

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

**Document archive
Vol. 6**

**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

Ref : CB2/BC/55/95
Tel : 2869 9266
Date : 10 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**

Meeting on Tuesday, 11 March 1997

I enclose the agenda and the following papers for your perusal -

- (a) Submission from the Federation of Hong Kong Industries (Paper No. CB(2)1471/96-97 (01)).
- (b) Submission from Mr Robin ADAMS (Paper No. CB(2)1471/96-97 (02)).
- (c) Submission from the Employers' Federation of Hong Kong (Paper No. CB(2)1471/96-97 (03)).
- (d) A summary of the old and new submissions (Paper No. CB(2)1471/96-97 (04)).

- (e) English version of the reference paper provided by Mr LAU Chin-shek on the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill (Chinese version forward to members vide LegCo Paper No 1258/96-97)
- (f) Chinese version of the Legislative Council Brief on the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 (English version forward to member vide Paper No. CB(2)1369/96-97 (01))

(Colin CHUI)
for Clerk to Bills Committee

Encl.

c.c. Hon Mrs Elizabeth WONG, CBE, ISO, JP
ALA4

c:\docleoc\970311\cb2-1471 doc

**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**

**Meeting on Tuesday, 11 March 1997 at 4:30 pm
in the Chamber of the Legislative Council Building**

Agenda

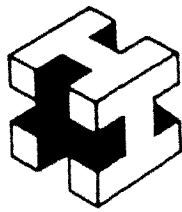
**I. Meeting with deputations
(4:30 pm - 6:30 pm)**

<u>Deputation</u>	<u>Time</u>	<u>Submission at</u>
The British Chamber of Commerce in Hong Kong	4:30 pm - 4:50 pm	Paper No. CB(2)1382/96-97 (03)
The Federation of Hong Kong Industries	4:50 pm - 5:10 pm	Paper No. CB(2)1471/96-97 (01)
Hong Kong Council of Social Service	5:10 pm - 5:30 pm	Paper No. CB(2)1382/96-97 (02)
The Hong Kong Association of Business and Professional Women	5:30 pm - 5:50 pm	Paper No. CB(2)1382/96-97 (01)
Mr Robin ADAMS	5:50 pm - 6:10 pm	Paper No. CB(2)1471/96-97 (02)
Members' questions/views	6:10 pm - 6:30 pm	

II. Any other business

III. Date of next meeting

Legislative Council Secretariat
10 March 1997



香港工業總會
Federation of
Hong Kong Industries

Ref.: A/GD/CNTA/EOWM

Date: 7 March 1997

Mrs Anna Lo
Clerk to the Bills Committee on the Equal
Opportunities (Family Responsibility,
Sexuality & Age) Bill, Equal Opportunities
(Race) Bill and Sex & Disability Discrimination
(Miscellaneous Provisions) Bill 1996
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Mrs Lo,

**Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill and
Sex & Disability Discrimination (Miscellaneous Provisions) Bill 1996**

Thank you for your letter of 23 January 1997 inviting our views on the above Bills.

The Federation is a staunch supporter of equal opportunities for all people. As an employers' association, we believe any discriminatory practices in employment would only deny employers with the widest choice of employable talent. In a highly competitive market, like Hong Kong, companies practising discriminatory acts will bound to lose in the long run. In our view, Hong Kong is essentially an open and fair society free of social conflicts. So far, we have not found any concrete evidence to substantiate the claim that there is a significant discrimination problem in employment or other social aspects in the community. It is our firm belief that legislating against a phoney problem is both illogical and wasteful. We consider that there is no need for Hong Kong to have more anti-discrimination legislation.

Last year three consultation exercises were launched by the Government to seek public views on possible discrimination on the grounds of family status, sexual orientation and age, and another public consultation on racial discrimination is being conducted. It was found out that members of the community are generally not in

favour of a legislative approach in tackling discrimination problems. On the contrary, many held the idea that a better and more effective way to eliminate discrimination is through civic education and public campaigns. They thought legislation would only encourage disputes and vexatious litigation, which, in turn, would jeopardise the social harmony we have long cherished. We share much of these views. Indeed, we believe what is now needed is not a new piece of legislation to outlaw every possible form of discrimination. Instead, the Government should concentrate its efforts in educating the community the importance of protecting individual rights and respecting other people. For employers, the two codes of practices published by the Equal Opportunities Commission (EOC) last December have provided useful and practical guidance in promoting equal opportunities in employment. These codes should be widely publicised among employers through the mass media and specially organised seminars.

Aside from the two Equal Opportunities Bills, the Federation also objects to the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996. We believe introducing any significant changes to the Sex and Disability Discrimination Ordinances at this juncture is highly inappropriate and unwise when the Ordinances have just become fully operative for less than three months. More time is needed for us to see the whole picture of the implementation and what problems might arise in the course of their operation. In our view, the EOC's functions and operations should remain intact until a thorough review is undertaken by the Government. Last but not least, to shorten the three-year exemption period for small employers is unfair to them, as they generally need more time to adjust their employment practices in complying with the requirements under the Ordinances.

We hope the Bills Committee will take our views into full account in considering the Bills.

Yours sincerely,

Henry Y. Y. Tang
Chairman

c.c. Hon. James Tien

Mrs. Anna Lo
Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong

February 10, 1996/7

Dear Mrs. Lo,

Thank you very much for entertaining this submission to the Bills Committee on the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill, Equal Opportunities (Race) Bill and Sex & Disability Discrimination (Miscellaneous Provisions) Bill 1996.

Even though I previously offered my opinions to the Bills Committee as to why the anti-discrimination legislation should be put in place, the lack of progress in the area of discrimination based on sexuality in Hong Kong is a sure sign that the issue truly can only begin to be resolved by first passing legislation.

It has been more than one and a half years since the Liberal Party and our own Government officials argued that "education and conciliation" were the preferred methods to eradicate the injustices caused by discrimination based on sexuality. They argued that legislation was not an appropriate method to rectify the problem. Sadly, only token actions have been taken towards this goal of educating the public by our Government. It seems that if left to itself, the Hong Kong Government will make the absolute minimum of efforts in order to comply with the rules of the game which they set themselves.

Recently the Chinese Permanent Cemeteries Fund awarded slightly less than HK\$400,000 to three lesbigay groups in Hong Kong. Although the Chairman of this body is Michael Suen, I'm told that the funds do not actually belong to the Hong Kong Government. All of the money awarded by the body was earmarked for support, and none for education, which was what I understood to be the intention of the Hong Kong Government. This token sum of HK\$400,000 is probably less than the total cost of running the Government for a few minutes, and certainly far less than the ten percent of the population who are Lesbian or Gay in Hong Kong deserve.

The Home Affairs Branch of the Government also recently published a small A4 size pamphlet entitled "Equal Opportunities: Sexual Orientation." The English on this pamphlet does more to proliferate the stereotypes of Gays as effeminate, promiscuous spreaders of AIDS than it does to extinguish and allay these ridiculous falsehoods. The brochure initially appears to fairly address the issues faced by Lesbians and Gays, but in fact perpetuates the negative stereotypes that we are working hard to remove from the minds of the public.

In an attempt to gauge how the Government produced material was being distributed, I went to the district offices both in the Harbour Building in Sheung Wan, and the one next to the Wanchai MTR. In both offices I found that the brochures were available only from behind the counter, and had to be specifically requested from the clerk. Considering that this subject is supposed to be so difficult to discuss, it seems to me that making it available in this way (by specific request) is not at all an effective way to educate the public. But when I recalled the way the brochure senselessly discusses some of the issues of homosexuality, I agree that it is better that the pamphlet remain behind the counter where the public won't find it.

Recently, at least one Hong Kong Gay man has obtained asylum in the USA based on grounds that in returning to Hong Kong, he would be subject to persecution. This acknowledgement from the US Government that Gays in Hong Kong have been subjected to persecution is prima facie proof that discrimination against Lesbians and Gays in Hong Kong is a real problem.

Lack of indigenous Hong Kong people speaking out publicly on the issue of sexuality discrimination in Hong Kong should be interpreted as proof of the harassment Lesbians and Gays are currently subjected to. Their apparent "silence" should not be interpreted as indication that the problem doesn't exist. This is a very important point to consider as sovereignty of Hong Kong is returned to China in the next few months. The authorities in China are well known for their lack of tolerance towards Lesbians and Gays. Anyone without a foreign passport would be foolish to speak out.

More important than my opinion is that of the Hong Kong Bill of Rights Ordinance 1991 which was signed by the Governor David Wilson on June 6, 1991. The Bill of Rights directly and indirectly protects the rights of Lesbians and Gay men in no less than eight of its articles. Unfortunately, the bill is only binding on the Government itself. The Hong Kong Bill of Rights Ordinance says:

Article 1 1. The rights recognised in this Bill of Rights shall be enjoyed without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

But if a Gay man is treated differentially because of his sexuality, as is now legal, his right in this article is violated.

Article 8 1. Everyone lawfully within Hong Kong shall, within Hong Kong have the right to liberty of movement and freedom to choose his residence.

But if a Gay man is evicted, or otherwise forced to vacate his home because he is Gay, his right to be free to choose his residence as stated in this article has been violated.

Article 10 All persons shall be equal before the courts and tribunals.

But if a Gay man is treated differently by the court by virtue of his sexuality, which is now legal, his right to be equal before the law as stated in this article is violated

Article 14 i. No one shall be subjected to arbitrary or unlawful interference with his privacy, home or correspondence, nor to unlawful attacks on his honour and reputation.

But if a gay man is fired from his job because he is gay, or he chooses to keep his sexuality hidden, but is vetted or harassed as being a homosexual, not only has his honour and reputation in fact been tarnished, but his right to privacy as stated in this article has also been violated.

Article 15 I. Everyone shall have the right to freedom of thought, conscience and religion.

But if a gay man is pressured into marrying a woman, or otherwise is forced to conceal or repress his true sexuality because to do otherwise would instigate greater repercussions, the right to freedom of thought and conscience as stated in this article has been violated.

Article 16 i. Everyone shall have the right to hold opinions without interference.

But if a gay man is prevented from sharing his opinion about his sexuality because to do so would precipitate harassment, his right to hold opinions as stated in this article is violated.

Article 18 i. Everyone shall have the right to freedom of association with others...

But if by associating with other gay men he is also identified as being gay, and suffers the consequences of discrimination which logically would follow, then his right to freedom of association as stated in this right has been violated.

The Equal Opportunities (Family Responsibility, Sexuality & Age) Bill will easily and quickly begin to resolve the inconsistencies between the Hong Kong Bill of Rights, and what is now legal and acceptable in Hong Kong.

