the Bills circulated vide LegCo Paper No. CB(3) 907, 999 and 1034/96-97 dated 27 June, 4 July and 5 July 1996 respectively;
 - (b) Legal Service Division Reports on the Bills issued under LegCo Papers No. LS205 and 206/95-96 dated 22 August and 17 September 1996 respectively;
 - (c) extracts of the minutes of meetings of the -
 - (i) Home Affairs Panel held on 29 March , 25 May and 26 July 1996;
 - (ii) Welfare Services Panel held on 6 June 1996; and
 - (iii) Manpower Panel on 24 June 1996.
5. The first meeting of the Bills Committee is scheduled as follows -
- Date : Wednesday, 15 January 1997
- Time : 2:15 pm
- Venue : Conference Room B
- Agenda : An agenda for the meeting is in **Appendix II**
6. To facilitate meeting arrangements, Members are invited to indicate attendance on the reply slip in **Appendix III** and return this to the LegCo Secretariat on or before **10 January 1997**.



(Mrs Anna LO)

Clerk to Bills Committee

Encl.

c.c. Legal Adviser
ALA4

c:\docleob\1-notice.doc

**Members who have indicated their intention
to join the Bills Committee on
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill,
Equal Opportunities (Race) Bill and
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

Dr LEONG Che-hung, OBE, JP

Hon Mrs Miriam LAU Kin-yea, OBE, JP

Hon Christine LOH Kung-wai

Hon LEE Cheuk-yan

Hon CHAN Yuen-han

Hon LAW Chi-kwong

Hon Bruce LIU Sing-lee

Hon NGAN Kam-chuen

Dr Hon John TSE Wing-ling

平等機會(家庭責任、性傾向及年齡)條例草案、
平等機會(種族)條例草案及
1996年性別及殘疾歧視(雜項規定)條例草案
委員會

業已表明有意加入上述條例草案委員會的議員

梁智鴻議員
劉健儀議員
陸恭蕙議員
李卓人議員
陳婉嫻議員
羅致光議員
廖成利議員
顏錦全議員
謝永齡議員

**Bills Committee on
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill,
Equal Opportunities (Race) Bill and
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

**Meeting on Wednesday, 15 January 1997 at 2:15 pm
in Conference Room B of the Legislative Council Building**

Agenda

I. Election of Chairman

II. Any other business

**Legislative Council Secretariat
3 January 1997**

平等機會(家庭責任、性傾向及年齡)條例草案、
平等機會(種族)條例草案及
1996年性別及殘疾歧視(雜項規定)條例草案
委員會會議

日期：一九九七年一月十五日(星期三)
時間：下午二時十五分
地點：立法局大樓會議室B

議程

I. 選舉主席

II. 其他事項

立法局秘書處
一九九七年一月三日

LegCo Panel on Home Affairs
Extract of minutes of meeting on 29 March 1996

X X X X

- 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.

X X X X

IV. 平等機會：當局就性傾向歧視和家庭狀況歧視所發表的諮詢文件，以及劉千石議員擬提出有關性傾向及家庭責任的條例草案。

(立法局95-96年度第PL1108號、PL1144號、PL1148及PL1171號文件)

11. 孔郭惠清女士解釋，當局就性傾向歧視和家庭狀況歧視所發表的諮詢文件，旨在了解市民對該兩個範疇的歧視問題及可行的解決方法有何意見。當局一直致力在社會上促進平等機會。是次諮詢的截止日期為一九九六年三月三十一日，當局迄今已收到超過4 000份意見書。當局對意見書作出分析後，稍後會向立法局匯報諮詢結果。

12. 劉千石議員向議員簡介其有關家庭責任、性傾向及年齡歧視的議員條例草案的最新進展。他告知議員，涉及年齡歧視的部分將獨立提交人力事務委員會討論，而政務科現正研究有關的議員條例草案，以決定是否造成使用公帑的效應。

X X X X

III. Equal Opportunities (Race) Bill
(Appendix IV to LegCo Paper No CB(2) 1916 95-96)

27. Mrs Elizabeth WONG presented her paper and made the following points .

- (a) The introduction of this Bill was in line with the UNCESCR's suggestion that UNCESCR should be reflected in local legislation.
- (b) The Bill was a follow-up on the Ms Anna WU's Equal Opportunities Bill in the last legislative session.
- (c) The Bill would not result in additional cost to the community, as it sought for the best utilisation of human resources without regard to a person's race.

28. Mr Jeremy Croft stated that the Administration considered that a step-by-step approach was more appropriate in addressing discrimination issues. He added that the Administration would conduct a study on racial discrimination later in the year. This approach had been supported by the UN Committee on the Elimination of All Forms of Racial Discrimination in March 1996.

29. Members were of the view the three Members' bills on equal opportunities should be examined by the same Bills Committee.

X X X X

111. 平等機會(種族)條例草案

(立法局95-96年度第CB(2)1916號文件附錄IV)

27. 黃錢其濂議員闡述其文件的內容，並提出以下各點：

- (a) 提出此條條例草案，符合聯合國經濟、社會及文化權利委員會的建議，即《經濟、社會、文化權利國際公約》的規定應透過本地法例予以體現。
- (b) 條例草案旨在跟進胡紅玉議員在上屆立法局會期提出的平等機會條例草案。
- (c) 條例草案不會令社會承擔額外的費用，因為其目的在於善用人力資源，使人人不分種族，得盡其才。

28. 高富思先生表示，當局認為採用循序漸進的方式解決歧視問題，較為適宜。他補充，當局在本年稍後時間會進行有關種族歧視的研究。聯合國消除種族歧視委員會曾在一九九六年三月表示支持此種做法。

29. 議員認為三條有關平等機會的條例草案應交由同一個條例草案委員會研究。

X X X X

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).

X X X X

V. 1996年性別及弱能歧視(雜項規定)條例草案
(立法局95-96年度第CB(2)1346號文件附錄IV)

25. 陸恭蕙議員向議員簡介1996年性別及弱能歧視(雜項規定)條例草案(該條例草案)的重點。她告知議員，如可能的話，條例草案的英文本可望於短期內獲法律草擬專員審批，並於本立法局會期內提交立法局審議。她在擬備該條例草案時，一直與當局緊密合作，並希望草案不會遭當局援引「具有由公帑負擔的效力」此一規則作出阻撓。雖然條例草案所提出的修訂建議不大可能在一九九六年九月一日生效，她希望日後立法局如成立委員會研究該條例草案，有關的委員會可加快工作。

26. 孔郭惠清女士認為，負責執行《性別歧視條例》的平等機會委員會應有機會對該條例草案提出意見。她補充，待《性別歧視條例》正式實施後才考慮對該條例提出修訂建議，可能更為恰當。至於該條例草案是否具有由公帑負擔的效力，則須由立法局主席作出裁決。

27. 劉慧卿議員認為，事務委員會應向內務委員會提出建議，該條例草案一旦提交立法局，應獲優先審議。羅致光議員、李永達議員及謝永齡議員對此議有所保留。該建議在會上付諸表決，並獲得通過(3位議員贊成，3位議員放棄表決)。

X X X X X

III. Sex and Disability Discrimination (Miscellaneous Provisions Bill 1996)

33. Ms Christine LOH briefed the Panel on the Bill and summarized as follows:

- (a) One feature of the Bill was to enable the Equal Opportunities Commission (EOC) to bring court proceedings in its own name;
- (b) Another feature of the Bill was to empower the EOC to promote international standards relevant to the Ordinances such as those set by United Nations;
- (c) Members were asked to consider an appropriate date for the commencement of both Ordinances to replace the proposed date (1 September 1996) in the Bill; and
- (d) Members might consider and recommend an appropriate grace period for small employers.

34. In view of the recent incidents involving discriminations, Dr TSE agreed with Ms LOH that those Ordinances should be implemented as soon as possible, particularly the Disability Discrimination Ordinance, and inquired if priority would be obtained from House Committee to consider the Ordinance. Regarding the concerns of the Administration on the Bill, Ms LOH understood that the financial implications of the Bill became the major hurdle particularly on the issue regarding double benefits and the Administration was considering the introduction of amendments to avoid complications of the issue but it was technically quite difficult. Ms LOH hoped that the issue would not constitute an obstacle to the Bill.

35. Ms Emily LAU observed that of these Ordinances received support from most of the members, the House Committee might give priority to the Bill. She was also worried about the number of Bills to be considered and the workload involved. With the consent of Ms LOH, the Chairman asked members of the Panel to continue discussions of those Ordinance with Ms LOH beyond the meeting and to express their opinions at the House Committee meeting.

X X X X X X X X X X

III. 1996 年性別及殘疾歧視(雜項規定)條例草案

33. 陸恭蕙議員向事務委員會簡介此條例草案，並撮述如下：

- (a) 條例草案的一項特點是賦權平等機會委員會以本身名義在法院提出訴訟
- (b) 條例草案的另一項特點是賦權平等機會委員會推廣與該等條例有關的國際標準，例如是由聯合國所訂立的標準；
- (c) 陸議員請議員訂出適當日期，以便代替條例中的建議日期(一九九六年九月一日)，實施該兩條條例；及
- (d) 議員可考慮並建議給予小型公司的僱主一段適當的寬限期。

34. 鑑於近期所發生涉及歧視的事件，謝永齡議員同意陸恭蕙議員的意見，應盡快實施該等條例，尤以《殘疾歧視條例》為然，謝議員亦詢問會否獲得內務委員會同意，優先研究該條例。就政府當局對條例草案所提出的關注事項，陸議員得悉，尤其是在有關雙重利益的問題上，條例草案的財政影響成為主要障礙，當局亦正考慮提出修正案，以免此問

題節外生枝，但在技術上頗為困難。陸議員希望此問題不會對條例草案構成障礙。

35. 劉慧卿議員留意到倘該等條例獲大部分議員支持，內務委員會可能會優先研究條例草案。她亦擔心須研究的條例草案的數目及所涉及的工作量。經陸議員同意，主席請事務委員會委員在會後繼續與陸議員討論該等條例，並在內務委員會會議席上表達意見。

X X X X X X X X X X

X X X X

- V. Discrimination in employment on the ground of age
(Information note by Hon LAU Chin-shek at Appendix D of LegCo Paper No. CB(1)1663/95-96, LegCo Brief Ref. EMBCRI 3231 95 Part VII)

15 Mr CHEUNG briefed members on details of the Administration's study on discrimination in employment on the ground of age. Members of the public were invited to forward their views on the issue by 7 August 1996 and meanwhile, the Administration remained open-minded on the way forward.

16 The Chairman remarked that the consultation paper lacked objectivity as the Administration seemed to be dissuading the public from supporting the legislative option by stating a number of disadvantages associated with such option. Another member cast doubt on the findings of the fact-finding survey conducted early this year and pointed out that although little evidence of pure age discrimination by employers due to personal prejudice had been found from the survey, it should not be concluded that the problem did not exist. He also considered it inappropriate to differentiate between "statistical age discrimination" and pure age discrimination as both were discriminatory in practice. In his opinion, both the legislative option and increased public education and self regulation could be adopted to deal with the issue.

17. In response, Mr CHEUNG stressed that the Administration had not taken a stance on the three possible options outlined in the consultation paper. The Administration had commissioned the Lingnan College, a tertiary institution independent from the Administration, assisted by the Survey Research Hong Kong Ltd to undertake the fact-finding survey. It had been stated in paragraph 6.10 of the consultation paper that the legislative and non-legislative options were not mutually exclusive.

18. Noting that the Chairman would introduce a member's bill on equal opportunities covering family responsibility, sexuality and age, and pending the results of public consultation by the end of August 1996, Mr CHEUNG enquired whether the Chairman would consider deferring his bill in anticipation that the Administration would put forward its proposal to deal with age discrimination in employment. In response, the Chairman said that he would introduce the bill in early July 1996 as scheduled so that it could be enacted as early as possible in the next LegCo session. However, the Chairman indicated that he would be delighted to consider the Administration's legislative proposal, if any. In the event that there were substantial differences between the two bills and the Administration's legislative timetable could not tie in with his own, he would still proceed with his bill.

X X X X

V. 就業方面的年齡歧視

(立法局95至96年度第CB(1)1663號文件附錄D所載由劉千石議員提交的資料摘要；參考資料摘要第EMBCR1/3231/95號第VII部分)

15. 張建宗先生向議員簡介政府所作出關於就業方面年齡歧視的研究。當局邀請公眾人士在一九九六年八月七日前就此題目提交意見。而就此問題的未來路向，政府會考慮各方面的意見。

16. 主席表示，諮詢文件有欠客觀。政府當局列舉種種採用立法方案的缺點，似乎是不鼓勵市民支持立法的方案。另一位議員對本年較早時進行的實況調查的結果表示有懷疑。該位議員指出，雖然調查沒有找到確實證據，證明僱主因個人成見而造成年齡歧視，但不能因而推論年齡歧視的問題並不存在。該位議員認為，對「統計性年齡歧視」及年齡歧視作出區分，並不適當，因為兩者都是歧視行為。他認為，在處理這問題時，可同時採用立法方案以及加強公眾教育和自我規管的方法。

17. 張建宗先生回應時強調，政府當局並未選定諮詢文件中提出的三個可行方案的任何方案。有關的實況調查，是政府當局委託嶺南學院代為進行的。嶺南學院是獨立的專上院校，該院校是由香港市場研究社協助進行上述調查。諮詢文件第6.10段已述明，立法和非立法的方案兩者並非不能並存。

18. 張建宗先生察悉，主席會提出有關平等機會的議員條例草案，內容包括家庭責任、性傾向及年齡等問題。他詢問主席說，考慮到公眾諮詢在一九九六年八月底會有結果，政府當局屆時會提出建議，處理有關就業方面的年齡歧視的問題，主席會否考慮延遲提出議員條例草案。主席回答時表示，他會按原定計劃在一九九六年七月初提出議員條例草案，以便在下年度立法局會期盡快立法。但主席表示，倘政府當局提出立法方案，他會樂於考慮。倘雙方的條例草案出現重大差歧，而政府當局的立法時間表又不能配合，他會按計劃提出其議員條例草案。

(Translation)

**Information Paper for Bills Committee
on Equal Opportunities (Family Responsibility,
Sexuality and Age) Bill**

Introduction

A Bills Committee was formed on 15 January this year to study the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill (the Bill), which was given its first and second readings in the 1995/96 legislative year on 10 July 1996 and hopefully will receive a third reading in the current legislative session.

The Bill

The main object of the Bill is to render unlawful discrimination on the grounds of family status, sexuality and age in various areas and to make provision for remedies for such discrimination. At the same time, the Bill seeks to give effect to international obligations applicable to Hong Kong in respect of discrimination.

Background

1. Since the beginning of the 90's, women's and homosexual groups have collated substantial data and compiled many research reports on discrimination on the grounds of family status, age and sexuality. Publicity and lobbying campaigns targeted at the public, the Government and the Legislative Council (LegCo) have also been launched by these groups to reflect the inequalities experienced by victims of discrimination and to seek prohibition on discrimination through legislative means.
2. Former legislator Ms. Anna WU, who served on the last LegCo, drafted and introduced a Bill on the subject. After extensive public consultation, the Bill received support from the community and non-government organizations.
3. Legislators and the Government thoroughly discussed the Bill in the relevant Bills Committee in the last term of LegCo. Certain legal points were clarified and amendments were accordingly made to avoid problems that might arise at the time of implementation.
4. Ms. Anna WU's Bill was voted down despite a strong voice of support from the community. This can probably be attributed to the Government's

objection to the Bill and its vigorous efforts to lobby legislators. In this term, I have re-introduced the Bill, which substantially follows the provisions of Ms. Anna WU's Bill, to the Legislative Council with the hope that the new fully elected Council will vote for the Bill on the basis of human rights, the rule of law and public opinions, in order to protect members of the public against discrimination on the grounds of family responsibility, sexuality and age.

Arguments

1. The most controversial part of the Bill is the safeguard it provides against discrimination on the ground of sexuality. Legislators of the current and the last terms have noted the concern among some members of the public that the Bill, once passed, might encourage homosexual behaviours. As a matter of fact, sexuality is not the result of nurture, encouragement or moulding. The enactment of legislation on the subject will establish a moral standard for the community, penalize and deter acts of discrimination and prompt the Government to implement relevant policies for the protection of the rights of the public. To protect homosexuals from discrimination through legislative means will not encourage homosexuality. Similarly, legislation on divorce is not enacted for the purpose of advocating divorce. Rather, it aims at relieving the pain of couples who are unable to maintain matrimonial relationship through protection provided under the law. If some members of the community are concerned about the sexuality aspect of the Bill, legislators should enlighten them rather than taking the public's misconception as the basis for casting votes.
2. The existing Domestic Violence Ordinance and Wills Ordinance in Hong Kong cover also non-matrimonial relationship. The Government, however, takes exception to the definition of family responsibility in the Bill. The reason for this is that the Government only recognizes husband-and-wife relationship under the marital system, and relationships by consanguinity and affinity. However, to make an absolute distinction between matrimonial and co-habiting relationships is not only unjustified, but also goes against the spirit of existing laws. The protection provided by the Bill to an individual is subject to a genuine discharge of his or her family responsibility on the basis of a truthful family life. As such, the relationships of marriage and co-habitation are equally protected under the Bill.
3. The Government conducted a public consultation exercise last year on discrimination on the grounds of family responsibility, sexuality and age. In releasing the results, the Government indicated that, as far as

discrimination based on sexuality and age was concerned, only public education was warranted, and there was no need for legislation for the time being. In the course of consultation, the Government planted a misconception among the public that the enactment of legislation meant support for a certain group of people and their behaviours. By painting an extremely negative image of homosexuals, the Government is showing its discriminatory attitude towards homosexuality. The purpose of legislation, in fact, is to eliminate discrimination rather than to call for support for a certain group of people. Following the release of the consultation results, women's and homosexual groups publicly condemned the findings (including those of a questionnaire on homosexuality) as misleading and discriminatory. Numerous organizations held the view that public education and legislation were equally important in the effective elimination of discrimination. While it is understandable that the Government may wish to maintain the status quo during the transition, we should not ignore the plight of those who have long fallen victim to discrimination and are in urgent need of legislative protection. Given that the provisions of the Bill have been the subject of public consultation and discussions in the LegCo since the end of 1993, doubts about the Bill have presumably been clarified. It is therefore hoped that the Bill will be considered expeditiously by the relevant Bills Committee and passed as early as possible in the current LegCo session.

4. There have already been a lot of researches and cases studies which can serve to prove the serious extent of discrimination in the area of employment on the grounds of age, responsibility for the care of the family and homosexuality/bisexuality. Nevertheless, under the premise of equal opportunities for all, arguments should no longer focus on such issues as the extent of discrimination and morality, but rather on the basic human right concept that every person is born with the right of not being discriminated against. Education is certainly important, but it is by no means the only way out. Legislation can more effectively change human behaviour. With the law being in force, the public will sense whether certain behaviour is right or wrong and gradually change their own discriminatory attitude. Should colleagues wish to obtain further information on discrimination before deciding whether to support the Bill, please do not hesitate to contact me or my assistant Ms. CHEUNG Yuet-fung (Tel. No. 25372444).

LAU Chin-shek
22 January 1997

**Legislative Council Panel on Welfare Services
Meeting on 14 February 1997**

**Disability Discrimination (Proceedings by
the Equal Opportunities Commission) Regulation**

PURPOSE

This paper seeks Members' views on the regulation to be made by the Secretary for Health and Welfare (SHW) to empower the Equal Opportunities Commission (EOC) to bring proceedings in its own name under s.72(1) and to seek certain remedies under s.72(4) of the Disability Discrimination Ordinance (Cap. 487) (DDO) (Relevant sections of the Disability Discrimination Ordinance are at **Annex**).

BACKGROUND

2. S.72(1) of the DDO provides that a person may make a claim, by means of a civil proceeding in a District Court, that another person has committed an act of discrimination, harassment, vilification or any unlawful act under the DDO. When the court is satisfied that the respondent has committed such an act, it may make an order under s.72(3) and s.72(4) providing remedies to the claimant.

3. S.86 of the DDO provides for SHW to make regulation where any person may bring proceedings under s.72(1) but has not done

so, empowering the EOC, in such circumstances as are specified in the regulation, to bring and maintain those proceedings as if the EOC were that person. The regulation would also specify which of the remedies referred to in s.72(3) and s.72(4) shall be obtainable by the EOC in the aforesaid proceedings.

4. The EOC has so far received five complaints lodged under the DDO since its formal operation in September 1996. To enable the EOC to implement the DDO effectively, we need to prepare for the introduction of the regulation to be made under s.86.

OBJECTIVES

5. The regulation is considered necessary as it serves as one of the means for the EOC to work towards the elimination of discrimination and promote equal opportunity between persons with and without a disability. Nevertheless, in equipping the EOC with such power, we should bear in mind that proceedings to be brought under s.72(1) are civil proceedings and the wishes of the aggrieved persons should be respected.

6. The main objective of our regulation is to maintain a balance between the need to take action against a discriminator and the right of an individual who may be suffering from an unlawful act but prefers not to pursue the matter by way of a court case. We believe that it would be sufficient for the EOC to act to establish for the first time in a

court of law an interpretation of the DDO which would establish a principle for similar cases.

7. Such arrangement will be consistent with the role of the EOC to encourage the parties in disputes to effect a settlement of the matter by conciliation as stipulated by section 62 of the DDO. We envisage that the EOC will settle most disputes on discrimination through conciliation. Only where this failed would the EOC help complainants to take their cases to courts. Another very substantial role assumed by EOC is public education. Introducing the Disability Discrimination Bill for second reading, SHW has already emphasised that on the first, the EOC would need to promote understanding of the Bill through public education. On the second, the EOC should be given the right to bring proceedings in its own name so as to establish points of principle and in the process educate the public.

8. To respect the right of an individual, the EOC should not initiate a civil court case unless the victim concerned gives a valid consent. An aggrieved person may decide not to take legal action for personal reasons, for instance, he is reaching a settlement with the discriminator and his preference should be respected.

9. As regards the remedies obtainable by the EOC, the objective of the EOC bringing a proceeding under s.72(1) should be establishing a principle or legal interpretation. The EOC does not, therefore, need all the remedies listed in s.72(4) (e.g. damages and reinstatement). We propose that our regulation should only include those

which seek to stop the respondent from repeating or continuing with the unlawful act.

THE REGULATION

Empowering the EOC to bring proceedings under s.72(1)

10. The proposed regulation will empower the EOC, by virtue of s.86(1)(a), to bring proceedings under s.72(1) (as if it were a person who may have brought proceedings under that section but has not done so) subject to the following considerations.

Circumstances under which proceedings can be initiated by the EOC

11. We propose that the circumstances in which the EOC may bring proceedings under s.72(1) of the DDO include the following:

- (a) the EOC has reasons to believe that a person has committed an act of discrimination, harassment, vilification or which is otherwise unlawful under the DDO as described in s.72(1);
- (b) the EOC considers that it is in the public interest to establish in court an important point of principle under an interpretation of the DDO for the first time;

- (c) the EOC has already offered assistance to the aggrieved person by way of conciliation (s.80 of the DDO) but failed to obtain a settlement; and
- (d) the person against whom such an act has been committed has expressly indicated that he will not bring a proceeding under s.72(1) and has given a valid consent to the EOC bringing such proceedings.

Remedies obtainable by the EOC

12. We propose that where a proceeding is brought under s.72(1) by virtue of this regulation, only the remedies under s.72(4)(a) and (g) should be available to the EOC. In this relation, the EOC may apply for remedies including a declaration and an order to be made by the District Court that the respondent shall not continue an unlawful act; and/or declare void in whole or in part any contract or agreement made in contravention of the DDO.

COMMENCEMENT

13. The DDO has come into full force on 20 December 1996 with the commencement of the Code of Practice on Employment and two sets of rules prepared by the EOC on the same date. As regards the regulation to empower the EOC to bring proceedings under s.72(1) of the DDO, we aim to make and commence the regulation as soon as possible.

ADVICE SOUGHT

14. Members are invited to comment on the proposed regulations as set out in paragraphs 10-12 above.

Health and Welfare Branch
Government Secretariat

February 1997

**Equal opportunities:
A study of discrimination
on the ground of race**

A consultation paper

Home Affairs Branch
Government Secretariat
February 1997

Table of contents

<i>Chapter 1 Introduction</i>	1
Study on racial discrimination	2
Methodology	2
New arrivals from China	3
Racial discrimination: definitions	3
Hong Kong's population	4
<i>Chapter 2 Education</i>	6
New arrivals	7
The South Asian community	7
Vietnamese migrants	8
Access to tertiary education	8
<i>Chapter 3 Employment</i>	10
Localisation	10
Institutions of tertiary education	11
Foreign domestic helpers	12
Access to the legal profession	15
Recruitment and career progression in the private sector	16
New arrivals	17
<i>Chapter 4 Health and social welfare</i>	18
Practitioners of Chinese medicine	18
Vietnamese migrants	19
Social welfare	20
Adoption	21
New arrivals	22
<i>Chapter 5 Law and order</i>	23
Treatment by members of the disciplined services	23

Vietnamese migrants _____	24
Immigration issues _____	24
Assessment _____	26
Accessibility of the law _____	27
<i>Chapter 6 Special issues of concern</i> _____	28
Discourtesy and abuse _____	28
The media _____	28
Language in insurance policies _____	29
Public housing _____	29
<i>Chapter 7 Measures taken by other jurisdictions</i> _____	31
Australia _____	31
Austria _____	32
Canada _____	33
Denmark _____	33
Japan _____	34
New Zealand _____	35
Singapore _____	35
United Kingdom _____	36
<i>Chapter 8 Possible measures to address the question of discrimination on the ground of race</i> _____	38
Existing measures _____	39
Public education _____	40
Legislation _____	41
Practical measures _____	43
<i>Chapter 9 Invitation for public comment</i> _____	45
<i>Annex A. Views of the Consuls-General</i> _____	46
<i>Annex B. List of respondents</i> _____	48

<i>Annex C. Population: data sets from the 1991 Census and the 1996</i>	
<i>By-Census</i> _____	51
<i>Annex D. Survey of recruitment advertisements</i> _____	57
Objective _____	57
Methodology _____	57
Criteria _____	57
Major findings _____	58
Conclusion _____	60
<i>Annex E. Bibliography</i> _____	61

Chapter 1 Introduction

1.1 This study aims to establish whether racial discrimination exists in Hong Kong and, if so, its nature, extent and possible options for addressing such problems as may be found to exist. It follows the studies of discrimination on the grounds of age, disability, family status, sex and sexuality. The focus of these studies has been equal opportunities: that is, the right of all members of society to a level playing field in the competition for the necessities and pleasures of life. Government is firmly committed to this ideal and to the principle that all kinds of discrimination are wrong. In 1995, this commitment first took concrete form with the enactment of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance.

1.2 The decision to legislate in respect of discrimination on the grounds of sex and disability followed extensive research and consultation on - and careful analysis of - the policy options. This reflected the recognition that discrimination was rooted in personal beliefs and social values. Measures to deal with it require the community's broad acceptance of the moral and practical 'rightness' of equal opportunities. Such acceptance is only obtainable gradually, through education and persuasion. For this reason, the Government believes that the best way of resolving the various problems of discrimination is through a step-by-step approach, mobilising public support for a new and developing 'culture' of equal opportunities.

1.3 The Bill of Rights Ordinance (BORO) - which took effect in 1991 - secures the civil and political rights of individuals insofar as they entail actions between the citizen and the public sector. But there have been calls for the elimination of discrimination as practised by and between private individuals and organisations. However, legislation, by its nature, is coercive. It cannot, as some commentators have suggested, have a purely educational function. It is always a serious step because it restricts freedom of action and of expression. Before taking that step, it is important that the issues entailed - and their implications - are clearly understood. Anti-discrimination legislation is a new form of law in Hong Kong with wide-ranging implications that are not yet fully appreciated. Each form of discrimination entails issues that are different from those that characterise the

other forms. Therefore, in examining the related questions of discrimination and equal opportunities, the Government has dealt with each issue separately, one step at a time. The current study is the latest of those steps.

Study on racial discrimination

1.4 This report completes the first, fact-finding, stage of the study. Its purpose is to provide a basis for public consultations on possible measures to tackle the issues identified. Government has undertaken to report the findings to the Legislative Council within the 1996/97 legislative session.

Methodology

1.5 The study process comprised a 'desk study' of relevant scholarship and jurisprudence (both domestic and international), correspondence with Consulates-General on the experience of their nationals in Hong Kong summarised in Annex A, and meetings with the organisations and individuals listed in Annex B. The chapters that follow summarise their responses in relation to various aspects of life in Hong Kong, such as access to education, employment, health, welfare and the law. The Home Affairs Branch is grateful to all for their valuable contributions.

1.6 In assessing the views and reports put forward, care was taken to avoid 'over-identification'. As a respondent pointed out, not everything bad that happens to a member of a minority is due to discrimination. And not everything bad and possibly discriminatory that happens to a member of an ethnic minority is due specifically to *racial* discrimination. To over-identify a problem is to exaggerate it. To forestall this, the information provided by respondents is generally presented without evaluation except where comment was unavoidable. Government considers that it is for members of the public to judge whether, on the basis of their own experience and of their assessment of the total picture, the findings presented here indicates that racial discrimination is or is not a problem in Hong Kong.

New arrivals from China

1.7 The inclusion of this topic requires explanation. New arrivals are Chinese people, ethnically the same as Hong Kong's settled majority. Therefore, the discussion of their situation in a document concerned with racial discrimination might reasonably be questioned. The reason is that international bodies concerned with race-related issues consider that 'racial discrimination' includes discrimination against identifiable minorities within a particular culture, even those of the same ethnic stock as the host community. For example, in its examination of the UK's 13th report under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in March 1996, the United Nations Committee on the Elimination of Racial Discrimination (CERD) considered and commented on the circumstances of the Irish Travellers. The Travellers are ethnically Irish people who speak an Irish dialect. But their distinct lifestyle sets them apart as a discrete minority and, as such, the difficulties they experience are considered a legitimate subject for enquiry by the CERD. New arrivals from China are in a similar position. Many are unfamiliar with local language and customs. They share certain difficulties that people commonly encounter when adapting to life in a new environment. And it is clear that, perhaps because of their position in society, they are sometimes treated unfairly. Their situation has attracted considerable discussion and public concern. Whether any aspects of it reflect specifically racial discrimination is a question that this study seeks to address. It is a question on which public opinion would be particularly welcome.

Racial discrimination: definitions

1.8 In Article 1 of the ICERD, the United Nations (UN) defines racial discrimination as follows -

"In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

1.9 This definition is the basis of several national laws in this area. In 1989, the United Nations Human Rights Committee¹ provided further clarification -

“ [T]he term ‘discrimination’ as used in the covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. [N]ot every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”

1.10 This position has been affirmed by the European Court of Human Rights which, drawing on international law, has held that differential treatment will amount to discrimination if the distinction has no “objective and reasonable justification”. In determining whether such justification exists, the Court requires that the difference of treatment must have been adopted in pursuit of a legitimate aim and that there must be a reasonable relationship of proportionality between the means employed and the aim to be realised.

Hong Kong’s population

1.11 An examination of data sets from the 1991 Census and the 1996 By-Census (as shown in Annex C) revealed a largely homogenous society, over 96% being ethnic Chinese. The remaining (roughly) 4% comprised highly diverse minority groups, Filipinos being the largest. They also indicated that - whatever their occupation, gender, or level of education - people from Japan, Europe and North America generally earn more than other groups; Filipinos and Thais earned

¹ General Comment 18(37) (New York, United Nations, 1989) in the report of the United Nations Human Rights Committee.

the least. Local Chinese and people from South Asia fell between the two extremes. These differentials are not proof of racial discrimination. High-earning North Americans and Europeans (in terms of nationality and place of birth) could be from any ethnic background. Income levels, particularly at the top and bottom ends, tend to reflect expectations in the countries of origin rather than discrimination in Hong Kong.

2.7 Section 4(2) of the English Schools Foundation Ordinance (Cap.1117) empowers the Foundation to offer a modern liberal education through the medium of English language without regard to race or religion. The Foundation's mission statement specifically welcomes students from all nations and emphasises the need to value people. Its student body includes representatives of over 50 different nationalities and the Foundation has frequently been praised for its multi-cultural ethos. It has an equal opportunities policy and its present Chairman is a prominent member of the Indian community. Recognising that English is not the first language for some of its students, the ESF has taken steps to help those for whom this is an obstacle to learning. Additionally, ESF secondary schools teach Chinese to examination level. And two ESF primary schools have introduced the subject on a pilot basis in response to parental demand. The aim is to extend this to all ESF primary schools over the next three to four years.

Vietnamese migrants

2.8 Some respondents said that Vietnamese children did not have the same access to schooling as other children living in Hong Kong. The position is that agencies sponsored by the United Nations High Commission on Refugees (UNHCR) provide pre-school and primary education in the camps. The UNHCR used to provide secondary education but withdrew that service in July 1995. The Hong Kong Government has resumed responsibility for providing such education and has commissioned the International Social Service to co-ordinate its provision. Government also provides assistance in the form of accommodation, classroom furniture, stationery, textbooks and sports equipment. All classes teach a Vietnamese syllabus to ensure continuity when students return to Vietnam.

Access to tertiary education

2.9 Some respondents considered that the Chinese language requirement for entry into Hong Kong's tertiary institutions was a barrier to non-Chinese residents who could not afford to pursue their studies overseas. Most, if not all, children of the settled minority communities spoke Chinese well. But few of them

could read or write it. They therefore considered that the requirement was an indirect, if unintended, form of racial discrimination.