Passing legislation which protects lesbians and gays in Hong Kong from discrimination will allow the homosexual community to focus on contributing to the wealth and well being of the society rather than protecting themselves. And this is better not only for them as individuals, but for Hong Kong as a community.

Best regards,

Robin Adams



EMPLOYERS' FEDERATION OF HONG KONG

香港僱主聯合會

7 March 1997

Mrs Anna Lo
Clerk to Bills Committee
Legislative Council
Legislative Building
8 Jackson Road, Hong Kong

(fax: 25099055, 2 pages)

Dear Mrs Lo,

**Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill and
Sex & Disability Discrimination (Miscellaneous Provisions) Bill 1996**

Thank you for informing us that the Bills Committee on the above three Bills introduced by the Hon Mr Lau Chin-shek, Mrs Elizabeth Wong and Ms Christine Loh has been reactivated.

In our previous letters to the government, we have stated clearly the Employers' Federation's support to equal opportunities in employment. However, we have strong reservation on addressing the subject by legislative approach. We have persistently caution the government not to push it too far or too fast.

Now that the Sex Discrimination Ordinance and the Disability Discrimination Ordinance have been enacted, and the respective Codes of Practice were just published in January 1997. As legislation of this kind is quite new to the community, we suggest the government to monitor the public understanding and review the social impact of these two Ordinances before considering any further legislation in the equal opportunities area. We adhere to our position and oppose to the introduction of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and the Equal Opportunities (Race) Bill.

.../p.2

Regarding the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996, we do not think it is appropriate to propose any changes to the two enacted Ordinances which in actual fact have just been put into practice recently, not to mention that the proposed changes are in general not agreeable to us; for example:

- (a) the grace period for companies with staff not exceeding five is reduced from 3 years to 18 months;
- (b) the ceiling \$150,000 for award of damages is removed;
- (c) the imposition of one year limit on the Schedule of Exceptions to the Ordinances; and
- (d) the burden of proof is solely rested with the defendant.

We therefore strongly object to the introduction of this Bill.

We continue to believe that public education and self-regulation are more constructive measures in promoting the attitude of equal opportunities. We believe the government should accrue learning and review the social impact of the newly enacted Sex and Disability Discrimination Ordinances, rather than rushing to extend similar legislation to more areas.

Yours sincerely,

May Chow
Executive Director

c.c.: Mr F K Hu *CBE JP*, Chairman
Mr Mark Leese, Executive Committee Chairman
Mr Brian Renwick, Consultant

Summary of previous and new/additional comments from interested organisations/individuals on the
 Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
 Equal Opportunities (Race) Bill and
 Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
1. The British Chamber of Commerce in Hong Kong (香港華商會)	<p><i>-Companies with less than 20 employees be exempted from any form of discrimination on the grounds of family status</i></p> <p><i>-Proper education from "cradle to grave" in respect of eliminating discrimination on the grounds of family status is important</i></p> <p><i>-no justification to introduce legislation to compel employers to employ a person with a different sexual orientation</i></p> <p><i>-It should be illegal to discriminate against anyone on the ground of sexual orientation</i> (LegCo Paper No CB(2)1382/96-97 (03))</p>	<p>Support fair employment practices and equality of opportunity in the workplace</p> <p>-Promotion, education and voluntary self regulation are the best methods to ensure both employers and employees practise equality of opportunity</p>	

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
<p>2. The Chinese Manufacturers' Association of Hong Kong (香港中華廠商聯合會)</p>		<p>-Support in principle the rationale of enhancing gender equality and working towards the elimination of sex discrimination and sexual harassment</p> <p>-Equal employment opportunities and elimination of sex discrimination are better achieved through education and publicity promotion rather than legislation</p>	
<p>3. Employers' Federation of Hong Kong (香港僱主聯合會)</p>	<p>-Does not support EOB</p> <p>-Support equal opportunities in employment but have strong reservation on addressing the subject by legislative approach</p> <p>-Oppose to the introduction of the Bill</p> <p>-Public education and self-regulation are more constructive</p>	<p><i>-No further comments</i></p> <p>-Support SDB subject to the following : (a) certain acts such as sexual harassment are individual acts and employers should not be held liable under such circumstances and (b) EOC should be empowered to consider specific cases regarding application and rules on genuine occupational qualifications</p> <p>-Strongly object to the introduction</p>	<p>-Does not support EOB</p> <p>-Support equal opportunities in employment but have strong reservation on addressing the subject by legislative approach</p> <p>-Oppose to the introduction of the Bill</p> <p>-Public education and self-regulation are more constructive</p>

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 of the Bill	Equal Opportunities (Race) Bill
<p>4. Federation of Hong Kong Industries (香港工業總會)</p>	<p>measures in promoting the attitude of equal opportunities</p> <p>-Suggest the Government to monitor the public understanding and review the social impact of SDO & DDO before considering any further legislation in the equal opportunities area</p> <p>(LegCo Paper No.CB(2)1471/96-97(03))</p>	<p>-Inappropriate to propose any changes to SDO & DDO which have just been put into practice and the proposed changes are in general not agreeable to the Federation</p> <p>(LegCo Paper No.CB(2)1471/96-97(03))</p>	<p>measures in promoting the attitude of equal opportunities</p> <p>-Suggest the Government to monitor the public understanding and review the social impact of SDO & DDO before considering any further legislation in the equal opportunities area</p> <p>(LegCo Paper No.CB(2)1471/96-97(03))</p>
	<p>-Does not find any concrete evidence to substantiate the claim that there is a significant discrimination problem in employment or other social aspects in the community</p> <p>-Government should concentrate its efforts in educating the community the importance of protecting individual rights and respecting other people</p> <p>-No need for Hong Kong to have</p>	<p>-Support the principles of equal opportunities in employment and equal pay for equal work</p> <p>-Education and publicity is a better and much less costly means (vis-a-vis legislation) to achieve equal employment opportunities</p> <p>-Support SDB subject to the following : (a) a clearer definition of "sexual harassment" in SDB, (b) removal of the clause on partnership, &</p>	<p>-Does not find any concrete evidence to substantiate the claim that there is a significant discrimination problem in employment or other social aspects in the community</p> <p>-Government should concentrate its efforts in educating the community the importance of protecting individual rights and respecting other people</p> <p>-No need for Hong Kong to have</p>

<p>Comments</p>	<p>Equal Opportunities (Family Responsibility, Sexuality & Age) Bill <i>anti-discrimination legislation in addition to SDO and DDO</i> <i>(LegCo Paper No CB(2)1471/96-97(01))</i></p>	<p>Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 <i>(c) terms of reference of EOC to include provision of free professional advice to employers for compliance with anti-discrimination legislation</i></p> <p><i>-Support DDB subject to the following: (a) a grace period of five years for small employers with not more than 10 employees, and (b) both the employer & his employee should be liable for the employee's discriminatory act(s) if it was done with the employer's knowledge and approval</i></p> <p><i>-Object to the Bill</i></p> <p><i>-More time is needed to see the whole picture of implementing SDO & DDO and the problems that may arise during their operation</i></p> <p><i>-EOC's functions and operations</i></p>	<p>Equal Opportunities (Race) Bill <i>anti-discrimination legislation in addition to SDO and DDO</i> <i>(LegCo Paper No CB(2)1471/96-97(01))</i></p>
------------------------	---	--	---

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
		<p><i>should remain intact until a thorough review is undertaken by the Government</i></p> <p><i>-Shortening the three-year grace period for small employers is unfair to them who need more time to adjust their employment practices in meeting the requirements under SDO & DDO</i></p> <p><i>(LegCo Paper No. CB(2)147/96-97(01))</i></p>	
<p>5. Hong Kong General Chamber of Commerce (香港總商會)</p>	<p><i>-Oppose the introduction of the Bill</i></p> <p><i>-Should allow the run-in of SDO and DDO 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</i></p> <p><i>(LegCo Paper No. CB(2)1382/96-97 (04))</i></p>	<p><i>-Oppose the introduction of the Bill</i></p> <p><i>-Recommend to maintain SDO and DDO as they are and put them in practice first.</i></p> <p><i>-May examine amendments to the Ordinances as and when necessary</i></p> <p><i>(LegCo Paper No. CB(2)1382/96-97 (04))</i></p>	<p><i>-Oppose the introduction of the Bill</i></p> <p><i>-Should allow the run-in of SDO and DDO 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</i></p> <p><i>(LegCo Paper No. CB(2)1382/96-97 (04))</i></p>
<p>6. The Hong Kong Association of Banks (香港銀行公會)</p>	<p><i>-Suggest to have a definition of discrimination which provides that : (a)the reasonableness exception applies in all cases</i></p>	<p><i>-Proposed widening of scope of "indirect discrimination" and lowering of standard of what constitutes such discrimination</i></p>	

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
<p>(b) a treatment or condition etc. is reasonable if reasonable people, having regard to all the circumstances, would not have considered the same to be unreasonable, and</p> <p>(c) the list of matters to be taken into account in determining reasonableness should be expanded to include, e.g. whether the disadvantages can be justified by reference to ordinary commercial grounds or the nature, characteristics or features of the matter, thing or service in question</p> <p>-Should revise the Bill which contains unacceptable restrictions on future lending decisions giving rise to anomalies</p> <p>(LegCo Paper No. CB(2)1382/96-97 (05))</p>	<p>appears to be too rapid a change given the recent enactment of SDO and DDO and the lack of experience on their operation</p> <p>-The HK\$150,000 cap under SDO should be retained and reviewed after having enforcement experience.</p> <p>(LegCo Paper No. CB(2)1382/96-97 (05))</p>	<p>-Support EOB which aims at, inter alia, eliminating discrimination on these three grounds</p>	<p>-Support EOB which aims at, eliminating discrimination on this ground</p>
<p>7. The Federation of Hong Kong and Kowloon Labour Unions (港九勞工社團聯會)</p>		<p>-Support EOB which aims at, eliminating discrimination on these grounds</p>	<p>-Support EOB which aims at, eliminating discrimination on this ground</p>

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
8. Hong Kong and Kowloon Trade Union Council (港九工團聯合總會)	-Support elimination of age discrimination -No further comments	-Urge the setting up of a Women's Commission -No further comments	
9. Hong Kong Confederation of Trade Unions (香港職工會聯盟)	-Support EOB subject to the inclusion of EOC -Support legislation to eliminate age discrimination	-Should eliminate discrimination on the grounds of trade union membership, aggrieved employees should be reinstated and compensated	
10. Hong Kong Federation of Trade Unions (香港工會聯合會)	-Support legislation against age discrimination	-Propose criminal sanction against discriminators -Shorten grace period for small employers	
11. Hong Kong Social Workers General Union (香港社會工作者總工會)	-Support EOB which aims at eliminating all forms of discrimination	-Support EOB which aims at eliminating all forms of discrimination	-Support EOB which aims at eliminating all forms of discrimination
12. Helpers for Domestic Helpers (家庭傭工協會)			-Immigration legislation and policy should be covered by EOB -No further comments
13. Alliance for the Promotion	-Support legislation to eliminate age discrimination in work		

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
<p>of Rights for Grass-roots Women (爭取基層婦女權益聯盟)</p>			
<p>14. Association for the Advancement of Feminism (新婦女協進會)</p>	<p>-Support inclusion of provisions against discrimination on the grounds of age, family responsibility and sexuality in SDB -No further comments</p>	<p>-Disagree to exceptions relating to NT land under SDB -Existing policy should be reviewed to assess its impacts on discrimination -No further comments</p>	
<p>15. Hong Kong Women's Coalition on Equal Opportunities (formerly known as Coalition of Women's Organisations) (平等機會婦女聯席)</p>	<p>-SDB should be amended to, inter alia, prohibit discrimination on the grounds of age and family responsibility in order to provide comprehensive protection of women's rights</p>	<p>-Strongly object to special exemption for the small house policy under SDB -Removal of grace period for small employers</p>	
<p>16. Hong Kong Association of Business and Professional Women (香港商業與專業婦會)</p>	<p>-Support EOB which is comprehensive and effective anti-discrimination legislation -Support enactment of this Bill (LegCo Paper No. CB(2)1382 96-97 (01))</p>	<p>-Support enactment of this Bill especially the provisions on (a) removal of cap on damages, (b) power of court to order reinstatement; and (c) strengthening EOC's</p>	<p>-Support EOB which is comprehensive and effective anti-discrimination legislation -Support enactment of this Bill (LegCo Paper No. CB(2)1382:96-97 (01))</p>

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
		<p><i>investigation powers.</i></p> <p><i>(LegCo Paper No. CB(2)1382/96-97 (01))</i></p>	
<p>17. Hong Kong Council of Women (香港婦女協會)</p>	<p>-Support EOB subject to wider definition of indirect discrimination and stricter test for justifying such discrimination</p> <p><i>-No further comments</i></p>	<p>-Support EOB subject to wider definition of indirect discrimination and stricter test for justifying such discrimination</p> <p><i>-No further comments</i></p>	<p>-Support EOB subject to wider definition of indirect discrimination and stricter test for justifying such discrimination</p> <p><i>-No further comments</i></p>
<p>18. Hong Kong Federation of Women (香港各界婦女聯合進會)</p>	<p>-Urge the Administration for a legislative timetable on other forms of discrimination (except sex and disability) contained in EOB</p> <p><i>-No further comments</i></p>	<p>-Propose a cap on damages in sex discrimination and sexual harassment cases</p> <p><i>-No further comments</i></p>	<p>-Urge the Administration for a legislative timetable on other forms of discrimination (except sex and disability) contained in EOB</p> <p><i>-No further comments</i></p>
<p>19. Hong Kong Women Christian Council (香港婦女基督徒協會)</p>	<p>-Support EOB</p> <p><i>-No further comment.</i></p>	<p>-Support EOB</p> <p><i>-No further comments</i></p>	<p>-Support EOB</p> <p><i>-No further comments</i></p>
<p>20. Hong Kong Women Workers' Association (香港婦女勞工協會)</p>	<p>-Support SDB subject to inclusion of provisions against discrimination on the grounds of age and family responsibility</p> <p>-Support legislation to eliminate</p>		
<p>21. Mongkok Kai-fong</p>	<p>-Support enactment which has</p>		

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
<p>Assn Ltd Chan Hing Social Service Centre (旺角街坊會陳慶社會服務中心)</p>	<p>discrimination on the grounds of age and family status</p> <p>-Support enactment which has financial resources to implement and provides women with comprehensive protection from discrimination</p> <p>-No further comments</p>	<p>financial resources to implement and provides women with comprehensive protection from discrimination</p> <p>-No further comments</p>	
<p>22. Hong Kong Council of Social Service (香港社會服務聯會)</p>	<p>-Support the earliest enactment of the Bill</p> <p>-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 who find themselves being excluded from job market</p> <p>(LegCo Paper No. CB(2)1382/96-97 (02))</p>	<p>-Support the earliest enactment of the Bill</p> <p>-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</p> <p>-Two new definitions should be added in the Bill : the obligations</p>	<p>-Support the earliest enactment of the Bill</p> <p>-Support 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.</p> <p>(LegCo Paper No. CB(2)1382/96-97 (02))</p>

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
<p>23. Hong Kong AIDS Foundation (香港愛滋病基金會)</p>		<p><i>under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) should be treated as "relevant international obligations" and discrimination is not limited to discrimination so falling</i> (LegCo Paper No CB(2)1382/96-97 (02))</p> <p>-Support DDB subject to amendments in relation to the following : (a)inclusion of HIV infection in the definition of disability; (b)the Chinese terminology for disability; (c)protection of family members and carers; (d)exemption for small employers; (e)exemption on the ground of "unjustifiable hardship"; (f)requests for information and HIV testing; (g)insurance; (h)composition of the EOC; (i)litigation power of EOC and court procedures; (j)reinstatement</p>	

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
		<p>as a remedy; and (k) people with HIV/AIDS as a direct threat to the health of others.</p> <p><i>-No further comments</i></p>	
<p>24. Hong Kong Single Parents Association (formerly known as Concern Group on Single Parents) (關注單親協會)</p>	<p>- The need of single parent families, who face discrimination on the grounds of age and family status in the work place and in school, should be considered in devising policy and legislation</p>		
<p>25. Movement Against Discrimination (MAD) (反歧視大聯盟)</p>	<p>-Support comprehensive anti-discrimination legislation together with the setting up of EOC to handle discriminatory acts</p> <p>-Support inclusion of provisions relating to discrimination on the grounds of age, family status and sexuality in SDB</p> <p>-Support EOB subject to the provision of a freezing period on those controversial areas to allow sufficient public discussion</p>	<p>-Support comprehensive anti-discrimination legislation together with the setting up of EOC to handle discriminatory acts</p>	<p>-Support comprehensive anti-discrimination legislation together with the setting up of EOC to handle discriminatory acts</p>
<p>26. Hong Kong Monitor (香港論衡)</p>			

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
27. Starbrook Sports International	-Age discrimination in selecting judo players will adversely affect success in international competitions		
28. Committee on Disability Discrimination Ordinance (formerly known as the Task Group on Anti-Discrimination Legislation for Disabled Persons)		-Committee's position on some of the provisions of the Bill is set out in a table attached to a letter of 14 February 1997 from Miss Stella HO of the Hong Kong Council of Social Service to the Bills Committee (LegCo Paper No. CB(2)1382/96-97 (02))	
29. Ms LUK Fung-ping (陸鳳萍女士)	[Comments relating to discrimination on the grounds of political and religious conviction only] -No further comments		
30. Ms Greg Pearce	-Support EOB which aims to eliminate all forms of discrimination		-Support EOB which aims to eliminate all forms of discrimination
31. Mr Timothy CHEUNG		- Comments on discrepancies between the English and Chinese versions under sections 4(a) and	

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
		<p>11(4)(a) of DDO</p> <p>-Exceptions under Schedule 5 Part 2 of SDO bring about :</p> <p>(a) discrimination between persons of different marital status in respect of housing allowances and education benefits, (b) discrimination against single persons, & (c) discrimination against single mothers who have never married.</p> <p>(LegCo Paper No. CB(2)1382/96-97 (06))</p>	
<p>32. Hong Kong Ten Percent Club (香港十分一會)</p>	<p>-Support EOB which aims at, inter alia, eliminating discrimination on the grounds of sexuality</p> <p>-Public education on liberty to choose sexual orientation important</p> <p>-Support EOB which can foster social acceptance and nurture understanding and love of the less-understood segments (e.g. homosexuals) of society</p>		
<p>33. The Horizons</p>			

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
34. The Satsanga (同志健康促進會)	<ul style="list-style-type: none"> - Support legislation to eliminate discrimination on the grounds of sexuality -<i>No further comments</i> 		
35. Mr Barrie Brandon	<ul style="list-style-type: none"> -Support EOB (especially the provisions against discrimination on the grounds of sexuality) 		
36. Mr Robin Adams	<ul style="list-style-type: none"> -Public education on acceptance of persons irrespective of sexual orientation is important -<i>The Bill will resolve the inconsistencies between the Hong Kong Bill of Rights, and what is now legal and acceptable in Hong Kong</i> -<i>Passing legislation which protects lesbians and gays in Hong Kong from discrimination will allow the homosexual community to focus on contributing to the wealth and well being of the society rather than</i> 		

Comments	Equal Opportunities (Family Responsibility, Sexuality & Age) Bill	Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996	Equal Opportunities (Race) Bill
	<i>protecting themselves</i> (LegCo Paper No. CB(2)1471/96-97(02))		
37. Christians For Hong Kong Society (基督徒關懷香港學會)	[Comments relating to discrimination on the grounds of religious conviction only]		
38. Coalition of Religious Bodies (基督徒團體關注平等機會法案聯席)	[Comments relating to discrimination on the grounds of religious conviction only]		
39. Hong Kong Christian Council (香港基督教協進會)		[Comments relating to exemption for religious bodies under SDB] <i>-No further comments</i>	

Note :

1. Words in normal type are previous comments while those in italics are *new/additional comments*.
2. EOB refers to Ms Anna WU's Equal Opportunities Bill introduced into LegCo in the 1994-95 session.
3. SDB and DDB refer to the Administration's Sex Discrimination Bill and Disability Discrimination Bill respectively which were amended and enacted as the Sex Discrimination Ordinance (SDO) and Disability Discrimination Ordinance (DDO) respectively.
4. EOC refers to the Equal Opportunities Commission.

a : maggie chiu\other\19

Ref : CB2/BC/55/95
Tel : 2869 9266
Date : 12 March 1997
From : Clerk to Bills Committee
To : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon LAU Wong-fat, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon Zachary WONG Wai-yin
Hon Christine LOH Kung-wai
Hon CHEUNG Hon-chung
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**

Follow-up to Meeting on 11 March 1997

I attach the following papers tabled at the captioned meeting for your consideration -

- (a) Submission from the Hong Kong Women's Coalition on Equal Opportunities (Paper No. CB(2)1503/96-97 (01)).
- (b) Submission from the Movement Against Discrimination (Paper No. CB(2)1503/96-97 (02)).