2.10 Articles 2.2 and 13.2(c) of ICESCR - which applies to Hong Kong - together guarantee that that higher education shall be equally accessible to all on the basis of capacity without distinction of any kind as to race, colour, language, national or social origin (and so forth). It is true that most UGC-funded institutions require a level of proficiency in Chinese for entry to first degree programmes. This is not based on race. It is, rather, a reasonable requirement in a community almost entirely comprised of Chinese-speakers whose cultural heritage originates from China. By way of analogy, it would surely not be considered either surprising or racist if candidates for first-degree programmes in, say, London, Bonn or Paris were required to demonstrate a level of competence in, respectively, English, German, or French. Student admission is a matter of institutional autonomy. All but one UGC-funded institutions accept proficiency in an alternative language in lieu of Chinese or English. Local non-Chinese students may be admitted on this basis.³

³ To encourage an international outlook, some institutions waive the second language requirement for non-local students if their 'home' education systems provide no opportunities to acquire proficiency in a language other than English. At least one institution admits non-local students who do not fulfil the Chinese language requirement to courses taught in English. Cases are considered on their own merits. In 1995-96, UGC-funded institutions enrolled 1,234 non-local students, of whom some 448 (36.3%) were from places other than China, Hong Kong or Macau.

Chapter 3 Employment

3.1 Subject to immigration controls that are common to many jurisdictions, employment in Hong Kong is open to all legal residents who have attained the age of 15. Immigration restrictions aside, the only constraints are legal protections for the benefit of younger workers and the Civil Service localisation policy, which gives priority to local candidates and has been in place since the 1950s. With those exceptions, all legal residents - irrespective of race, colour, class, gender, or creed - have the right to compete for employment according to inclination, qualification and ability. All workers legally resident in Hong Kong enjoy the same protections under such laws as the Employment Ordinance (Cap.57), the Employees' Compensation Ordinance (Cap.282), and the Protection of Wages on Insolvency Ordinance (Cap.380).

Localisation

3.2 Some respondents considered that the localisation policy was designed exclusively for the benefit of ethnic Chinese. It discriminated against other ethnic groups, permanently curtailing their promotion prospects. A respondent from the Pakistani community said that - except for the Police and the Correctional Services - no South Asian resident had been recruited into the Civil Service for some ten-to-twenty years. Those currently in service were either recruited before then or were from overseas.

3.3 Government policy is that recruitment to the Civil Service is on a non-discriminatory basis. Localisation is not based on race or ethnic origin. Local or overseas status is determined on the criteria of habitual residence, general background and social ties, and potential uprooting or dislocation. There are ethnic Chinese appointed on overseas terms and non-ethnic Chinese appointed on local terms, including members of Hong Kong's South Asian community. But, precisely because recruitment is non-discriminatory, Government does not seek information about the ethnic origin of candidates or serving officers and keeps no statistics in this regard. A recent Court of Appeal judgement (on a judicial review of decisions made under the localisation policy) recognised that localisation was not in itself unlawful. The Court ruled that some decisions made under the policy

were unlawful. To comply with that ruling, the Government is considering ways to rectify the decisions in question.

3.4 Other respondents considered that, by allowing officers on overseas agreement terms to switch to local terms, the Government had renounced the localisation policy. They resented the fact that, in permitting overseas officers to remain in service, the Government did not compensate local officers for what they termed 'past disparities'. In the view of these respondents, Government had not considered the changes to the localisation policy in sufficient depth or detail.

3.5 Their complaint relates to a modification to the localisation policy that allows overseas agreement officers who are permanent residents of Hong Kong to transfer to local terms. This was done to ensure that the policy was consistent with Article 21(c) of the Bill of Rights Ordinance. The article provides that every person with right of abode in the territory (that is, every permanent resident) should have access on general terms of equality to public service in Hong Kong. The need for such consistency - and thence the arrangements for overseas officers who are permanent residents to transfer to local agreement terms - was recognised in the recent Court of Appeal judgement referred to in paragraph 3.3. Notwithstanding the modification, the main thrust of the localisation policy is unchanged and localisation remains a central tenet of Government policy.

Institutions of tertiary education

3.6 Some respondents said that very few members of staff were of South Asian origin. Almost all those that were, they stated, had been recruited from Western universities. None were recruited directly from South Asia. This suggested a prejudicial view of the value of South Asian scholarship and qualifications. Others considered that the distinctions between local and overseas terms of employment - and the allocation of housing benefits - were evidence of racial discrimination in the universities.

3.7 These institutions are funded through the Universities Grants Committee (UGC). They are governed by policies which, among other things, advocate no discrimination on the ground of race. This is evident in the recruitment of staff and admission of students: candidates compete on ability and

merits. No account is taken of their ethnic origins. In 1994-95, about 30% of them were "home-grown" in the sense of having received their higher education in Hong Kong. Some 20% had first degrees from universities in the United Kingdom, 15% from universities in the United States, and 5% each from universities in China, Taiwan and Canada.

3.8 It is Government policy that the terms and conditions of service in subvented organisations - which include those funded by the UGC - should be broadly comparable to (and no better than) those of civil servants in grades of comparable responsibility. Institutions offer different housing benefits to staff employed on local and overseas terms in accordance with civil service practice. Within these parameters, UGC-funded institutions enjoy autonomy in determining terms of employment. All but one have adopted common terms of service. The remaining one is taking active steps to do so. Where there remains a distinction between local and overseas terms, that distinction is not made on grounds of ethnicity.

Foreign domestic helpers

3.9 Several respondents said that domestic helpers encountered discrimination in Hong Kong, some of it racially based. The main areas of concern were -

- social stigmatisation: this included such things as exclusion from residential lifts and club premises (the latter while escorting their employers' children to and from clubs). Employers representatives pointed out that, in most countries, service personnel were required to use service lifts or 'tradesmen's entrances'. This practice might arguably be considered discriminatory. But there was no basis for considering it to be racial discrimination: the ban had not applied to residents and guests from the same countries as the domestic helpers. Club facilities were for the use of members who paid substantial fees for the privilege. The restrictions on the helpers were the same as for any non-members and could not be considered discriminatory;

- colour prejudice: it was claimed that some employers had dismissed helpers immediately on their arrival in Hong Kong on the ground that they had dark skin which Chinese people (apparently) considered unlucky. Employers representatives considered that incidents of this kind were rare. They did not condone treatment of this kind. But domestic employment entailed close and frequent contact between employer and employee. It was important that all concerned felt comfortable with one another. Measures to address such matters would need careful consideration as they could be counter-productive intrusions on domestic privacy;
- resistance to activities centres for foreign domestic helpers: some respondents considered that local opposition to these centres demonstrated the existence of racial discrimination. The Home Affairs Department, with the Bayanihan Trust, played a large part in establishing the centres. It considers that the initial resistance by certain local residents was due to misunderstanding about the nature of the scheme rather than to racial prejudice. The centres are now proving to be popular and well-accepted by the general public. There are now six Sunday-only centres and two dedicated centres, open five days a week. Government is seeking venues for further centres of this kind;
- problems in the workplace: complaints included sexual harassment, physical violence, underpayment, non/insufficient provision of food, lack of personal space, and employers requiring helpers to work illegally in their business operations. Those who complained were usually dismissed. Existing complaint channels were unhelpful: migrant workers often felt intimidated by authority and found it difficult to speak up for themselves.

Foreign domestic helpers enjoy the same rights and protections in law as do local workers. Helpers who consider that they are being denied statutory benefits under the Employment Ordinance - or that their employers are not conforming with their contractual obligations - have recourse to the conciliation service offered by the Labour Relations Services of the Labour Department. If conciliation fails, there is further recourse to the Labour Tribunal, which is part of the Judiciary, or the

Labour Department's Minor Employment Claims Adjudication Board (MECAB). The choice of adjudicator depends on the number of claimants and the amount of claims involved. Helpers who consider that their employers have subjected them to abuse may seek the Director of Immigration's agreement to their changing employers on grounds of maltreatment. Additionally, several non-government organisations assist foreign workers to secure their rights.

It was also claimed that Government-supplied interpreters often went beyond their remit by advising clients to accept inadequate settlements.⁴ It is the policy and practice of the MECAB to encourage parties to bring their own interpreters to the hearings. If they cannot do so, MECAB will meet the need. Normally, however, the interpreters at MECAB hearings are the claimants' friends, relatives, or trade union officials. Claimants who are dissatisfied with the MECAB's interpretation service can complain during the hearing. In that event, Adjudication Officer may adjourn the hearing to arrange a replacement. Additionally, claimants may request Adjudication Officers to review their awards/order within seven days after the hearing on the ground that the interpretation service was unsatisfactory.

All of these things, if proven in particular cases, would be evidence of wrongdoing. But it is not clear that, by themselves, they would be evidence of racial discrimination. Indeed, respondents said that some of the worst abuses were perpetuated by the victims' own nationals;

- the 'two-week rule': requires that when domestic helpers' contracts are terminated prematurely by either party, the helpers are permitted to remain in Hong Kong for a maximum of two weeks before returning to their country of origin. If they wish to work in Hong Kong again, they must re-apply in their home country for a new work visa. The purpose of this rule is to deter job-hopping which was a frequent problem before its

⁴ An effort was made to follow-up a specific complaint in this category. But the organisation dealing with it did not supply the necessary additional information.

introduction. It is applied flexibly and with compassion. Extensions are allowed in cases of genuine difficulties. Most applications for permission to sign new contracts (after premature termination of old ones) are approved (92% in the first six months of 1996). Successful applicants do not have to return to their countries of origin before starting their new jobs.

Some respondents considered the rule discriminatory because it applied only to domestic helpers and labourers from developing countries, not to managerial/professional expatriates. Employers' representatives said the rule provided a balance between their interests and those of their employees. Employers of foreign domestic helpers spent money, time and effort to bring their helpers to Hong Kong. They did so expecting to receive at least two years' service in return. Unlike other employees, domestic helpers and imported labourers enjoyed special protections such as a minimum wage and 'compensation' package. The 'two-week' rule should be seen in this context; and

- families: unlike managerial/professional expatriates, foreign domestic helpers cannot bring their families to live with them in Hong Kong. Some respondents considered the restriction discriminatory because it applied exclusively to particular classes of workers from developing nations. The restriction is common to most countries that receive migrant workers. It reflects the practical concern that, if migrant workers could bring their families with them or settle permanently, they would compete with local workers for housing, education and other social resources. This is not a significant concern in the case of managerial/professional expatriates who, generally speaking, enjoy relatively attractive salaries and benefits (such as housing and education allowances) that make it unlikely that they will make demands on public services in these areas.

Access to the legal profession

3.10 The legal profession in Hong Kong is divided into two branches - solicitors and barristers. The admission criteria for solicitors were amended in 1994 to make them non-discriminatory. However, the admission criteria for

barristers. found in section 27 of the Legal Practitioners Ordinance (Cap.159), provide no recourse for foreign lawyers coming from non-Commonwealth jurisdictions to gain admission in Hong Kong. Moreover, barristers qualified in England, Northern Ireland and Scotland can gain admission as a barrister in Hong Kong more easily than barristers from other Commonwealth jurisdictions.

3.11 Government and the Bar Association recognise the need to introduce admission criteria for barristers that are objective, reasonable, non-discriminatory and standards-based. The Bar Association has submitted proposals in this respect to the Government, which is now discussing them with the Association.

Recruitment and career progression in the private sector

3.12 Various respondents said that race was a factor in the recruitment practices of many private sector employers. For example, it was evident in recruitment advertisements. Requirements such as 'native Chinese' 'native Japanese', 'native English speaker', and even 'would not suit Asian applicants' were, they said, fairly common. To investigate this assertion, a survey was made of one week's advertisements in a selection of English and Chinese newspapers. This found that fewer than 1% of the advertisements in those papers could reasonably be construed as racist on the face of their wording. Its findings are at Annex D.

3.13 Some respondents spoke of 'glass ceilings' within private companies and the professions. These, they said, made career progression difficult for employees who were not ethnic Chinese. For example, some employers were unwilling to commit the same resources to career development (such as language training) of non-Chinese employees as to that of their Chinese colleagues. It was not possible to investigate the extent of such occurrences. But it is understood that many established employers now have equal opportunities policies. In the absence of sufficient information, it is not possible to determine whether such practices do exist and if so are, in fact, racially discriminatory.

New arrivals

3.14 Respondents said that new arrivals found it difficult to secure jobs. Employers were reluctant to hire new arrivals because their command of Cantonese and/or English was inadequate and they lacked the necessary work skills. These respondents (mostly NGOs representing new arrivals) recognised that these difficulties might be genuine and that the requirements might sometimes be reasonable. But new arrivals were also rejected for jobs with no obvious skill content. Some respondents also claimed that new arrivals who secured employment were often exploited, perhaps because new arrivals were prepared to work long hours for low pay. This sometimes led local co-workers to regard new arrivals as a threat to their own jobs and wage levels and as competitors for social resources.⁵

3.15 New arrivals enjoy the same protection under the law (Employment Ordinance, Employees' Compensation Ordinance, etc.) as all other workers legally resident in Hong Kong. Recognising that many new arrivals face difficulties in securing employment, Government introduced an amendment to the Employees Retraining Ordinance to enable new arrivals to receive training and retraining under the Employees' Retraining Scheme. This was enacted in January 1997.

⁵ For an insight into the psychology of discrimination in this area, see for example Lam, S. F., Law, I., Chiu, C. Y., Hong, Y. Y., 'Social identities of Hong Kong adolescents and their relations to intergroup perception and intended interaction', *International Symposium on Personality and Education*, April 1996. See Bibliography (Annex E) for related studies.

Chapter 4 Health and social welfare

4.1 Government policy is that no one should be prevented, through lack of means, from obtaining medical treatment. To this end, it heavily subsidises various health care services. About 4.3% of Hong Kong's GDP is spent on health care every year; 6% when expenditure on infrastructure and support services are added. Hong Kong's health indices compare favourably with those of developed nations. This is attributable to the comprehensive range of promotional, preventive, curative and rehabilitative services that the population receives. Hong Kong regularly submits information on the health situation in the territory to the World Health Organisation of the United Nations.

4.2 There is no discrimination in the provision of health care services. Special measures are taken to ensure that cultural or linguistic differences do not prevent access to those services. For example, patients who cannot speak Cantonese or English are encouraged to bring relatives or friends to serve as interpreters. A list of registered part-time interpreters is available at all public hospitals. Additionally, the Department of Health's Social Hygiene Service has trained a small team of nurses to speak Thai. More are undergoing training. Health education materials are available in several languages such as Bengali, Hindi, Japanese, Thai, Urdu, and Vietnamese. Interpreters provide Vietnamese translation services for patients in camp clinics and in public hospitals.

Practitioners of Chinese medicine

4.3 Section 31(1) of the Medical Registration Ordinance (Cap. 161) provides that -

“Subject to the provisions of section 32 [*which relates to the treatment of eye diseases*] nothing in this Ordinance shall be deemed to affect the right of any person of Chinese race, not being a person taking or using any name, title, addition or description calculated to induce anyone to believe that he is qualified to practise medicine or surgery according to modern scientific methods, to practise medicine or surgery according to purely Chinese

methods and to demand and recover reasonable charges in respect of such practice.”

Some respondents said this was discriminatory, partly because of the term ‘of Chinese race’ and partly because the exemption applied only to persons of Chinese race. This provision is historical and arises from two proclamations issued in 1841. These declared that the inhabitants of Hong Kong would be governed according to the laws, customs and usages, religious rites and ceremonies of the Chinese. Because the practice of traditional Chinese medicine has been regarded as one of those ‘customs and usages’, the law does not require traditional practitioners to register or to be subject to certain controls or disciplinary procedures. However, the Preparatory Committee on Chinese Medicine, appointed by the Secretary for Health and Welfare in 1995, is considering the regulation, development and promotion of traditional Chinese medicine. It is likely to recommend a legislative framework to regulate Chinese medicine and to regulate/register practitioners of Chinese medicine. The relevant provisions in Cap.161 will be removed when the Committee’s recommendations, if accepted, are implemented.

Vietnamese migrants

4.4 Some respondents claimed that detainees were denied medical and dental treatment unless they volunteered to return to Vietnam. This was, they said, clear evidence of anti-Vietnamese prejudice/discrimination. The allegation was also put before the UN Committee on Economic, Social and Cultural Rights (CESCR) during its hearing of the third report on Hong Kong under the International Covenant on Economic, Social and Cultural Rights, in November 1996.

4.5 The assertions were of considerable concern. If true, they would entail infringements of medical ethics, Government policy and the Bill of Rights. Accordingly, the Government instigated a thorough investigation of each of the cases cited to the CESCR. After exhaustive inquiry, the allegations were found to be without foundation. Government’s policy is that medical services are provided to all Vietnamese refugees and migrants should they need them. A comprehensive range of medical services is being provided in the Vietnamese migrant camps

including general out-patient clinics, dental treatment, maternity and baby care. Persons requiring medical services that cannot be provided in the camps will be referred to hospitals and specialist units. The camp management also makes special arrangements for relatives and friends to visit migrants admitted to hospital.

Social welfare

4.6 Welfare services are provided to all who need them, irrespective of culture, nationality, or race. But there is special provision for the ethnic minorities, namely -

- special rehabilitation facilities for non-Chinese-speaking disabled children and adults. These include the -
 - Matilda Child Development Centre: an early education training centre with places for 30 children;
 - Hong Kong Vocational Centre: a day activity centre with places for ten young adults;
 - Watchdog: an early education training centre with places for 24 non-Chinese-speaking children; and
 - Springboard: a special child care centre with 15 places for English-speaking disabled children (from 1996/97);
- care for the elderly: the China Coast Community provides residential care for the elderly, mainly English-speaking people;
- pre-school education: the Social Welfare Department organises an English language course in child care to help non-Chinese-speaking playgroup staff to meet the registration requirements of the Child Care Centres Ordinance;

- Ellis Kadoorie Hong Kong Ladies Benevolent Association Trust (No.3 Trust): according to the expressed wish of the donor, only provides assistance to Hong Kong residents who are not Portuguese or Chinese;
- new arrivals from China: the Government subvents the International Social Service to provide special welfare services to new arrivals. The 'post-migration service' provides counselling, orientation sessions, dialect classes and social groups for both adults and children. The aim is to help them adapt to life in Hong Kong. The Social Welfare Department runs courses to provide its staff with the necessary skills and knowledge to work with new immigrants. This includes training in Putonghua and simplified characters;
- welfare services hotline: provides pre-recorded information in Cantonese, Putonghua and English; and
- correctional and residential homes: meet the special needs of ethnic minorities, such as dietary requirements. The opportunity is also taken to teach the residents about each other's cultural values.

Adoption

4.7 Concern has been expressed that the priority accorded to Chinese couples wishing to adopt children in Hong Kong may be racially discriminatory. This practice is pursuant to Article 20 of the United Nations Convention on the Rights of the Child. That is, the highest priorities are to maintain continuity of a child's upbringing and the child's ethnic, cultural and linguistic background. Thus, in Hong Kong - where most children available for adoption are ethnically Chinese - local Chinese couples have priority if all prospective adoptive parents are adjudged equally capable of fulfilling that role. Similarly, where non-Chinese children are available for adoption, priority is accorded to couples of the same racial background as the children.

New arrivals

4.8 NGOs working with new arrivals said that some local people seemed to resent the allocation of public resources to new arrivals. This probably refers to the services described in paragraph 4.6 (fifth bullet). As stated, the aim is to help new arrivals adapt to life in Hong Kong. The service is consistent with the policy of impartial provision of services to those who need them, regardless of race or origin, and is not rendered at the expense of other Hong Kong residents. Indeed, the Government considers that helping new arrivals to settle in is in the interests of the whole community. The quicker they do so, the sooner they will be in a position to contribute to Hong Kong's economic and social development.

Chapter 5 Law and order

5.1 The Bill of Rights Ordinance provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. "In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as **race**, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." As a matter of both law and policy the enforcement of the law is impartial. It is administered without discrimination or favour. This is a fundamental condition of the rule of law.

5.2 Law enforcement, by its very nature, may occasionally impose inconvenience on individual members of the public. For example, the Police have to conduct stops and searches in the course of the fight against crime. So too do the Customs and Immigration Services in combating smuggling and illegal immigration. These operations inevitably involve the selection of targets, which, based on operational experience, are likely to produce successful outcomes. For instance, certain locations are known centres of illegal activities, and certain points of origin are known transit points for the drug trade or routes for illegal immigration. Unfortunately, directing enforcement efforts at these targets may result in inconvenience to innocent residents and travellers, and since some people may be inconvenienced more frequently than others, it is perhaps not surprising that some may feel that discrimination is involved.

Treatment by members of the disciplined services

5.3 Some South Asian and Southeast Asian respondents were dissatisfied with the treatment they had received from the Customs and Immigration Services. They said they had frequently been stopped, delayed, and searched when entering Hong Kong. Chinese and Western passengers travelling from the same places were allowed to pass through without inconvenience. They recognised that the practice of 'target profiling' had reasonable objectives. However, it should be exercised with tact and sensitivity.

5.4 Representatives of the Filipino, South Asian and Thai communities claimed that the Police appeared indifferent to their problems and treated them with contempt. They said that station staff were unsympathetic when people from these communities sought to report crimes committed against them. Sometimes station personnel refused to handle their cases at all. At street level, they said, Police patrol officers were often abusive and 'took sides' with Chinese people in disputes with other racial groups. To discover whether these complaints could to any extent be substantiated, those where respondents had provided sufficient information were referred to the departments in question. In each case, a full reply was received, none indicating evidence of discrimination. This does not conclusively demonstrate that discrimination was never involved. But it was established that similar complaints had been made by Chinese people, which suggests the possibility that any problems in this area might relate to service quality rather than to racial discrimination.

Vietnamese migrants

5.5 Some respondents claimed that, in a recent training exercise for the Police Tactical Unit, the "enemy" were clearly intended to represent Vietnamese detainees. They considered this to be evidence of stereotyping/discrimination on the part of the authorities. The Government's position is that demonstrations by Vietnamese detainees are among the many contingencies for which the Police must plan and prepare. Such preparation requires training, and training must be as realistic as practicality allows. This is not a question of racial stereotyping but a reflection of operational needs.

Immigration issues

5.6 Hong Kong's immigration policy seeks to facilitate entry and departure procedures and the process of working and doing business in the territory. At the same time, it aims to control the level of entry for permanent settlement so that the permanent population will grow at a pace with which the social infrastructure can cope. It also aims to assist in the control and detection of crime. These aims and responsibilities are carried out on a non-discriminatory

basis though, for the practical reasons in paragraph 5.2, their execution may require a certain degree of differentiation.

5.7 However, some respondents considered certain provisions of the Immigration Ordinance (Cap.115) to be racially discriminatory. These were -

- section 1 of Schedule 1: this sets out the criteria for permanent resident status. One criterion extends that status to *“any person who is wholly or partly of Chinese race and has at any time been ordinarily resident in Hong Kong for a continuous period of not less than 7 years ”* Some respondents claimed this was discriminatory because it gave ethnically Chinese people an advantage over other ethnic groups. Other groups could become permanent residents. But the procedures were more difficult and costly. And their main option - naturalisation - was no longer available. The Immigration Ordinance does not restrict permanent residency to persons of any particular race. It is available to -
 - (a) British Dependent Territories citizens;
 - (b) persons wholly or partly of Chinese race who have resided in Hong Kong continuously for seven years; and
 - (c) persons outside the first two categories who enjoyed similar rights before 1987 when the terms “permanent resident” and “right of abode” were introduced into Hong Kong law.

The first and third categories do not entail questions of race. The second does so only in the sense that the persons concerned are Chinese. The wording was a convenient way of identifying the very significant segment of Hong Kong’s population on whom it conferred permanent residency, a status that they had not previously enjoyed. These were people from China who had made Hong Kong their home but had not opted to become British Dependant Territories Citizens. Hong Kong is now their only home. The provision is an interim measure pending the full alignment of the Immigration Ordinance with the provisions of the Joint Declaration and Article 24 of the Basic Law. The latter provides

that both Chinese and non-Chinese nationals who satisfy certain conditions will have the right of abode in Hong Kong;

- deportation: sections 19 and 20 gave British (non-permanent) residents greater protection than other groups. This privilege reflects the constitutional relationship between a metropolitan territory and its dependencies. It will shortly be repealed;
- refugees (Part IIIA): these provisions were considered discriminatory because they applied only to Vietnamese, denying others the right to asylum in Hong Kong. But these measures were a practical and temporary response to the special problems posed by a large and continuing influx of migrants from Vietnam; and
- the “three stars” identity card system (Immigration Regulations): some respondents considered this discriminatory because it distinguished one class of permanent residents (ethnic Chinese) from all others. However, the “three stars” merely indicate that the holder is eligible for a Hong Kong re-entry permit for travel to and from Macau and China. They do not provide the holder with any special advantage over other permanent residents. Hong Kong re-entry permits are now issued to persons not of Chinese race who have been granted unconditional stay in Hong Kong but cannot obtain national passports and do not hold travel documents of any country or region. Therefore, Government does not consider that the “three stars” symbol is in any sense discriminatory.

Assessment

5.8 As stated in chapter 1, it is a principle of international law that not all differentiation is discriminatory. And it is a matter of common sense that not all discrimination is to do with race. On the basis of the information presented, it is not possible to determine whether discrimination - racial or otherwise - was involved in the cases reported. It would be surprising if such was never the case. In all organisations there may be individuals who depart from the standards of professionalism and impartiality that law, policy and discipline require. However, such departures are contrary to the standards required by the Civil Service in

general and by the disciplined services in particular. Those standards are maintained through regular training and officers who breach them may be subject to disciplinary action. There are well-established complaints channels to deal with complaints against the disciplinary services. Where applicable, the BORO may also be invoked in court where the Government or public authorities are considered to have committed racially discriminatory acts.

Accessibility of the law

5.9 One respondent - a legal academic - said that discrimination was entrenched in the law and its institutions. The translation of the law into Chinese was incomplete;⁶ the existing translations were unusable. The entire corpus of case law was unavailable in Chinese, ensuring the continued primacy of English and perpetuated class and race distinctions.

5.10 Other respondents, including experts whose first language was not English, disagreed. Competency in English was a professional requirement for lawyers operating within the Common Law system. Hong Kong's laws must be capable of being read and understood by the international community. Those urging the adoption of 'authentically local' legislation might consider the experience of Malaysia and Sri Lanka, which reverted to English after attempting to 'localise' the language of the law.⁷

⁶ Since April 1989, all new principal Ordinances and legislation amending bilingual Ordinances, and most subsidiary legislation, have been enacted in both English and Chinese, and both texts are equally authentic. At the same time, legislation originally enacted in English only is being translated into Chinese by the Attorney General's Chambers and examined carefully by the Bilingual Laws Advisory Committee before it is declared authentic by the Governor in Council. The target of the Government is that all Hong Kong legislation will be bilingual by 30 June 1997. With the completion of the bilingual legislation programme and through the assistance of their legal advisers, members of the public will have reasonable access to the law regardless of their race.

⁷ Article by Dr Nihal Jayawickrama, Faculty of Law, University of Hong Kong, Hong Kong Standard: 13 November 1996.

Chapter 6 Special issues of concern

6.1 This chapter documents some of the more common, everyday experiences that respondents cited as evidence of racial discrimination. Everywhere in the world, there are numerous incidents that make people feel that they have been subject to discrimination. Episodes of this kind are more likely to occur in the lives of the 'visible minorities' such as people with disabilities and members of ethnic minorities. These things are always unpleasant. But the reality is that they must be expected in a high-pressure urban environment. Where they do not entail discrimination and/or do not infringe any laws, they can only be rebuked or endured. In considering the cases discussed here, it is important to recall that not all unpleasant experiences involve discrimination. Not all incidents of discrimination are cases of racial discrimination, even if the victims are members of ethnic minorities. And differential treatment does not always amount to discrimination.

Discourtesy and abuse

6.2 Common experiences reported included the use of racial epithets ('ah-chaan', 'ah-cha', 'ban-mui', and so forth); refusal of service by taxi drivers; and disdainful treatment by serving-staff in shops and fast food outlets.

6.3 Representatives of the taxi trade - a frequent focus of complaint - recognised that some drivers might have racist attitudes. But these were a small minority. Most problems were the result of communication difficulties and ill-temper resulting from the pressures and tensions of driving in Hong Kong. As the Consulate-General of Botswana has observed (see Annex A), it is possible that this is the origin of other problems that respondents reported.

The media

6.4 Several respondents said that the media, particularly those elements that emphasised 'infotainment', frequently used pejorative terms like those referred to in paragraph 6.2. They also said that it was rather common for the

media to portray new arrivals as poor, lazy, uneducated, and generally less capable than local people. Representatives of newspaper editors said that the use of pejoratives was not intended to offend. The practice was essentially one of habit. They had misgivings about using legislation to curb the practice. But they preferred to reserve a considered view pending sight of this document and the public consultations. Journalists' representatives also had reservations about legislation. But they recognised that there was a problem that needed further consideration.

Language in insurance policies

6.5 Some respondents considered that the use of English by the insurance industry was discriminatory in a mainly Chinese-speaking market. Representatives of the insurance industry recognise that, ideally, people should be able to read and understand their policies. Efforts are being made to translate policies into Chinese. But the process is not easy. Most major insurers are from English-speaking jurisdictions. Terms and conditions are in English because they reflect well-tested legal principles that are difficult to render into Chinese with confidence that they would remain legally waterproof. The industry recognises that people might consider the absence of a legally binding Chinese text to be discriminatory. But it has a rational, objective basis in the nature of the product.

Public housing

6.6 Government is committed to meeting the housing needs of the community. One of the objectives of its Long Term Housing Strategy is to ensure that all households are adequately housed at a price or rent that they can afford. Over the past ten years, the number of inadequately housed persons has steadily fallen. The Government will continue, through clearances, rehousing and construction, to improve the living conditions of those who remain inadequately housed. Access to all forms of public housing is restricted to those who truly need it. Therefore, eligibility is subject to residency status (applicants must be permanent residents) and household income. There is no restriction on the ground of ethnicity/race. Non-Chinese permanent residents are eligible to apply for subsidised housing provided that they meet the criteria.

6.7 New arrivals, not yet being permanent residents, are not eligible for public housing. They - and NGOs representing their interests - recognise that there is a long waiting list. But they consider it unfair and discriminatory that, to be eligible, fifty percent of an applicant household must be permanent residents. Because of this, some households at the head of the public housing queue have been returned to the back when additional members arrive from China. Their difficulties are compounded, they say, by the reluctance of private landlords to rent to new arrivals, particularly those with children.

6.8 Government recognises that it is frustrating when households face an extended wait for public housing. But this does not happen because of discrimination. It is the result of practical considerations and the need for impartiality in balancing claims to scarce housing resources. Government is firmly committed to the aims of the Long Term Housing Strategy and will continue to encourage new arrivals to register on the public housing waiting list so that their applications can be considered once they have met the seven-year residence rule.

Chapter 7 Measures taken by other jurisdictions

7.1 The ICERD was adopted by the United Nations General Assembly in 1965 and entered into force in 1969. There are now some 147 States Parties to it. However, efforts to establish how many countries had specific legislation against racial discrimination were unsuccessful. Even the United Nations Committee on the Elimination of Racial Discrimination (CERD) - the monitoring body for the ICERD - was unable to provide a figure. This chapter contains a selection of the measures that certain other jurisdictions have introduced to address the various problems of racial discrimination. The selection is neither exhaustive nor comprehensive; its purpose is purely illustrative.⁸

Australia

7.2 The Racial Discrimination Act 1975 gives effect to Australia's obligations under the ICERD. Its major objectives are -

- to promote equality before the law for all persons, regardless of their race, colour, descent, or national or ethnic origin; and
- to make discrimination against people on the basis of their race, colour, descent or national or ethnic origin unlawful.

7.3 The Act makes it unlawful to discriminate in such areas as employment, land, housing and accommodation, provision of goods and services, access to places and facilities for use by the public, advertising and joining a trade union. It empowers Australia's Human Rights and Equal Opportunity Commission to inquire into alleged infringements under the Act, and to effect settlement by conciliation. Where conciliation is unsuccessful or inappropriate, matters may be

⁸ The Government is grateful to the Consulates-General of the Austria and Denmark and to the Japanese Ministry of Justice for the information on their respective countries.

referred for formal hearing of consideration by Hearing Commissioners. Upon further inquiry, determinations are issued to resolve these matters. For example, in a complaint about racial discrimination in employment, orders may include financial compensation, employment, re-instatement, promotion, transfer to a different section or location, new procedures, or education/training programmes to prevent recurrences.

7.4 Additionally, the Racial Hatred Act 1995 makes it unlawful to do an act, otherwise than in private, if the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of persons and the act is done on racial grounds.⁹

Austria

7.5 Austria has several legal provisions against racial discrimination in its various aspects. For historical reasons, there is a significant focus within those provisions on Nazism and neo-Nazism. But the most comprehensive is probably Federal Constitutional Law of 3 July 1973, Federal Law for the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. This law forbids any form of racial discrimination. It provides that - in legislation and in law enforcement - any distinction introduced solely on the grounds of race, colour, descent or national or ethnic origin shall be unlawful.

7.6 Austria's public authorities engage in a wide range of activities against racism and intolerance. Examples include the training of Government officials and Government information programmes. Political education is part of the syllabus in all Austrian schools. The aim is to foster an understanding of democracy and commitment to the values of peace, freedom, equality and justice. There is a strong emphasis on human rights.

⁹ Adapted from Annual Report 1994-95 of the Human Rights and Equal Opportunity Commission, Australia.