(Colin CHUI)
for Clerk to Bills Committee

Encl.

c.c. Hon Mrs Elizabeth WONG, CBE, ISO, JP
ALA4

c:\doc\eccl\970311\cb2-1503doc

平等機會婦女聯席

回應政府對〈平等機會（家庭責任、性傾向及年齡）條例草案〉之立場

平等機會婦女聯席是一個由多個婦女團體所組成的聯席，目標之一是爭取政府立法保障婦女在社會各方面的平等機會。聯席對政府反對劉千石議員提出的〈平等機會（家庭責任、性傾向及年齡）條例草案〉深表遺憾。我們相信，一個代表市民，為市民爭取權利的政府，必定會致力於消除歧視，衆所週知，目前香港，有不少人（特別是婦女）因家庭責任、性傾向及年齡歧視而遭到不平等的看待。為了使香港的婦女不再因受到家庭責任、年齡及性傾向的歧視，而限制她們的發展及對社會的貢獻，我們謹向各議員重申聯席的立場：

（一）聯席支持劉千石議員有關〈平等機會（家庭責任）部份的條例草案〉，並反對政府以絕大部份回應者持反對意見之理由否定在法律上承認同居及未婚同居配偶的平等地位。因為基於平等的原則，無論是同居關係及婚姻關係也應受到法律的保障。

（二）聯席對政府放棄立法保障不同性傾向人士的立場，表示遺憾與憤怒。首先，我們質疑政府就性取向所進行的諮詢，在抽選對象時是否有足夠的廣泛性與客觀性。即使政府有合理理據，確立諮詢的結果，證明社會上有大比數人士對問題有負面意見，亦正正反映這些有不同性取向的人，正受到社會人士的嚴重歧視，在此情況下，政府更有責任立法消除這種歧見。

聯席亦不同意一些宗教及教育團體所指，反對立法是避免日後會出現「反向歧視」（reverse discrimination）；我們認為，在一個平等共溶的社會上，少數人士的平等機會，絕不等於對社會的整體平等有任何侵害，因此，我們難以接受上述理據。

至於政府建議以非立法措施來解決有關問題，我們認為這些措施亦要得到法例的配合，才可有效地令社會人士主動消除對不同性取向者的歧見。香港的不同性取向者目前正受到相當嚴重的歧視，令她/他們無法站出來為自己爭取合理權益，她/他們面對的問題極須關注與幫助。

（三）九十年代初開始，各個關注團體、學術研究已指出年齡歧視是一個廣泛存在的嚴重問題。而受年齡歧視最深的多為非技術中年女工，她們的工作最易被取替。勞工處在 95 年至 96 年所作的招聘廣告調查亦顯示此類工種的年齡歧視最為嚴重。

政府的只收回 68 份諮詢文件回應理由而立法的需要，但這 68 份文件中有 15 份是團體代表，而其中有大部份是贊成立法的，這些團體多屬前線基構，能充份反映受歧視者的意願。

最後，我們要求各立法局議員支持通過由劉千石提交〈平等機會（家庭責任、性傾向及年齡）條例草案〉，切勿輕率放棄為長期受歧視的市民爭取平等權利。

Submission of the Movement Against Discrimination
to the Bills Committee on the Three Equal opportunities Bills

1. The Movement Against Discrimination (MAD) is in support of the move to eliminate all forms of discrimination in Hong Kong and hence is urging the Legislative Council to vote for the present three Bills in totality. We think that it is a logical move after the enactment of the Sex Discrimination Ordinance (SDO) and the Disability discrimination Ordinance (DDO) in 1995. In fact, these are the residual parts of the original legislation proposed by Ms. Anna Wu in 1995 which endorse a general equal opportunities principle for all in our legislation.
2. The government has so far issued 4 consultation papers on Equal Opportunities on Family Status, Sexual Orientation, Age and Race which were behind the original schedule of government's plan of consultation. But we agree that public consultation is needed on such important matters and late is better than never.
3. We understand that the government has intention to amend existing legislations to incorporate measures against discrimination on family status but not on other grounds while its position on race is pending for the result of public consultation.
4. The MAD is critical of the government's piecemeal and wait and see approach in equal opportunities legislation as it will prolong discrimination and leaving aside unpopular legislative proposals, such as sexual orientation untackled.
5. We wanted to state our grounds of objection here for members consideration. **Firstly**, anti-discrimination legislation is a general principle to be adopted by the society across the board in various sectors: sex, disability, age, sexual orientation, race, family status, religious and other beliefs etc. The incrementalist approached is unfair to those who are still suffering from discrimination.
6. **Secondly**, the support of the community is important for government policies, but the defend of minorities rights is also an important duty of the modern government and legislations. Hence, the MAD is opposing the government's rejection of anti-discrimination legislation on the ground of sexual orientation as the public is said to be not in its favour. We urge the government to take positive measures to alleviate the misunderstanding and prejudicial attitude towards people with different sexual orientation.
7. **Thirdly**, the Legislative Councillors should support the equal opportunities in employment against age discrimination which has acted against middle aged workers, males as well as females in times of unemployment and economic recession. They are often at the mercy of employers who have upper hands in affecting the livelihood of the workers, especially for those suffered from industrial transition.
8. **Fourthly**, while the government is seeking public comments on anti-discrimination legislation on the ground of race, its position is not in favour of legislation which is often an important move by the government to protect minority races and recent immigrants who are of different background from local people. To promote integration and to resist confrontation, legal protection and public education are complementary strategies a society should adopt.

9. **The MAD is urging the Legislative Councillors to support the present 3 Bills to provide equal opportunities to a wider community in the Hong Kong society. We are sure that this will enhance community respect and mutual accommodation which are conducive to the smooth transition and economic prosperity on Hong Kong during the transitional period.**
10. We further urge the government to engage in public education on equal opportunities in schools and community and to beef up the Equal Opportunities Commission in tackling complaints actively and with results.

Mak Hoi Wah
Chairman, MAD
March 11, 1997



本署檔號 Our Ref
來函檔號 Your Ref

EMB 1/3231/95 X

電話 Telephone 2810 2018
傳真 Faxline 2868 5916

17 March 1997

To : All Members of the Legislative Council

Equal Opportunities (Family Responsibility,
Sexuality and Age) Bill

On 3 March 1997 I wrote to you regarding the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill sponsored by the Hon Lau Chin-shek. In that letter I referred to our intended programme of public education, publicity and self-regulation, and how we believed that these measures are the most appropriate way to deal with the issue of discrimination in employment on the ground of age.

I should now like to bring you up-to-date regarding the progress we have made in two particular aspects of the public education, publicity and self-regulation programme.

Announcement of Public Interest

Our first in a series of Announcements of Public Interest, (APIs) calling upon employers to consider ability, not age, in employment situations, will be on air on TV next week. The APIs will feature a number of authentic cases where middle-aged employees who have worked in a particular industry for many years have successfully secured a new job in a completely different line of work. The APIs will put across the message that it is ability that counts, not age.

We are now planning the second series of APIs, which will focus on employment opportunities for younger persons.

Practical guidelines for employers

We have finished drafting the practical guidelines, and shall soon be circulating these to the Legislative Council Manpower Panel, employer and employee organisations and other interested parties for their comments. A copy of the draft practical guidelines is attached. As you will see, the guidelines cover a wide range of employment situations including recruitment, advertising, employment agency services, selection, promotion and training, as well as redundancy and retirement. We are confident that these guidelines, once finalised, will facilitate the elimination of discrimination in employment on the ground of age. If you have any comments on the draft, I would be pleased to receive them.

In conclusion, let me reiterate that we are committed to the promotion of equal employment opportunities to workers, irrespective of their age. We believe that the most appropriate way to deal with this issue is through a programme of public education, publicity and self-regulation. I urge you once again to support Government's efforts in the coming months to tackle the issue of age discrimination in employment and oppose the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill.

(Joseph W P Wong)
Secretary for Education and Manpower

Enclosures

cc Hon Lau Chin-shek

Practical Guidelines for Employers
Eliminating Age Discrimination in Employment

The Government believes that a programme of public education, publicity and self-regulation is the most appropriate way of dealing with age discrimination in employment. Self-regulation means that employers also have the responsibility to ensure fair treatment in all aspects of employment, irrespective of age. We believe that the development of a code of employment practices will facilitate this process. Employers and employment agencies are encouraged to follow the guidelines and the recommended good practices in the ensuing paragraphs.

Consistent Selection Criteria

2. We believe that one way to help eliminate age discrimination in employment is for employers to develop a set of consistent selection criteria. These would provide clear guidelines for employers in recruitment, training, promotion, transfer, redundancy and dismissal situations. In this way, each individual can be assessed according to his or her abilities to carry out a given job and will not be judged by irrelevant considerations, including age.

3. These criteria should cover topics that relate specifically to the job, e.g.

- the type of experience the applicant should have, e.g. clerical, or merchandising experience;
- the amount of experience required, e.g. three years, or two to four years' experience;
- any educational qualifications that may be required, e.g. a higher diploma;
- any specific managerial or technical skills that may be required, e.g. the need to speak Putonghua or be familiar with Information Technology;
- the specific personal qualities required for the job, e.g. willingness to do shift work, or to travel abroad for a number of days each month;

4. The criteria should only address requirements that are specific to the job. None of the above requirements should deal with or identify age, unless it is a genuine requirement of the job.

Exceptions where age may be a genuine requirement of a job

5. There should be very few instances where age is a genuine job or occupational requirement. Situations where an age requirement might be justified include the need to recruit an actor of a

particular age to provide authenticity in a play, or to fulfil the statutory requirements of relevant legislation, e.g. under the Dutiable Commodities Ordinance (Liquor) Regulations, persons below a certain age are forbidden to work in licensed premises selling alcohol; while under the Security and Guarding Services Ordinance there are both minimum and maximum age limits for persons performing security work.

Guidelines for Recruitment

6. We urge employers to make all recruitment decisions on the basis of consistent selection criteria. In addition, staff handling applications and conducting interviews should be trained to provide fair treatment to applicants of different age groups, e.g. by avoiding questions which could lead to discrimination on the ground of age.

Advertising

7. We recommend that employers should :

- (a) advertise for jobs on the basis of consistent selection criteria, and in neutral terms, so as to encourage applications from suitable candidates of all ages, and to ensure that no one age group will be treated more favourably than another, unless age is a genuine job

requirement, or there are statutory requirements under the relevant legislation;

- (b) avoid specifying an age range or an upper or lower age limit when placing advertisements for employment, unless age is a genuine requirement of the job or there are statutory requirements under the relevant legislation; and
- (c) where vacancies are to be filled by promotion or transfer, publish the information to all eligible employees so that there is no restriction on applications from different age groups.