7.7 The Austrian Government advises that the effectiveness of these measures varies from region to region. So too do the nature and frequency of the problems that they are intended to address. In principle, the Austrian Government considers that political education should be an important concern in the teaching of all school subjects. But it is hard to assess how far this is practised in the classroom. The only 'measurements' available are examination results and those do not lend themselves to a reliable assessment of the success of these efforts.

Canada

7.8 The Canadian Charter of Rights and Freedoms provides a constitutional safeguard against discrimination and has been incorporated into the Canadian Constitution. It provides for rights against discrimination on a number of grounds including that on the ground of race. At the federal level, the Canadian Human Rights Act, enacted in 1977, renders discrimination unlawful on a number of grounds, including that on race, national or ethnic origin, and colour. This makes it unlawful to discriminate in the provision of goods, services, facilities or accommodation, and matters related to employment. The Act applies to all federal government departments, agencies, Crown corporations, and businesses and industries under federal jurisdiction such as banks, airlines, and railway companies.

7.9 The Act establishes the Canadian Human Rights Commission. This deals with complaints from individuals and groups concerning discriminatory practices as covered in the Act. The Commission can approve a settlement if the parties have agreed to one during the investigation. It can appoint a conciliator to help both sides arrive at a reasonable settlement. Or it can send the case to a Human Rights Tribunal for public hearings. The Tribunal has the power to issue orders to the respondent.

Denmark

7.10 Danish law contains several provisions aimed directly at eliminating racial discrimination or similar types of discrimination or unequal treatment. These are -

- section 266(b) of the Danish Penal Code: “Any person who publicly or with the intention of disseminating it to a wide circle of people, makes a statement or imparts other information, threatening, insulting or degrading a group of persons on account of their race, colour, national or ethnic origin, belief or sexual orientation, shall be liable to a fine, simple detention or imprisonment for a term not exceeding two years”;
- Act No. 626 of 29 September 1987: warrants penalties for discrimination in establishments and at arrangements open to the public; and
- Act No. 466 of 30 June 1993: establishes a Racial Equality Board to combat unequal treatment in all its aspects and to support equal opportunities for all ethnic groups.

7.11 In addition to public education, Denmark has initiated several schemes to further integration and tolerance. Through financial measures and social innovations such as ‘activation programmes’, the Danish Government aims to improve community relations and the attitudes of residents.¹⁰

Japan

7.12 The starting point for protection against racial discrimination in Japan is Article 14 of the Japanese Constitution. This stipulates that “all people are equal under the law and there shall be no discrimination because of race, creed, sex, social status or family origin.” However, the Japanese Constitution confers legally enforceable rights only on Japanese nationals, that is, those who are Japanese by birth or foreigners who have acquired Japanese nationality. A foreigner who is not a Japanese national has no recourse in courts under the Constitution.

7.13 Protection against racial discrimination in Japan is provided under subsidiary legislation, the ‘Regulation for the Investigation and Handling of Cases

¹⁰ Based on Denmark’s twelfth periodic report under the ICERD, March 1995 (UN document GE.95-16319 (E)).

of Human Rights Violations'. This provides for a system of human rights counselling and investigation. But there is no specific reference to racial discrimination in the list of cases that are regarded as human rights infringements. Thus, protection against racial discrimination would seem to depend on a liberal interpretation of the 'Regulation'. However, in January 1996, the Japanese Diet (legislature) approved a bill for Japan to subscribe to the ICERD. The Ministry of Justice acknowledged that it would take time for Japan to align its laws with the provisions of the Convention. Public education plays an important role and is considered to be achieving positive results.

New Zealand

7.14 The New Zealand Human Rights Act 1993, enacted in February 1994, replaced the Human Rights Commission Act 1977 and the Race Relation Act 1971. It prohibits discrimination on several grounds, including colour, race and ethnic or national origins. The latter includes nationality or citizenship. It 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.

Singapore

7.15 Article 12 of Singapore's Constitution provides that all persons are equal before the law and entitled to the equal protection of the law. It also provides that there shall be no discrimination against citizens on the ground only of - among other things - race, descent or place of birth. This shall apply in any law, the appointment to any office or employment under a public authority, the administration of laws relating to property, or the conduct of trade, business, vocation or employment. Article 16 prohibits discrimination on the same grounds in relation to the provision of public education. Article 152 places a duty on Government to protect the interests of Singapore's racial and religious minorities. And Article 154 provides for the impartial treatment of Government employees regardless of race. And Part VII establishes a Presidential Council for Minority Rights to advise Government on matters affecting racial or religious communities.

The Council alerts Parliament to draft legislation that, in its view, might be racially discriminatory.

7.16 These is no anti-discrimination legislation governing acts between private citizens. Instead, the Government promotes racial integration and harmony through social programmes and policies. For example, a racial quota policy governs the allocation of new public housing to ensure that each housing block reflects the ethnic composition of the country as a whole. The different ethnic groups within the housing estates are encouraged to interact with one another. The Singapore Government considers that, in a society where 86% of the population live in public housing, these measures have considerable impact. Singapore's population is significantly more diverse than Hong Kong's. Of its approximately 3 million people, some 74% are Chinese, 14% Malays and 7% Indians. Despite this diversity, there have been no incidents of racial tension or violence since the 1960s. This may be evidence that the Singaporean approach is effective.

United Kingdom

7.17 The Race Relations Act 1976, which strengthened legislation passed in the 1960s, makes discrimination unlawful on grounds of colour, race, nationality or ethnic or national origin in the provision of goods, facilities and services, in employment, in housing and in advertising. The Act gives complainants direct access to civil courts and, for employment complaints, to industrial tribunals. Additionally, the Public Order Act 1986 makes it a criminal offence to incite racial hatred.

7.18 The Race Relations Act establishes a Commission for Racial Equality with power to investigate unlawful discriminatory practices and to issue non-discrimination notices requiring such practices to cease. It has an educational role and has issued codes of practice in employment, education, health care and housing. It is the general public's main source of advice about the Act and has discretion to assist individuals with their complaints about racial discrimination and to handle litigation cases. It can also undertake or fund research and supports the work of the UK's 'race equality councils'. These are autonomous voluntary bodies - set up in areas with significant ethnic minority populations - to promote equality of opportunity and good relations at the local level. Among other things,

the Commission also provides grants to ethnic minority self-help groups and to other projects run by or for the benefit of the minority communities.

7.19 Additionally, the Race Relations Employment Advisory Service promotes Government policies aimed at eliminating racial discrimination - and promoting fair treatment and equality of opportunity - in employment. Advisers provide employers with advice and practical help in developing and implementing effective equal opportunities strategies.

Chapter 8 Possible measures to address the question of discrimination on the ground of race

8.1 The dictum “if it ain’t broke, don’t fix it” encapsulates the Government’s pragmatism in its approach to anti-discrimination generally and to racial discrimination in particular. The UK’s reports under the ICERD have consistently affirmed that Hong Kong did not need anti-discrimination legislation in this area as there was no racial discrimination here. This is, perhaps, a bold claim that needs explanation.

8.2 As shown in chapter 1, the population of Hong Kong is largely homogenous, 96% of its people being ethnic Chinese. In this respect, Hong Kong society differs significantly from many others, including those discussed in chapter 7. For example, Australia, Canada and the UK are heterogeneous societies that have experienced substantial migrations of various ethnic groups over the last 40 years. To a large extent, they introduced laws against racial discrimination to address serious inter-communal tensions. In Hong Kong, the majority and minority communities have generally got on well together and continue to do so. There have been no race riots, demonstrations by racist organisations, gangs of violent youths attacking people for being of the ‘wrong colour’, or signs and slogans calling for one group or other to ‘go home’. There are no attacks on people’s homes or defilement’s of cemeteries or places of worship. Problems of this kind are increasingly common elsewhere, even in countries with laws against racial discrimination.

8.3 It is against this background that Government has taken the view that racial discrimination is not a significant issue in Hong Kong. But Government is not complacent and is conscious that discrimination can take less extreme or indirect forms.

Existing measures

8.4 Hong Kong already has legislation against racial discrimination that binds Government and all public authorities. Article 1 of the BORO provides that

“The rights recognised in this Bill of Rights shall be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Other provisions in the BORO and elsewhere also establish the principle of racial equality. For example, section 33(1) of the Television Ordinance (Cap.52) prohibits programmes that incite hatred on account of race and other grounds. Section 13M(1) of the Telecommunication Ordinance (Cap.106) contains a similar prohibition. And section 10(2) of the Film Censorship Ordinance (Cap.392) provides for the censorship of films which denigrate or insult on account of race.

8.5 Government policy is to address possible discrimination through education and through practical measures. Its educational efforts have been directed at the community in general - through the work of the Committee on the Promotion of Civic Education - and at the schools, through the total curriculum. The aim is to instil respect for the equality of all human beings, their dignity, their right to equal opportunities, and their cultural and personal differences. Equal opportunities is a major theme of the civic education programme and is receiving substantial coverage in the electronic media and through other forms of communication.

8.6 Additionally, efforts are being made to help new arrivals integrate into Hong Kong society. These include -

- greater publicity for the services available to new arrivals;
- re-targeting services to districts where most new arrivals live, such as Eastern District, Kwun Tong, Kowloon City and Sham Shui Po;

- enhancing co-ordination between government departments, NGOs, and local associations in rendering support to new arrivals,
- encouraging community links with new arrivals.
- the Home Affairs Department has re-issued the service handbook it published in 1996 with expanded information on housing, employment assistance, vocational training, etc. It will enlist the support of local associations and clansman associations to organise orientation and language programmes for new arrivals: and
- Government will review its existing 'service package' on the basis of the Home Affairs Department's quarterly surveys on new arrivals.

The Government fully intends to maintain, develop and improve these efforts.

Public education

8.7 There is near unanimity, both in Hong Kong and internationally, that education is the key to eliminating discrimination. Almost all respondents agreed that, with or without legislation, the Government should give more thought to promoting a culture of non-discrimination. This was, they said, a process that had to start in the schools and in society as a whole. However, it must be recognised - as the UN itself has acknowledged - that education for the elimination of discrimination is bound to be a long term process.¹¹ Recognising this, Government has committed considerable resources over the years to developing civic education programmes and school curricula emphasising the universality of human rights. It will continue to seek ways of improving the content and effectiveness of these efforts. To that end, it will continue to monitor developments overseas with a view

¹¹ *Report by the NGO Sub-Committee on Racism and Education to the Commission of Human Rights, 52nd session, item 12 of the agenda. (UN document GE. 96-10775). See in particular the observations by L.H. Horace-Perera (World Federation of United Nations Associations) and Professor Michael Banton (now Chairman of the CERD)*

to learning from them. And it will welcome proposals from members of the public responding to this report.

Legislation

8.8 The approach taken in addressing this issue through the present study has the support of the Committee on the Elimination of Racial Discrimination (CERD). In March 1996, in its concluding observations on the 13th report on Hong Kong under the ICERD, the Committee said -

“With respect to Hong Kong, the study on racial discrimination proposed to begin by the end of the present year is viewed as a constructive means of determining the extent of problems in the area of racial discrimination and reviewing all laws that may in a discriminatory manner confer exclusive benefits on members of a particular race. Where discrimination is found to exist, the study could serve as an important basis for the development of solutions.”

This section of the chapter sets out the views put forth in the course of the study for and against legislation to outlaw racial discrimination.

8.9 Respondents opposed to legislation argued that racial discrimination was not a significant problem in Hong Kong: there were more urgent priorities for the legislative programme. In pursuing its step-by-step approach, the Government had taken too many steps too quickly. Government and community need more time to adjust to the existing anti-discrimination laws and to observe their effects before considering further laws of this kind. Legislation could be counter-productive, engendering resentment on the part of the local majority. It could then rebound to the detriment of its intended beneficiaries. The practical difficulties of enforcing anti-discrimination laws were already becoming apparent with the implementation of the Sex Discrimination Ordinance. Such legislation imposed administrative and financial burdens on employers to the detriment of good business practice and freedom. And it encouraged disputes and vexatious litigation. A better and more effective way of ending discrimination - at least in employment - was to rely on market forces. In a competitive economy, businesses with discriminatory employment practices denied themselves the widest choice of

employees. They would become uncompetitive as their more enlightened competitors took advantage of their short-sightedness.¹²

8.10 On the other hand, respondents favouring legislation argued that anti-discrimination laws were the hallmark of a civilised and just society. Laws against racial discrimination would protect the rights of minorities, create a level playing field, and reassure the ethnic minorities of their future in Hong Kong. They would provide effective and immediate redress and incentives to abandon discriminatory behaviour and attitudes. They would also demonstrate Government's commitment to eliminating discrimination and provide a lead for public opinion. Legislation would set standards of acceptable behaviour, complementing and enhancing the effectiveness of education and other measures. Anti-discrimination laws were powerful educational tools in their own right. The 'economic argument' against anti-discrimination laws was out of touch with reality. Racism and other forms of discrimination continued to flourish even in free market societies.¹³ Indeed, far from eliminating discrimination, the market often reinforced it.¹⁴

¹² This reflects the position of Professor Richard Epstein of Chicago University as cited in 'Market Magic: can the invisible hand strangle bigotry?' a review essay by Gregory S Crespi (Assistant Professor, Southern Methodist University Law School) of 'Forbidden grounds: the case against employment discrimination laws' by Richard A Epstein, Harvard University Press, Cambridge, Massachusetts, 1992: in Boston University Law Review Vol. 72:991, 1992. Epstein argues that, in competitive markets, rational parties will bargain to an outcome that maximizes both their joint gains and, indirectly, overall social wealth. Any legislatively imposed terms that differed from such an outcome would be inefficient and would violate basic human right to individual autonomy. If only a few firms in a particular industry initiated non-discriminatory employment practices, discriminatory practices - being inherently inefficient - would collapse under the pressure of market forces.

¹³ This argument draws on the riposte to Epstein by Professor Richard Delgado (University of Colorado), 'Rodrigo's return' Michigan Law Review Vol.91:1183, 1992.

¹⁴ Mary Becker, Chicago Law School Georgetown Law Journal Vol 79:1659, 1991. Professor Becker, also a critic of the 'Epstein school', argues that markets reflect inequities rather than eliminate them.

8.11 Pending the outcome of the consultations that will follow the publication of this document, Government will maintain an open mind on the merits of legislation and other options. It is aware of the Equal Opportunities (Race) Bill currently before the Legislative Council under the sponsorship of a Member. But it shares the CERD's view that, where discrimination may be found to exist, the study should serve as an important basis for the development of solutions. It hopes Members of the Legislative Council will take account of that view and await the outcome of the present study and consultations.

Practical measures

8.12 Mention has been made of the efforts to help new arrivals integrate into their new environment. Those initiatives will continue and develop. Additionally, some respondents proposed that Government should provide assistance to NGOs dedicated to helping minority groups. Respondents' proposals included such things as -

- sheltered accommodation for domestic helpers in distress;
- interpreters for foreign workers who need to deal with officialdom;
- a dedicated body to assess the skills and qualifications of new arrivals;
- cultural orientation and Cantonese courses for new arrivals;
- media to disseminate the message that resources dedicated to new arrivals are an investment in Hong Kong's future;
- handbooks in various languages for visitors and foreign workers to help them communicate with local people;

- a formalised system of complaints against abusive drivers or those who refuse fares: perhaps on the lines of the American ‘three strikes’ system;¹⁵ and
- dedicated schools for speakers of minority languages.

It must be stressed that these are not Government proposals but suggestions put forward by respondents. It is unlikely that, on close analysis, all will prove to be practical. Some may duplicate existing provisions. For example, the Transport Department’s Transport Complaints Unit already provides a formalised system for handling complaints about public transport. But all systems can be improved and Government is open to new ideas in that direction. It is likely that the consultation process will add to the list. Clearly, if implemented, measures such as those proposed above would in no way be incompatible with either legislation or education or both.

¹⁵ That is, individual drivers who received three complaints against them would automatically be prosecuted.

Chapter 9 Invitation for public comment

9.1 Measures that the Government may adopt to further promote equal opportunities for persons of all races could have wide implications for the community. It is important that members of the public express their views on this subject.

9.2 Members of the public who wish to comment on this consultation document and the issues it raises are invited to submit their comments by letter or by fax to -

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

by **30 April 1997**.

9.3 This document is also available through the Home Affairs Branch home page on the Internet from which it can be downloaded. The address is -

<http://www.info.gov.hk/hab/index.htm>

9.4 A compendium of comments received will be published to enable the public to read the views expressed during the consultations on the issues raised in this document. Respondents who would like their comments to be kept confidential are asked to so indicate in their submissions. Personal data will be used solely for the purposes of the consultation exercise.

Annex A. Views of the Consuls-General

Country	Comments
Australia	No complaints had been received from Australian nationals living in or visiting Hong Kong.
Austria	No complaints had been received from Austrian nationals living in or visiting Hong Kong.
Botswana	There had been isolated instances of the use of pejoratives such as 'black devil'. Taxi operators had refused service to expatriates. Similar claims had been made about shop assistants who were alleged to loathe serving expatriates. Other expatriates claimed that locals avoided sitting close to them in public transport and saw this as racial discrimination. Such situations may simply be innocent reactions from persons meeting expatriates from a different culture for the first time and experiencing difficulty in knowing how to react.
Canada	No complaints had been received from Canadian nationals living in or visiting Hong Kong.
France	No complaints had been received from French nationals living in or visiting Hong Kong.
India	The Commission's experience in Hong Kong had been "uniformly positive."
Malaysia	No complaints had been received from Malaysian nationals living in or visiting Hong Kong.
Netherlands	No complaints had been received from Netherlands nationals living in or visiting Hong Kong.
New Zealand	No complaints had been received from New Zealand nationals living in or visiting Hong Kong.

Norway	No complaints had been received from Norwegian nationals living in or visiting Hong Kong.
Pakistan	Many Pakistani visitors had complained that Hong Kong Police officers discriminated against them because of their race and country of origin. Pakistanis are frequently charged with overstaying: an offence that should be addressed with compassion rather than criminal prosecution.
Poland	No complaints had been received from Polish nationals living in or visiting Hong Kong.
Portugal	No complaints had been received from Portuguese nationals living in or visiting Hong Kong.
South Africa	There have been no complaints from South African nationals living in Hong Kong. But a few South African visitors had encountered prejudice because of skin colour. The Consul General had personally witnessed displays of racial prejudice against black South Africans. There had been complaints of racial prejudice on the part of Hong Kong Government officials.
Sweden	No complaints had been received from Swedish nationals living in or visiting Hong Kong.
Switzerland	There had been some complaints that bus drivers and taxi drivers would not stop for Westerners.
Turkey	The Consulate General of Turkey felt unable to offer comments.

Annex B. List of respondents

Academia

Dr. Andrew C. Byrnes - The University of Hong Kong
 Dr. Nihal Jayawickrama - The University of Hong Kong
 Dr. Lam Shui-fong - The University of Hong Kong
 Dr. Ivy Lau Yee-man - The University of Hong Kong
 Dr. Y. Joseph Lian - Hong Kong University of Science and Technology
 Dr. Benny Tai - The University of Hong Kong
 Dr. Derry Wong - City University of Hong Kong

Banking and finance

The DTC Association
 The Hong Kong Chamber of Insurance Intermediaries
 The Hong Kong Federation of Insurance Brokers
 The Hong Kong Federation of Insurers
 Professional Insurance Brokers Association Limited
 Securities and Futures Commission

Civil service

Association of Expatriate Civil Servants
 Senior Non-Expatriate Officers Association

Commerce and industry

American Chamber of Commerce in Hong Kong
 Australian Chamber of Commerce in Hong Kong
 British Chamber of Commerce in Hong Kong
 Canadian Chamber of Commerce
 The Chinese Manufacturers' Association of Hong Kong
 Employers' Federation of Hong Kong
 Federation of Hong Kong Industries
 The Hong Kong General Chamber of Commerce
 The Hong Kong Japanese Chamber of Commerce and Industry
 Hong Kong Institute of Human Resources Management
 The Indian Chamber of Commerce

Domestic service

Asian Domestic Workers Union
 Hong Kong Employers of Overseas Domestic Helpers Association
 Helpers for Domestic Helpers
 Philippine Domestic Workers' Union

Education (schools)

Caput Schools Council
 English Schools Foundation
 Grant Schools Council
 Hong Kong Private Schools Association Limited
 Hong Kong Prevocational Schools Council

Ethnic minorities

Asian Migrant Centre
 Asian Regional Exchange for New Alternatives
 Association of Sri Lankans in Hong Kong
 Friends of Thai in Hong Kong
 Indian Resources Group
 Nepalese Alien Association
 Pakistan Islamic Welfare Union of Hong Kong
 United Filipinos of Hong Kong

Human rights

Amnesty International Hong Kong Section
 Hong Kong Human Rights Monitor
 Movement Against Discrimination
 Refugee Concern Hong Kong

Law

The Hong Kong Bar Association

Media

Hong Kong Journalists Association
 Newspaper Executives Association

Religious bodies

Alliance Bible Seminary

The Hong Kong Christian Industrial Committee

The Hong Kong Christian Institute

Jesus is Lord Fellowship

Justice & Peace Commission of the Hong Kong Catholic Diocese

The Student Christian Movement in Hong Kong

Social services

Caritas Family Service

Christian Family Service Centre

Hong Kong Council of Social Service

The Hong Kong Federation of Youth Groups

International Social Service

Po Leung Kuk

Society for Community Organisation

Taxi associations

Chuen Lee Radio Taxis Association Limited

Hong Kong & Kowloon Taxi Companies Association Limited

Quadripartite Taxi Service Association Limited

Trade unions

The Federation of Hong Kong and Kowloon Labour Unions

The Hong Kong Confederation of Trade Unions

Hong Kong Construction Industry Employees General Union

Women's groups

Association of Women for Action and Research

The Hong Kong Association of Business and Professional Women

Hong Kong NGO Liaison Group on Women's Issues

Hong Kong Women Workers' Association

Annex C. Population: data sets from the 1991 Census and the 1996 By-Census

Table 1¹⁶: population by place of birth

Place of Birth	1986		1991		1996	
	Number	%	Number	%	Number	%
Hong Kong	3 203 165	59.4	3 299 597	59.8	3 749 332	60.3
China	1 999 185	37.0	1 967 508	35.6	2 026 212	32.6
Elsewhere	193 647	3.6	255 176	4.6	442 012	7.1
Total	5 395 997	100.0	5 522 281	100.0	6 217 556	100.0

Table 2¹⁷: proportion of population aged five and over able to speak selected languages/dialects, 1991 and 1996¹⁸

Language/dialect	Population aged five and over(%)		
	As usual language/dialect	As another language/dialect	Total
<hr/>			

¹⁶ 1996 Population By-Census - Summary Results, Table 8.

¹⁷ 1996 Population By-Census - Summary Results, Table 12.

¹⁸ Note: These figures do not include persons who are unable to speak.

	1991	1996	1991	1996	1991	1996
Cantonese	88.7	88.7	7.1	6.6	95.8	95.2
English	2.2	3.1	29.4	34.9	31.6	38.1
Putonghua	1.1	1.1	17.0	24.2	18.1	25.3
Chiu Chau	1.4	1.1	4.0	3.9	5.4	5.0
Hakka	1.6	1.2	3.7	3.6	5.3	4.9
Fukien (including Taiwanese)	1.9	1.9	1.7	2.0	3.6	3.9
Sze Yap	0.4	0.3	1.5	1.2	1.9	1.4
Shanghainese	0.7	0.5	1.1	1.1	1.8	1.6
Filipino	0.1	0.2	1.0	1.6	1.1	1.8
Japanese	0.2	0.3	0.8	1.0	1.0	1.2

Table 3: median monthly earning (HK\$) from main employment of employees by place of birth (1996 By-census)

	<u>Population</u>	<u>(%)</u>	<u>Medium earning</u>
European countries	22416	0.84	35000
American countries	8520	0.32	32675
Japan	8694	0.32	32500
Hong Kong	1630158	60.80	10000
Macau	33376	1.24	9800
India, Pakistan, Bangladesh and Sri Lanka	10767	0.40	9500
China	783077	29.20	8000

Other Asian and Oceanian countries	57656	2.15	8000
Thailand	9582	0.36	4400
Philippines	115679	4.31	3750
Others	1431	0.05	22500
Overall	2681356	100	9000

Table 4 ¹⁹: population by nationality, 1991 and 1996

Nationality	1991		1996	
	Number	%	Number	%
British (with right of abode in Hong Kong only)	3 294 444	59.6	3 681 898	59.2
British (with right of abode in places outside Hong Kong)	68 502	1.2	175 395	2.8
Chinese (place of domicile - Hong Kong)	1 897 101	34.4	1 941 569	31.2
Chinese (place of domicile - other than Hong Kong)	48 029	0.9	64 717	1.0
Filipino	64 658	1.2	120 730	1.9
Canadian	15 135	0.3	32 515	0.5
United States of America	18 383	0.3	28 946	0.5
India, Pakistan, Bangladesh, Sri Lanka	14 329	0.3	20 955	0.3
Portuguese	18 488	0.3	20 738	0.3

¹⁹ 1996 Population By-Census - Summary Results, Table 9.

Australian	10 432	0.2	20 209	0.3
Japanese	10 850	0.2	19 010	0.3
Thai	11 787	0.2	15 993	0.3
Others	50 143	0.9	74 881	1.2
Total	5 522 281	100.0	6 217 556	100.0

Table 5: median monthly earning (HKS) from main employment of employees by nationality (1996 By-census)

	<u>Population</u>	<u>(%)</u>	<u>Median earning</u>
United States of American	10744	0.40	35000
Japanese	8465	0.32	32500
Canadian	12614	0.47	26120
British (with right of abode in places outside Hong Kong)	83298	3.11	24000
Portuguese	11170	0.42	11000
British (with right of abode in Hong Kong)	1599139	59.64	10000
Indian, Pakistani, Bangladeshi and Sri Lankan	9444	0.35	9500
Chinese (place of domicile - HK)	745446	27.8	8000
Chinese (place of domicile - other than HK)	31500	1.17	7940
Thai	8872	0.33	4000
Filipino	114683	4.28	3750
Others	45981	1.71	12000
Overall	2681356	100	9000

Table 6: median monthly earnings (HK\$) from main employment of employees by nationality/educational attainment (1996 By-census)

	<u>Primary</u>	<u>Upper secondary</u>	<u>Tertiary non-degree</u>	<u>Tertiary degree</u>
British with right of abode in HK	7 938	10 000	15 000	19 990
British with right of abode in places outside HK	8 118	14 000	28 000	41 000
Japanese	7 500	20 000	25 000	38 000
USA	7 750	13 000	20 000	44 000
Filipinos	3 750	3 750	3 750	3 750
Canadian	8 500	15 000	25 000	32 000

Table 7: median monthly earning (HK\$) from main employment of employees by nationality and occupation (1996 By-census)

	<u>Managers and administrators</u>	<u>Clerks</u>	<u>Craft and related workers</u>	<u>Elementary occupation</u>
British with right of abode in HK	22 000	9 000	9 000	7 000
Japanese	42 500	12 000	10 750	6 500
USA	61 000	10 000	10 000	9 000
Filipinos	22 000	7 600	13 221	3 750

Table 8: median monthly earning (HK\$) from main employment of employees by language spoken (1996 By-census)

	<u>Population</u>	<u>(%)</u>	<u>Medium earning</u>
Japanese	7851	0.29	32500
Cantonese	2316883	86.63	9500
Putonghua	33373	1.25	9500
Thai	2122	0.08	8700
Hindi	3730	0.14	8500
Bengali	1900	0.07	8000
Filipino	11775	0.44	4000
English	144214	5.39	3750
Overall (see note below)	2674561	100	9000

[Note: the overall figure takes account of all dialect groups including those that have been omitted for the sake of brevity]

Table 9 : median monthly earning (HK\$) from main employment of employees by language spoken and gender (1996 By-census)

	<u>Male</u>	<u>Female</u>
Cantonese	10 000	8 500
Japanese	40 000	17 500
English	37 500	3 750
Filipino	9 500	3 750

Annex D. Survey of recruitment advertisements

Objective

1. Some respondents said that they - or the groups they represented - experienced racial discrimination in employment: both in the search for jobs and in the workplace. A survey was made of job advertisements in the local press in order to discover whether there were indications of discrimination at the first stage of the recruitment process.

Methodology

2. The survey focused on the advertisements placed in five newspapers in the week of 16 to 21 September 1996. These were the Ming Pao Daily News, Oriental Daily News, Sing Pao Daily News, Hong Kong Standard and South China Morning Post. This covered some 28,429 vacancies, 13,756 (48.4%) being from the English papers, 14,673 (51.6%) from the Chinese ones. The findings are summarised below.

Criteria

3. It was decided that four specific 'candidate requirements' might indicate possible discrimination -
- nationality: a requirement that candidates be of a particular nationality clearly excludes those who are not and to that extent is discriminatory. It may not be racially discriminatory since some nationalities embrace many ethnic groups. But many - probably more - do not and the requirement in such cases is a clear (*prima facie*) indication of racial discrimination;
 - 'native speaker': language requirements are common and, for the most part, the view was taken that these were reasonable. The ability to learn

or acquire a language is not a matter of ethnicity but of individual aptitude and persistence. In a city that is geographically in South China and where some 90% of the population speaks Cantonese, the requirement is not unreasonable. However, advertisements calling for native speakers of a particular language might indicate racial discrimination because, in most cases, 'native speaker' was likely to be coterminous with 'native ethnic'. Few, if any, native speakers of Cantonese are likely to be other than ethnic Hans from South China. Possible exceptions include languages like English and French as 'native speakers' could be of almost any ethnic origin. However, no exception was made for them for the purposes of the survey as there is evidence that, in practice, employers seeking 'native English speakers' really mean whites;

- minimum periods of residency in Hong Kong: this was included because there had been assertions that the requirement discriminated against new arrivals from China; and
- degree from a specified country: this was included because it could be a way of reserving jobs for people of particular backgrounds.

Major findings

4. Possible indications of discrimination were found in just 128 (0.5%) of the advertisements examined, 98 (0.4%) of which appeared in the English newspapers, 30 (0.1%) in the Chinese newspapers. The breakdown by type of discrimination was -

- nationality: 43.0 %;
- native speaker: 29.7 %;
- residency - two years or above: 24.2 %; and
- degree from particular country: 3.1%.

5. Taking each of these seriatim -

- Nationality: this requirement only appeared in the English papers, perhaps because the advertisers assumed that readers of Chinese papers were unlikely to be other than ethnic Chinese. We found calls for 12 different nationalities, Chinese being the most frequent and British second. The requirement for British nationals may simply reflect the fact that, unlike other 'foreign' nationals, they can work in Hong Kong without work-permits. This could be an important consideration for employers who need to fill vacancies quickly. But it does not explain the preference for non-locals that the requirement entails.

Most advertisements calling for candidates of a particular nationality were for clerical/secretarial posts. This may be because employers work in close contact with their secretaries. A secretary of the same nationality as the employer could minimise communication problems. Trading/marketing posts ranked second, perhaps because of real or perceived advantages that persons of particular nationalities enjoy when dealing with business connections of the same nationality and culture.

- Native speakers: like nationality, and possibly for the same putative reasons, this requirement only appeared in the English newspapers. The most common requirements were for native speakers of English (particularly for teaching posts), Cantonese (trading/marketing), and Japanese (clerical/secretarial and some managerial).
- Residency: most of the advertisements with this requirement were for security guards.
- Education: this was not a common requirement. Only four advertisements included it. Of those, three specifically required graduates from universities in China, perhaps reflecting the advertisers' need for people who have good connections in China and are familiar with the cultural/linguistic/business environment there. The other required new immigrants applicants to have a higher education level than others. It would appear that the advertiser took a dim view of mainland

educational standards. But it is unsafe to draw general conclusions from a single case.

- New immigrants welcome: we found 234 advertisements saying that new immigrants were welcome. This constitutes only 0.8% of the total examined. But it is considerably more than those that we assessed as being discriminatory. More than 97% of these appeared in Chinese newspapers, presumably because most new arrivals are more likely to read Chinese than English. These advertisements are not overtly discriminatory as welcoming applications from a particular source does not amount to excluding others. However, about 74% of them were for jobs in night clubs, massage parlours and saunas. This could indicate a measure of stereotyping.

Conclusion

6. A very small percentage of the advertisements examined contained possible indications of racial discrimination. But it must be borne in mind that some of those assessed as possibly discriminatory may have reflected genuine occupational requirements. And it must be emphasised that most advertisements were not overtly discriminatory. It is, of course, possible that employers discriminate at later stages of the selection process. But there is no simple way of investigating that possibility.