Employment Agencies and Services

8. We recommend that employers using such services should specify that the vacancies are open to suitably qualified persons of any age as this could send out a clear message that applicants of all ages are welcome. Employment agencies and other providers of employment services are also encouraged to follow this and other principles and the recommended good practices in this “Practical Guidelines for Employers.”

Shortlisting

9. We encourage employers to use the consistent selection criteria as the basis for shortlisting of applicants, and avoid making any generalisations or assumptions about the abilities of a particular age group which may not be true of the individual.

Interviewing

10. We encourage employers to :
- (a) ensure that personnel staff, line managers and all other employees who may be involved in staff recruitment receive training in non-discriminatory practices.
 - (b) only ask questions at job interviews that either relate directly to the genuine requirements of the job or facilitate a better understanding of the applicant's personality and aptitude;
 - (c) keep records of interviews to show the reasons for appointing or not appointing a particular applicant.

Selection Tests

11. If selection tests are used then these should be professionally designed and relate specifically to the job requirements. Age should have no place in such tests, unless it is a genuine job requirement.

Appraisal, Promotion and Training

12. We recommend that where an appraisal system exists, the assessment criteria should be examined carefully to ensure fair treatment to employees of all age groups. In a similar way, opportunities for promotion, training or transfer should be available to all, irrespective of their age. Care should be taken not to deny promotion or other opportunities to an employee simply on the ground of age.

Dismissal and redundancies

13. No employee should be dismissed simply on the ground of age. In the case of redundancy, either on a voluntary or compulsory basis, the decision should be made on the basis of which jobs are being eliminated and the performance of individual workers, not on age grounds. Employers should also ensure that conditions for access to voluntary departure or redundancy scheme, if any, be on equal terms to employees, irrespective of their age.

Retirement

14. We recommend that employers should review from time to time their company policy on retirement, and consider in particular whether a compulsory retirement age is necessary.

Grievance and related procedures

15. The employer has the main responsibility for eliminating age discrimination in the workplace, and for encouraging equal employment opportunities. However, employees also have a clear role to play in helping create a climate at work where age discrimination is unacceptable. When appropriate, employees should also encourage their employers to formulate anti-discrimination policies.

16. When an employee does make a complaint, then it should be handled according to a set of procedures which have been laid down and agreed by all concerned. All complaints or grievances should be handled in the same way, irrespective of the age of the complainant or the alleged perpetrator. Procedures should allow for discussion or conciliation between the parties, as well as the intervention of a neutral third party.

[prat-gu]

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/1/2/34 Pt 7

來函編號 YOUR REF

Tel No 2835 1383

Faxline 2591 6002

17 March 1997

The Hon. Andrew Wong Wang-fat, OBE, JP
President
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Sir,

I refer to the two "consequential amendment" provisions in clause 103 of the Hon. Lau Chin-shek's Equal Opportunities (Family Responsibility, Sexuality & Age) Bill and clause 55 of the Hon. Mrs. Elizabeth Wong's Equal Opportunities (Race) Bill to amend section 3 of the Hong Kong Bills of Rights Ordinance.

These two provisions, as advised by the Attorney General's Chambers, are neither consequential to the two Members' Bills in question nor relevant to their long titles. As such, they offend the prohibition on intermixing of subject-matters in Clause XXV(3) of the Royal Instructions.

Clause XXV(3) of the Royal Instructions requires that "each different matter shall be provided for by a different Ordinance, without intermixing in one and the same Ordinance such things as have no proper relation to each other; and no clause is to be inserted in or annexed to any Ordinance which shall be foreign to what the title of such Ordinance imports and no"

2707

The long title of the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill is to “promote equality of opportunity in Hong Kong and to provide remedies in respect of discrimination on the grounds of family responsibility or family status, sexuality, or age, or involving harassment on the ground of sexuality”, whereas the long title of the Equal Opportunities (Race) Bill is to “promote equality of opportunities in Hong Kong and to provide remedies in respect of discrimination on the grounds of race, colour, nationality, national or ethnic origin, or involving racial harassment.” As is evident from a reading of their long titles, the two clauses in question are clearly foreign to what the titles of their respective Ordinances import.

The Administration therefore takes the view that an amendment to the Bill of Rights Ordinance is outside the ambit of the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill and the Equal Opportunities (Race) Bill.

In addition, of its 103 clauses, 102 clauses of the Mr. Lau’s Members’ Bill will become a new, free-standing Ordinance with a novel subject-matter. Only one clause, clause 103, the very last one, amends an existing Ordinance. That clause is not made necessary by anything in the rest of the Members’ Bill. It is not consequential at all, but simply tacked on to the Members’ Bill in order to effect a quite separate legislative purpose, namely, to amend an existing Ordinance for a purpose totally unconnected with the rest of the Bill. The same argument applies to the Mrs. Wong’s Members’ Bill in that only the last clause, clause 55, amends an existing Ordinance and that clause is made unnecessary and not consequential at all.

If there is any argument that the Law Draftsman should not have issued a certificate to each of these two Members’ Bills in the first place as the Bills are inconsistent with the Royal Instructions, the Administration, as advised by the Attorney General’s Chambers, would like to point out that there is no reason for regarding the Law Draftsman’s certificate under Legislative Council Standing Order 39(1A) as conclusive, in particular given that the rules laid down by Clause XXV(3) of the Royal Instructions are directed both at the Governor and the Legislative Council. The Legislative Council itself is separately subject to the constitutional duty to abstain from intermixing.

In view of the above considerations, we firmly believe that the two "consequential amendment" provisions in clause 103 of the Hon. Lau's Equal Opportunities (Family Responsibility, Sexuality & Age) Bill and clause 55 of the Hon. Wong's Equal Opportunities (Race) Bill are constitutionally not in order and contradict the legislative intent enshrined in the long titles of the Bills.

Yours faithfully,

(NG Hon-wah)
for Secretary for Home Affairs

c.c. Chairman and all Members of the Bills Committee on the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill, Equal Opportunities (Race) Bill and Sex and Disability (Miscellaneous Provisions) Bill 1996
Hon. Lau Chin-shek
Hon. Elizabeth Wong

CB(1)1091/96-97(02)

**Information Paper for LegCo Panel on Manpower
(Meeting on 18 March 1997)**

**Review of Sex Discriminatory Provisions under the
Women and Young Persons (Industry) Regulations**

Background

The Women and Young Persons (Industry) Regulations (the Regulations), made under the Employment Ordinance, include women-specific provisions which prohibit the employment of women in dangerous trades, restrict their working hours, and provide for compulsory weekly rest days. A summary of these restrictive provisions is given in the Annex.

2. Upon enactment of the Sex Discrimination Ordinance (SDO) on 14 July 1995, the women-specific provisions in the Regulations were regarded as discriminatory and would become void after a one-year grace period i.e. after 13 July 1996.

3. On 3 July 1996, the Legislative Council passed a resolution to extend the grace period under Section 57(3) of the SDO for one more year (i.e. up to 13 July 1997) for exempting those provisions on the protection of women under the Regulations from applications of the SDO. It is thus necessary to render the Regulations compatible with the SDO by 13 July 1997.

2710

Progress of the Review

4. Members were informed vide our last progress report in August 1996 that the Labour Department was conducting a review of the Regulations in the light of the SDO and the following options were identified to deal with the issue :

- (a) to remove the employment restrictions relating to female workers;
- (b) to extend the scope of employment restrictions to cover male workers, or extend some of them to make workers and remove the rest; or
- (c) to preserve the women-specific employment restrictions in the Regulations.

Members were also informed that option (c) would not be legally acceptable, and that the Administration was planning to proceed with option (a) first, so as to remove the inconsistencies between the Regulations and the SDO before the deadline of 13 July 1997 while considering whether and how to proceed with option (b).

5. The Labour Advisory Board was consulted and supported this proposed course of action in October 1996. The Administration is now taking steps to repeal the relevant provisions in the Regulations. We plan to table the Amendment Regulations in the LegCo during the second quarter of 1997.

2711

17-MAR-1997 15:10

+852 1950 8314

+852 2869 6794 P.11

17:45 FROM EMB (LABOUR DIVISION) TO 25243802 P.04

- 3 -

6. It is important to note that the protection on health and safety of women at work will not diminish as a result of the removal of the restrictive provisions in the Regulations

7. At present, general protection for men and women in industry is already provided under Section 6A (General Duties provisions) of the Factories and Industrial Undertakings Ordinance. It is the duty of every proprietor of an industrial undertaking (including mines, quarries, underground worksites and tunnelling sites) to ensure, so far as is reasonably practicable, the health and safety at work of all persons employed by him in the undertaking.

8. Besides, considerable improvements on legislative protection for occupational safety and health are in hand :

- The Factories & Industrial Undertakings (Asbestos) Regulations have been amended in February this year to reduce hazards at source.
- The Factories & Industrial Undertakings (Confined Spaces) Regulations will soon be amended to improve protection of workers in confined spaces.
- Mandatory basic safety training will be introduced to require the construction industry to provide safety training for its workers.
- Under the proposed Occupational Safety and Health Ordinance (OSHO), protection will be extended to cover employees, both men and women, in all economic sectors. Regulations to be made under

2712

- 4 -

this proposed Ordinance will cover general safety and health in the workplace, personal protective equipment at work, handling of dangerous substance, use of machinery and equipment, etc.

9 Due consideration has been given in the legislation related to the health and safety needs of a worker during pregnancy :

Under the proposed Factories and Industrial Undertakings (Medical Examination) Regulations, the appointed medical practitioner has a duty to suspend pregnant workers from exposure to highly hazardous substances at work.

Regulations will be made under the proposed OSHO to require the employer to take all reasonable measures to avoid and reduce the risk of workers' injury in hazardous manual handling operations, and pregnancy is specified as one of the factors to be considered in the risk assessment exercise.

The proposed Employment (Amendment) Bill 1996 (introduced into LegCo in May 1996) seeks to give effect to the review of maternity protection provisions, and provides that the employer shall not require a pregnant worker to handle heavy materials or do other work injurious to pregnancy.

10. The Labour Department already has in place a vigorous promotion and education programme to enhance employers' and workers' awareness of the aforesaid laws and codes on occupational health and safety.