Annex E. Bibliography

Amnesty International and Oxfam Hong Kong, *Human Rights and World Concepts of Secondary School Teachers and Students in Hong Kong - Survey Results Report*, May 1996

Andrew C Byrnes, Faculty of Law, University of Hong Kong, *International Obligations to Eradicate Discrimination and to enact anti-discrimination legislation*, October 1994

Becker, G. S., *The Economics of Discrimination, 2nd Edition*, The University of Chicago Press, 1957 & 1971

Becker, M. E., 'Needed in the Nineties disadvantages in employment' *Georgetown Law Journal Vol 79:1659*, 1991

The Boys' and Girls' Club Association of Hong Kong, *The life adjustment of new immigrant children from Mainland China : Survey Report*, September 1996

Caritas Community Centre - Tsuen Wan, *Orientation and service demands of new immigrants*, June 1996

Cavalli-Sforza, L., Cavalli-Sforza, F., *The Great Human Diasporas*, Addison-Welsey, Reading, MA, USA

Crespi, G. S., 'Market Magic: can the invisible hand strangle bigotry?' *Boston University Law Review Vol. 72:991*, 1992

Delgado, R., 'Rodrigo's return' *Michigan Law Review Vol.91:1183*

Dowd, N. E., Epstein, R. A., Law, W., & Law, M., 'Liberty vs equality: in defense of privileged white males: review of "Forbidden grounds": the case against employment discrimination laws' *William and Mary Law Review Vol.34:429*

Rungtip Imrungruang, Friends of Thai in Hong Kong, *The Progress Report of Friends of Thai in Hong Kong Year 1995*, 29 February 1995

The Hong Kong Federation of Youth Groups, *Young People and Discrimination, Youth Poll Series No. 32*, February 1996

Human Rights and Equal Opportunity Commission, Australia, *Annual Report 1994-95*

Marks, J., *American Behavioral Scientist*, Vol 40 No 2, November/December 1996
123-133

Lam, S. F., Lau, I., Chiu, C. Y., Hong, Y. Y., 'Social identities of Hong Kong adolescents and their relations to intergroup perception and intended interaction', *International Symposium on Personality and Education*, April 1996

Lam, S. F., Lau, I., Chiu, C. Y., Hong, Y. Y., 'Social identity of Hong Kong adolescents before 1997'. In M. E. DeGolyer & J. Scott (Eds.), *Transiting Hong Kong: Political, social, and psychological foundations of the SAR*. London: Routledge. (In press).

Lau, I., Chiu, C., Chau, A. W., Ho, D. Y. F., Hong, Y., Lam, S. F., & Lee, H. C., 'Social identity, intergroup orientation, and intergroup relations in transitional Hong Kong'. In M. E. DeGolyer & J. Scott (Eds.), *Transiting Hong Kong: Political, social, and psychological foundations of the SAR*. London: Routledge. (In press).

James Lee, Department of Applied Social Studies, Hong Kong Polytechnic University, *New Immigrants from the Mainland and its Challenges on Social Policy and Planning in Hong Kong*, April 1996

Tse, W. L., *Opinion Survey - Equal Opportunities (Racial)*

United Nations, *Report of the United Nations Human Rights Committee, General Comment 18(37)* New York, 1989.

United Nations, *Declaration on the Elimination of Racial Discrimination*.

United Nations, *Universal Declaration of Human Rights*.

Report by the NGO Sub-Committee on Racism and Education to the Commission of Human Rights, 52nd session, item 12 of the agenda. (UN document GE. 96-10775)

Twelfth periodic report on Denmark under the ICERD, March 1995 (UN document GE.95-16319 (E))

Raymond Wacks, *Human Rights in Hong Kong*, Hong Kong Oxford University Press 1992

Rüdiger Wolfrum, *The Implementation of International Standards on Prevention and Elimination of Racial Discrimination : Achievements and Challenges*, October 1995

Ref : CB2/BC/55/95
Tel : 2869 9266
Date : 28 February 1997
From : Clerk to Bills Committee
To : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Dr Hon John TSE Wing-ling (Deputy Chairman)
Hon LAU Wong-fat, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon Emily LAU Wai-hing
Hon Zachary WONG Wai-yin
Hon Christine LOH Kung-wai
Hon LEE Cheuk-yan
Hon CHAN Yuen-han
Hon CHEUNG Hon-chung
Hon Albert HO Chun-yan
Hon LAU Chin-shek
Hon LEUNG Yiu-chung
Hon Bruce LIU Sing-lee
Hon LO Suk-ching
Hon NGAN Kam-chuen

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill,
Equal Opportunities (Race) Bill and
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

I enclose relevant sections of the Sex Discrimination Ordinance and Disability Discrimination Ordinance, marked up to show proposed amendments set out in the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 for your reference.



(Colin CHUI)
for Clerk to Bills Committee

Encl.

c.c. Legal Adviser
ALA4

c:\doc\ecob\970303\cb2-1362.doc

CHAPTER 480

SEX DISCRIMINATION

An Ordinance to render unlawful certain kinds of sex discrimination, discrimination on the ground of marital status or pregnancy, and sexual harassment; to provide for the establishment of a Commission with the functions of working towards the elimination of such discrimination and harassment and promoting equality of opportunity between men and women generally; and to provide for matters incidental thereto or connected therewith.

[]

PART I

PRELIMINARY

1. Short title and commencement

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

~~(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice in the Gazette, and different days may be so appointed for different provisions.~~

2. Interpretation

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

“access” (獲得·享用) means access as construed in accordance with section 56;

“act” (作為) includes a deliberate omission;

“advertisement” (廣告) includes every form of advertisement, whether to the public or not, and whether—

~~(2) The Secretary for Home Affairs may, by notice in the Gazette, appoint—~~

~~(a) a day; or~~

~~(b) different days in respect of different provisions, for the coming into operation of this Ordinance and such a day, or the later or last of such different days, shall be a day no later than 1 September 1996.~~

(3) Subject to subsection (2), this Ordinance shall come into operation on 1 September 1996.

- (a) in a newspaper or other publication;
- (b) by television or radio;
- (c) by display of notices, signs, labels, showcards or goods;
- (d) by distribution of samples, circulars, catalogues, price lists or other material;
- (e) by exhibition of pictures, models or films; or
- (f) in any other way,

and references to the publishing of advertisements shall be construed accordingly;

“Chairperson” (主席) means the Chairperson of the Commission appointed under section 63(3)(a);

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

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

“Commission” (委員會) means the Equal Opportunities Commission established under section 63(1),

“commission agent” (佣金經紀人) means commission agent as construed in accordance with section 20;

“committee” (小組委員會) means a committee established under section 64(2)(a);

“committee of management” (管理委員會), in relation to a club, means the group or body of persons (howsoever described) that manages the affairs of that club;

“conciliator” (調解人) means any person engaged by the Commission under section 64(2)(e);

“contract worker” (合約工作者) means contract worker as construed in accordance with section 13;

“discrimination” (歧視) means any discrimination falling within section 5, 6, 7, 8 or 9, and related expressions shall be construed accordingly;

“dispose” (處置), in relation to premises, includes granting a right to occupy the premises, and any reference to acquiring premises shall be construed accordingly;

“dynamically supported craft” (藉動力而獲得支承的航行器) has the same meaning as in the Shipping and Port Control Ordinance (Cap. 313);

“education” (教育) includes any form of training or instruction;

“educational establishment” (教育機構) means an educational establishment specified in column 1 of Schedule 1;

“employment” (僱用) means employment under—

- (a) a contract of service or of apprenticeship; or
 - (b) a contract personally to execute any work or labour,
- and related expressions shall be construed accordingly;

"employment agency" (職業介紹所) means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers;

"enforcement notice" (執行通知) means a notice under section 77(2);

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

"firm" (商號) means firm within the meaning of the Partnership Ordinance (Cap. 38);

"formal investigation" (正式調查) means an investigation under section 70;

"general notice" (一般通告), in relation to any person, means a notice published by him at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;

"genuine occupational qualification" (真正的職業資格) means genuine occupational qualification as construed in accordance with section 12(2);

"man" (男性) includes a male of any age;

"marital status" (婚姻狀況) means the state or condition of being—

- (a) single;
- (b) married;
- (c) married but living separately and apart from one's spouse;
- (d) divorced; or
- (e) widowed;

"notice" (通告、通知) means a notice in writing;

"prescribed" (訂明) means prescribed in rules made under section 88;

"profession" (專業) includes any vocation or occupation;

"responsible body" (負責組織), in relation to an educational establishment, means the body specified in column 2 of Schedule 1 opposite that establishment;

"retirement" (退休) includes retirement (whether voluntary or not) on grounds of age, length of service or incapacity;

"sex discrimination" (性別歧視) means any discrimination falling within section 5 or 6;

"single-sex establishment" (單性別機構) means single-sex establishment as construed in accordance with section 26;

"trade" (行業) includes any business;

"training" (訓練) includes any form of education or instruction;

"woman" (女性) includes a female of any age.

(2) References in this Ordinance to the dismissal of a person from employment or to the expulsion of a person from a position as partner include references—

* "relevant international instruments" (有關國際文書) means—

- (a) the Convention on the Elimination of All Forms of Discrimination Against Women, as adopted by the General Assembly of the United Nations on 18 December 1979;
- (b) the Declaration on the Elimination of Violence Against Women proclaimed by the General Assembly of the United Nations on 20 December 1993;
- (c) the International Labour Organisation Recommendation No. 90 on Equal Remuneration for Men and Women Workers for Work of Equal Value; and
- (d) the International Labour Organisation Recommendation No. 111 on Discrimination in Occupation and Employment as it relates to sex, marital status or pregnancy;

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

- (a) to the termination of that person's employment or partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment or partnership is renewed on the same terms;
- (b) to the termination of that person's employment or partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer, or the other partners, as the case may be.

(3) For the purposes of this Ordinance, an enforcement notice or a finding by the District Court becomes final when an appeal against the notice or finding is dismissed, withdrawn or abandoned or when the time for appealing expires without an appeal having been brought; and for this purpose an appeal against an enforcement notice shall be taken to be dismissed if, notwithstanding that a requirement of the notice is quashed on appeal, a direction is given in respect of it under section 78(3).

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

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

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

(6) For the avoidance of doubt, it is hereby declared that paragraph (b) of subsection (5) shall not apply for the purposes of sections 39 and 40.

(7) In subsection (5)—

"conduct of a sexual nature" (涉及性的行徑) includes making a statement of a sexual nature to a woman, or in her presence, whether the statement is made orally or in writing.

(8) A provision of Part III or IV framed with reference to sexual harassment of women shall be treated as applying equally to the treatment of men and for that purpose that provision, and subsections (5) and (7), shall have effect with such modifications as are necessary.

(9) Subject to subsection (10), in this Ordinance "existing statutory provision" (現有法例條文) means any provision of—

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

(b) any subsidiary legislation made—

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

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

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

△

3. Application

This Ordinance binds the Government.

4. Act done because of sex, etc. and for other reason

If—

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

(b) one of the reasons is the sex, marital status or pregnancy of a person (whether or not it is the dominant or a substantial reason for doing the act),

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

PART II

DISCRIMINATION TO WHICH ORDINANCE APPLIES

5. Sex discrimination against women

(1) A person discriminates against a woman in any circumstances relevant for the purposes of any provision of this Ordinance if—

(a) on the ground of her sex he treats her less favourably than he treats or would treat a man; or

△

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

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

- △ ~~(b) he applies to her a requirement or condition which he applies or would apply equally to a man but—~~
- ~~(i) which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it;~~
 - ~~(ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and~~
 - ~~(iii) which is to her detriment because she cannot comply with it.~~
- (2) If a person treats or would treat a man differently according to the man's marital status, his treatment of a woman is for the purposes of subsection (1)(a) to be compared to his treatment of a man having the like marital status.

*
6. Sex discrimination against men

(1) Section 5, and the provisions of Parts III and IV relating to sex discrimination against women, shall be read as applying equally to the treatment of men, and for that purpose shall have effect with such modifications as are necessary.

(2) In the application of subsection (1) no account shall be taken of special treatment afforded to women in connection with pregnancy or childbirth.

7. Discrimination against married, etc. persons in employment field

(1) A person discriminates against a person of either sex in any circumstances relevant for the purposes of any provision of Part III or IV if—

- (a) on the ground of his or her marital status ("the relevant marital status") he treats that person less favourably than he treats or would treat a person of the same sex with a different marital status; or

- # (b) ~~he applies to that person a requirement or condition which he applies or would apply equally to a person with a different marital status but—~~
- ~~(i) which is such that the proportion of persons with the relevant marital status who can comply with it is considerably smaller than the proportion of persons of the same sex with a different marital status who can comply with it;~~
 - ~~(ii) which he cannot show to be justifiable irrespective of the marital status of the person to whom it is applied; and~~
 - ~~(iii) which is to that person's detriment because he or she cannot comply with it.~~

- △ (b) he imposes or proposes to impose a condition or requirement, or applies or proposes to apply a practice or policy, which he would impose or apply equally in regard to a man but—
- (i) which has or is likely to have the effect of disadvantaging women; and
 - (ii) which is not reasonable in the circumstances.

* (3) For the purposes of subsection (1)(b), a person who asserts that a condition, requirement, practice or policy is reasonable having regard to the circumstances of the case bears the burden of proving that the condition, requirement, practice or policy concerned is reasonable.

(4) In determining whether a condition, requirement, practice or policy is reasonable in the circumstances, the matters to be taken into account include—

- (a) the nature and extent of the resulting disadvantage;
- (b) the feasibility of overcoming or mitigating the disadvantage; and
- (c) whether the disadvantage is disproportionate to the result sought.

- # (b) he imposes or proposes to impose a condition or requirement, or applies or proposes to apply a practice or policy, which he would impose or apply equally in regard to a person with a different marital status but—
- (i) which has or is likely to have the effect of disadvantaging persons of the relevant marital status; and
 - (ii) which is not reasonable in the circumstances.

(2) For the purposes of subsection (1), a provision of Part III or IV framed with reference to discrimination against women shall be treated as applying equally to the treatment of men, and for that purpose shall have effect with such modifications as are necessary.



8. Discrimination against pregnant women in employment field

(1) A person discriminates against a woman in any circumstances relevant for the purposes of any provision of Part III or IV if—

- (a) on the ground of her pregnancy he treats her less favourably than he treats or would treat a person who is not pregnant; or
- * ~~(b) he applies to her a requirement or condition which he applies or would apply to a person who is not pregnant but—~~
- (i) which is such that the proportion of persons who are pregnant who can comply with it is considerably smaller than the proportion of persons who are not pregnant who can comply with it;
- (ii) which he cannot show to be justifiable irrespective of whether or not the person to whom it is applied is pregnant; and
- ~~(iii) which is to her detriment because she cannot comply with it.~~



9. Discrimination by way of victimisation

(1) A person ("the discriminator") discriminates against another person ("the person victimised") in any circumstances relevant for the purposes of any provision of this Ordinance if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised or any other person ("the third person") has—

- (a) brought proceedings against the discriminator or any other person under this Ordinance;
- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Ordinance;
- (c) otherwise done anything under or by reference to this Ordinance in relation to the discriminator or any other person; or
- (d) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Ordinance,



(3) For the purposes of subsection (1)(b), a person who asserts that a condition, requirement, practice or policy is reasonable having regard to the circumstances of the case bears the burden of proving that the condition, requirement, practice or policy concerned is reasonable.

(4) In determining whether a condition, requirement, practice or policy is reasonable in the circumstances, the matters to be taken into account include—

- (a) the nature and extent of the resulting disadvantage;
- (b) the feasibility of overcoming or mitigating the disadvantage; and
- (c) whether the disadvantage is disproportionate to the result sought.



- ~~(b) he imposes or proposes to impose a condition or requirement, or applies or proposes to apply a practice or policy, which he would impose or apply equally in regard to person who is not pregnant but—~~
- (i) which has or is likely to have the effect of disadvantaging persons who are pregnant; and
- (ii) which is not reasonable in the circumstances.



(2) For the purposes of subsection (1)(b), a person who asserts that a condition, requirement, practice or policy is reasonable having regard to the circumstances of the case bears the burden of proving that the condition, requirement, practice or policy concerned is reasonable.

(3) In determining whether a condition, requirement, practice or policy is reasonable in the circumstances, the matters to be taken into account include—

- (a) the nature and extent of the resulting disadvantage;
- (b) the feasibility of overcoming or mitigating the disadvantage; and
- (c) whether the disadvantage is disproportionate to the result sought.

or by reason that the discriminator knows the person victimised or the third person, as the case may be, intends to do any of those things, or suspects the person victimised or the third person, as the case may be, has done, or intends to do, any of them.

(2) Subsection (1) shall not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.

(3) For the purposes of subsection (1), a provision of Part III or IV framed with reference to discrimination against, or sexual harassment of, women shall be treated as applying equally to the treatment of men and for that purpose shall have effect with such modifications as are necessary.

10. Comparison of cases under sections 5(1), 7(1) and 8

A comparison of the cases of persons—

- (a) of different sex under section 5(1);
- (b) of different marital status under section 7(1);
- (c) who are pregnant and not pregnant under section 8,

shall be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

PART III

DISCRIMINATION AND SEXUAL HARASSMENT IN EMPLOYMENT FIELD

Discrimination by employers

11. Discrimination against applicants and employees

(1) It is unlawful for a person, in relation to employment by him at an establishment in Hong Kong, to discriminate against a woman—

- (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.

(2) It is unlawful for a person, in the case of a woman employed by him at an establishment in Hong Kong, to discriminate against her—

- (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 or deliberately omitting 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.

(3) Except in relation to discrimination falling within section 9, subsections (1) and (2) shall not apply to employment where the number of persons employed by the employer, added to the number employed by any associated employers of his, does not exceed 5 (disregarding any persons employed for the purposes of a private home).

~~(4) Subject to subsection (5), subsections (1)(b) and (2) shall not apply to provision in relation to death or retirement except in so far as, in their application to 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 access to 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.~~

~~(5) Subsections (1)(b) and (2) shall apply to provision in relation to death or retirement specified in Part 1 of Schedule 2 except in so far as any such provision made for a woman before the commencement of this section continues for that woman on and after that commencement.~~

(6) Subsection (2) shall not apply to benefits, facilities or services of any description if the employer is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public comprising the woman concerned, unless—

- (a) that provision differs in a material respect from the provision of the benefits, facilities or services by the employer to his employees; or
- (b) the benefits, facilities or services relate to training.

~~(7) Subsection (3) shall expire on the 3rd anniversary of the day on which this Ordinance is enacted.~~

(8) For the purposes of subsection (3), 2 employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control.

~~(9) The Governor in Council may, by notice in the Gazette~~

- ~~(a) amend subsection (3) by substituting another number for the last number appearing in that subsection;~~
- ~~(b) amend subsection (7) by substituting another anniversary for the anniversary appearing in that subsection.~~

(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.

(7) Subject to subsection (8), subsection (3) shall expire 18 months after the day on which this Ordinance is enacted.

(9) Prior to the expiry of subsection (3) under subsection (7) the Legislative Council may, by resolution, amend subsection (7) to extend subsection (3) for a period of 1 year.

(c) in the way he affords her access to any benefits, facilities or services or by refusing or deliberately omitting to afford her access to them; or

(d) by subjecting her to any other detriment.

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

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

14. Meaning of employment at establishment in Hong Kong

(1) For the purposes of this Ordinance ("the relevant purposes"), employment is to be regarded as being at an establishment in Hong Kong unless the employee does his work wholly or mainly outside Hong Kong.

(2) Subsection (1) shall not apply to—

(a) employment on board a ship registered in Hong Kong; or

(b) employment on aircraft or dynamically supported craft registered in Hong Kong and operated by a person who has his principal place of business, or is ordinarily resident, in Hong Kong,

but for the relevant purposes such employment is to be regarded as being at an establishment in Hong Kong unless the employee does his work wholly outside Hong Kong.

(3) In the case of employment on board a ship registered in Hong Kong (except where the employee does his work wholly outside Hong Kong) the ship shall for the relevant purposes be deemed to be the establishment.

(4) Where work is not done at an establishment it shall be treated for the relevant purposes as done at the establishment from which it is done or (where it is not done from any establishment) at the establishment with which it has the closest connection.

Discrimination by other bodies

15. Partnerships

(1) It is unlawful for a firm consisting of not less than 6 partners, in relation to a position as partner in the firm, to discriminate against a woman—

- (a) in the arrangements the firm makes for the purpose of determining who should be offered that position;
- (b) in the terms on which the firm offers her that position;
- (c) by refusing or deliberately omitting to offer her that position; or
- (d) in a case where the woman already holds that position—
 - (i) in the way the firm affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them; or
 - (ii) by expelling her from that position or subjecting her to any other detriment.

(2) Subsection (1) shall apply in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.

(3) Subsection (1)(a) and (c) shall not apply to a position as partner where, if it were employment, being a man would be a genuine occupational qualification for the job.

~~(4) Subject to subsection (5), subsection (1)(b) and (d) shall not apply to provision made in relation to death or retirement except in so far as, in their application to 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.~~

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

(6) In the case of a limited partnership references in subsection (1) to a partner shall be construed as references to a general partner within the meaning of section 2 of the Limited Partnerships Ordinance (Cap. 37).

(7) The Governor in Council may, by notice in the Gazette, amend subsection (1) by—

- (a) substituting another number for the number appearing in that subsection; or
- (b) repealing the words and number appearing after “for a firm” and before “, in relation to”.

16. Trade unions, etc.

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

~~(4) Subject to subsection (5), subsection (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) Subsection (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.

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

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

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

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

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

(5) This section shall apply to provision—

- (a) made in relation to the death or retirement from work of a member; and
- (b) specified in Part 3 of Schedule 2,

~~except in so far as any such provision made for a member before the commencement of this section continues for that member on and after that commencement.~~

(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.

17. Qualifying bodies

(1) It is unlawful for an authority or body which can confer an authorization or qualification which is needed for, or facilitates, engagement in a particular profession or trade to discriminate against a woman—

- (a) in the terms on which it is prepared to confer on her that authorization or qualification;
- (b) by refusing or deliberately omitting to grant her application for it; or
- (c) by withdrawing it from her or varying the terms on which she holds it.

(2) Where an authority or body is required by law to satisfy itself as to his good character before conferring on a person an authorization or qualification which is needed for, or facilitates, his engagement in any profession or trade then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on the authority or body a duty to have regard to any evidence tending to show that he, or any of his employees or agents (whether past or present), has—

- (2) This section shall not be taken as making lawful—
- (a) discrimination in the arrangements for determining the persons entitled to vote in an election of members of the body, or otherwise to choose the persons to serve on the body; or
 - (b) discrimination in any arrangements concerning membership of the organization itself.

56. Indirect access to benefits, etc.

(1) References in this Ordinance to the affording by any person of access to benefits, facilities or services are not limited to benefits, facilities or services provided by that person himself, but include any means by which it is in that person's power to facilitate access to benefits, facilities or services provided by any other person ("actual provider").

(2) Where by any provision of this Ordinance the affording by any person of access to benefits, facilities or services in a discriminatory way is in certain circumstances prevented from being unlawful, the effect of the provision shall extend also to the liability under this Ordinance of any actual provider.

57. Acts done for purposes of protection of women

- (1) Nothing in—
- (a) the provisions of Part III;
 - (b) the provisions of Part IV so far as it applies to vocational training; or
 - (c) the provisions of Part V so far as it has effect in relation to any of the provisions referred to in paragraph (a) or (b),

shall render unlawful any act done by a person in relation to a woman if—

- (i) it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision concerning the protection of women; or
- (ii) it was necessary for that person to do it in order to comply with a requirement of a provision specified in Schedule 3 and it was done by that person for the purpose of the protection of the woman concerned (or of any class of women that included that woman).

- (2) In subsection (1)—
- (a) the reference in paragraph (i) of that subsection to an existing statutory provision concerning the protection of women is a reference to any such provision having effect for the purpose of protecting women as regards—

56A. Double benefits for married persons

(1) For avoidance of doubt, it is hereby declared that nothing in Part 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 or has received the same or a similar benefit or allowance, whether from the first-mentioned person or from another.

(2) In this section—
 "allowance" (津貼) includes part of an allowance;
 "benefit" (福利) includes part of a benefit.

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" (生育科技程序) means any medical treatment or scientific intervention directed at assisting human reproduction by artificial means, and includes in vitro fertilisation, artificial insemination, gender selection and manipulation of gametes or embryos outside the body.

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).

- (i) pregnancy or maternity; or
- (ii) other circumstances giving rise to risks specifically affecting women,

whether the provision relates only to such protection or to the protection of any other class of persons as well;

- (b) the reference in paragraph (ii) of that subsection to the protection of a particular woman or class of women is a reference to the protection of that woman or those women as regards any circumstances falling within paragraph (a)(i) or (ii).

(3) Subject to subsection (4), the provisions of section 12(2)(g), subsections (1)(ii) and (2)(b) and Schedule 3 shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

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

58. Acts done under statutory authority to be exempt from certain provisions of Part IV

(1) Nothing in—

(a) the relevant provisions of Part IV; or

(b) Part V so far as it has effect in relation to those provisions,

shall render unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision.

(2) In subsection (1), “the relevant provisions of Part IV” (第IV部的有關條文) means the provisions of Part IV except so far as they apply to vocational training or sexual harassment.

~~59. Acts safeguarding security of Hong Kong~~

~~(1) Nothing in Part III, IV or V shall render unlawful an act done for the purpose of safeguarding the security of Hong Kong.~~

~~(2) A certificate purporting to be signed by or on behalf of the Chief Secretary and certifying that an act specified in the certificate was done for the purpose of safeguarding the security of Hong Kong shall be conclusive evidence that it was done for that purpose.~~

~~(3) A document purporting to be a certificate referred to in subsection (2) shall be received in evidence and, in the absence of evidence to the contrary, shall be deemed to be such a certificate.~~

(4) Subsections (2) and (3) shall not have effect in relation to the determination of the question whether any act is rendered unlawful by—

- (a) Part III;
- (b) Part IV so far as it applies to vocational training; or
- (c) Part V as read with—
 - (i) Part III; or
 - ~~(ii) Part IV so far as it applies to vocational training.~~

60. Construction of references to vocational training

In sections 57 and 58, "vocational training" (職業訓練) includes—

- (a) retraining; and
- (b) vocational guidance.

61. Application to New Territories land

Nothing in Part IV or V shall—


- (a) be construed as affecting the operation of any of the provisions of—
 - (i) the New Territories Ordinance (Cap. 97); or
 - (ii) the New Territories Leases (Extension) Ordinance (Cap. 150); or
- (b) render unlawful any act done by any person in, or in connection with, the operation of any of those provisions.

62. Further exceptions

(1) No provision or Part of this Ordinance specified in column 1 of Part 2 of Schedule 5 shall render unlawful any discrimination specified opposite thereto in column 2 of that Part.

(2) Nothing in Part III, IV or V shall render unlawful any act done by any person—

- (a) in connection with any discrimination which is not unlawful by virtue of the operation of subsection (1); and
- (b) to the extent that it is done for the purposes of that discrimination.

 (3) Subject to subsection (4), the provisions of subsections (1) and (2) and Schedule 5 shall expire on the 1st anniversary of the day on which the Sex and Disability Discrimination (Miscellaneous Provisions) Ordinance 1996 (of 1996) is enacted.

(4) Prior to the expiry of the provisions referred to in subsection (3), the Legislative Council may, by resolution, amend that subsection to extend those provisions for a period of 1 year.

2567



PART VII

EQUAL OPPORTUNITIES COMMISSION

General

63. Establishment of Commission

(1) There is hereby established a body corporate to be called the Equal Opportunities Commission.

(2) The Commission shall have perpetual succession and a common seal and shall be capable of suing and being sued.

(3) The Governor shall appoint to be members of the Commission—

(a) a Chairperson; and

(b) not less than 4 or more than 16 other members,

each being an individual who is not a public officer.

(4) The members of the Commission shall form its governing body with authority, in the name of the Commission, to perform the functions and exercise the powers of the Commission.

(5) The members of the Commission may be appointed on a full-time or part-time basis as the Governor thinks fit except that the Chairperson shall be appointed on a full-time basis.

(6) The relevant provisions of Schedule 6 shall have effect with respect to the Commission and its members.

(7) The Commission shall not be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government.

(8) Part VII of the Interpretation and General Clauses Ordinance (Cap. 1) shall apply to the Commission and appointments to the Commission except in so far as that Part is inconsistent with the provisions of this Ordinance.

(9) Every appointment under subsection (3) shall be notified in the Gazette.

(10) The Governor in Council may, by notice in the Gazette, amend subsection (3)(b) by substituting another number for any number appearing in that subsection.

64. Functions and powers of Commission

(1) The Commission shall—

(a) work towards the elimination of discrimination;

(b) promote equality of opportunity between men and women generally;

(c) work towards the elimination of sexual harassment;

- (d) in the case of any act alleged to be unlawful by virtue of this Ordinance, encourage persons who are concerned with the matter to which the act relates to effect a settlement of the matter by conciliation, whether under section 84 or otherwise;
- (e) keep under review the working of this Ordinance and, when it is so required by the Governor or otherwise thinks it necessary, draw up and submit to the Governor proposals for amending this Ordinance; and
- (f) perform such other functions as are imposed on it under this Ordinance or any other enactment.
- △ (2) The Commission may do all such things as are necessary for, or incidental or conducive to, the better performance of its functions and in particular but without prejudice to the generality of the foregoing, may—
- (a) establish such committees as it thinks fit;
- (b) acquire and hold property of any description if in the opinion of the Commission such property is necessary for—
- (i) the accommodation of the Commission or of any committee; or
- (ii) the performance of any function which the Commission may perform,
- and, subject to the terms and conditions upon which such property is held, dispose of it;
- (c) enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement or other obligation;
- (d) employ such persons as it thinks fit to carry out any matter relating to the performance of its functions or the exercise of its powers;
- (e) without prejudice to the generality of paragraph (d), engage the services of such persons as it thinks fit to carry out any matter relating to the performance of its functions or the exercise of its powers under section 84;
- (f) engage the services of such technical and professional advisers as it thinks fit to advise the Commission on any matter relating to the performance of its functions or the exercise of its powers;
- (g) undertake and execute any lawful trust which has as an object the furtherance of any function which the Commission is required or is permitted by this Ordinance to perform or any other similar object;
- (h) accept and solicit gifts and donations, whether subject to any trust or not;
- (i) with the prior approval of the Governor, become a member of or affiliate to any international body concerned with (whether in whole or in part) the elimination of discrimination;



(1A) Without prejudice to the generality of subsection (1), the Commission may—

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

(j) exercise such other powers as are conferred on it under this Ordinance or any other enactment.

(3) The relevant provisions of Schedule 6 shall have effect with respect to a committee and its members.

(4) Part VII of the Interpretation and General Clauses Ordinance (Cap. 1) shall apply to a committee and appointments to the committee except in so far as that Part is inconsistent with the provisions of this Ordinance.

65. Research and education

(1) The Commission may undertake or assist (financially or otherwise) the undertaking by other persons of any research, and any educational activities, which appear to the Commission necessary or expedient for the performance of its functions

(2) The Commission may impose reasonable charges for educational or other facilities or services made available by it.

(3) The Commission shall not provide any financial assistance under subsection (1) except with the prior approval of the Secretary for Home Affairs given, after consulting with the Secretary for the Treasury, generally or in any particular case.

66. Review of Schedules 3 and 5

(1) Without prejudice to the generality of section 64(1), the Commission, pursuant to its functions under paragraphs (a) and (b) of that section, shall keep Schedules 3 and 5 under review.

(2) Whenever the Commission thinks it necessary, it shall draw up and submit to the Governor proposals for—

- (a) amending the provisions specified in Schedule 3;
- (b) amending Schedule 5.

67. Delegations

(1) Subject to subsection (2), the Commission may, with or without restrictions as it thinks fit, delegate in writing any of its functions or powers to—

- (a) any member of the Commission;
- (b) any committee;
- (c) any employee of the Commission;
- (d) any conciliator.

(2) The Commission shall not delegate any of its functions or powers under—

- (a) subsection (1) or section 64(2)(a) or 88;

2570

Investigations

70. Power to conduct formal investigations

Without prejudice to the generality of section 64(1), the Commission may if it thinks fit, and shall if required by the Chief Secretary, conduct a formal investigation for any purpose connected with the carrying out of any of its functions under that section.

71. Terms of reference

(1) The Commission shall not embark on a formal investigation unless the requirements of this section have been complied with.

(2) Terms of reference for the formal investigation shall be drawn up by the Commission or, if the Commission was required by the Chief Secretary to conduct the investigation, by the Chief Secretary after consulting the Commission.

(3) It shall be the duty of the Commission to give general notice of the holding of the formal investigation unless the terms of reference confine it to activities of persons named in them, but in such a case the Commission shall in the prescribed manner give those persons notice of the holding of the investigation

~~(4) Where the terms of reference of the formal investigation confine it to activities of persons named in them and the Commission in the course of it proposes to investigate any act made unlawful by this Ordinance which it believes that a person so named may have done, the Commission shall—~~

~~(a) inform that person of its belief and of its proposal to investigate the act; and~~

~~(b) offer him an opportunity of making oral or written representations with regard to it (or both oral and written representations if he thinks fit),~~

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

(i) by counsel or a solicitor; or

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

(5) The Commission or, if the Commission was required by the Chief Secretary to conduct the formal investigation, the Chief Secretary after consulting the Commission may from time to time revise the terms of reference; and subsections (1), (3) and (4) shall apply to the revised investigation and terms of reference as they applied to the original.

72. Power to obtain information

(1) For the purposes of a formal investigation the Commission, by a notice in the prescribed form served on him in the prescribed manner—

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

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

~~(b) offer him an opportunity of making oral or written representations, within 28 days after the notification of the proposal to investigate, with regard to it (or both oral and written representations if he thinks fit),~~

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

(i) by counsel or a solicitor; or

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

- (a) may require any person to furnish such written information as may be described in the notice, and may specify the time at which, and the manner and form in which, the information is to be furnished;
- (b) may require any person to attend at such time and place as is specified in the notice and give oral information about, and produce all documents in his possession or control relating to, any matter specified in the notice.
- (2) Except as provided by section 79, a notice shall be served under subsection (1) only where—
- (a) service of the notice was authorized in writing by or on behalf of the Chief Secretary; or
- △ ~~(b) the terms of reference of the formal investigation state that the Commission believes that a person named in them may have done or may be doing acts of all or any of the following descriptions—~~
- (i) unlawful discriminatory acts;
 - (ii) unlawful acts of sexual harassment;
 - (iii) contraventions of section 42;
 - (iv) contraventions of section 43, 44 or 45,
- ~~and confine the investigation to those acts.~~
- (3) A notice under subsection (1) shall not require a person—
- (a) to give information, or produce any documents, which he could not be compelled to give in evidence, or produce, in civil proceedings before the High Court; or
- (b) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.
- (4) If a person fails to comply with a notice served on him under subsection (1) or the Commission has reasonable cause to believe that he intends not to comply with it, the Commission may apply to the District Court for an order requiring him to comply with it or with such directions for the like purpose as may be contained in the order; and section 66A of the District Court Ordinance (Cap. 336) shall apply to failure without reasonable excuse to comply with any such order as it applies in the cases there provided.
- (5) A person commits an offence if he—
- (a) wilfully alters, suppresses, conceals or destroys a document which he has been required by a notice or order under this section to produce; or
- (b) in complying with such a notice or order, knowingly or recklessly makes any statement which in a material respect is false or misleading,
- and is liable on conviction to a fine at level 4.



- (b) the Commission believes that a person named in the terms of reference of the formal investigation may have done or may be doing acts of all or any of the following descriptions—
- (i) unlawful discriminatory acts;
 - (ii) unlawful acts of sexual harassment;
 - (iii) contraventions of section 42;
 - (iv) contraventions of section 43, 44 or 45.

76. Claims under Part III or IV

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

- (a) has committed an act of discrimination against the claimant which is unlawful by virtue of Part III or IV;
- (b) is by virtue of section 46 or 47 to be treated as having committed such an act of discrimination against the claimant; or
- (c) has committed an act of sexual harassment against the claimant which is unlawful by virtue of Part III or IV,

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

(2) Subsection (1) shall not apply to a claim under section 17(1) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any enactment.

(3) Proceedings under subsection (1) shall be brought in the District Court but all such remedies shall be obtainable in such proceedings as, apart from this subsection and section 75(1), would be obtainable in the High Court.

~~(4) The District Court shall, by virtue of this subsection and notwithstanding any law, have all such powers as are necessary or expedient for it to have in order to provide any of the remedies referred to in subsection (3) or to grant an injunction under section 81 or 82(4).~~

~~(5) In respect of an unlawful act of discrimination falling within section 5(1)(b), 7(1)(b) or 8(b), no award of damages shall be made if the respondent proves that the requirement or condition concerned was not applied with the intention of treating the claimant unfavourably on the ground of the claimant's sex, marital status or pregnancy, as the case may be.~~

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

~~(7) No award of damages to a claimant shall exceed an amount of \$150,000 in the case of—~~

- (a) an act of discrimination against the claimant which is unlawful by virtue of Part III (including any case where the respondent is by virtue of section 46 or 47 to be treated as having committed such an act of discrimination against the claimant); or
- (b) an act of sexual harassment against the claimant which is unlawful by virtue of Part III.

(8) The Governor in Council may, by notice in the Gazette, amend subsection (7) by substituting another amount for the amount appearing in that subsection.

* and where the court is satisfied that the respondent has committed an unlawful act of discrimination or sexual harassment against the claimant in contravention of this Ordinance, the court may make an order which it considers just and appropriate in the circumstances.

△ (4) Without limiting the generality of the power conferred by subsection (3), the District Court may—

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and order that the respondent should not repeat or continue such unlawful conduct or act;
- (b) order that the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent should employ or re-employ the claimant;
- (d) order that the respondent should promote the claimant;
- (e) order that the respondent pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;
- (f) order that the respondent pay to the claimant punitive or exemplary damages; or
- (g) make an order declaring void in whole or part and either ab initio or from such other time as is specified in the order any contract or agreement made in contravention of this

(2) Where the District Court considers a requirement in respect of which an appeal is brought under subsection (1) to be unreasonable because it is based on an incorrect finding of fact or for any other reason, the Court shall quash the requirement.

(3) On quashing a requirement under subsection (2), the District Court may direct that the enforcement notice shall be treated as if, in place of the requirement quashed, it had contained a requirement in terms specified in the direction.

(4) Subsection (1) shall not apply to a requirement treated as included in an enforcement notice by virtue of a direction under subsection (3).

79. Investigation as to compliance with enforcement notice

(1) If—

- (a) the terms of reference of a formal investigation state that its purpose is to determine whether any requirements of an enforcement notice are being or have been carried out, but section 72(2)(b) does not apply; and
- (b) section 71(3) is complied with in relation to the investigation on a date (“the commencement date”) not later than the expiration of the period of 5 years beginning when the enforcement notice became final,

the Commission may within the relevant period serve notices under section 72(1) for the purposes of the investigation without needing to obtain the consent of the Chief Secretary.

(2) In subsection (1), “relevant period” (有關期間) means the period beginning on the commencement date and ending on the later of the following dates—

- (a) the date on which the period of 5 years referred to in subsection (1)(b) expires;
- (b) the date 2 years after the commencement date.

80. Register of enforcement notices

(1) The Commission shall establish and maintain a register (“the register”) of enforcement notices which have become final.

(2) Any person shall be entitled, on payment of such reasonable fee, if any, as may be determined by the Commission—

- (a) to inspect the register during ordinary office hours and take copies of any entry; or
- (b) to obtain from the Commission a copy, certified by the Commission to be correct, of any entry in the register.

79A. Binding undertakings

(1) Any person may in writing undertake to do anything that a person may be required to do by an enforcement notice under section 77, and the Commission may accept such an undertaking.

(2) An undertaking accepted by the Commission under subsection (1) shall, for the purposes of this Part, be treated as if it were an enforcement notice that became final on the date of its acceptance by the Commission.

(3) The Commission shall establish and maintain a register of the undertakings referred to in subsection (2), and section 80(2) to (4) shall apply to that register as they apply to the register referred to in section 80(1).

(3) The Commission may, if it thinks fit, determine that the right conferred by subsection (2)(a) shall be exercisable in relation to a copy of the register instead of, or in addition to, the original.

(4) The Commission shall give general notice of the place or places where, and the times when, the register or a copy of it may be inspected.

Other enforcement by Commission

81. Persistent discrimination or sexual harassment

If, during the period of 5 years beginning on the date on which either of the following became final in the case of any person, namely—

- (a) an enforcement notice served on him;
- (b) a finding by the District Court under section 76 that he has done an unlawful discriminatory act or unlawful act of sexual harassment,

it appears to the Commission that unless restrained he is likely to do one or more acts falling within paragraph (b), or contravening section 42, the Commission may apply to the District Court for an injunction restraining him from doing so; and the District Court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms

82. Enforcement of sections 43, 44 and 45

(1) Proceedings in respect of a contravention of section 43, 44 or 45 shall be brought only by the Commission in accordance with the provisions of this section.

- (2) The proceedings shall be—
- (a) an application for a decision whether the alleged contravention occurred; or
 - (b) an application under subsection (4),

or both

(3) An application under subsection (2)(a) shall be made to the District Court.

- (4) If it appears to the Commission—
- (a) that a person has done an act which by virtue of section 43, 44 or 45 was unlawful; and
 - (b) that unless restrained he is likely to do further acts which by virtue of that section are unlawful,

the Commission may apply to the District Court for an injunction restraining him from doing so; and the District Court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

(5) Without prejudice to subsection (4), if it appears to the Commission that a person has done an act which was unlawful by virtue of section 43, the Commission may apply to the District Court for an order imposing a financial penalty on such person; and the District Court, if satisfied that the application is well-founded, may make such an order.

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

**Help for persons suffering discrimination
or sexual harassment**

**83. Help for aggrieved persons in obtaining
information, etc.**

(1) With a view to helping a person ("the person aggrieved") who considers he may have been discriminated against or sexually harassed in contravention of this Ordinance to decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, the Commission may prescribe—

- (a) forms by which the person aggrieved may question the respondent on his reasons for doing any relevant act, or on any other matter which is or may be relevant;
- (b) forms by which the respondent may if he so wishes reply to any questions.

(2) Where the person aggrieved questions the respondent (whether or not in accordance with forms referred to in subsection (1))—

- (a) the question, and any reply by the respondent (whether or not in accordance with such a form) shall, subject to subsections (3), (4) and (5), be admissible as evidence in the proceedings;
- (b) if it appears to the District Court that the respondent deliberately, and without reasonable excuse, omitted to reply within a reasonable period or that his reply is evasive or equivocal, the Court may draw any inference from that fact it considers it just and equitable to draw, including an inference that he committed an unlawful act.

(3) The Commission may—

- (a) prescribe the period within which questions must be served in order to be admissible under subsection (2)(a);
- (b) prescribe the manner in which a question, and any reply by the respondent, may be served.

**82A. Commission may bring proceedings in
its own name**

(1) Where any person may bring proceedings under section 76(1) but has not done so, the Commission may, in such circumstances, bring proceedings in its own name, as if the Commission were that person.

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

- (a) the Hong Kong Bill of Rights Ordinance (Cap. 383) as it relates to discrimination on the grounds of sex, marital status or pregnancy; or
 - (b) article VII(5) of the Hong Kong Letters Patent 1917 to 1993 as it relates to discrimination on the grounds of sex, marital status or pregnancy.
- (3) In this section, "discrimination" (歧視) means—
- (a) for the purposes of subsection (2)(a), discrimination within the meaning of the Hong Kong Bill of Rights Ordinance (Cap. 383); and
 - (b) for the purposes of subsection (2)(b), discrimination within the meaning of the International Covenant on Civil and Political Rights,

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

82B. Commission may intervene in proceedings

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

- (a) a claim under section 76(1); or
- (b) a declaration of the kind referred to in section 82A(2),

is an issue.

- (a) that decision; and
- (b) the reasons for that decision.

(6) Evidence of anything said or done by any person in the course of conciliation under this section (including anything said or done at any conference held for the purposes of such conciliation) is not admissible in evidence in any proceedings under this Ordinance except with the consent of that person.

(7) For the avoidance of doubt, it is hereby declared that subsection (6) shall not apply where—

- (a) a complaint is lodged under subsection (1); and
- (b) a settlement has been effected of the matter to which the act the subject of the complaint relates.

85. Assistance other than by way of conciliation

(1) Where a complaint has been lodged under section 84(1) but, for whatever reason, there has not been a settlement of the matter to which the act the subject of the complaint relates, then any person who may institute proceedings under this Ordinance in respect of that act may make an application to the Commission for assistance in respect of those proceedings.

(2) The Commission shall consider an application under subsection (1) and may grant it if it thinks fit to do so, in particular where—

- (a) the case raises a question of principle; or
- (b) it is unreasonable, having regard to the complexity of the case or the applicant's position in relation to the respondent or another person involved or any other matter, to expect the applicant to deal with the case unaided.

(3) Assistance by the Commission under this section may include—

- (a) giving advice;
- (b) arranging for the giving of advice or assistance by a solicitor or counsel;
- (c) arranging for representation by any person including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings;
- (d) any other form of assistance which the Commission may consider appropriate,

but paragraph (c) shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address a court in, any proceedings except to the extent permitted under rules made in accordance with section 73B of the District Court Ordinance (Cap. 336).

(4) In so far as expenses are incurred by the Commission in providing the applicant with assistance under this section the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by relevant rules) shall constitute a first charge for the benefit of the Commission—

- (a) on any costs or expenses which (whether by virtue of a judgment or order of the District Court or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and
- (b) so far as relates to any costs or expenses, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(5) The charge conferred by subsection (4) shall be subject to any charge under the Legal Aid Ordinance (Cap. 91) and to any provision in that Ordinance for payment of any sum into the Supplementary Legal Aid Fund established under that Ordinance.

* (6) In this section—
 “relevant rules” (有關規則) means any rules made under the District Court Ordinance (Cap. 336);
 “respondent” (答辯人) includes a prospective respondent.

Period within which proceedings to be brought

86. Period within which proceedings to be brought

(1) The District Court shall not consider a claim under section 76 unless proceedings in respect of the claim are instituted before the end of the period of 24 months beginning—

- (a) when the act complained of was done; or
- (b) if there is a relevant report in relation to that act, with the day on which the report is published or made available for inspection under section 73,

whichever is the later.

(2) The District Court shall not consider an application under—

- (a) section 82(2)(a) unless it is made before the end of the period of 24 months beginning when the act to which it relates was done;
- (b) section 82(4) unless it is made before the end of the period of 5 years so beginning.

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



- (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.



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

(4) For the purposes of subsection (3), the circumstances of the case include, in relation to any claim, whether the act to which the claim relates was the subject of a complaint lodged under section 84(1) and, if so, the period that elapsed between when the act was done and when that complaint was so lodged.

(5) For the purposes of this section—

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

and, in the absence of evidence to the contrary, a person shall be taken for the purposes of this section to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

(6) The Governor in Council may, by notice in the Gazette, amend subsection (1) by substituting a longer period for the period specified in that subsection.

(7) In this section, "relevant report" (有關報告), in relation to an act referred to in subsection (1), means a report—

- (a) published or made available for inspection under section 73; and
- (b) from which it can reasonably be construed (and whether or not the report mentions, or was in any way prepared in consequence of, the act) that the Commission is of the opinion that the act, or the class of acts to which the act belongs, is unlawful under a provision of Part III, IV or V.

PART IX

MISCELLANEOUS

87. Validity and revision of contracts

(1) A term of a contract is void where—

- (a) its inclusion renders the making of the contract unlawful by virtue of this Ordinance;
- (b) it is included in furtherance of an act rendered unlawful by this Ordinance; or
- (c) it provides for the doing of an act which would be rendered unlawful by this Ordinance.

- (b) be made so as to apply only in such circumstances as are prescribed by the rules;
- (c) specify forms for the purposes of the rules;
- (d) be made generally for the better or more effectual carrying out of the provisions of this Ordinance, including incidental, consequential, evidential and supplemental provisions.

(3) Any rules made under this section may prescribe offences in respect of contraventions of the rules, and may provide for the imposition of a fine not exceeding level 4 and of imprisonment for a period not exceeding 2 years.

~~89. Regulations to empower Commission to bring certain proceedings~~

- (1) The Secretary for Home Affairs may make regulations—
 - (a) where any person may bring proceedings under section 76(1) but has not done so, empowering the Commission, in such circumstances as are specified in the regulations, to bring and maintain those proceedings as if the Commission were that person;
 - (b) specifying which of the remedies referred to in section 76(3) shall be obtainable by the Commission in any such proceedings;
 - (c) for the purposes of enabling the Commission to bring and maintain any such proceedings (including any related purposes), specifying modifications to which any provisions of this Ordinance (including any subsidiary legislation) shall be read.
- (2) Any regulations made under this section shall be subject to the approval of the Legislative Council.

90. Amendment of Schedules

- (1) The Governor in Council may, by notice in the Gazette, amend Schedule 1, 3, 4 or 5 but any notice to amend Schedule 5 shall be subject to the approval of the Legislative Council.
- (2) The Legislative Council may, by resolution, amend Schedule 6.

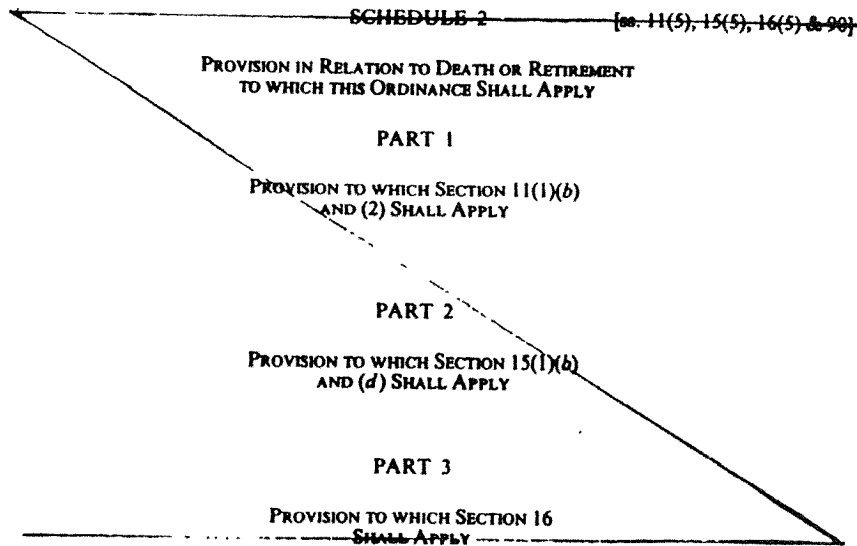
91. Transitional provisions and consequential amendments

- (1) The provisions of Schedule 7 shall have effect as transitional provisions for the purposes of this Ordinance.
- (2) The enactments specified in Schedule 8 are amended as set out in that Schedule.

2581

Educational establishment	Responsible body
11. The Open Learning Institute of Hong Kong established by The Open Learning Institute of Hong Kong Ordinance (Cap. 1145)	The Council or the Academic Board, within the meaning of section 2 of The Open Learning Institute of Hong Kong Ordinance (Cap. 1145), according to which of them has the function concerned
12. Lingnan College as incorporated by the Lingnan College Ordinance (Cap. 422)	The Board of Governors, the Council or the Academic Board, within the meaning of section 2 of the Lingnan College Ordinance (Cap. 422), according to which of them has the function concerned
13. The Hong Kong Institute of Education established by The Hong Kong Institute of Education Ordinance (Cap. 444)	The Council or the Academic Board, within the meaning of section 2 of The Hong Kong Institute of Education Ordinance (Cap. 444), according to which of them has the function concerned
14. Any school which is registered or provisionally registered under the Education Ordinance (Cap. 279)	The management committee, within the meaning of section 3 of the Education Ordinance (Cap. 279), of the school
15. Any school, within the meaning of section 3 of the Education Ordinance (Cap. 279), entirely maintained and controlled by the Government	The Director of Education

2582



SCHEDULE 3 [ss. 12, 57, 66 & 90]

PROVISIONS SPECIFIED FOR PURPOSES OF
SECTION 12(2)(g)

1. Regulations 4, 5, 6, 8, 10, 11, 13 and 14 of the Women and Young Persons (Industry) Regulations (Cap. 57 sub. leg.).
2. Regulation 25 of the Factories and Industrial Undertakings Regulations (Cap. 59 sub. leg.).
3. Regulation 46 of the Construction Sites (Safety) Regulations (Cap. 59 sub. leg.).
4. Regulation 29 of the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg.).

SCHEDULE 4 [ss. 34(3) & 90]

DISCRIMINATION TO WHICH SECTIONS 28(1) AND 29
SHALL NOT APPLY

Provision creating illegality	Exception
Part III	Sections 11(3), 12(1)(b), 19(3) and 22 Sections 1 and 2 of Schedule 7
Section 25	Sections 26 and 27 Section 3 of Schedule 7

SCHEDULE 5 [ss. 62, 66 & 90]

FURTHER EXCEPTIONS TO THIS ORDINANCE

PART 1

INTERPRETATION

1. Interpretation

In this Schedule—

- ~~"allowance" (津贴) includes part of an allowance or~~
~~"benefit" (利益) includes part of a benefit.~~
 "indigenous villager" (原居村民) means indigenous villager within the meaning of section 9 of the New Territories Leases (Extension) Ordinance (Cap. 150);
 "relevant office" (有關職位) means any office (howsoever described) of—
- (a) the police force (including any office of police cadet within the meaning of the Police Force Ordinance (Cap. 232));
 - (b) the Royal Hong Kong Auxiliary Police Force within the meaning of the Royal Hong Kong Auxiliary Police Force Ordinance (Cap. 233);
 - (c) the Immigration Service within the meaning of the Immigration Service Ordinance (Cap. 331);

2583

- (d) the Fire Services Department within the meaning of the Fire Services Ordinance (Cap. 95);
- (e) the Correctional Services Department within the meaning of the Prisons Ordinance (Cap. 234);
- (f) the Customs and Excise Service within the meaning of the Customs and Excise Service Ordinance (Cap. 342);

~~"reproductive technology procedure" (生殖科技程序) means any medical treatment or scientific intervention directed at assisting human reproduction by artificial means, and includes in vitro fertilisation, artificial insemination, gender selection and manipulation of gametes or embryos outside the body.~~

PART 2

EXCEPTIONS

Provision creating illegality	Exception
1 Parts III, IV and V	Any discrimination between men and women seeking to hold, or holding, any relevant office— <ul style="list-style-type: none"> (a) as to requirements relating to height, uniform, weight or equipment; (b) so far as there is a difference between the total number of persons of each sex recruited to, or holding, any such office or class of such office; (c) so far as any such office or class of such office which falls within that part of the police force known as the Police Tactical Unit is reserved for men; (d) so far as training in the use of weapons is concerned where any such office or class of such office falls within paragraph (a), (b), (e) or (f) of the definition of "relevant office".
2 Part IV	Any discrimination between men and women arising from that policy of the Government— <ul style="list-style-type: none"> (a) known as the small house policy; and (b) pursuant to which benefits relating to land in the New Territories are granted to indigenous villagers who are men.
3 Parts III, IV and V	Any discrimination between persons of different marital status (but excluding any discrimination against a person who is not single as compared with a person who is single) arising from a provision— <ul style="list-style-type: none"> (a) of— <ul style="list-style-type: none"> (i) the Civil Service Regulations; (ii) any contract of service or apprenticeship; or (iii) any contract personally to execute any work; and (b) relating to <ul style="list-style-type: none"> (i) housing; (ii) education; (iii) air-conditioning; (iv) passage; or (v) baggage, benefits or allowances.

2584

Provision creating illegality	Exception
4. Parts IV and V	Any discrimination between persons of different marital status arising from the provision of any reproductive technology procedure.
5. Parts III, IV and V	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).
6. Parts IV and V	Any discrimination between persons of different marital status arising from the public housing scheme known as the Home Ownership Scheme or Private Sector Participation Scheme.
7. Parts III, IV and V	Any discrimination between men and women arising from— (a) section 2(5)(a) of the Surviving Spouses' and Children's Pensions Ordinance (Cap. 79); (b) section 18(1A) of the Pensions Ordinance (Cap. 89); (c) section 19 of the Widows and Orphans Pension Ordinance (Cap. 94); (d) section 19(4) of the Pension Benefits Ordinance (Cap. 99); or (e) section 20(4) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401).
8. Parts III, IV and V	Any discrimination between persons of different marital status arising from the proviso to regulation 4(1) of the Royal Hong Kong Auxiliary Police Force (Pensions) Regulations (Cap. 233 sub. leg.).

SCHEDULE 6

[ss. 63, 64, 67 & 90]

PROVISIONS WITH RESPECT TO THE COMMISSION AND COMMITTEES AND THEIR MEMBERS

Members and procedure of Commission

1 Terms and conditions of appointment of Chairperson, etc.

- (1) Subject to subsection (2), the Governor shall determine the remuneration and the terms and conditions of appointment of the Chairperson.
- (2) The Chairperson shall not, without the specific approval of the Governor—
 - (a) hold any office of profit other than his office as Chairperson; or
 - (b) engage in any occupation for reward outside the functions of his office
- (3) This section shall apply to any other member of the Commission who is appointed on a full-time basis as it applies to the Chairperson.

2. Terms of appointment of members of Commission

- (1) Subject to sections 1 and 5 and subsection (2), a member of the Commission shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for reappointment.
- (2) A member of the Commission shall be appointed for a term not exceeding 5 years.
- (3) A member of the Commission may at any time by notice in writing to the Governor resign his office

2585

CHAPTER 487

DISABILITY DISCRIMINATION

An Ordinance to render unlawful discrimination against persons on the ground of their or their associates' disability in respect of their employment, accommodation, education, access to partnerships, membership of trade unions and clubs, access to premises, educational establishments, sporting activities and the provision of goods, services and facilities; to make provision against harassment and vilification of persons with a disability and their associates; to extend the jurisdiction of the Equal Opportunities Commission to include discrimination against persons on the ground of their or their associates' disability, and for connected purposes.


[]

PART I

PRELIMINARY


1. Short title and commencement

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

 ~~(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Health and Welfare by notice in the Gazette, and different days may be so appointed for different provisions.~~

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—
“access” (獲得、享用) means access as construed in accordance with section 56;
“act” (作為) includes a deliberate omission;

 (2) The Secretary for Health and Welfare may, by notice in the Gazette, appoint—

(a) a day; or

(b) different days in respect of different provisions,

for the coming into operation of this Ordinance and such a day, or the later or last of such different days, shall be a day no later than 1 September 1996.

(3) Subject to subsection (2), this Ordinance shall come into operation on 1 September 1996.

“advertisement” (廣告) includes every form of advertisement, whether to the public or not, and whether—

- (a) in a newspaper or other publication;
- (b) by television or radio;
- (c) by display of notices, signs, labels, showcards or goods;
- (d) by distribution of samples, circulars, catalogues, price lists or other material;
- (e) by exhibition of pictures, models or films; or
- (f) in any other way,

and references to the publishing of advertisements shall be construed accordingly;

“associate” (有聯繫人士), in relation to a person, includes—

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

“carer” (照料者) includes—

- (a) the Director of Social Welfare;
- (b) any officer of the Social Welfare Department authorized in writing by the Director of Social Welfare;
- (c) any person specified in Schedule 1;

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

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

“Commission” (平等機會委員會) has the same meaning as in the relevant Ordinance;

“commission agent” (佣金經紀人) means commission agent as construed in accordance with section 20;

“committee” (小組委員會) has the same meaning as in the relevant Ordinance;

“committee of management” (管理委員會), in relation to a club, means the group or body of persons (however described) that manages the affairs of that club;

“conciliator” (調解人) has the same meaning as in the relevant Ordinance;

“contract worker” (合約工作者) means contract worker as construed in accordance with section 13;

“disability” (殘疾), in relation to a person, means—

- (a) total or partial loss of the person's bodily or mental functions;
- (b) total or partial loss of a part of the person's body;
- (c) the presence in the body of organisms causing disease or illness;
- (d) the presence in the body of organisms capable of causing disease or illness;
- (e) the malfunction, malformation or disfigurement of a part of the person's body;
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour,

and includes a disability that—

- (i) presently exists;
- (ii) previously existed but no longer exists;
- (iii) may exist in the future; or
- (iv) is imputed to a person;

"discrimination" (歧視) means any discrimination falling within sections 6, 7, 9 or 10, and related expressions shall be construed accordingly;

"discriminator" (歧視者) includes a prospective discriminator;

"dispose" (處置), in relation to premises, includes granting a right to occupy the premises, and any reference to acquiring premises shall be construed accordingly;

"dynamically supported craft" (藉動力而獲得支承的航行器) has the same meaning as in the Shipping and Port Control Ordinance (Cap. 313);

"education" (教育) includes any form of training or instruction;

"educational establishment" (教育機構) has the same meaning as in the relevant Ordinance;

"employment" (僱用) means employment under—

- (a) a contract of service or of apprenticeship; or
- (b) a contract personally to execute any work or labour,

and related expressions shall be construed accordingly;

"employment agency" (職業介紹所) means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers;

"enforcement notice" (執行通知) means a notice under section 73(2);

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

"firm" (商號) means a firm within the meaning of the Partnership Ordinance (Cap. 38);

"formal investigation" (正式調查) means an investigation under section 66;

"general notice" (一般通告), in relation to any person, means a notice published by him at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;

"genuine occupational qualification" (真正的職業資格) means genuine occupational qualification as construed in accordance with section 12(3);

"harass" (騷擾) shall be construed in accordance with subsection (6);

"notice" (通知、通告) means a notice in writing;

"palliative or therapeutic device or auxiliary aid" (具減輕惡情或治療作用的裝置或輔助器材) includes a device or aid specified in Schedule 2;

"prescribed" (訂明) means prescribed in rules made under section 85;

"profession" (專業) includes any vocation or occupation;

"registered" (註冊) includes licensed;

"relevant Ordinance" (《性別歧視條例》) means the Sex Discrimination Ordinance (Cap. 480);

"responsible body" (負責組織) has the same meaning as in the relevant Ordinance;

"trade" (行業) includes any business;

"training" (訓練) includes any form of education or instruction;

"unjustifiable hardship" (不合情理的困難) means unjustifiable hardship as construed in accordance with section 4.

(2) References in this Ordinance to the dismissal of a person from employment or to the expulsion of a person from a position as partner include references—

(a) to the termination of that person's employment or partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment or partnership is renewed on the same terms;

(b) to the termination of that person's employment or partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer, or the other partners, as the case may be.

(3) References in this Ordinance to the provision of facilities shall be construed to include references to making those facilities available or making arrangements for the provision of those facilities or to the provision of those facilities in buildings or premises.

(4) For the purposes of this Ordinance, an enforcement notice or a finding by the District Court becomes final when an appeal against the notice or finding is dismissed, withdrawn or abandoned or when the time for appealing expires without an appeal having been brought; and for this purpose an appeal against an enforcement notice shall be taken to be dismissed if, notwithstanding that a requirement of the notice is quashed on appeal, a direction is given in respect of it under section 74(3).

* "relevant international instruments" (有關國際文書)
means—

- (a) the Standard Rules on the Equalization of Opportunities for Persons with Disabilities adopted by the General Assembly of the United Nations on 20 December 1993;
- (b) the Declaration on the Rights of Disabled Persons proclaimed by the General Assembly of the United Nations on 9 December 1975; and
- (c) the Declaration on the Rights of Mentally Retarded Persons proclaimed by the General Assembly of the United Nations on 20 December 1971;

"relevant international obligations" (有關國際義務) means obligations applicable to Hong Kong under international treaties to take appropriate steps, including legislative measures, to eliminate discrimination on the ground of disability, in particular obligations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as applied to Hong Kong;

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

(6) For the purposes of this Ordinance, a person (howsoever described) harasses another person if that first-mentioned person engages in unwelcome conduct (which may include an oral or written statement) on account of that second-mentioned person's disability, or on account of the disability of an associate of that second-mentioned person, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the second-mentioned person would be offended, humiliated or intimidated by that conduct.

(7) For the purposes of section 6(c), references in this Ordinance to—

- (a) a person with a disability (or words to the like effect) shall be construed to mean a person (and whether or not he has a disability) with an associate with a disability;
- (b) a person without a disability (or words to the like effect) shall be construed to mean a person without an associate with a disability.

(8) For the purposes of any of the provisions of sections 22, 23, 37, 38, 39, 46 and 47, references to a person with a disability (or words to the like effect) shall be construed to include a person (and whether or not he has a disability) with an associate with a disability.

(9) Subject to subsection (10), in this Ordinance "existing statutory provision" (現有法例條文) means any provision of—

- (a) any Ordinance enacted before this Ordinance was enacted;
- (b) any subsidiary legislation made—
 - (i) under an Ordinance enacted before this Ordinance was enacted; and
 - (ii) before, on or after this Ordinance was enacted.

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

2590



3. Act done because of disability and for other reason

If—

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



(11) For the purposes of the definition of "relevant international obligations" (有關國際義務), "discrimination" (歧視) means discrimination within the meaning of the treaties referred to in that definition and, although including every form of discrimination falling within section 6, 9 or 10, is not limited to discrimination so falling.

(b) one of the reasons is the disability of a person (whether or not it is the dominant or a substantial reason for doing the act), then, for the purposes of this Ordinance, the act is taken to be done for the reason specified in paragraph (b).

4. Unjustifiable hardship

For the purposes of this Ordinance, in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including—

- (a) the reasonableness of any accommodation to be made available to a person with a disability;
- (b) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned;
- (c) the effect of the disability of a person concerned; and
- (d) the financial circumstances of and the estimated amount of expenditure (including recurrent expenditure) required to be made by the person claiming unjustifiable hardship.

5. Application

This Ordinance binds the Government.

PART II

DISCRIMINATION TO WHICH ORDINANCE APPLIES

6. Discrimination against persons with disability, etc.

(1) A person discriminates against another person in any circumstances relevant for the purposes of any provision of this Ordinance if—

(a) on the ground of that other person's disability he treats him less favourably than he treats or would treat a person without a disability;

△ (b) ~~he applies to that other person a requirement or condition which he applies or would apply equally to a person without a disability but—~~

(i) ~~which is such that the proportion of persons with a disability who can comply with it is considerably smaller than the proportion of persons without a disability who can comply with it;~~

△ (b) he imposes or proposes to impose a condition or requirement, or applies or proposes to apply a practice or policy, which he would impose or apply equally in regard to a person without a disability but—

- (i) which has or is likely to have the effect of disadvantaging persons with a disability because of their disability; and
- (ii) which is not reasonable in the circumstances; or

2591

- ~~(ii) which he cannot show to be justifiable irrespective of the disability or absence of the disability of the person to whom it is applied; and~~
- ~~(iii) which is to that person's detriment because he cannot comply with it; or~~
- (c) on the ground of the disability of an associate of that other person he treats him less favourably than he treats or would treat a person without such a disability.



7. Discrimination by way of victimisation

(1) A discriminator discriminates against another person ("the person victimised") in any circumstances relevant for the purposes of any provision of this Ordinance if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised or any other person ("the third person") has—

- (a) brought proceedings against the discriminator or any other person under this Ordinance;
- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Ordinance;
- (c) otherwise done anything under or by reference to this Ordinance in relation to the discriminator or any other person; or
- (d) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Ordinance,

or by reason that the discriminator knows the person victimised or the third person, as the case may be, intends to do any of those things, or suspects the person victimised or the third person, as the case may be, has done, or intends to do, any of them.

(2) Subsection (1) shall not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.

8. Comparison of cases under section 6

A comparison of the cases of persons with or without a disability under section 6 shall be such that the relevant circumstances in the one case are the same, or not materially different, in the other.



(2) For the purposes of subsection (1)(b), a person who asserts that a condition, requirement, practice or policy is reasonable having regard to the circumstances of the case bears the burden of proving that the condition, requirement, practice or policy concerned is reasonable.