2713

11 In the meantime, the Labour Department is examining whether there are justifications for introducing regulations on hours of work to cover both sexes in some or all economic sectors. The Department has been collecting first-hand information on legislation on hours of work and on enforcement experience from several neighbouring countries of comparable economic development. The Census and Statistics Department has completed a survey on the patterns of working hours and overtime of the local labour force. The raw data collected in the survey is now being processed to facilitate the Government Economist to conduct a detailed analysis around the second quarter of 1997. The Administration will consider the way forward after considering the findings of this survey and assessing the economic implications. The Administration will then consult widely on any proposals arising from this review in due course.

Labour Department

March 1997

2714

Annex

Summary of Employment Restrictions for Women
under the Women and Young Persons (Industry) Regulations.

(A) Prohibited work

- underground work in any mine or quarry
- tunnelling operation
- dangerous trades (i.e. boiler chipping, manufacture of glass from basic raw materials, manufacturing processes involving the use of arsenic, lead, manganese, mercury or phosphorous, vermilion manufacture, chromium plating, the machining or grinding of celluloid or magnesium, and the manufacture of hydrochloric, nitric or sulphuric acids)
- carrying any load which is unreasonably heavy

(B) Hours of work

- not more than 8 hours a day and 48 hours a week (excluding overtime)
- not more than 5 hours continuous work without thereafter an interval of at least 1/2 hour for meal or rest

(C) Overtime work

- not more than 2 hours a day and 200 hours a year

(D) Period of employment

- not allowed to work before 6 a.m. and after 11 p.m.

TOTAL P 07

2715

Action

- (c) in the UK, reinstatement had been ordered in respect of only 1% of the cases adjudicated by the Industrial Relations Tribunal; and
- (d) the Administration would consider imposing higher penalties on employers in the light of operational experience.

In this connection, the Chairman reminded members that issues related to compulsory versus voluntary reinstatement had been discussed at length by the Panel at the last meeting.

**VI Review of sex discriminatory protective provisions under the
Women and Young Persons (Industry) Regulations**

(LegCo Paper No. CB(1) 1091/96-97(01))

LegCo Paper No. CB(1) 1091/96-97(02))

17. The Deputy Chairman introduced her paper and expressed dissatisfaction on the lack of public consultation on the Administration's proposal to remove the protective provisions under the Women and Young Persons (Industry) Regulations (WYP(IR)). She also stressed that protection of women was one of the important objectives of the Sex Discrimination Ordinance (SDO) and this positive element of the SDO must not be overlooked.

18. In reply, DS for E&M and AC for L (RB) elaborated the Administration's position as follows:

- (a) Women workers' well being would not be jeopardised as a result of removing the restrictive provisions under the WYP(I)R as there were existing and forthcoming statutory provisions to accord general protection to both men and women workers. In fact, some women's groups had voiced the views that certain provisions under the WYP(I)R were too restrictive and had barred women from jobs which they were capable of performing.
- (b) Consultation with the medical profession had revealed that apart from pregnancy, women were not particularly susceptible.
- (c) Pending availability of information on overseas practices and the Government Economist's analysis, the Administration had not decided whether there were justifications for extending regulation on hours of work to cover both sexes in some or all economic sectors. There would be wide consultation should any proposals arise.

action

19. Mr LEE Cheuk-yan felt that the proposed repeal of the protective provisions under the WYP(I)R was regressive and that the Administration's study should precede any decision to remove these provisions. In reply, AC for L (RB) explained that the proposed legislative amendments and the major study had been undertaken concurrently, though the latter necessarily took more time. She also informed members that according to the written advice of the Equal Opportunities Commission (EOC), the restrictive provisions under the WYP(I)R were in conflict with the SDO.

20. In this connection, Mr LEUNG Yiu-chung urged that protection should be provided to men as well as women, citing a complaint from male workers for having to work continuously for 72 hours. He suggested that in the WYP(I)R, where reference was made to women in the context of protection, the reference could be extended to workers generally. He sought sight of the written advice of the EOC referred to by AC for L (RB) and the Chairman advised that clarification would be sought with the EOC. If possible, the Panel would also request for a copy of the said advice.

Clerk

VII Any Other Business

Briefing on Employment (Amendment) (No. 4) Bill 1997

respect than the other, though *lex scripta* has overriding effect.¹ The truth of this can be tested quite simply. Suppose a question arose as to whether an Act impliedly overruled some aspect of the law of criminal conspiracy. The question would be decided in exactly the same way whether the Act was passed before or after the partial codification of that offence by the Criminal Law Act 1977. The enormous output of legislation in the past two hundred years has meant that whole areas previously regulated by the common law are now the province of statute law, whether enacted by way of codification, development or replacement of common law rules.

There is thus little difference in *quality* between common law and enacted law. To suggest otherwise brings one within the range of Lord Radcliffe's condemnation of 'mystical' methods of discovering the law.² All that can legitimately be said is that *some* common law rules have deeper roots in our law than *some* statutory rules. Judges still pay respect to 'our lady the common law'. Thus we continue to find dicta like that of Lord Reid when he said that Parliament 'can be presumed not to have altered the common law further than was necessary'.³ It is submitted that the better view is that earlier expressed by Lord Wright extra-judicially when he said that the principle that an Act of Parliament should be construed so as not to change the common law more than seemed unavoidable is now discredited.⁴

Effect of statute on common law rules Where Parliament takes a particular view of a common law rule, this may influence the court in determining the (purely common law) content of the rule.

Example 269.12 The Court of Appeal, in holding that the kidnapping of a child of tender years had never been an offence at common law, was influenced by the fact that Parliament had taken that view when passing an Act relating to child stealing in 1814.⁵

This does not mean that the common law can be 'developed' to fill gaps in a statute which cannot be filled by legitimate implication or delegated legislative power. *Example 269.13* In *Malone v Commissioner of Police of the Metropolis* [1980] QB 49 at 69 Roskill LJ described the proposition that the common law should be developed and extended by the court to permit retention of property seized by police under an enactment which did not justify such retention as 'an impossible argument'. Stephenson LJ said (at 63): 'Until I listened to this argument, I had never heard that the statute book was a source of the common law. The argument has nothing to commend it but its audacity'.⁶

Section 270. Municipal law should conform to public international law

It is a principle of legal policy that the municipal law should conform to public international law. The court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle.

1 Sec Code s 32.
 2 *Galloway v Galloway* [1956] AC 299 at 320.
 3 *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 at 615.
 4 (1945-7) 9 CLJ 2, at p.3.
 5 *R v D* [1984] 2 WLR 112. The Act was 54 Geo 3 c 101. The decision was reversed by the House of Lords (*R v D* [1984] AC 778).
 6 As to the effect of legislation in developing legal policy see however Code s 175. See also Examples 87.2 and 328.1.

COMMENT

Legal policy The principle that municipal or national law should conform to the principles of public international law is an aspect of legal policy. For the nature of legal policy see Code s 263. As to the opposing constructions see Code s 149.

Public international law is what used to be called the law of nations, or *ius gentium*.¹ More strictly the *ius gentium*, originally distinguished from the *ius civile* or ancient law of Rome, was understood to be the body of legal rules found in all civilised states.² As Maine put it, basing himself on Justinian—'All nations, who are ruled by laws and customs, are governed partly by their own particular laws, and partly by those laws which are common to all mankind. The law which a people enacts is called the Civil Law of that people, but that which natural reason appoints for all mankind is called the Law of Nations, because all nations use it.'³

This overlooks what should be a central feature, namely that, when their thinking is not distorted by religious or other dogma, human beings, because of their common humanity, tend to arrive at similar social or municipal laws. Nevertheless our courts do not assume that nations agree on the content of any particular rule.⁴

Public international law is not generally part of the municipal legal system, and so is not subject to the implied importation of legal rules dealt with in Code Part XXIII. It is for this reason that a United Kingdom court will not make a declaration as to the content of a rule of public international law or the effect of a treaty.⁵ Nor, where Parliament has refrained from legislating so as to give effect to a treaty, will the court find it easy to lay down new rules of common law or equity that will carry out the Crown's treaty obligations, or ... discover for the first time that such rules have always existed'.⁶

Again, where the words of an enactment have a wider application than the provisions of a relevant treaty, the treaty will not be held to cut down their ordinary meaning.⁷ However, a rule of public international law which is incorporated by a decision of a competent court then becomes part of the municipal law.⁸ Again, under the principle known as *adoption*, a rule of international law may be incorporated into municipal law by custom or statute.⁹

In all such cases the implied importation dealt with in Code s 327 would apply. It is an important principle of public policy to respect the comity of nations, and obey treaties which are binding under public international law. Thus Diplock LJ said 'there is a *prima facie* presumption that Parliament does not intend to act in breach of [public] international law, including therein specific treaty obligations; and if one of the meanings that can reasonably be attributed to the legislation is consonant with the treaty obligations and another or others

1 See Brownlie, *Principles of Public International Law* (3rd edn, 1979).
 2 *Vocaturque jus gentium, quasi quo jure omnes gentes utuntur* (Just Inst.).
 3 H S Maine, *Ancient Law* pp 37-8.
 4 *Re Queensland Mercantile and Agency Ltd* [1892] 1 Ch 219 at 226.
 5 *Republic of Italy v Hambros Bank Ltd* [1950] Ch 314 at 329, *Malone v Commr of Police of the Metropolis* (No 2) [1979] Ch 344 at 353.
 6 *Malone v Commr of Police of the Metropolis* (No 2) [1979] Ch 344 at p 648.
 7 *The Norwiche* [1975] QB 589.
 8 *The Europe Tapioca Service Ltd v Govt of Pakistan* [1975] 1 WLR 1485 at 1495.
 9 For adoption by statute see Code s 221.

are not, the meaning which is so consonant is to be preferred.¹ Like so many judicial dicta on statutory interpretation, this overlooks the likelihood that there will be more than one factor bearing on a disputed interpretation.² The Crown is also treated as having this intention to respect treaty obligations when the courts construe an instrument made under the prerogative.³

The courts treat the need to observe treaties as a general matter of legal policy.⁴ In a case on the Warsaw convention, Lord Denning MR put the point even more strongly: 'The Warsaw Convention is an international convention which is binding in international law on all the countries who have ratified it: and it is the duty of these courts to construe our legislation so as to be in conformity with international law and not in conflict with it.'⁵ However it is clear that the correct principle is the presumptive one as stated by Diplock LJ in the dictum cited above.⁶ The prime duty of the courts is to carry out the intention of Parliament. Where Parliament makes it plain that it intends to infringe an international obligation, the court must comply.