(3) In determining whether a condition, requirement, practice or policy is reasonable in the circumstances, the matters to be taken into account include—

- (a) the nature and extent of the resulting disadvantage;
- (b) the feasibility of overcoming or mitigating the disadvantage; and
- (c) whether the disadvantage is disproportionate to the result sought.

2592

9. Discrimination (palliative or therapeutic devices and auxiliary aids)

For the purposes of this Ordinance, a discriminator discriminates against another person on the ground of that other person's disability if the discriminator treats that other person less favourably because of—

- (a) the fact that other person is accompanied by, or possesses a palliative or therapeutic device or auxiliary aid that is used by that other person; or
- (b) any matter related to that fact, whether or not it is the discriminator's practice to treat less favourably any person who is accompanied by, or is in possession, and is the user, of such a palliative or therapeutic device or auxiliary aid.

10. Discrimination (interpreters, readers and assistants)

For the purposes of this Ordinance, a discriminator discriminates against another person on the ground of that other person's disability if the discriminator treats that other person less favourably because of—

- (a) the fact that other person is accompanied by—
 - (i) an interpreter;
 - (ii) a reader;
 - (iii) an assistant; or
 - (iv) a carer,
who provides interpretive, reading or other services to that other person because of the disability; or
- (b) any matter related to that fact, whether or not it is the discriminator's practice to treat less favourably any person who is accompanied by such—
 - (i) an interpreter;
 - (ii) a reader;
 - (iii) an assistant; or
 - (iv) a carer.

PART III

**DISCRIMINATION AND HARASSMENT
IN EMPLOYMENT FIELD**

Discrimination by employers

11. Discrimination against applicants and employees

(1) It is unlawful for a person ("the employer"), in relation to employment by him at an establishment in Hong Kong, to discriminate against another person with a disability—

- (a) in the arrangements the employer makes for the purpose of determining who should be offered that employment;
- (b) in the terms on which the employer offers that other person that employment; or
- (c) by refusing or deliberately omitting to offer that other person that employment.

(2) It is unlawful for the employer, in the case of a person with a disability employed by him at an establishment in Hong Kong, to discriminate against that person—

- (a) in the way he affords that person access to opportunities for promotion, transfer or training, or to any other benefits, services or facilities, or by refusing or deliberately omitting to afford that person access to them;
- (b) in the terms of employment he affords that person; or
- (c) by dismissing that person, or subjecting him to any other detriment.

(3) Except in relation to discrimination falling within section 7, subsections (1) and (2) shall not apply to employment where the number of persons employed by the employer, added to the number employed by any associated employers of his, does not exceed 5 (disregarding any persons employed for the purposes of a private home).

(4) Subsection (2) shall not apply to benefits, services or facilities of any description if the employer is concerned with the provision (for payment or not) of benefits, services or facilities of that description to the public, or to a section of the public comprising the person with a disability concerned, unless—

- (a) that provision differs in a material respect from the provision of the benefits, services or facilities by the employer to his employees without a disability; or
- (b) the benefits, services or facilities relate to training.

~~(5) Subsection (3) shall expire on the 3rd anniversary of the day on which this Ordinance is enacted.~~

(6) For the purposes of subsection (3), 2 employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control.

~~(7) The Governor in Council may, by notice in the Gazette~~

- ~~(a) amend subsection (3) by substituting another number for the last number appearing in that subsection;~~
- ~~(b) amend subsection (5) by substituting another anniversary for the anniversary appearing in that subsection.~~

△ (5) Subject to subsection (5A), subsection (3) shall expire 18 months after the day on which this Ordinance is enacted.

(5A) Prior to the expiry of subsection (3) under subsection (5) the Legislative Council may, by resolution, amend subsection (5) to extend subsection (3) for a period of 1 year.

~~60. Further exceptions~~

~~(1) No provision or Part of this Ordinance specified in column 1 of Schedule 5 shall render unlawful any discrimination specified opposite thereto in column 2 of that Schedule.~~

~~(2) Nothing in Part III, IV or V shall render unlawful any act done by any person—~~

~~(a) in connection with any discrimination which is not unlawful by virtue of the operation of subsection (1); and~~

~~(b) to the extent that it is done for the purposes of that discrimination.~~

61. Infectious diseases

(1) Subject to subsection (2), nothing in this Ordinance shall apply to a person who discriminates against another person with a disability if—

(a) that person's disability is an infectious disease; and

(b) the discriminatory act is reasonably necessary to protect public health.

(2) For the avoidance of doubt, it is hereby declared that subsection (1) has no application to a person who is HIV-positive or has acquired immune deficiency syndrome (commonly known as "AIDS") merely because of the fact that the person has such a condition.

(3) In this section, "infectious disease" (傳染病) includes—

(a) any disease specified in the First Schedule to the Quarantine and Prevention of Disease Ordinance (Cap. 141); and

(b) any communicable disease specified by the Director of Health by notice in the Gazette.

PART VII

COMMISSION

62. Functions and powers of Commission

(1) The Commission shall—

(a) work towards the elimination of discrimination;

(b) promote equality of opportunity between persons with a disability and persons without a disability;

(c) work towards the elimination of harassment and vilification;

(d) in the case of any act alleged to be unlawful by virtue of this Ordinance, encourage persons who are concerned with the matter to which the act relates to effect a settlement of the matter by conciliation, whether under section 80 or otherwise;

(e) keep under review the working of this Ordinance and, when it is so required by the Governor or otherwise thinks it necessary draw up and submit to the Governor proposals for amending this Ordinance; and

*** (f) perform such other functions as are imposed on it under this Ordinance or any other enactment.

(2) The Commission may do all such things as are necessary for, or incidental or conducive to, the better performance of its functions and in particular but without prejudice to the generality of the foregoing, may—

- (a) with the prior approval of the Governor, become a member of or affiliate to any international body concerned with (whether in whole or in part) the elimination of discrimination;
- (b) exercise such other powers as are conferred on it under this Ordinance.

63. Review of Schedules 2, 3 and 5

(1) Without prejudice to the generality of section 62(1), the Commission, pursuant to its functions under paragraphs (a) and (b) of that section, shall keep Schedules ~~2, 3 and 5~~ under review.

(2) Whenever the Commission thinks it necessary, it shall draw up and submit to the Governor proposals for— *Schedule 2*

- (a) amending ~~Schedules 2 and 5~~;
- (b) amending the provisions specified in Schedule 3.

64. Delegations

The Commission shall not under section 69 of the relevant Ordinance delegate any of its functions or powers under—

- (a) section 85;
- (b) any provisions of any regulations made under section 86 which are specified in the regulations as provisions which shall not be subject to section 69 of the relevant Ordinance;
- (c) any provisions of any rules made under section 85 which are specified in the rules as provisions which shall not be subject to section 69 of the relevant Ordinance.

Codes of practice

65. Codes of practice

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

*** (1A) Without prejudice to the generality of subsection (1), the Commission may—

- (a) promote the understanding and acceptance, and the public discussion, of relevant international obligations and of the standards contained in relevant international instruments; and
- (b) examine any proposed legislation (including subsidiary legislation) that the Commission considers may affect equality of opportunity between persons with a disability and persons without a disability or affect understanding and acceptance of relevant international obligations and of the standards contained in relevant international instruments, and report the results of the examination to the person proposing the legislation and to the Legislative Council.

67. Terms of reference

(1) The Commission shall not embark on a formal investigation unless the requirements of this section have been complied with.

(2) Terms of reference for the formal investigation shall be drawn up by the Commission or, if the Commission was required by the Chief Secretary to conduct the investigation, by the Chief Secretary after consulting the Commission.

(3) It shall be the duty of the Commission to give general notice of the holding of the formal investigation unless the terms of reference confine it to activities of persons named in them, but in such a case the Commission shall in the prescribed manner give those persons notice of the holding of the investigation.

~~(4) Where the terms of reference of the formal investigation confine it to activities of persons named in them and the Commission in the course of it proposes to investigate any act made unlawful by this Ordinance which it believes that a person so named may have done, the Commission shall—~~

- ~~(a) inform that person of its belief and of its proposal to investigate the act; and~~
- ~~(b) offer him an opportunity of making oral or written representations with regard to it (or both oral and written representations if he thinks fit).~~

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

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

(5) The Commission or, if the Commission was required by the Chief Secretary to conduct the formal investigation, the Chief Secretary after consulting the Commission may from time to time revise the terms of reference; and subsections (1), (3) and (4) shall apply to the revised investigation and terms of reference as they applied to the original.

68. Power to obtain information

(1) For the purposes of a formal investigation the Commission, by a notice in the prescribed form served on him in the prescribed manner—

- (a) may require any person to furnish such written information as may be described in the notice, and may specify the time at which, and the manner and form in which, the information is to be furnished;

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

- ~~(a) inform that person of its proposal to investigate the act; and~~
- ~~(b) offer him an opportunity of making oral or written representations, within 28 days after the notification of the proposal to investigate, with regard to it (or both oral and written representations if he thinks fit),~~

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

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

(b) may require any person to attend at such time and place as is specified in the notice and give oral information about, and produce all documents in his possession or control relating to, any matter specified in the notice.

(2) Except as provided by section 75, a notice shall be served under subsection (1) only where—

(a) service of the notice was authorized in writing by or on behalf of the Chief Secretary; or

~~(b) the terms of reference of the formal investigation state that the Commission believes that a person named in them may have done or may be doing acts of all or any of the following descriptions—~~

~~(i) unlawful discriminatory acts;~~

~~(ii) unlawful acts of harassment;~~

~~(iii) contraventions of section 41, 42, 43, 44, 45, 46 or 47, and confine the investigation to those acts.~~

(3) A notice under subsection (1) shall not require a person—

(a) to give information, or produce any documents, which he could not be compelled to give in evidence, or produce, in civil proceedings before the High Court; or

(b) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.

(4) If a person fails to comply with a notice served on him under subsection (1) or the Commission has reasonable cause to believe that he intends not to comply with it, the Commission may apply to the District Court for an order requiring him to comply with it or with such directions for the like purpose as may be contained in the order; and section 66A of the District Court Ordinance (Cap. 336) shall apply to failure without reasonable excuse to comply with any such order as it applies in the cases there provided.

(5) A person commits an offence if he—

(a) wilfully alters, suppresses, conceals or destroys a document which he has been required by a notice or order under this section to produce; or

(b) in complying with such a notice or order, knowingly or recklessly makes any statement which in a material respect is false or misleading,

and is liable on conviction to a fine at level 4.

69. Recommendations and reports on formal investigations

(1) If in the light of any of its findings in a formal investigation it appears to the Commission necessary or expedient, whether during the course of the investigation or after its conclusion—

(b) the Commission believes that a person named in the terms of reference of the formal investigation may have done or may be doing acts of all or any of the following descriptions—

(i) unlawful discriminatory acts;

(ii) unlawful acts of harassment;

(iii) contraventions of section 41, 42, 43, 44, 45, 46 or 47.

(2) Where the District Court considers a requirement in respect of which an appeal is brought under subsection (1) to be unreasonable because it is based on an incorrect finding of fact or for any other reason, the Court shall quash the requirement.

(3) On quashing a requirement under subsection (2), the District Court may direct that the enforcement notice shall be treated as if, in place of the requirement quashed, it had contained a requirement in terms specified in the direction.

(4) Subsection (1) shall not apply to a requirement treated as included in an enforcement notice by virtue of a direction under subsection (3).

75. Investigation as to compliance with enforcement notice

(1) If—

- (a) the terms of reference of a formal investigation state that its purpose is to determine whether any requirements of an enforcement notice are being or have been carried out, but section 68(2)(b) does not apply; and
- (b) section 67(3) is complied with in relation to the investigation on a date (“the commencement date”) not later than the expiration of the period of 5 years beginning when the enforcement notice became final,

the Commission may within the relevant period serve notices under section 68(1) for the purposes of the investigation without needing to obtain the consent of the Chief Secretary.

(2) In subsection (1), “relevant period” (有關期間) means the period beginning on the commencement date and ending on the later of the following dates—

- (a) the date on which the period of 5 years referred to in subsection (1)(b) expires;
- (b) the date 2 years after the commencement date.



76. Register of enforcement notices

(1) The Commission shall establish and maintain a register (“the register”) of enforcement notices which have become final.

(2) Any person shall be entitled, on payment of such reasonable fee, if any, as may be determined by the Commission—

- (a) to inspect the register during ordinary office hours and take copies of any entry; or
- (b) to obtain from the Commission a copy, certified by the Commission to be correct, of any entry in the register.



75A. Binding undertakings

(1) Any person may in writing undertake to do anything that a person may be required to do by an enforcement notice under section 73, and the Commission may accept such an undertaking.

(2) An undertaking accepted by the Commission under subsection (1) shall, for the purposes of this Part, be treated as if it were an enforcement notice that became final on the date of its acceptance by the Commission.

(3) The Commission shall establish and maintain a register of the undertakings referred to in subsection (2), and section 76(2) to (4) shall apply to that register as they apply to the register referred to in section 76(1).

(3) The Commission may, if it thinks fit, determine that the right conferred by subsection (2)(a) shall be exercisable in relation to a copy of the register instead of, or in addition to, the original.

(4) The Commission shall give general notice of the place or places where, and the times when, the register or a copy of it may be inspected.

Other enforcement by Commission

77. Persistent discrimination, harassment or vilification

If, during the period of 5 years beginning on the date on which either of the following became final in the case of any person, namely—

- (a) an enforcement notice served on him;
- (b) a finding by the District Court under section 72 that he has done an unlawful discriminatory act, an unlawful act of harassment or acts contravening section 46 or 47,

it appears to the Commission that unless restrained he is likely to do one or more acts falling within paragraph (b), or contravening section 41, the Commission may apply to the District Court for an injunction restraining him from doing so; and the District Court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

78. Enforcement of sections 42, 43, 44 and 45

(1) Proceedings in respect of a contravention of section 42, 43, 44 or 45 shall be brought only by the Commission in accordance with the provisions of this section.

- (2) The proceedings shall be—
- (a) an application for a decision whether the alleged contravention occurred; or
 - (b) an application under subsection (4),

or both.

(3) An application under subsection (2)(a) shall be made to the District Court.

- (4) If it appears to the Commission—
- (a) that a person has done an act which by virtue of section 42, 43, 44 or 45 was unlawful; and
 - (b) that unless restrained he is likely to do further acts which by virtue of that section are unlawful,

the Commission may apply to the District Court for an injunction restraining him from doing so; and the District Court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

(5) Without prejudice to subsection (4), if it appears to the Commission that a person has done an act which was unlawful by virtue of section 43, the Commission may apply to the District Court for an order imposing a financial penalty on such person; and the District Court, if satisfied that the application is well-founded, may make such an order.

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

**Help for persons suffering discrimination,
harassment or vilification**

**79. Help for aggrieved persons in obtaining
information, etc.**

(1) With a view to helping a person ("the person aggrieved") who considers he may have been discriminated against or harassed in contravention of this Ordinance, or the subject of an unlawful act under section 46 or 47, to decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, the Commission may prescribe—

- (a) forms by which the person aggrieved may question the respondent on his reasons for doing any relevant act, or on any other matter which is or may be relevant;
- (b) forms by which the respondent may if he so wishes reply to any questions.

(2) Where the person aggrieved questions the respondent (whether or not in accordance with forms referred to in subsection (1))—

- (a) the question, and any reply by the respondent (whether or not in accordance with such a form) shall, subject to subsections (3), (4) and (5), be admissible as evidence in the proceedings;
- (b) if it appears to the District Court that the respondent deliberately, and without reasonable excuse, omitted to reply within a reasonable period or that his reply is evasive or equivocal, the Court may draw any inference from that fact it considers it just and equitable to draw, including an inference that he committed an unlawful act.

(3) The Commission may—

- (a) prescribe the period within which questions must be served in order to be admissible under subsection (2)(a);
- (b) prescribe the manner in which a question, and any reply by the respondent, may be served.

**78A. Commission may bring proceedings in
its own name**

(1) Where any person may bring proceedings under section 72(1) but has not done so, the Commission may, in such circumstances, bring proceedings in its own name, as if the Commission were that person.

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

- (a) the Hong Kong Bill of Rights Ordinance (Cap. 383) as it relates to discrimination on the ground of disability; or
- (b) article VII(5) of the Hong Kong Letters Patent 1917 to 1993 as it relates to discrimination on the ground of disability.

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

- (a) for the purposes of subsection (2)(a), discrimination within the meaning of the Hong Kong Bill of Rights Ordinance (Cap. 383); and
- (b) for the purposes of subsection (2)(b), discrimination within the meaning of the International Covenant on Civil and Political Rights,

and, although including every form of discrimination falling within section 3, 6, 9 or 10, is not limited to discrimination so falling.

78B. Commission may intervene in proceedings

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

- (a) a claim under section 72(1); or
- (b) a declaration of the kind referred to in section 78A(2),

is an issue.

(a) that decision; and

(b) the reasons for that decision.

(6) Evidence of anything said or done by any person in the course of conciliation under this section (including anything said or done at any conference held for the purposes of such conciliation) is not admissible in evidence in any proceedings under this Ordinance except with the consent of that person.

(7) For the avoidance of doubt, it is hereby declared that subsection (6) shall not apply where—

(a) a complaint is lodged under subsection (1); and

(b) a settlement has been effected of the matter to which the act the subject of the complaint relates.

81. Assistance other than by way of conciliation

(1) Where a complaint has been lodged under section 80(1) but, for whatever reason, there has not been a settlement of the matter to which the act the subject of the complaint relates, then any person who may institute proceedings under this Ordinance in respect of that act may make an application to the Commission for assistance in respect of those proceedings.

(2) The Commission shall consider an application under subsection (1) and may grant it if it thinks fit to do so, in particular where—

(a) the case raises a question of principle; or

(b) it is unreasonable, having regard to the complexity of the case or the applicant's position in relation to the respondent or another person involved or any other matter, to expect the applicant to deal with the case unaided.

(3) Assistance by the Commission under this section may include—

(a) giving advice;

(b) arranging for the giving of advice or assistance by a solicitor or counsel;

(c) arranging for representation by any person including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings;

(d) any other form of assistance which the Commission may consider appropriate,

but paragraph (c) shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address a court in, any proceedings except to the extent permitted under rules made in accordance with section 73C of the District Court Ordinance (Cap. 336).

(4) In so far as expenses are incurred by the Commission in providing the applicant with assistance under this section the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by relevant rules) shall constitute a first charge for the benefit of the Commission—

- (a) on any costs or expenses which (whether by virtue of a judgment or order of the District Court or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and
- (b) so far as relates to any costs or expenses, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(5) The charge conferred by subsection (4) shall be subject to any charge under the Legal Aid Ordinance (Cap. 91) and to any provision in that Ordinance for payment of any sum into the Supplementary Legal Aid Fund established under that Ordinance.

(6) In this section—

“relevant rules” (有關規則) means any rules made under the District Court Ordinance (Cap. 336);

“respondent” (答辯人) includes a prospective respondent.

Period within which proceedings to be brought

82. Period within which proceedings to be brought

(1) The District Court shall not consider a claim under section 72 unless proceedings in respect of the claim are instituted before the end of the period of 24 months beginning—

- (a) when the act complained of was done; or
- (b) if there is a relevant report in relation to that act, with the day on which the report is published or made available for inspection under section 69,

whichever is the later.

(2) The District Court shall not consider an application under—

- (a) section 78(2)(a) unless it is made before the end of the period of 24 months beginning when the act to which it relates was done;
- (b) section 78(4) unless it is made before the end of the period of 5 years so beginning.

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

(5A)(a) Where any person, who has received assistance in respect of proceedings under subsection (2), withdraws from those proceedings, the Commission may take over and maintain those proceedings.

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

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

(4) For the purposes of subsection (3), the circumstances of the case include, in relation to any claim, whether the act to which the claim relates was the subject of a complaint lodged under section 80(1) and, if so, the period that elapsed between when the act was done and when that complaint was so lodged.

(5) For the purposes of this section—

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

and, in the absence of evidence to the contrary, a person shall be taken for the purposes of this section to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

(6) The Governor in Council may, by notice in the Gazette, amend subsection (1) by substituting a longer period for the period specified in that subsection.

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

- (a) published or made available for inspection under section 69; and
- (b) from which it can reasonably be construed (and whether or not the report mentions, or was in any way prepared in consequence of, the act) that the Commission is of the opinion that the act, or the class of acts to which the act belongs, is unlawful under a provision of Part III, IV or V.

PART IX

MISCELLANEOUS

83. Validity and revision of contracts

(1) A term of a contract is void where—

- (a) its inclusion renders the making of the contract unlawful by virtue of this Ordinance;
- (b) it is included in furtherance of an act rendered unlawful by this Ordinance; or
- (c) it provides for the doing of an act which would be rendered unlawful by this Ordinance.

- (b) the Building Authority;
- (c) the Housing Authority;
- (d) the Director of Architectural Services.

85. Rules

- (1) The Commission may make rules—
 - (a) to enable the Commission to make any arrangements necessary to assist any person with a disability to attend before it and provide information pursuant to section 68;
 - (b) prescribing the persons, or persons belonging to a class of persons, who may lodge a representative complaint under section 80(1);
 - (c) prescribing the matters to be taken into account by the Commission for the purposes of a determination under section 80(4)(d);
 - (d) to enable the Commission to require such persons, or persons belonging to such class of persons, as are specified in the rules to furnish information to the Commission for the purposes of section 80;
 - (e) restricting the disclosure of any information referred to in paragraph (d) furnished to the Commission;
 - (f) to enable the Commission to direct persons to attend any conference held for the purposes of section 80;
 - (g) regulating the procedure of any conference held for the purposes of section 80;
 - (h) prescribing any other thing that is required or permitted to be prescribed under this Ordinance.
- (2) Any rules made under subsection (1) may—
 - (a) make different provisions for different circumstances and provide for a particular case or class of cases;
 - (b) be made so as to apply only in such circumstances as are prescribed by the rules;
 - (c) specify forms for the purposes of the rules;
 - (d) be made generally for the better or more effectual carrying out of the provisions of this Ordinance, including incidental, consequential, evidential and supplemental provisions.
- (3) Any rules made under this section may prescribe offences in respect of contraventions of the rules, and may provide for the imposition of a fine not exceeding level 4 and of imprisonment for a period not exceeding 2 years.

~~86. Regulations to empower Commission
to bring certain proceedings~~

- ~~(1) The Secretary for Health and Welfare may make regulations~~

- ~~(a) where any person may bring proceedings under section 72(1) but has not done so, empowering the Commission, in such circumstances as are specified in the regulations, to bring and maintain those proceedings as if the Commission were that person;~~
- ~~(b) specifying which of the remedies referred to in section 72(3) shall be obtainable by the Commission in any such proceedings;~~
- ~~(c) for the purposes of enabling the Commission to bring and maintain any such proceedings (including any related purposes), specifying modifications to which any provisions of this Ordinance (including any subsidiary legislation) shall be read.~~
- ~~(2) Any regulations made under this section shall be subject to the approval of the Legislative Council.~~

87. Amendment of Schedules

(1) The Secretary for Health and Welfare may, by notice in the Gazette, amend Schedule 1 or 2.

(2) The Governor in Council may, by notice in the Gazette, amend Schedule 3 ~~4 or 5~~ but any notice to amend Schedule 5 shall be subject to the approval of the Legislative Council.

88. Consequential amendments

The enactments specified in Schedule 6 are amended as set out in that Schedule.

SCHEDULE 1

[ss. 2 & 87]

PERSONS SPECIFIED AS CARERS

SCHEDULE 4 [ss. 32 & 87]

DISCRIMINATION TO WHICH SECTIONS 26(1) AND 28 SHALL NOT APPLY

Provision creating illegality Exception
Part III Sections 11(3), 12(1)(b) and 19(3)

~~SCHEDULE 5 [ss. 60, 63 & 87]~~

~~FURTHER EXCEPTIONS TO THIS ORDINANCE~~

~~Provision creating illegality Exception~~

SCHEDULE 6 [s. 88]

CONSEQUENTIAL AMENDMENTS

Official Languages Ordinance

1. Schedule amended

The Schedule to the Official Languages Ordinance (Cap. 5) is amended by adding—
"13 The District Court in the exercise of its jurisdiction under the Disability Discrimination Ordinance (Cap. 487)".

Labour Tribunal Ordinance

2. Jurisdiction of tribunal

Section 7 of the Labour Tribunal Ordinance (Cap. 25) is amended by adding—
"(4) Subsection (2) shall not operate to prevent the transfer of any claim to the tribunal in accordance with any rules made under section 73C of the District Court Ordinance (Cap. 336)."

3. Declining jurisdiction

Section 10 is amended by adding—
"(4) This section shall not apply to any claim transferred to the tribunal in accordance with any rules made under section 73C of the District Court Ordinance (Cap. 336)."

2607

LEGISLATIVE COUNCIL BRIEF

**SEX AND DISABILITY DISCRIMINATION
(MISCELLANEOUS PROVISIONS) BILL 1996**

INTRODUCTION

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 sponsor is 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.

BACKGROUND

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.
4. Both Ordinances are substantially based on the UK Sex Discrimination Act 1975.³ 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.

THE BILL

Commencement dates (Clauses 2 and 25)

5. The Bill sets commencement dates for the Ordinances. Since the Bill was gazetted on 5 July 1996, however, both Ordinances have finally come into force. Clauses 2 and 25 are therefore obsolete and may be deleted at committee-stage.

Indirect discrimination (Clauses 4, 5, 6 and 27)

6. 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).
7. 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:

¹ Cap 480 LHK

² Cap 487 LHK

³ 1975 c 65 U.K.

“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.”⁴

Exceptions for small employers

(Clauses 7(b)-(c) and 28)

8. Both Ordinances exempt employers with 5 or fewer employees for a 3 year period after the Ordinances’ enactment (expiring on 14 July 1998 for the SDO and on 3 August 1998 for the DDO). The Bill shortens this period, while enabling Legco to extend either exception for some additional time if necessary.

9. The specific dates that the Bill sets for these purposes have passed since the Bill was gazetted on 5 July 1996. Committee stage amendments to Clauses 7(b)-(c) and 28 may therefore be considered.

Exception for security of Hong Kong

(Clause 11)

10. 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.

11. 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.

12. A similar exception was deleted from the DDO prior to enactment.

Exception for death and retirement benefits

(Clauses 7(a), 8, 9, 22 and 23)

13. 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.

14. 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

⁴ UK EOC, “Equal Treatment for Men and Women: Strengthening the Acts,” 1988, para 33

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].”⁵

15. Such a grandfather exception was acceptable to the 1995 Bills Committee, but the Administration did not put forward the amendment described. Instead, the Governor in Council was given the power to apply the SDO to such benefits in the future by stages, with neither a firm commitment nor a timetable to do so.⁶ The Bill repeals this arrangement and substitutes an exception of the type originally proposed.

Further exceptions

(Clauses 10, 12, 24, 29, 31, 39 and 40)

16. 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.

17. 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. The SDO already contains a similar arrangement in respect of another exception.⁷

18. 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);

⁵ Home Affairs Branch, SDB Paper No 13/95, para. 2 -- references to the Sex Discrimination Bill are up-dated to the SDO

⁶ See SDO 11(5), 15(5), 16(5), 90 and Schedule 2

⁷ SDO 57(3)-(4), making a temporary exception for labour legislation intended to protect women. Legco extended this exception for a 2d year by a resolution made on 3 July 1996

- 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.

19. 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.

20. 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)

21. 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 significantly deters any litigation in respect of those matters;⁸
- 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 8, 19, 21, 35, 36 and 38)

22. The Bill enables the EOC to bring court proceedings in its own name, either in claims under the Ordinances, or under the Bill of Rights or the Letters Patent in relation to the types of discrimination that concern the EOC.

23. Regulations made by the Secretary for Home Affairs currently allow the EOC to litigate under the Ordinances, but not under relevant provisions in the Bill of Rights or Letters Patent. This creates a loophole because 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 an exception to the Ordinances which has no parallel in the Bill of Rights. The Bill closes this loophole.

24. 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

⁸ Awards of costs are also unavailable, See SDO Schedule 8, item 15

- 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)

25. 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.

26. 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.

27. The existing requirement disables the EOC from investigating at all in many situations where its attention is most needed. As the UK EOC has explained, relaxing the requirement will enable the EOC —

“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.”⁹

28. 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.

29. 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.”¹⁰ 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.

30. 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

⁹ UK EOC, “Equal Treatment for Men and Women. Strengthening the Acts.” 1988, para 47-48

¹⁰ Lord Denning MR, *CRE v Amari Plastics (C A)* [1982] 1 Q B 1194 at 1203

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)

31. 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.

32. 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 Rights of Disabled Persons, on the Rights of Mentally Retarded Persons, and on the Elimination of Violence Against Women.

33. 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.

LEGISLATIVE TIMETABLE

34. The Bill was discussed in the Home Affairs Panel on 24 May 1996. The legislative timetable is:

Publication in the Gazette	5 July 1996
First Reading and commencement of Second Reading debate	10 July 1996
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

Office of Christine Loh

28 February 1996 7 !

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

Introduction

The Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996, introduced by the Hon. Christine Loh, seeks to amend the Sex Discrimination Ordinance (SDO) and Disability Discrimination Ordinance (DDO) which were enacted on 14 July 1995 and 3 August 1995 respectively after thorough consideration by the Legislative Council.

Comments and Observations

General

2. We do not support the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996. As the SDO and DDO were only fully commenced on 20 December 1996, we firmly believe it would be desirable to wait for some practical experience of their operation before coming to a view as to whether any amendments to these Ordinances are appropriate.

3. Besides, the Equal Opportunities Commission (EOC) has just started to introduce and promote provisions in the two Ordinances to the community. It will certainly cause confusion to the public if we now propose to make amendments to the Ordinances.

Specific concerns

4. In addition, certain provisions in the Bill are inappropriate and undesirable. For example :-

- The Bill seeks to link the interpretation of the two Ordinances with international instruments and obligations. However, as these Ordinances are self-contained pieces of legislation, references to other instruments are not required. Such a link would cause uncertainty in interpreting the two Ordinances.
- The proposal to charge EOC with the responsibility to promote international instruments and examine any proposed legislation is inappropriate as the EOC was established to implement and promote the two Ordinances.
- The Bill proposes that the existing exception provisions in the Ordinances, such as those related to the small house policy will expire after a maximum of two years following the enactment of the Bill. However, all these exceptions are reasonable and necessary. Any unilateral termination of the policy or practice by legislative means is not acceptable.
- The proposed shortening of the grace period for small business establishments from 36 to 18 months may pose great difficulties in complying with the Ordinances.
- The proposed deletion of the exception clause for acts safeguarding security of Hong Kong could undermine our security.
- The Bill seeks to empower the EOC to carry out an investigation on a named person regardless of whether the EOC holds a belief that that person has committed unlawful acts. It seems only reasonable and fair that EOC should have a belief that an unlawful act has been committed before commencing a formal investigation.
- The Bill also seeks to allow the EOC, subject to the leave of the Court, to take over proceedings in its own name even if a complainant receiving EOC's assistance withdraws from the proceedings. We consider that the EOC should not be allowed to compel the parties concerned to go through the process of litigation where the complainant has voluntarily withdrawn from a proceeding.

Conclusion

5. We do not support the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 as amendments to the SDO and DDO should only be considered after we have had the actual experience of the implementation of these two Ordinances.

Health & Welfare Branch
Home Affairs Branch
February 1997

{ BC-R1 }

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

Introduction

The Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, introduced by the Hon. Lau Chin-shek, seeks to outlaw discrimination on the grounds of family responsibility, sexuality and age.

Comments and Observations

2. We support the elimination of all kinds of discrimination. However, having conducted studies into and consulted the public on the above three areas, we do not believe the enactment of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill is appropriate.

(1) Family Responsibility

3. We have conducted a public consultation exercise on discrimination on the ground of family status in early 1996. In view of clear public support for legislation, we propose to introduce our own bill to eliminate discrimination on the ground of family status soon into the Legislative Council. Like the Sex Discrimination Ordinance, our Bill will outlaw discrimination in the areas of employment, education, disposal and management of premises, provisions of goods and services as well as activities of clubs and government.

4. Mr Lau's Bill, in so far as it relates to family responsibility, differs from our proposals in several areas. Our concerns about the Bill are as follows :-

- Family responsibility or family status in relation to a person will cover co-habitation and de-facto spouse under the Bill. However, according to our public consultation exercise carried out in early 1996, an overwhelming majority of respondents (over 90% of the 8,000 submissions received) had expressed strong reservation and disapproval to giving legal recognition to co-habitation and de-facto spouse respectively.

- The Bill seeks to link its objects with international instruments and obligations. This is inappropriate and unnecessary as it only restates a commonly accepted rule of statutory interpretation.
- The Bill provides no exception for some existing practices or policies, such as giving different rates of the Private Tenancy Allowance to officers of different family status. This may create difficulties.
- Besides, no grace period has been allowed for small business establishments to comply with provisions in the Bill.

(II) Sexuality

5. We conducted a study and public consultations on this issue in 1995/96, announcing our findings in June last year. More than 10,000 submissions were received and an overwhelming majority (85%) opposed legislation. Instead, they supported administrative measures such as public education to promote the principle of equal opportunities and enhanced support services for sexual minorities. Accordingly, we have helped homosexual support groups to secure funds to enhance the services they provide. Additionally, in October last year, we published a pamphlet that sought to address common misunderstandings about the sexual minorities and to gain greater acceptance of their right to equal opportunities. We aim to publish a booklet in the next few weeks to promote a better understanding of the issues within the community. All these efforts will continue.

6. Last year's consultations indicated strong public opposition to anti-discrimination legislation in this area and that its introduction at the present time would be premature. It follows that Government cannot support the provisions in Part III of the Bill. We hope that, in considering the Bill, Members will take full account of these findings and the measures that Government is taking to address this area of discrimination.

(III) Age

7. We also conducted a consultation exercise on discrimination in employment on the ground of age in June 1996. The low response rate to the public consultation paper (with only 68 submissions received by the end of the two-month consultation period) indicates that this is not a pressing issue to the community. There are also divergent views as to whether age discrimination legislation should be introduced.

8. In view of the above, it seems premature to introduce any age discrimination legislation. The more prudent approach to dealing with this issue is through a programme of publicity, public education and self-regulation, at least for the time being. We will be launching the publicity programme shortly. We have also drafted a set of non-statutory guidelines for employers to facilitate the self-regulation process. The Government will review the necessity for a legislative approach in the light of the outcome of the public education exercise and self-regulation efforts.

9. We also wish to point out that the provision in clause 103 of the Bill (proposed amendment to section 3 of the Hong Kong Bill of Rights Ordinance) is not consequential to the Bill and its long title. In this respect, it offends the prohibition in Clause XXV of the Royal Instructions on intermixing in the same ordinance subject matters that "have no proper relation to each other".

Conclusion

10. We do not support the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill. However, we will :

- (a) introduce our own bill on family status with scope acceptable to the community at large;
- (b) continue with our administrative measures, such as public education, to promote the principle of equal opportunities for sexual minorities ; and
- (c) deal with the issue of age discrimination in employment through the programme of publicity, public education and self-regulation.

Education & Manpower Branch
Home Affairs Branch
February 1997

{BC-R2}

Equal Opportunities (Race) Bill

Introduction

The Equal Opportunities (Race) Bill, introduced by the Hon. Elizabeth Wong, seeks to outlaw discrimination on the ground of race.

Comments and Observations

General

2. The Government is firmly committed to the principle that all are entitled to equal opportunities and considers that all kinds of discrimination are wrong. But anti-discrimination legislation is a new form of law in Hong Kong with wide-ranging implications that are not yet fully appreciated. Each form of discrimination entails issues not shared by the other forms. Legislation is always a serious step because it restricts freedom of action and of expression. Before taking that step, it is important that the issues - and their implications - are clearly understood.

3. To address the question of racial discrimination, Government is conducting a study to establish whether such discrimination exists in Hong Kong and, if so, its nature, extent and possible options for addressing such problems as may be found to exist. This follows the studies of discrimination on the grounds of age, disability, family status, sex and sexuality. The study has comprised a 'desk study' of relevant scholarship and jurisprudence, correspondence with Consulates-General on the experience of their nationals in Hong Kong, and meetings with interested organisations and individuals from a wide spectrum of the community. We aim to release our findings in a consultative document shortly. Pending the outcome of the consultations that will follow the publication of the document, Government will maintain an open mind on the merits of legislation and other options.

4. The study has the support of the United Nations Committee on the Elimination of Racial Discrimination (CERD). In March 1996, in its concluding observations on the 13th report on Hong Kong under the ICERD, the Committee said -

“With respect to Hong Kong, the study on racial discrimination proposed to begin by the end of the present year is viewed as a constructive means of determining the extent of problems in the area of racial discrimination and reviewing all laws that may in a discriminatory manner confer exclusive benefits on members of a particular race. Where discrimination is found to exist, the study could serve as an important basis for the development of solutions.”

Government shares the CERD’s view that, where discrimination may be found to exist, the study should serve as an important basis for the development of solutions. It hopes that, in considering the Equal Opportunities (Race) Bill, Members will take account of that view and await the outcome of the study and consultations.

Specific concerns

5. We will comment on the detail of the Bill at a later date. But, without prejudice to our general position as stated above, we take this opportunity to advise Members of our principal concerns -

- **impact on immigration law and policy: the Bill includes no exemptions - corresponding to those in sections 11 and 12 of the Bill of Rights Ordinance - for matters pertaining to immigration legislation on deportation and on entry into, stay in and departure from Hong Kong. These exemptions are essential for effective immigration control. Several of the Bill’s provisions (for example, clauses 9 and 11 on employment, 23 on the administration of laws) impinge directly on immigration matters and Government would not be able to support the passage of the Bill without the exemptions. We would also wish to include a temporary exemption for the provisions in Part IIIA of the Immigration Ordinance in respect of Vietnamese migrants.**
- **consequential amendments to section 3 of the Bill of Rights Ordinance (BORO): in our view, the provision in section 55 - common to all three Members Bill now before the Committee - is not consequential to the Bill and its long title. In this respect it offends the prohibition in Clause XXV of the Royal Instructions on intermixing in the same ordinance subject matters that “have no proper relation to each other”.**

Conclusion

6. We consider that we should await the outcome of the consultation exercise before proceeding further with the legislative proposal as the public should be allowed to discuss the issue.

Home Affairs Branch
February 1997

{BC-B3}

EOC's Position in Respect of Three Private Members' Bills

Introduction

The Equal Opportunities Commission ("EOC") has been asked to comment on the following three private members' Bills sought to be introduced in the Legislative Council:

- (i) Sex and Disability Discrimination (Miscellaneous Provisions) Bill;
- (ii) Equal Opportunities (Family Responsibility, Sexuality, and Age) Bill; and
- (iii) Equal Opportunities (Race) Bill

2. Only the first-mentioned Bill, proposed by the Hon. Christine LOH, has direct impact on the EOC, in that it seeks to amend existing provisions of the Sex Discrimination Ordinance, Cap. 480 ("SDO") and the Disability Discrimination Ordinance, Cap. 487 ("DDO").

Sex and Disability Discrimination (Miscellaneous Provisions) Bill

3. This Bill seeks to amend the provisions of the SDO and the DDO, and to extend of scope of the two Ordinances, through, *inter alia*:

- (i) the introduction of international instruments and international obligations, some of which are not binding on Hong Kong, which would extend the functions of the EOC;
- (ii) the introduction of a new definition for 'indirect discrimination';
- (iii) the repealing of certain provisions whereby discriminatory acts are not rendered unlawful;
- (iv) the abolition (in effect) of the grace period for 'small employers'; and
- (v) the re-defining of the remedies available to civil claimants under the SDO.

4. Given that the SDO and the DDO have only been fully operational since 20th December 1996, and that the related Codes of Practice on employment were issued on the same date after two rounds of consultation, the

EOC considers that it may be premature to consider amending any of the existing provisions without local operational experience.

5. Although changes to the SDO and the DDO, and consequently to the functions of the EOC, may be warranted in the future, the EOC is of the view that any such changes should only be made *after the development of local experience* and after *comprehensive review by the EOC*.

6. The EOC proposes to conduct a review of the legislation, commencing in December 1997, one year after the full implementation of the two Ordinances, to determine what amendments - if any - are necessary or desirable.

Equal Opportunities (Family Responsibility, Sexuality & Age) Bill

7. Whilst the EOC supports the spirit of equal opportunities, it will respect the opinion of the public and the decision of the Legislature in respect of legislation relating to these areas. It would be desirable for the EOC to be charged with the function of implementing such legislation and, to avoid confusion to the public, it is recommended that a consistent implementation mechanism be in place.

Equal Opportunities (Race) Bill

8. The EOC will similarly respect the opinion of the public and the decision of the Legislature insofar as this Bill is concerned. Similarly, to avoid confusion to the public, it is recommended that a consistent implementation mechanism be adopted. Again, it would be desirable for the EOC to be charged with the function of implementing such legislation, along similar lines as set out in the SDO and the DDO. Should the EOC be tasked with the function of implementing and administering such legislation, additional resources should be allocated to it.

Equal Opportunities Commission

3rd March 1997

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 : Carole Petersen
Andrew Bymes

From : Adam Mayes
(Direct line 2521-6820)

Date : 3/3/97

Total pages : 3 (including this page)

EOC opposes any amendments to Ordinances

In a fax tabled at the 1st Bills Committee meeting today, EOC in effect endorsed the Administration's position on the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996.

ADPL seems to be backing away from the Bill already. Bruce Liu said the EOC's proposal to review the Ordinances in 1 year's time sounds reasonable, and asked Christine to justify clause-by-clause why the amendments are necessary now.

Regards,





本署檔號 Our Ref

EMB 2/1/3231/95 IV

電話 Telephone 2810 2018

來函檔號 Your Ref.

傳真 Faxline. 2868 5916

3 March 1997

To : All Members of the Legislative Council

Equal Opportunities (Family Responsibility,
Sexuality and Age) Bill

I am writing to you regarding the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill sponsored by the Hon Lau Chin-shek.

One of the objectives of the Bill is to prohibit discrimination in employment on the ground of age. Based on the outcome of public consultation conducted by Government last year, we have informed members of our view that a sustained programme of public education, publicity and self-regulation would be the most appropriate way to deal with this particular issue. They should be more effective in changing attitudes than legislative sanctions; and the purpose of the relevant clauses in the Bill can be achieved by strengthening our current and planned activities as described below :

Publicity and public education measures

- Our first Announcement of Public Interest (API) calling on employers to consider ability, not age, in employment situations will be aired on TV in the next week or two. Other APIs will follow

- We are serious in our public education and promotion efforts - this is why we have secured a budget of \$2 million a year for a sustained campaign.

Practical guidelines for employers

- We have drawn up practical guidelines for employers on how to eliminate age discrimination in employment. We will soon be circulating these to employer and employee organisations as well as the LegCo Panel on Manpower for their comments.
- We are considering other concepts for the public education campaign, such as producing a leaflet for employers explaining the desirability of avoiding age discrimination in employment.

Employment services

- The Labour Department's Local Employment Service (LES) encourages equal opportunities and provides free employment assistance and counselling services for job seekers of all age groups. Employers placing vacancy orders with the LES are not allowed to specify any age requirements. Job-matching is performed with the objective of identifying suitable jobs for those seeking work according to their abilities, not their age.
- The LES provides priority service for job-seekers aged 50 or above. Where instant service cannot be provided, an elderly job seeker will be given the earliest possible appointment.

- The Labour Department also provides careers advisory and guidance services specifically for teenagers.
- The Labour Department promotes the concept of equal opportunities in employment through its wide range of promotional activities including talks, seminars and training courses for human resources managers, mobile exhibitions, and the distribution of publicity material to employers.
- The Labour Department also offers its services to parties involved in age discrimination in employment cases. The Department can offer advice to the employer on effective human resources management practices, act as a go-between by promoting dialogue between the two parties, help clarify misunderstanding, and arrange conciliation and meetings.

Retraining

- The Employees Retraining Board offers special programmes to job seekers aged 50 or above. Courses are designed especially to enhance their employability in the labour market.

The Government will review the situation after the public education programme has been running for a period of time, say, one year. If there is no improvement, we will seriously consider the need for legislation.

I am aware that the Bill also covers age discrimination in areas other than employment. In the consultation exercise, members of the public were also invited to comment on any other areas where they believe age discrimination was an issue. Very few comments were received.

In conclusion, I urge that you support Government's efforts to tackle the issue of age discrimination in the coming months and oppose the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill.



(Joseph W P Wong)
Secretary for Education and Manpower

cc Hon Lau Chin-shek

Ref : CB2/BC/55/95
Tel : 2869 9252
Date : 4 March 1997
From : Clerk to Bills Committee
To : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Dr Hon John TSE Wing-ling (Deputy Chairman)
Hon LAU Wong-fat, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon Emily LAU Wai-hing
Hon Zachary WONG Wai-yin
Hon Christine LOH Kung-wai
Hon LEE Cheuk-yan
Hon CHAN Yuen-han
Hon CHEUNG Hon-chung
Hon Albert HO Chun-yan
Hon LAU Chin-shek
Hon LEUNG Yiu-chung
Hon Bruce LIU Sing-lee
Hon LO Suk-ching
Hon NGAN Kam-chuen

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill,
Equal Opportunities (Race) Bill and
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

Written submissions

I forward for Members' consideration the following submissions -

- Paper No. CB(2) 1382/96-97(01) - Hong Kong Association of
Business and Professional Women
- Paper No. CB(2) 1382/96-97(02) - Hong Kong Council of Social
Service
- Paper No. CB(2) 1382/96-97(03) - The British Chamber of
Commerce
- Paper No. CB(2) 1382/96-97(04) - The Hong Kong General Chamber
of Commerce

Paper No. CB(2) 1382/96-97(05) - The Hong Kong Association of
Banks

Paper No. CB(2) 1382/96-97(06) - Mr Timothy Cheung

2. A summary of the old and new submissions are being prepared and will
be circulated to Members.



(Mrs Anna LO)
Clerk to Bills Committee

Encl.

c.c. Hon Mrs Elizabeth WONG, CBE, ISO, JP

ALA4

c:\doc\loc\cb2-1382.doc

HONG KONG ASSOCIATION OF BUSINESS AND PROFESSIONAL WOMEN
GPO BOX 1526, HONG KONG

February 15, 1997

Mrs. Anna Lo,
Clerk to the Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age)
Bill; Equal Opportunities (Race) Bill; and the Sex and Disability
Discrimination (Miscellaneous Provisions) Bill 1996
Hong Kong Legislative Council

Thank you for your letter of 23 January 1997 seeking the views of the Hong Kong Association of Business and Professional Women ("BPW") on the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill; the Equal Opportunities (Race) Bill; and the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996.

As I noted in my previous fax to you, we would appreciate it if the following submissions of BPW could be distributed to the Bills Committee. In particular:

1. We have enclosed a written submission supporting the enactment of the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill; the Equal Opportunities (Race) Bill; and the Sex and Disability (Miscellaneous Provisions) Bill.
2. BPW previously made a written submission to the Bills Committee that studied Anna Wu's Equal Opportunities Bill and the Government's Sex Discrimination Bill (in 1994-95). You should have this submission on file. (If not, please contact me.)
3. We have also enclosed (and would like submitted to the Bills Committee) BPW's submissions responding to the Government consultation exercises on:
 - a. age discrimination;
 - b. family status discrimination;
 - c. sexuality discrimination; and
 - d. race discrimination (an informal consultation).

I would appreciate it if you would telephone me (2975-5707) or fax me (2818-9124) me to advise me as to when the Bills Committee will meet, as certain of our members are interested in observing. We would also like the opportunity to appear before the Bills Committee when it holds public hearings on the Bills.

Thank you for your assistance. If you do not receive all of BPW's submissions or have any questions, please do not hesitate to contact me

Sincerely yours,

Carole J. Petersen
for HKBPW

Submission of the Hong Kong Association of Business and Professional Women on the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill; the Equal Opportunities (Race) Bill; and the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

February 1997

The Need for Comprehensive Discrimination Legislation

1. The Hong Kong Association of Business and Professional Women ("BPW") has long supported legislation to prohibit discrimination in Hong Kong. In particular, BPW supported the original Equal Opportunities Bill introduced by Anna Wu in 1994. Our organization continues to support the concept of comprehensive and effective anti-discrimination legislation. Unfortunately, Hong Kong has neither at this time. The Sex Discrimination Ordinance is filled with unnecessary exemptions and is, moreover, made almost useless by the arbitrary and unrealistic limitation on damages. Moreover, many important areas of discrimination have not been legislated against at all.

2. BPW supports the enactment of the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill, and the Equal Opportunities (Race) Bill. We would refer the Bills Committee to BPW's original submission supporting Anna Wu's Equal Opportunities Bill, and to BPW's more recent responses to the Government's consultation papers on sexuality, family status, and age discrimination, and to our recent response to the informal consultation exercise on race discrimination (all of which are enclosed with this submission). In all of these submissions, BPW has supported the enactment of comprehensive and effective anti-discrimination legislation. As a women's organization, we are particularly concerned about age discrimination, as it affects women disproportionately in Hong Kong and stems in part from the sexist view that women employees should be judged by their appearance rather than by their qualifications. However, we believe that all victims of unfair discrimination deserve legal protection and thus support the other pending bills as well.

The Need to Strengthen the SDO and Remove the Cap on Damages

3. BPW also strongly supports the enactment of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996. This Bill is essential if the SDO and DDO are to be truly effective weapons against discrimination. At present the SDO contains many unnecessary exemptions, which were not supported by the Bills Committee that studied the Bill and which severely weaken the SDO. For example, Section 59 of the SDO exempts any "act done for the purpose of safeguarding the security of Hong Kong". To our knowledge, the Hong Kong Government has never been able to justify this exemption. There are several other exemptions (such as that for the exclusion of women from the Small House Policy) which are unjustified. Essentially, these

exemptions were inserted to allow the Hong Kong government to largely preserve the status quo, while claiming that it has acted against discrimination. Indeed, the Government made this claim at the Fourth World Conference on Women in September 1995, despite the fact that the SDO did not even come into force for more than a year after the Conference.)

4. As a women's organization, we are particularly outraged at Section 76(7) of the Sex Discrimination Ordinance which **limits damages** to a mere \$150,000. This provision was not in the original Sex Discrimination Bill and was not supported by the Bills Committee that studied the Bill. The cap on damages was proposed by a legislator who sought to please the business community by inserting a limitation on damages that was so low that it would discourage victims of discrimination and sexual harassment from making a claim. It is a shame that the Government and certain other legislators decided to support this amendment. The decision to cap damages for discrimination and sexual harassment reflects a view that these damages are somehow less important than other types of legal damages and thus do not deserve full compensation. This is an insult to victims of discrimination and sexual harassment and makes a farce out of the legislation.

5. The cap on damages is particularly harmful given that victims of sex discrimination will not normally receive their legal costs even when if they win in court. This is because the Sex Discrimination Ordinance added a provision to the District Court Ordinance that each party shall normally bear its own costs in a proceeding brought under the SDO (see Section 73B of the District Court Ordinance). Given the high cost of litigating in Hong Kong, it is entirely possible that a woman who successfully litigates a claim under the SDO will not receive enough in damages to pay for her legal costs, let alone to compensate her for her actual damages.

6. Thus, even if a woman has a strong claim and has sufficient funds to engage good lawyers, she will be unlikely to actually sue -- because the cap on damages makes the decision to sue an unwise one. Moreover, those who discriminate against women will also know that victims are highly unlikely to sue and that they can therefore continue to discriminate with impunity.

7. Proponents of the cap on damages have sometimes argued that it is not necessary for a victim of discrimination to hire lawyers, as she can represent herself in court. But this is no answer. Anyone familiar with the realities of litigation will know that an individual representing herself stands little chance against a large commercial organization that is represented by highly qualified lawyers. Indeed, the victim would have great difficulty even obtaining the appropriate evidence of discrimination, as she would not be familiar with the rules of pre-trial discovery. Legal representation is thus essential for effective enforcement of the law -- but victims will not be willing to spend money for such representation in the face of the existing cap on damages.

8. The cap on damages will also greatly hamper any efforts by the Equal Opportunities Commission to **mediate** complaints of discrimination. In order for mediation to be effective, the parties have to have a **reason** to mediate. For the party that is accused of discrimination, the incentive to mediate is generally the desire to avoid a costly lawsuit and the possibility of a substantial award. But under the existing SDO, the alleged discriminator will have no incentive to mediate in good faith -- knowing that the cap on damages will make the victim unlikely to sue and that even if she does sue, the maximum exposure is very low.

9. Therefore, unless amended, the cap on damages threatens to undermine the entire purpose of the Sex Discrimination Ordinance. Only the most blatant examples of discrimination will be effected by the SDO. For example, discriminatory newspaper advertisements can be deterred because they are a very obvious form of discrimination and because the Equal Opportunities Commission itself can easily take action against publishers. But the real heart of discrimination -- such as hiring, firing, and promotion decisions -- will not be effectively deterred because the damages are too low to encourage victims to make complaints and, in any event, too low to encourage compliance with the law.

10. Some groups (such as employers) have argued that the legislature should not remove the cap on damages until Hong Kong has gained some "experience" with the SDO. But we must ask ourselves: how will that "experience" be interpreted? If victims of discrimination and harassment fail to file claims (because the cap on damages makes it economically unwise to do so), the business community will argue that this is an indication of a lack of discrimination in Hong Kong and that there is no need to strengthen the law. In fact, the number of complaints of discrimination will be artificially constrained by the existing inadequate remedies. The fact is that the cap on damages was a fundamental mistake, right from the start, and it must be removed if the law is to provide effective remedies and effective deterrence.

11. It has been suggested to BPW that even if the cap on damages were removed from the SDO, the District Court would be limited in the amount of damages that it could award by the normal limitations on its jurisdiction. In our view, this is not the case, because Section 76(3) of the SDO states that all remedies that would be available in the High Court shall be obtainable. However, if there is any doubt on this point, we would suggest that all necessary amendments be made (e.g. to the SDO, the DDO and the District Court Ordinance) so as to ensure that the court has the power to award damages that fully compensate victims of discrimination for their actual damages.

12. In addition to the removal of the cap on damages, BPW also supports the other amendments proposed by the Sex and Disability Discrimination (Miscellaneous Provisions) Bill to strengthen remedies. In particular, we support amending the SDO so as to expressly permit the court to order that the victim of

discrimination be hired or re-hired. While this remedy is not always appropriate, it often works well (for example, in large organizations, where the victim of discrimination would not need to work directly with those who discriminated against her). We note that this remedy is available under the DDO and there is no justification for the inequality of remedies.

13. BPW also supports the other amendments proposed by Ms. Loh's Sex and Disability Discrimination (Miscellaneous Provisions) Bill, including those that would strengthen the powers of the Equal Opportunities Commission to investigate discrimination. Removing the cap on damages will help those victims who have the resources to obtain legal representation. But many women who do not have the financial resources to maintain a court action. Moreover, in many cases, discrimination and harassment can be better dealt with through an investigation by the EOC. It is thus essential that the EOC have the necessary powers to investigate and remedy discrimination. It should be noted that many of the amendments proposed by Ms. Loh are based upon recommendations of the United Kingdom's Equal Opportunities Commission, which has found that it is severely hampered by existing restrictions on its powers.

Conclusion

14. BPW supports the enactment of all three bills being studied by the Bills Committee. We are particularly concerned by the existing cap on damages in the SDO and urge that it be removed without further delay. We would be happy to answer any questions on our submission. We would also appreciate the opportunity to appear before the Bills Committee if it holds public hearings on the bills.

THE HONG KONG ASSOCIATION OF BUSINESS AND PROFESSIONAL WOMEN
GPO BOX 1526 Hong Kong

July 25, 1996

To:

Secretary for Education and Manpower
Central Government Offices
9th floor, West Wing
11 Ice House Street, Central
Hong Kong

SUBMISSION OF THE HONG KONG ASSOCIATION
OF BUSINESS AND PROFESSIONAL WOMEN IN RESPONSE TO
THE GOVERNMENT'S CONSULTATION PAPER ON AGE DISCRIMINATION

The Hong Kong Association of Business and Professional Women ("BPW") respectfully submits the following comments in response to the Government's Consultation Paper entitled "Equal Opportunities: A Study on Discrimination in Employment on the Ground of Age" (hereinafter, the "Consultation Paper"). BPW is happy to have its name identified in the eventual report on this consultation exercise. Indeed, BPW requests that all submissions made in response to this exercise be published and made available to the public. BPW also requests that its submission be included in any report or publication of the results of this consultation.

1. Introduction and Summary of Submission

1.1 In general, BPW supports the concept of legislation to prohibit discrimination. BPW thus supported the Equal Opportunities Bill (the "EOB") introduced by Anna Wu in 1994, which would have prohibited age discrimination had it been enacted. Like most Hong Kong women's organizations, BPW was very disappointed that the Government refused, in 1995, to support the EOB or to offer any alternative legislation addressing age discrimination. BPW will now support the private member's bill recently introduced to prohibit discrimination on the grounds of age, family status, and sexuality. We hope that the Government will support this bill and co-operate with the Bills Committee that will study it.

1.2 BPW calls upon the Government to abandon its longstanding opposition to age discrimination legislation (which is very apparent in the Consultation Paper). Instead of wasting time and money trying to persuade the public that the problem of age discrimination does not exist, the Government should devote its resources to the enactment of an effective age discrimination law.

2. The Scope of the Consultation Paper is Too Narrow

2.1 The Consultation Paper should not have been limited to age

discrimination in employment. While employment is an important area, age discrimination can also cause hardship in other areas, such as education and housing. For example, women have often complained of age discrimination in Government training programmes (such as the "On the Job Training Scheme"). Such discrimination is particularly harsh on women, who are more likely than men to delay their education or career development while they have children. BPW thus believes that age discrimination should be prohibited in all of the areas covered by the Sex Discrimination Ordinance, including employment, education, housing, the provision of goods and services, and the administration of government programmes.

2.2 We also note that the Consultation Paper focuses entirely upon the private sector employment market, with nothing said about the public sector. As recently as late 1993, a legislative assistant working for Ms. Anna Wu photographed job advertisements posted by Government departments that set absurdly low age limits for clerical jobs. The Consultation Paper does not state whether this practice has been abolished. Even if the Government no longer publishes such blatantly discriminatory advertisements, it is quite likely that more subtle age discrimination is still practised by Government departments (for example, when applications are screened and when applicants are interviewed).

2.3 BPW thus calls upon the Government to clearly state: (i) whether it has adopted a firm policy against age discrimination in Government departments; and (ii) if so, how that policy is enforced. If no policy against age discrimination has been adopted with respect to the public employment sector, then it should be adopted immediately. The Government cannot claim to be "promoting equality" unless it is a clear leader in the fight against both overt and covert age discrimination.

3. The Consultation Paper Misrepresents the Extent of the Evidence of Age Discrimination

3.1 It is painfully clear that the department that prepared this Consultation Paper strongly opposes age discrimination legislation. The authors of the paper have gone out of their way to down-play the evidence of discrimination, often trying to re-characterize clear examples of discrimination as something else (such as "statistical age discrimination" and "market discrimination").

3.2 A good example, of the attitude taken in this Consultation Paper appears on page 2, at paragraph 1.5 of the "Executive Summary". Here the Government claims that its "Working Group" noted that:

"there was no evidence to prove any discrimination in employment against persons of any age group" (emphasis added).

An unformed reader might well simply stop reading the

Consultation Paper at this point! After all, if the Government is so certain that there is no evidence of age discrimination why should anyone even participate in this consultative exercise?

3.3 Of course, an informed reader will view this statement sceptically, for a similar Government "Working Group" also concluded (in 1992) that sex discrimination was not a problem in Hong Kong and should not be addressed by legislation. Fortunately, the public and the Legislative Council persuaded the Government to abandon that unrealistic position.

3.4 Moreover, if members of the public persevere in reading the Consultation Paper, they will find that it contains a good deal of evidence of age discrimination--but that the Government has done its utmost to down-play or to re-characterize it as something else. For example:

3.5 The Consultative Paper (at para 3.2) acknowledges that approximately 17% of all job advertisements in Hong Kong openly discriminate on the ground of age. The Government apparently considers this to be a small percentage, but it is actually very significant. This percentage indicates that more than 1/6 of employers overtly discriminate on the ground of age. And since most discriminatory behaviour tends to be more subtle than overt age limitations (that is, it occurs when the employer screens applications, interviews applicants, or promotes employees), the 17% figure is clearly just the "tip of the iceberg".

3.6 The Consultation Paper also acknowledges that in certain fields, the incidence of overt age discrimination is much higher than 17%. The Labour Department found that the frequency of stating an age range in a job advertisement is not uniform across all fields. Rather it is "most common" in three occupational categories: (1) sales and service workers (e.g., shop assistants); (2) clerical workers; and (3) manual or unskilled workers. Thus, workers in these three fields will find that far more than 17% of the job advertisements overtly discriminate on the ground of age.

3.7 Women are particularly affected by age discrimination. As a result of sex discrimination, women are more likely than men to find themselves in the three job categories mentioned in para. 3.6 above (particularly in categories (1) and (2).) And within any field, women are more likely than men to suffer age discrimination, as a result of the well-documented sexist tendency of many employers to value women employees more for their appearance than for their skills. Thus, a 40 year-old woman who is seeking work as a shop assistant or as a secretary will find that the incidence of overt age discrimination against her is far higher than 17%. And, of course, the incidence of covert age discrimination against her (at the application, interview, and promotion stages) will be higher still.

3.8 In addition to down-playing the evidence of age discrimination, the Government also has attempted to re-characterize it as something other than "true" age

discrimination. For example, the Government acknowledges (at para 5.9 of the Consultation Paper) that Hong Kong employers often fail to assess individual workers on the basis of their own merits. Instead, they tend to assume that each worker has:

"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)."

3.9 This is a classic example of discrimination -- judging a person on the basis of assumed stereotypes, rather than on his or her own merits. Yet the Government refuses to acknowledge this as "true" age discrimination, referring to it instead as "statistical age discrimination" (and apparently disregarding it when deciding whether age discrimination is a problem in Hong Kong). Indeed, the Government appears even to defend this practice, stating that it is "not surprising" that employers make these stereotypical judgements, to avoid the cost of individual assessments of job applicants. (See Consultation Paper, para. 5.9.)

3.10 We are deeply concerned that the Government would try to characterize this practice as anything other than clear age discrimination. Consider the analogous practice in the area of sex discrimination: if an employer refused to consider female applicants for a job that involved lifting heavy boxes on the ground that he "assumed" that all women lack upper body strength and did not wish to go to the trouble of assessing individual female applicants, that employer would clearly be liable under the Sex Discrimination Ordinance (when that Ordinance finally comes into force!). One of the primary purposes of anti-discrimination legislation is to prohibit the practice of judging a person on the basis of stereotypical (and often entirely unjustified) assumptions about his/her sex, race, or age group. The fact that the Government fails even to acknowledge that such stereotypical judgments are, indeed, "age discrimination" is extremely disappointing. How can the Hong Kong Government claim to be addressing discrimination when it will not even admit to its existence?

3.11 Another example of the Government's attempt to re-characterize evidence of age discrimination appears at page 22 of the Consultation Paper. Here the Government admits that Hong Kong employers discriminate on the basis of age, but claims that this is not due to any personal prejudices of the employers, but rather to customers' prejudices. BPW first notes that there is no detailed discussion of how the Government came to this conclusion. If it is based solely upon interviews with employers, then it is an unreliable finding, as it is common for employers to blame their own prejudices on their customers. Moreover, it makes absolutely no difference to the victims of age discrimination whether the root cause of the discrimination is the prejudices of employers or their customers. The result is the same -- the worker is being judged on the basis of

stereotypes and prejudices rather than on the basis of his/her ability to do the job. And legislation could have an effect upon this so-called "market discrimination": for if all employers were prohibited from discriminating on the basis of age, then no employer would suffer a competitive disadvantage by not catering to the prejudices of customers.

4. Additional Evidence of Age Discrimination and of Public Support for Legislation

4.1 As noted above, the Government's Consultation Paper actually reveals substantial evidence of age discrimination in Hong Kong. The Government's longstanding opposition to age discrimination legislation has simply caused the drafters of this paper to downplay this evidence, and to attempt to re-characterize it as something else. But this does not change the simple fact that many Hong Kong workers are victims of age discrimination and require protection from it.

4.2 In addition to the evidence of discrimination that is revealed (albeit begrudgingly) in the Consultation Paper, there is other evidence that the Government has ignored. For example:

(a) During the 1993 consultation on the Green Paper on Equal Opportunities for Women and Men, many women and women's organizations made submissions complaining not only of sex discrimination, but also of age discrimination.

(b) Similarly, when the Equal Opportunities Bill and the Sex Discrimination Bill were being considered by the Bills Committee (in 1994-5), many women's organizations made written and oral submissions asking that age, as well as sex discrimination, be legislated against.

(c) In June 1994, the South China Morning Post conducted a survey that revealed that 78% of Hong Kong people felt that some action should be taken against discrimination against the elderly.

(d) In March 1995, Anna Wu was presented with 2000 letters from women complaining of age discrimination.

4.3 More examples of the public's concern about age discrimination and its general support for legislation could be cited. In truth, the only group that clearly opposes legislation is employers. But this should come as no surprise -- Hong Kong employers also initially opposed sex discrimination legislation. But eventually, the clear need for such legislation overcame their opposition. Age discrimination is an equally serious problem and should not be ignored any longer.

5. BPW's Suggestions Regarding Age Discrimination Legislation

5.1 BPW supports age discrimination legislation that would apply to employment (both in the public and private sectors). But age discrimination legislation should also apply to all of the areas

covered by the Sex Discrimination Ordinance, including education, housing, provision of goods and services, and the administration of laws and government programmes.

5.2 Age discrimination legislation should be enacted speedily, without the long "phase in" period that has prevented the Sex Discrimination Ordinance and the Disability Ordinance from coming into force as of August 1996 -- more than one year after their enactment. (Now that the Equal Opportunities Commission has finally been established, there is no excuse for further delays in the implementation of these anti-discrimination laws.)

5.3 Age discrimination legislation should be enforced in a similar manner to the Sex Discrimination Ordinance and the Disability Discrimination Ordinance, with access to both the courts and the Equal Opportunities Commission. There should be no restriction on damages (and BPW calls for the repeal of the absurdly low limit on damages presently in the Sex Discrimination Ordinance). The remedy of re-instatement should be available. (BPW also supports the amendments proposed in Christine Loh's Sex and Disability Discrimination Amendment Bill, particularly those that would improve the investigation and enforcement powers of the EOC.)

5.4 BPW agrees that there should be an exemption for differential treatment of young persons, where that different treatment is reasonably necessary to protect young persons. Such exemptions are common in age discrimination legislation and should not be difficult to draft.

5.5 BPW also would support an exemption for reasonable mandatory retirement policies (e.g. policies that require all employees to retire at 60 or 65). But the law should require that any such policy be applied equally to all employees, and in particular, that it be applied equally to male and female employees. A mandatory retirement age that is different for male and female employees is sex discrimination and cannot be justified.