Example 270.1 In *Collico Dealings Ltd v IRC* [1962] AC 1 the House of Lords was called on to construe the Finance (No 2) Act 1955 s 4(2), which dealt with the tax-avoidance device known as dividend stripping. Section 4(2) was inconsistent with double taxation agreements made between the British and Irish governments, but the House of Lords held that s 4(2) must prevail. Viscount Simonds said (at 19):

'It is said that the plain words of the statute are to be disregarded ... in order to observe the comity of nations and the established rules of international law. I am not sure on which of these high-sounding phrases the appellant company chiefly relies. But I would answer that neither comity nor rule of international law can be invoked to prevent a sovereign state from taking what steps it thinks fit to protect its own revenue laws from gross abuse, or to save its own citizens from unjust discrimination in favour of foreigners. To demand that the plain words of the statute should be disregarded in order to do that very thing is an extravagance to which this House will not, I hope, give ear.'

This again is overstated. The concepts of comity and public international law scarcely deserve the dismissive epithet 'high-sounding'; while all that need be said about what a 'sovereign state' such as Britain can do is that its legislature has unlimited and overriding power to lay down the municipal law.⁷ *European Convention on Human Rights* The European Convention on Human Rights entered into force on 3 September 1953.⁸ To date it has been ratified

- 1 *Salomon v Comrs of Customs and Excise* [1967] 2 QB 116 at 143. Cf *Garland v British Rail Engineering Ltd* [1983] 2 AC 751 at 771; *MacLaine Watson & Co Ltd v Department of Trade and Industry* [1990] 2 AC 418; *Duke v GEC Reliance Ltd* [1988] 1 All ER 626; *Pickstone v Freemans plc* [1988] 2 All ER 803; *Brind v Secretary of State for the Home Department* [1991] 1 All ER 720.
- 2 As to the weighing of two or more conflicting interpretative factors by the court see Code s 186.
- 3 *Post Office v Estuary Radio Ltd* [1968] 2 QB 740 at 757. As to prerogative instruments see Code ss 48 and 49.
- 4 *A-G v British Broadcasting Corporation* [1980] 3 WLR 109, per Lord Scarman at p 120.
- 5 *Corocraft Ltd v Pan American Airways Inc* [1968] 3 WLR 1273 at 1281. See also *Example 316.1*.
- 6 *Salomon v Comrs of Customs and Excise* [1967] 2 QB 116 at 143.
- 7 See also *Niboyet v Niboyet* (1878) 4 PD 1; *Mortensen v Peters* (1906) 8 F 93.
- 8 See Code s 32.
- 9 Its full name is the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is set out in Cmnd 8969.

by 21 nations, including the United Kingdom. For these it constitutes a treaty imposing the usual obligations and rights under a treaty in public international law. The machinery for enforcement of these consists of the European Commission of Human Rights and the European Court of Human Rights, both of which operate at Strasbourg. The United Kingdom has accepted the right of individual petition to the Commission, but has not made the Convention part of its municipal law.

It follows that the Convention does not directly govern the exercise of powers conferred by or under an Act.¹ However it is presumed that Parliament, when it passes an Act, intends it to be construed in conformity with the Convention, unless the contrary intention appears.² Fox LJ said in relation to closed shop legislation that the Convention is not a reliable guide to the intention of Parliament.³ Nevertheless the Convention is a treaty by which the United Kingdom is bound. It is, by virtue of the principle now under discussion, as reliable a guide to legislative intention as any other treaty. Furthermore many of the principles embedded in the Convention correspond to, and may indeed be derived from, those of our own legal policy.⁴ This appears from the passage in the preamble recording that the states parties agreed upon the Convention—

'Reaffirming their profound belief in those Fundamental Freedoms which are the foundation of justice and peace and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend; [and] Being resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law ...'

The individual human rights specified in the European Convention are mentioned in their appropriate places in Code Part XVII. See also Example 327.6.

In *R v Secretary of State for the Home Department, ex p Brind* [1990] 1 All ER 469 the Court of Appeal considered the argument that a directive issued by the Home Secretary to the Independent Broadcasting Authority under the Broadcasting Act 1981 s 29(3) prohibiting the broadcasting of direct statements by representatives of proscribed terrorist organisations in Northern Ireland contravened the provisions of the European Convention on Human Rights art 10 (freedom of speech). *Held* Since there was no ambiguity in the wording of s 29(3), which gave the Home Secretary unfettered power to prohibit the broadcasting of 'any matter or classes of matter', its width was not to be treated as cut down by art 10. Lord Donaldson MR said (at 477)—

'... you have to look long and hard before you can detect any difference between the English common law and the principles set out in the convention, at least if the convention is viewed through English judicial eyes ... when the terms of primary legislation are fairly capable of bearing two or more

R v Secretary of State for the Home Department, ex p Fernandes (1980) *The Times* 21 November; *R v Secretary of State for the Home Department, ex p Kirkwood* [1984] 1 WLR 913.

A-G v British Broadcasting Corporation [1981] AC 303 at 352.

Taylor v Co-operative Retail Services Ltd [1982] ICR 600, (1982) *The Times* 13 July.

4 For the nature of legal policy see Code s 263.

5 Professor Fawcett, a former President of the European Commission of Human Rights, points out that the Constitution adopted by the USSR in 1977, while containing a Bill

of Rights, gives equal prominence to what might be called Human Duties: 'Human

Rights: Our Country in Europe' (Child & Co lecture 1983) p 3.

meanings [there is] a presumption that Parliament has legislated in a manner consistent, rather than inconsistent, with the United Kingdom's treaty obligations.'

The decision was upheld by the House of Lords in *Brind v Secretary of State, for the Home Department* [1991] 1 All ER 720. Lord Bridge said (at 722-723):

'But it is already well settled that, in construing any provision in domestic legislation which is ambiguous in the sense that it is capable of a meaning which either conforms to or conflicts with the convention, the courts will presume that Parliament intended to legislate in conformity with it. Hence, it is submitted, when a statute confers upon an administrative authority a discretion capable of being exercised in a way which infringes any basic human rights protected by the convention, it may similarly be presumed that the legislative intention was that the discretion should be exercised within the limitations which the convention imposes. I confess that I found considerable persuasive force in this submission. But in the end I have been convinced that the logic of it is flawed. When confronted with a simple choice between two possible interpretations of some specific statutory provision, the presumption whereby the courts prefer that which avoids conflict between our domestic legislation and our international treaty obligations is a mere canon of construction which involves no importation of international law into the domestic field. But where Parliament has conferred on the executive an administrative discretion without indicating that it must be exercised within the convention limits, to presume that it must be exercised within convention limits would be to go far beyond the resolution of an ambiguity ... and I cannot escape the conclusion that this would be a judicial usurpation of the legislative function.'

Judicial notice Judicial notice is taken of rules and principles of public international law, even when not embodied in municipal law.¹ This also applies to treaties made by the British Crown. As Scarman LJ said—

'If statutory words have to be construed or a legal principle formulated in an area of the law where Her Majesty has accepted international obligations, our courts—who, of course, take notice of the acts of Her Majesty—do not exercise of her sovereign power—will have regard to the convention as part of the full content or background of the law. Such a convention, especially a multilateral one, should then be considered by the Courts even though no statute expressly or impliedly incorporates it into our law.'²

As to the doctrine of judicial notice generally see Code s 21. The courts will accept a Minister's certificate as to acts of sovereign power, otherwise known as acts of state.³

Citation of treaties The existence of the presumption dealt with in this section of the Code means that the court is obliged to consider any relevant rule of public international law, and permit the citation of any relevant treaty. For this reason it seems that Lord Parker CJ was mistaken when he said it was not for the court to consider whether the United Kingdom had implemented the international Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty. Uniform statutes An Act passed to give effect to an international agreement will be construed in the light of meanings attached to the agreement in other countries.

1 *Re Queensland Mercantile and Agency Ltd* [1892] 1 Ch. 219 at 226.
2 *Per-American World Airways Inc v Department of Trade* [1976] 1 Lloyd's Rep. 257, p. 261 (emphasis added).
3 For acts of state see Code s 48.
4 *Gray v Lumley* (1862) 1 W.L.R. 826 at 827.

states, so as to promote uniformity.¹ As Scott LJ said of an agreement designed to put an end to differing practices 'the maintenance of uniformity in the interpretation of a rule after its international adoption is just as important as the initial removal of divergence'.² The treaty need not be referred to in the Act for the court to have regard to it.³

Interpretation of enactment by reference to terms of treaty As to the interpretation of an enactment by reference to the terms of a relevant treaty see Code s 221.

Vienna Convention For the provisions relating to interpretation of treaties set out in the Vienna Convention on the Law of Treaties⁴ see Code s 221.

Diplomatic privilege As to diplomatic privilege see Code s 221.

Extra-territorial extent and application of Acts For presumptions based on rules of public international law regarding the territorial extent of Acts, and their application to foreigners, see Code Part V.

¹ *Stag Line Ltd v Foscolo Mango & Co Ltd* [1932] AC 328 at 350, *Riverstone Meat Co v Lancashire Shipping Co* [1961] AC 807 at 869, *Compania Colombiana de Seguros v Pacific Steam Navigation Co Ltd* (1965) 1 QB 101, *Salomon v Comirs of Customs and Excise* (1967) 2 QB 116, *Leesh River Tea Co Ltd v British India Steam Navigation Co Ltd* (1967) 2 QB 250; *Post Office v Erimary Radio Ltd* [1967] 1 W.L.R. 1396.
² *The Esmeralda* (1938) P. 41 at 46 (emphasis added). See further F. A. Mann, 'The Interpretation of the Law of Treaties' (1946) 62 L.Q.R. 278, 'Uniform Statutes in English Law' (1983) 99 L.Q.R. 376.
³ *Attorney-General v Guardian Newspapers Ltd* [1967] 2 QB 136.

來函編號 Your Ref:

本函編號 Our Ref. LS/B/98/95-96

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

20 March 1997

Fax No. : 2537 6937

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

Dear Adam,

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

Thank you for your today's fax and the enclosed material.

As I understand the Administration's objection to clause 2(f) and clause 7(3) of the Bill is that the 2 instruments mentioned in clause 2(f) are only recommendations and hence, the local courts should not be asked to enforce something which has no binding effect at all.

The instruments, which you referred to in your fax, in the schedules to the Arbitration Ordinance (Cap. 341) are either conventions which have signatory states or the UNCITRAL Model Law which contains substantive provisions and is meant to be binding on member states (see Article 1(1)). Perhaps, we need more legal justifications for retaining the provisions in question.

Once you have obtained the text of the ILO Recommendations 111 and 165, it will be helpful to highlight, for perusal by the Bills Committee, the relevant provisions of those instruments on the Rights of Workers with Family Responsibilities.

Am I right to assume that either the UK or Hong Kong is an ILO Member?