6. Conclusion: Legislation is a Necessary First Step

6.1 The Government repeatedly makes the point that legislation is not a "cure all". It does not guarantee jobs for middle-aged workers and cannot completely remove prejudice. This is true. But no legislation is a "cure all". Legislation prohibiting pollution, child abuse, and the exploitation of workers' safety is all difficult to enforce. But society has clearly decided that such legislation should exist and should be enforced to the extent possible.

6.2 Age discrimination legislation is a necessary first step. The law must clearly state that discrimination and prejudice are wrong. The law must also provide a remedy for victims of discrimination. Otherwise, public education will have no weight and will have little or no effect. BPW thus calls upon the Hong Kong Government and the Legislative Council to take the first step and enact legislation against age discrimination.

Submission of the
Hong Kong Association of Business and Professional Women
on the Government's Consultation Paper on
Family Status Discrimination

I. Introduction

1. The Hong Kong Association of Business and Professional Women (BPW) supported the Equal Opportunities Bill (sponsored by Anna Wu), which would have prohibited discrimination on the ground of family status and family responsibilities. We continue to support this legislation, as comprehensive anti-discrimination legislation is the preferred option. However, we would also support a separate bill to prohibit family status discrimination, providing it is similar in effect and scope to the EOB.

II. The Need to Bring the Sex Discrimination Ordinance into Force

2. It should first be noted that certain examples of family status discrimination may be prohibited by the Sex Discrimination Ordinance (for example, as cases of "indirect" sex discrimination, as noted at paragraphs 70-71 of the Consultation Paper). Unfortunately, the Sex Discrimination Ordinance still is not in force, although it was enacted almost one year ago. The implementation of this important Ordinance has been unnecessarily delayed by the Government's insistence that it must first establish the Equal Opportunities Commission (despite the fact that the Ordinance is also enforceable in the courts). Moreover, the Government has delayed the establishment of the Commission by failing promptly to advertise the position of Chairperson -- waiting a full seven months after the Sex Discrimination Ordinance was enacted to publish the advertisement. As a result, there is still no date certain for the establishment of the Commission or the implementation of the Sex Discrimination Ordinance. BPW, like many other women's organizations, urges the Government to bring the Sex Discrimination Ordinance into force without further delay.

3. In addition, we understand that the Government plans to delay even further the implementation of the employment provisions of the Sex Discrimination Ordinance, by refusing to bring these provisions into force until after the Equal Opportunities Commission has issued "codes of practice" to advise employers on the impact of the new law. We do not agree that these codes must precede the enforcement of the Ordinance. (Indeed, in other jurisdictions, such codes are normally based upon experience with the law.) We urge the Government to re-think this plan and to bring the entire Sex Discrimination Ordinance into effect as soon as possible.

III. The Need for Legislation Prohibiting Family Status Discrimination

4. While the Sex Discrimination Ordinance may, indirectly, address certain cases of family status discrimination, it will not provide comprehensive protection. Moreover, the extent to which the Sex Discrimination Ordinance will prohibit family status discrimination will largely depend upon case-by-case interpretation of the Ordinance, leading to unnecessary uncertainty in the law. Therefore, an Ordinance that directly prohibits discrimination on the ground of family status and responsibilities is required.

5. Such legislation should prohibit both discrimination on the ground of family status and discrimination on the ground of family responsibilities (as defined in the Equal Opportunities Bill). The legislation should be as wide in scope as the Sex Discrimination Ordinance, applying, for example, to employment, education, accommodation, the provision of goods and services, eligibility to vote, activities of clubs (as defined in the SDO), and the administration of laws and government programmes.

6. Legislation to prohibit discrimination on the basis of family status and family responsibilities is essential to achieve the original purposes of the

Sex Discrimination Ordinance Women are far more likely than men to suffer this form of discrimination. Women applicants for jobs are more likely than men to be asked if they have young children at home. They are also more likely than men to be excluded from consideration for the job on this basis - based upon the discriminatory assumption that they will not be able to fulfil the requirements of the position because of their status in the family.

7 Thus, while both men and women need protection from family status discrimination, the issue is of particular importance to women. Indeed, the Sex Discrimination Ordinance will achieve little if employers who previously refused to consider women applicants on the ground of their sex now refuse to consider them on the ground that they are caregivers. (As noted above, while such actions might be interpreted as constituting indirect sex discrimination, this would depend upon judicial interpretation and is not the optimal way of addressing family status discrimination.)

8 It should also be noted that family status discrimination can be particularly harmful to business and professional women. For example, in Hong Kong, professional people are often required to travel on business. Many women do this regularly as part of their jobs. But some employers may believe that it is not appropriate for certain employees (such as those who are mothers) to travel away from their families and may fail to give such employees assignments or promotions that would involve travel. It is important that employees be given equal opportunities for employment, training, and promotion, regardless of their family status.

9. Employees also deserve to be paid equally and to be given equal opportunities to work night shifts or to work overtime hours. Of course, employees with family responsibilities may choose not to work overtime hours, in which case they will understandably earn less money than those employees who do work overtime. But it is important that they be given equal opportunities to work overtime. In many cases, the employee can arrange for someone else to perform her caregiving role in her absence; and the night shift or overtime pay (which is often quite lucrative) may be essential to the family budget.

10 Women's organizations also have received complaints from single mothers who have had difficulty obtaining housing. While such complaints might be addressed under the heading of marital status discrimination (which is covered by the Sex Discrimination Ordinance), a law prohibiting family status discrimination would provide more comprehensive and certain protection.

IV Exemptions

11 In general, we would support the exemptions that were included in the Equal Opportunities Bill. In particular, we would support the exemption for special measures (discussed at paragraph 97 of the Consultation Paper). We would also support an exemption to allow employers to restrict the employment of relatives in circumstances where it could damage the employer. (For example, in certain industries, an employer might legitimately refuse to employ a close relative of a competitor's employee.)

12 We do not support an exemption for small businesses (and we continue to oppose it in the Sex Discrimination Ordinance). Given that the legislation would not require any special advantages or concessions for people of a certain family status, there is no justification for such an exemption. The argument made in the Consultation Paper that small businesses need more time to learn about the law is a weak one. In fact, people and institutions tend to ignore new laws until they are brought into force and made to apply to them.

V Enforcement

13 The legislation should be enforced along the same lines as the Disability Discrimination Ordinance, with access to both the Equal Opportunities

Commission and the courts. We strongly oppose any limitation on damages (and we call for the repeal of the limitation on damages in the Sex Discrimination Ordinance). We also support a specific clause providing for the remedy of reinstatement (and call for the addition of such a remedy to the Sex Discrimination Ordinance).

VI Non-legislative Measures

14 We do not agree with the suggestion of "some consultees" (referred to at paragraph 122 of the Consultation Paper) that the Government should defer legislation in favour of public education and increased services for people with family responsibilities. While we would support such non-legislative measures, they are not a substitute for legislation. It is important that the laws of Hong Kong stand behind any public education campaign by emphatically stating that discrimination is wrong.

15 However, we do urge the Government to pursue such non-legislative means and especially to increase government support for day-care services for children, the elderly, and disabled family members. We also urge Government and other public authorities to take the lead in offering employees flex-time arrangements and on-site child-care. Universities and training centres should also consider offering on-site child care, to enable parents and others with family responsibilities to pursue their education and upgrade their skills.

HKABPW Response to Government Study on Discrimination on the Ground of Sexuality

General

1. We take the position that discrimination of any sort is wrong
2. In the case where an obvious wrong is being done to a section of the community (as indicated by the responses to the survey) we believe that it is the duty of Government to legislate to correct that injustice. It is not the duty of Government to balance competing interests or to consider whether the legislation would have public support. The Government must take the lead.
3. The only matter that the Government needs to consider is whether such legislation would be acceptable to the Legislative Council. We believe that with Government support there would be majority support for the Legislative Council for some form of anti discrimination legislation such as that which was promulgated in the Equal Opportunities Bill in respect of sexual orientation.
4. In addition to legislation we support public education through the mass media, general health and sex education and revision of the school curriculum. But we consider this to be complimentary to legislation and not the forerunner of it.
5. We supported the proposals made in the EOB and continue to do so save that we would wish the Equal Opportunities Commission to have charge of enforcing the legislation together with the District court

Survey

1. The survey was designed to elicit the public's awareness and acceptance of sexual orientation in different spheres.
2. It is clear from the responses that there is substantial discrimination in the area of sexual orientation. A lack of knowledge about and suspicion of those with a different sexual orientation from the norm means that there is a greater likelihood of discrimination and therefore a greater need for protection.
3. Whilst we would agree with the need for education we do not believe that this will deal with the problem of discrimination on its own. The Government has accepted this fact in the case of sex & disability discrimination and we see no reason why sexual orientation should be treated differently

Legislation

1. Definition - we accept the definition in the EOB and would support the inclusion of the perceived and past sexual orientation as a prohibited ground of discrimination
2. We would prefer the enforcement mechanism to be in the hands of the Equal Opportunities Commission rather than the District Court
3. We would support legislation which would include provisions against discrimination on the grounds of sexuality in the areas of employment, education, access to places, and vehicles, provision of goods, services and facilities, accommodation, land clubs, application forms, and administration of laws and public services. We believe such legislation should include provisions which prohibit harassment and vilification on the grounds of sexual orientation
4. We believe there should be an exemption in the legislation in respect of marriage at this stage and that the question of marriage between same sex couples should be further examined by the Equal Opportunities Commission

- 5 We would not support legislation which would encourage the adoption of children or the use of reproductive technology by same sex couples at this time. We believe that at the present time children of such couples would suffer unreasonable discrimination.
- 6 We support the exemption in the EOB in connection with religious bodies.
- 7 We would not support an exemption for the employment of teachers.
- 8 We do not support a period of exemption in connection with small businesses. Employers are not asked to do anything positive but to refrain from discriminating against persons on the grounds of sexual orientation.
- 9 We support the exemptions in the EOB in respect of Domestic helpers and accommodation. We do not believe that it is right to legislate for what people do in their own homes.
- 10 We support the special measures exemption in respect of measures which discriminate positively on the grounds of sexual orientation.
- 11 We support the exemption regarding charitable donations. Donors are entitled to earmark their gifts to certain classes of people, however we see no reason for the exemption in respect of voluntary organisations who should not be in a different position than employers.
- 12 We suggest that enforcement provisions laid down in the Disability Discrimination Ordinance be adopted in any sexual orientation legislation, namely initial investigation and mediation by the EOC and the opportunity to bring an action in the District Court.

Submission of the Hong Kong Association of Business
and Professional Women on the Need for
Race Discrimination Legislation in Hong Kong

The Hong Kong Association of Business and Professional Women ("BPW") respectfully submits the following comments to the Hong Kong Government on the need for legislation to prohibit discrimination on the ground of race and national origin in Hong Kong. BPW is happy to have its name identified in any eventual report on this consultation exercise. Indeed, BPW requests that all submissions made on this topic be published or otherwise made available to the public.

1. Introduction and Summary of Submission

1.1 In general, BPW supports the concept of comprehensive legislation to prohibit discrimination. BPW thus supported the Equal Opportunities Bill introduced by Anna Wu in 1994, which would have prohibited race discrimination had it been enacted. BPW was very disappointed that the Government refused, in 1995, to support the EOB or to offer any alternative legislation addressing race discrimination.

1.2 Race discrimination is a subject that has received too little attention from the Hong Kong Government. We call upon the Government to either introduce a race discrimination bill or, at a minimum, to announce publicly that it will not oppose any private member's race discrimination bill introduced into the Legislative Council.

2. The Need for Race Discrimination Legislation in Hong Kong

2.1 Hong Kong is an international city with many racial and ethnic groups. As a colonial society, there is a long history of discrimination against local Chinese people and racial discrimination legislation should have been introduced many years ago. In recent years, there have been complaints of discrimination against other minority groups (for example, discrimination against people of Indian or Filipino origin). Because racial minorities generally do not have much political power in society, their plight is often ignored.

2.2 In this period of transition, anti-discrimination legislation is particularly important. Racial minorities need to know that they will be fairly treated in Hong Kong both before and after 1997. Such assurances also would help to give foreign business people who invest and do business in Hong Kong increased confidence in their future here.

2.3 Equally important, is the fact that Hong Kong is obligated to take steps to protect people from racial discrimination under several international conventions (such as the Racial Discrimination Convention, the International Covenant on Civil

and Political Rights and the International Covenant on Economic, Social and Cultural Rights'. A necessary and very basic first step in fulfilling these obligations is to enact effective domestic legislation prohibiting race discrimination.

2.4 Race discrimination legislation is by no means a radical concept. Many countries have such protection, often in their constitutions. Indeed, Hong Kong's Bill of Rights (and in future Article 39 of the Basic Law) obligates the Hong Kong Government to protect people from race discrimination. Thus, a Race Discrimination Ordinance would simply fulfil this obligation and give victims of race discrimination some real remedies.

3. BPW's Specific Suggestions Regarding Legislation

3.1 BPW supports race discrimination legislation that would apply to employment (both in the public and private sectors). The legislation should also apply to all of the areas covered by the Sex Discrimination Ordinance, including education, housing, provision of goods and services, and the administration of laws and government programmes.

3.2 BPW believes that a Race Discrimination Ordinance should be enforced through both the Equal Opportunities Commission and the courts (under a structure similar to that of the Sex Discrimination Ordinance). However, we support the amendments proposed in Christine Loh's Sex and Disability Discrimination Amendment Bill, which would improve the remedies under the Sex Discrimination Ordinance and also improve the powers and procedures of the Equal Opportunities Commission. We do not support any restriction of damages (which presently exists in the Sex Discrimination Ordinance but which we hope will be repealed soon).

3.3 BPW cautions against the use of overly broad "exemptions" which could make any legislation meaningless. The Government and legislature should draft a Race Discrimination Bill so that it contains as few exemptions as possible and only those for which a justification can be clearly articulated. Moreover, any necessary exemptions should be drafted as narrowly as possible.

Respectfully Submitted

Carole Petersen
Convenor of Public Affairs Committee
Hong Kong Association of Business and Professional Women

23 September 1996

The Hong Kong Council
of Social Service
香港社會服務聯會三週年紀念



February 17, 1997

Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong

Attn: Mrs. Anna Lo

Dear Mrs Anna Lo,

Bill Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill and
Sex & Disability Discrimination (Miscellaneous Provisions) Bill 1996

I am writing, on behalf of the Working Group on Women Service, to reply to your letter dated January 23, 1997. We are grateful to hear that the Bill Committee will be activated in the near future to follow-up the above-mentioned Bills.

Consistent with our position on Sex Discrimination Bill, we support the earliest enactment of the captioned three bills to ban against discrimination on the ground of family responsibility, sexuality, age and race. Besides, we also support wholly a further and better provision for the elimination of discrimination on the grounds of sex, disability, marital status and pregnancy; of sexual harassment; and of harassment and vilification of persons with a disability or their associates.

In short, I would like to take this opportunity to reiterate our position again that we support:

- measures should be devised to prevent employers from wilfully terminating the employment of women who are pregnant or from not recruiting women who are from single parent households or who need to take care of others such as elderlies, child and etc.;
- provision should be enacted to guard against age discrimination especially in employment; it has been a growing problem particularly for those aged over 30 with low education find himself/herself being excluded from job market;

.... / 2

265J

adding two new definitions in the Sex and Disability Discrimination (Miscellaneous Provisions) Bills: the obligations under the CEDAW should be treated as being included within the definition of "relevant international obligations" and discrimination is not limited to discrimination so falling;

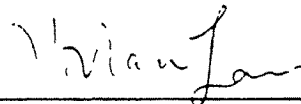
the views that "All human beings are born free and equal in dignity and rights (Universal Declaration of Human Rights, United Nations, 1948)". The spirit that every citizen is entitled to enjoy equal opportunities should be upheld.

As mentioned above, we earnestly hope that these three bills could be enacted as earliest as possible so as to promote equality of opportunity in Hong Kong. We would keep touch with you and send in our further comments if any to your office. You are most appreciated if you can keep us inform of the progress regarding the three bills.

Should there be any query, please feel free to call me at 2864 2949.

With best regards.

Yours sincerely,



Vivian Lau (Miss)

Secretary of Working Group on Women Service

c.c. AD(AS)

WS 970217LT AL

The Hong Kong Council
of Social Service



香港社會服務聯合會三週年紀念

By Fax & By Post

February 14, 1997

Mrs Anna Lo
Clerk to Bills Committee
Legislative Council
8 Jackson Road
Hong Kong

Dear Mrs. Lo,

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sex & Age) Bill,
Equal Opportunities (Race) Bill and
Sex & Disability Discrimination (Miscellaneous Provisions) Bill 1996**

I refer to your letter of January 23, 1997 and enclose herewith the Council's views on the amendments to the existing Disability Discrimination Ordinance proposed by the Honourable Christine Loh for your further pursuit. Should you have any queries, please feel free to contact me at 2864 2932.

Thank you for your attention.

Yours sincerely,

Stella Ho
Assistant Division Officer
Rehabilitation Division

Encl

2652

Joint Council for the Physically & Mentally Disabled
(Rehabilitation Division, Hong Kong Council of Social Service)

Comments on the Sex & Disability (Miscellaneous Provisions) Bill 1996

Clause	Outline of the proposed amendments	The Council's stance
26	Add two new definitions: "relevant international obligations" and "relevant international instruments"	Support
27	Amend the definition of indirect discrimination	Support
28	Reduce the duration of the temporary exemption for small employers from 3 years to 18 months after the Ordinance's enactment	No specific views
29	Repeal Schedule 5 (further exception to the Ordinance)	Support
30	Give EOC two additional functions: - to promote international standards relevant to the Ordinance - to examine and report on proposed legislation	Support Support
32	Set a time limit of 28 days during which the persons may make representations to the Commission in regard to the terms of reference before launching the formal investigation	Against : There is no need to seek the consent of the accused party on the terms of reference before launching the formal investigation
33	Make the belief that a person has committed specific unlawful acts a prerequisite for the Commission to compel information from the person	No specific views
34	Enable the accused persons to make, and the Commission to accept binding undertakings not to act unlawfully under the Ordinance	Support

Clause -	Outline of the proposed amendments	The Council's stance
35	Enable EOC to bring proceedings in respect of any act of discrimination or harassment and to seek a declaration that a provision of law is inconsistent with the HK Bill of Rights Ordinance or Hong Kong Letters Patent	Support
36	Enable EOC to take over proceedings in its own name if a claimant to whom EOC has given legal or financial assistance withdraws from those proceedings	Support
37	Make the time used to attempt conciliation of a complaint does not count against the time limit to initiate legal proceedings	Support

- END -

February 1997



The British
Chamber of Commerce
in Hong Kong

香
港
英
商
會

31 January, 1997

By Mail & Facsimile

Mrs Anna Lo
Clerk to the Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Mrs Lo

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill and
Sex & Disability Discrimination (Miscellaneous Provisions) Bill 1996**

Thank you for your letter dated 23 January 1997 calling for our additional views on the above mentioned Bills which are before the Bills Committee. We have re-examined our submission dated 2 April 1997 and are content with the general thrust of the submission but have made two alterations of emphasis as follows.

Paragraph 4 Line 4 Delete "need" and insert "justification"

Paragraph 5 Line 7 Delete "need" and insert "justification"

Other than these two amendments we are satisfied that our submission continues to represent the views of our chamber. With best wishes

Yours sincerely

Brigadier Christopher Hammerbeck CB
Executive Director

cc Patrick Paul

Promoting Partnership and Progress



The British
Chamber of Commerce
in Hong Kong

香
港
英
商
會

2 April, 1996

Ms Chang King-yiu
Home Affairs Branch
Government Secretariat
31st Floor, Southorn Centre
130 Hennessy Road
Wan Chai
Hong Kong

Dear Ms Chang

**Consultation on Discrimination
on the grounds of Family Status and Sexual Orientation**

I apologize for our late submission of our comments on this important study which inevitably will have an impact on the members of the Chamber of Commerce. It should be remembered that the companies of this Chamber employ some 250,000 Hong Kong Citizens, so it was considered important that as wide a consultation of the members of the Chamber should be carried out by the SME Committee. Their findings have just come to hand, so it is now possible for us to comment sensibly on your consultative papers

The Chamber accepts that whilst it is relatively easy to introduce legislation to compel large employers to adopt progressive employee relation policies it is more difficult to deal with smaller companies. Clearly a company employing two or three people could not be expected to carry the burden in the same way as a major employer of labour. Therefore we believe that any legislation must clearly define the size of companies. It is the view of the membership of this Chamber that companies with less than 20 employees be exempted from any form of discrimination on the issue of discrimination on the grounds of family status. Which in any event we consider it to be virtually impossible to monitor given the vast number of companies in this category

Promoting Partnership and Progress

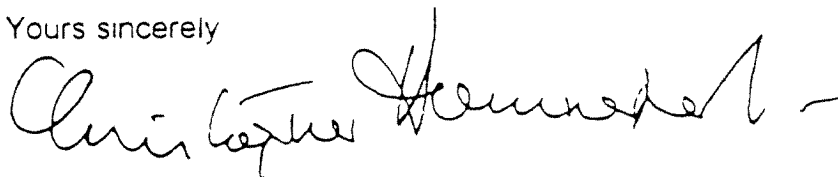
That having been said it is fully recognized that the principal burden of discrimination falls on the female members of society and therefore no woman should be denied a job opportunity simply because she is a single parent. Clearly the same applies increasingly to men in Hong Kong. We cannot accept the assertion in paragraph 74 that 'the law may not be acceptable to the public'. Were this maxim to be applied then virtually no law associated with discrimination on any grounds would ever have passed because these issues tread on sensitive grounds in any society. We believe that the onus therefore lies with the Government to ensure that there is proper education from 'cradle to grave' without which there will be further instances of public unrest over such things as community care centres for the mentally ill. All the legislation in the world will not change deeply held prejudices it is in the heart and the mind that change must be sought. The Chamber also rejects the assertions made in paragraph 101 completely, it is the role of government, legislators and the courts to be ahead of public opinion and not behind it.

On the question of discrimination on the grounds of sexual orientation the tables attached to the consultative paper show very clearly the public reaction to homosexual orientation in Hong Kong. Our members feel clearly that there is no ~~need~~ to introduce legislation to compel employers to take into employment anyone with a different sexual orientation. What concerned our members was the hostility evidenced in the tables at tables 1-17 which clearly demonstrated a high degree of hostility toward the employment of homosexuals in Hong Kong. As a comment our study group made the point that perhaps the relatively high level of censorship on sexual matters in Hong Kong, which was greater than that in other developed countries, influenced background attitudes amongst the general public.

Put very simply the amount of public education required is enormous. That is very clearly a role for government but it is also in this area that perhaps industry could make a contribution and that is to ensure that there is no discrimination between any of the different groups that make up the work force. It is the view of our study group that it ought to be illegal to discriminate against anyone on the ground of sexual orientation. Irrespective of whether in the public or private sector there is no ~~need~~ ^{justification} to legislate to force employers to accept a specific quota of homosexuals or lesbians. It would be sufficient for the law to simply prohibit any employer irrespective of size to discriminate against anyone.

it is hoped that these comments will be constructive for your process of consultation

Yours sincerely



Brigadier Christopher Hammerbeck CB



The Hong Kong General Chamber of Commerce

香 港 總 商 會

30 January, 1997

Our Ref: YSC:092

Mrs. Anna Lo
Clerk to Bills Committee
Legislative Council
Legislative Building
8 Jackson Road
Hong Kong

Dear Mrs. Lo,

Re: Equal Opportunities Bills

Thank you for informing us on the re-activation of the Bills Committee on the three private members Bills by Mr. Lau Chin-shek, Ms. Elizabeth Wong Chien Chi-lien and Miss Christine Loh Kung-wai on equal opportunities.

For the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and Equal Opportunities (Race) Bill, the Chamber retains its opposition to their introduction as pre-mature and unnecessary, at present. We would like to see the run-in of the two existing discrimination ordinances for a couple of years first, then review the social need and community response in due course before any further legislation is proposed in this direction.

As for the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996, we are of the view that the changes it proposed are in general not agreeable to us, e.g. reduce temporary exception for small employers from 3 years to 18 months, replace general exception to "grand-fathering", repeal the \$150,000 limit on awards,..... etc.

...../2

2658

Therefore, we oppose the introduction of the said Bill and recommend to maintain the two existing Ordinances as they are and put them in practice first. We may examine adequate amendments of the Ordinances as and when they become necessary.

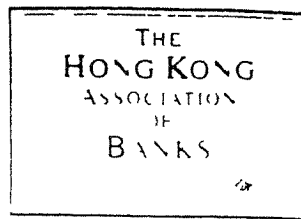
Yours faithfully,



Y S Cheung
Industrial and Corporate Affairs
Assistant Director

cc: The Hon James Tien - Chamber Chairman
The Hon Paul Cheng - Legco Rep.
Mr. Poon Yun - HR Committee Chairman
Mr. Stephen Lau - LAB Rep.

YSC/fk



G.P.O. Box 11391 Hong Kong
Room 2205-5F Prince's Building Central Hong Kong
Telephone 2521 1160 2521 1169 Facsimile 2521 1169

香港銀行公會 11391號
2521 1160 2521 1169 2521 1169

Mrs Anna Lo
Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong

5th February 1997

Dear Mrs Lo,

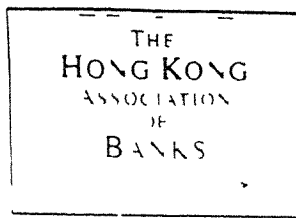
**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill
Equal Opportunities (Race) Bill and
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

I refer to our letter of 24th January and advise that we have no comments to make on the Bills in addition to those in our submissions already copied to you

Yours sincerely,

Grace Law
Acting Secretary

Chairman The Hong Kong and Shanghai Banking Corporation
Vice Chairman Bank of China
Standard Chartered Bank
Secretary Guy de B. Priestley A.C.I.B.



C P O B A 11191 Hong Kong
Room 225 F. Prince Building, Central Hong Kong
Telephone 2521 1160 2521 1169 Facsimile 2521 1168

香港銀行業協會
香港中區干諾道中111號
電話 2521 1160 2521 1169 傳真 2521 1168

Mrs Anna Lo
Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong

24th January, 1997

Dear Mrs Lo,

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill and
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

Thank you for your letter of 23rd January (ref CB2/BC/55/95)

We are pleased that the Bills Committee is to reconsider our previous submissions on discrimination legislation. We also enclose copies of our more recent submissions sent to the Home Affairs Branch in 1996 on the first and third captioned Bills which we hope the Bills Committee will also consider. I will try to revert to you by 10th February if we wish to make any supplementary submission.

Yours sincerely

Guy N de B Priestley
Secretary

enc

Correspondence: The Hong Kong and Shanghai Banking Corporation
Correspondence: Bank of China
Correspondence: Standard Chartered Bank
Secretary: Guy N de B Priestley, A.C.B.

2661



G.P.O. Box 11391, Hong Kong
Room 525, S.F. Prince's Building, Central, Hong Kong
Telephone: 2521 1160, 2521 1169 Facsimile: 2368 5035

香港郵政總局信箱11391號
香港中環太子大廈5樓525室
電話：2521 1160, 2521 1169 傳真號碼：2368 5035

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

20th September, 1996

Dear Sir,

**EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY,
SEXUALITY AND AGE) BILL**

We write to give our comments on the above Bill published in the Hong Kong Government Gazette on 21st June 1996.

1. We note that the comments made in our two submissions to the Home Affairs Branch both dated 15th March, 1996 have not been accepted, with the exception relating to restriction on employment of relatives to avoid collusion. We would be interested to know the reasons for not accepting the comments.
2. A major problem with the Bill appears to be that it tilts the balance over too much in favour of same treatment for all, and disregards the fact that by reason of the nature, characteristic or feature of thing in question (e.g., a loan), different treatment is necessary and reasonable. Exceptions are listed, but they are specific examples and therefore too limited.

We suggest that there should be a definition that will cover all such nature, characteristics or features to provide that:

the reasonableness exception applies in all cases;

a treatment or condition etc. is reasonable if reasonable people, having

1

Chairman Bank of China
Vice Chairmen Standard Chartered Bank
The Hongkong and Shanghai Banking Corporation Limited
Secretary Josiah C. L. Kwok

主席 中國銀行
副主席 渣打銀行
香港上海匯豐銀行有限公司
秘書 郭展禮

2662

regard to all the circumstances, would not have considered the same to be unreasonable.

the list of the matters to be taken into account in determining reasonableness should be expanded to include, e.g. whether the disadvantage can be justified by reference to ordinary commercial grounds or the nature, characteristic or feature of the matter, thing or service in question.

3. Another major problem with the Bill is that no exception is made to permit banks to exercise normal credit decisions in relation to their services.

Our concern is that on a strict interpretation of the Bill's provisions, banks could be forced into loans which are unsafe. They would be prevented from applying criteria which their lengthy experience has shown them to be well-founded. Being forced into such business will endanger banks' safety and therefore the deposits of customers.

The Bill as it stands contains unacceptable restrictions on future lending decisions giving rise to anomalies. The draft legislation must be revised in order to make it workable for banks.

Yours faithfully,



Josiah Kwok
Secretary



G P O Box 11391, Hong Kong
Room 525 3/F Prince's Building Central Hong Kong
Telephone 2521 1160 2521 1169 Facsimile 2868 5035

香港郵政總局信箱11391號
香港中環太子大廈5樓525室
電話 2521 1160 2521 1169 圖文傳真：2868 5035

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

30th August, 1996

Dear Sir,

**SEX AND DISABILITY DISCRIMINATION
(MISCELLANEOUS PROVISIONS) BILL 1996**

We are writing to give our comments on the above Bill which was gazetted on 5th July 1996.

1. The amendments in relation to "indirect discrimination" (Clauses 4, 5, 6 and 27) appear to widen the scope of such form of discrimination and also to lower the standard of what constitutes such discrimination. This would seem to be too rapid a change given that the enactment of the discrimination legislation has been relatively recent and no body of experience has yet been built up as to the operation of the legislation.
2. In relation to the Sex Discrimination Ordinance only, the HKD150,000 limit on awards in respect of unlawful discrimination or harassment in employment would be repealed. We believe this limit should be retained and reviewed after there has been some experience of enforcement under the Ordinance.

Yours faithfully,

Josiah Kwok
Secretary

Chairman Bank of China
Vice Chairmen Standard Chartered Bank
The Hongkong and Shanghai Banking Corporation Limited
Secretary Josiah C. L. Kwok

主席 中國銀行
副主席 渣打銀行
香港上海匯豐銀行有限公司
秘書 郭實德

2664

Post-it* Fax Note	7671	Date	2 / 10 / 96	# of pages	2
To	Miss Eleanor Chan	From	Ho San Lam		
Co./Dept.	Leo Lee	Co./Dept.	Disability Discrimination		
Phone #	2869-9507	Phone #	2525-7633		
Fax #	2677-8024	Fax #			

Timothy Cheung
 c/o Fred Kan & Co.,
 Solicitors,
 Suite 3104-3106,
 Central Plaza, Hong Kong

19 September, 1996

Margaret Ng
 Room 116, New Henry House
 10 Ice House Street
 Hong Kong

Dear Ms. Ng,

Re Equal Opportunities Legislation

I have just read the Disability Discrimination Ordinance (cap.487) I am very concerned with the poor drafting of the Chinese version. It is very difficult to understand the meaning of the legislation by just reading the Chinese version without referring to the English version. In some cases, it is almost impossible to know what it is talking about.

Also, it seems that there are some discrepancies between the English version and the Chinese version:-

1 Section 4 of Disability Discrimination Ordinance provides that :

"For the purposes of this Ordinance, in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including -

- (a) the reasonableness of any accommodation to be made available to a person with a disability "

The Chinese version of this Section 4(a) is

"向任何殘疾人士作出的處所提供的合理程度"

I cannot figure out why the words "處所提供" are used here. The word "accommodation" here should mean adjustment or compromise, and not a room or place to sleep. The appropriate words in Chinese for 'accommodation' should be "調整" or "改動"

2 Section 11(4)(a) of the Disability Discrimination Ordinance reads as follows

'that provision differs in a material respect from the provision of the benefits, services or facilities by the employer to his employees without a disability'

The Chinese version for this sub-section is -

"該項提供與該僱主向其僱員所提供的該類利益、服務或設施在要項上有所分別"

It seems that some words are missing. Should we use "沒有殘疾的僱員" instead of "僱員" ?

I hope that such inconsistencies have already been considered and will be dealt with.

Concerning the Sex Discrimination Ordinance, I am disappointed with the exceptions provided under Schedule 5 Part 2. Why there still can be discrimination between persons of different marital status in respect of housing allowances and education benefits? Why there still can be discrimination against single persons? Such forms of discrimination may affect single mothers who have never married. Is it possible to deal with this unfairness in the Sex and Disability Discrimination (Miscellaneous Provisions) Bill?

What is the status of the Equal Opportunities (Race) Bill 1996 and the Equal Opportunities (Family responsibility, Sexuality and Age) Bill? I am not aware of any development after the two bills were gazetted in June and July. Some of my clients and my friends are eager to know whether there will be a new law in Hong Kong legislation to deal with race discrimination, especially in the field of employment.

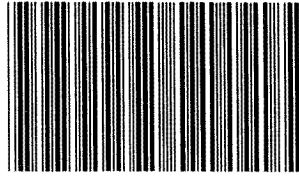
Yours very truly,



Timothy Cheung

TC/bpc(C7136 L82)

cc: File 022/30/55/95



X19134626

KT4369.S5 D6
Document archive.
[Hong Kong] : Centre for
Comparative & Public Law,
Faculty of Law, University of
Hong Kong. [1999]