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

Mrs Anson Chan, J.P.

主席

陳方安生

BY HAND AND BY FAX

21 March 1997

Annie Wu

副主席

伍淑清

Elsie Leung

榮譽顧問

梁愛詩

梁愛詩

Members of

Executive Committee

成員

Marina Wong

President

黃汝瑛

Mrs Anna Lo
Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Mrs Lo,

Equal Opportunities (Family Responsibility, Sexuality & Age) Bills
Equal Opportunities (Race) Bill
Sex & Disability Discrimination (Miscellaneous Provisions) Bill 1996

We are an association of women entrepreneurs and professionals established under the Hong Kong Societies Ordinance in September 1996.

The above bills in varying degrees have implications on business and employment and we wish to respectfully submit our views.

Equal Opportunities (Family Responsibility, Sexuality & Age) Bills

Kathleen Ho

Vice President

葉黃曾愉

Elle Shum

Vice President

岑敏玲

岑敏玲

Wilhelmina Ngai

Honorary Secretary

倪秀娟

倪秀娟

Wong Mun Kit

Honorary Treasurer

王文潔

王文潔

Lee Yeung Yat Fan

李楊一帆

Angel Hon

韓淑儀

3. We support in principle legislation to outlaw discrimination on family status. However we do not think that it is appropriate to give legal recognition to co-habitation and de-facto spouse. Hong Kong is a society with traditional Chinese values towards family and marriage. Such values have served Hong Kong well. On the other hand, as Hong Kong becomes more international and economic ties with China become closer, mobility of Hong Kong people has increased tremendously. Such mobility destabilises family unison and creates friction and pressure on the members of a family. If co-habitation and de-facto spouse is given legal recognition, this social problem may be further aggravated which is undesirable during this time of transition.

4. We think legislation on ground of sexuality is also inappropriate. Administrative measures as well as public education should be strengthened to promote the principle of equal opportunities for sexual minorities.

2724



Mrs Anson Chan JP

23/10/96

陳方安生

Annie Wu

伍淑賢

Elsie Leung

梁愛詩

Members of
Equal Opportunity Committee

Marina Wong

President

黃汝瓊

Kathleen Ho

Vice President

葉黃曾愉

Elle Shum

Vice President

岑敏玲

Wilhelmina Ngai

Honorary Secretary

倪秀娟

Wong Mun Kit

Honorary Secretary

王文潔

Lee Yeung Yat Fan

Honorary Secretary

李楊一帆

Angel Hon

Honorary Secretary

鍾淑儀

5. We also object the fact that no grace period is allowed for small enterprises in this bill. Small enterprises comprise the majority in Hong Kong and any legislative development of this nature and pace is not appropriate.

6. We are not against any Age discrimination legislation in principle. However, there are some aspects of differences in age groups which must be regulated, such as against infants in entering into contracts and on marriageable age. We also need to evaluate the effects of the current laws on sex and disability discrimination which fully commenced only in December 1996 and the work of the Equal Opportunities Committee which has operated for only a short period of time. The susceptibility of the society to change is also a concern. We are of the view that the introduction of the Age discrimination legislation is not appropriate at the present time.

Equal Opportunities (Race) Bill

7. The government has just started its consultation exercise on racial discrimination. We should await the outcome of the consultation before considering whether to proceed further with the legislative proposal.

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

8. It will be confusing to the public to introduce amendments to the Sex and Disability Discrimination Ordinances at this stage. The community needs more time to fully understand the existing provisions and their Code of Practice. Additional resources have to be committed by Hong Kong employers already in ensuring compliance of these ordinances and smaller enterprises need the longer grace period.

Yours sincerely,

Marina Wong
President

2725

CB(1)109(196-97)(01)

致：各立法局人力事務委員會成員：

由：立法局議員陳婉嫻

1997年3月24日

有關對政府撤銷婦青條例部份內容的意見

(1) 前言：

對於女性僱員應否予特別保護這個大課題，在國際勞工組織所訂立各種公約及各國勞工立法都是有不同程度之保護，而香港亦有法例保護婦女僱員，但可惜政府在日前以不抵觸「性別歧視條例」為由，在毫無改善之時，而建議廢除部份保護女性僱員之法例條文，這實在令人失望。

(2) 香港法例：

其實現行僱傭條例中「婦女及青年（工業）規例」是保障婦女及十六歲以下少年的職業健康及僱傭的情況，其中包括限制女工搬重物及保障其生理障礙、限制工時等。這些法例是婦女及勞工團體長期以來爭取才得到之成果。但是1995年7月在立法局通過的性別歧視條例指明，上述保護婦青條文會與性別歧視條例相抵觸，該條例並訂明這方面之抵觸情況用1年時間處理，換句話條例對此情況有1年豁免期，而政府於1996年年中對立法局議員表示，他們未處理好有關的

善後，並要求立局議員容許對此再多 1 年豁免期，立局於是在 1996 年 7 月通過延長上述豁免期之決議案，而條件是政府在考慮善後時要充份諮詢各界人士，不過，勞工處卻在 1996 年 10 月在明顯沒有充份諮詢各界意見時在勞顧會提出，撤消上述婦青的條文，因為有關條文會於 1997 年 7 月，其豁免期屆滿時，被認為與性別歧視條例相抵觸，在這情況下，政府稱勞顧會同意取消該條文，但勞顧會中之勞方代表不認同，本人也認為，這種做法是草率及倒退的。

(3). 總結:

在「性別歧視條例」中，我們察覺到上屆立法局議員在草擬條例時，已預期到婦女是需要立法加以保護的。因而在條例 57 條中便指出，現有保護女性的法例條文，將不會視為歧視。由此可見，性別歧視條例已經明確申明：保障不等於歧視。整個條例並沒有判定「婦女及青年（工業）規例」違反性別歧視，只是提出需要檢討。故此，本人認為，若政府沒有廣泛諮詢的情況下，完全撤銷保護婦女及青年條例，實有違上述性別歧視條例 57 條的精神。另一方面，勞工界亦早已表達此保障婦女的條文是不可全面取消的，因而本人認為，政府在未有修訂或新的條文前，不可能簡單地取消婦青有關係文。



香港各界婦女聯合協進會 Hong Kong Federation of Women

Paper No. CB(2)1633/96-9

立法局草案事務委員會主席
梁智鴻先生台啓

BY FAX & BY POST

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
1996 年性別及殘疾歧視 (雜項規定) 條例草案

梁主席：

多謝立法局本年一月二十三日及三月五日來函，諮詢有關上述三份條例草案的意見。

本會成員經討論後，有以下意見：

第一部份：平等機會 (家庭責任、性傾向及年齡) 條例草案

我們支持消除各種形式的歧視，但我們認為制定《平等機會 (家庭責任、性傾向及年齡) 條例草案》並不恰當，因為：

- (1) 根據本草案，任何人士的家庭責任或家庭崗位，涵蓋了同居和未婚同居配偶的家庭責任或家庭崗位。對於法律上承認同居及未婚同居配偶的地位，我們強烈反對。家庭是構成每一個社會的基本單元，近年二奶問題已令香港很多家庭解體，在法律上承認同居配偶，實在火上加油，必使社會問題更嚴重。
- (2) 此外，本草案並無給予小型企業任何寬限期，協助他們遵守草案的條文，這是不實際的。
- (3) 本草案把草案的目標與國際公約和義務掛鉤。把一般公認的釋義法規重述一次，既不恰當，也無必要。
- (4) 在性傾向方面，我們反對立法消除歧視，但贊成採取行政措施，例如推行公民教育，宣揚平等機會的原則，力求消除一般人對有某種性傾向的少數人士的誤解，使更多人接受他們也應獲得平等機會的權利。

香港灣仔皇后大道東228號中華大廈10樓B室
電話：28336131 傳真：28336909

10/F, B, JONSIM PLACE, 228 QUEEN'S ROAD EAST, WANCHAI, HONG KONG.
TEL.: 28336131 FAX: 28336909



香港各界婦女聯合協進會

Hong Kong Federation of Women

(5) 在年齡歧視方面，我們認為當局應更小心研究清楚，因為：

- 自政府在 95 年 7 月頒佈性別歧視及殘疾歧視條例，及平等機會委員會在 96 年 5 月成立以來，香港僱主才開始注意在招聘、僱用、提升、訓練員工時可能觸犯歧視條例。在現階段立法管制年齡歧視，實在太急進。
- 香港現有法律容許存在種種對不同年齡限制的現像存在。例如未成年人士簽署的文件無效、法例規定自主結婚年齡、未成年人士無投票或被選舉權。而某些職業則有年齡的限制，如看更。
- 香港工商業競爭激烈，一般僱主要求僱員不單稱職，更要表現出色；同時，與其他已發展國家相比，香港一般規模較少的機構並無一套完善的職位評審標準，而在僱主和僱員皆充份了解何謂真正的就職資格，而立法禁止年齡歧視，對員工來說條例可能複雜難明，對僱主來說可能會變成觸犯法例的陷阱。
- 我們並不反對立法管制年齡歧視，但該視乎社會對立法消除這種歧視的承受力，避免種苗助長，防礙了香港發展歧視及人權法案的進程。我們應可參照其他國家如日本、歐洲、新加坡等地在制定法例及其他保障措施，向年老僱員提供較理想的就業機會，同時通過平等機會委員會，教育市民，消除歧視，向老年的僱員提供較好的工作機會。

第二部份：1996 年性別及殘疾歧視（雜項規定）條例草案

我們認為本草案某些條文，並不恰當，又不合宜。因為：

- (1) 草案建議由平等機會委員會負責推廣國際公約，並審核任何法例提案。我們認為審擬法案是立法局的責任，而平等機會委員會應負責執行和推廣。
- (2) 本草案試圖賦予平等機會委員會權力，不論在該委員會是否相信某人曾作出違法作為，也可對點名人士進行調查。但我們認為平等機會委員會應確信該人實已作出違法作為，才正式展開調查，這樣才算公平合理。

香港灣仔皇后大道東 228 號中華大廈 10 樓 B 室
電話：28336131 傳真：28336909

10/F, B, JONSIM PLACE, 228 QUEEN'S ROAD EAST, WANCHAI, HONG KONG.
TEL.: 28336131 FAX: 28336909



香港各界婦女聯合協進會

Hong Kong Federation of Women

- (3) 本草案試圖讓平等機會委員會，即使受助的申訴人撤消訴訟，也可用本身名義向法庭申請繼續進行法律程序，我們認為，既然申訴人自願撤消法律程序，平等機會委員會不應強迫各有關方面繼續參與訴訟。
- (4) 本草案提出把小型企業的寬限期縮短，由36個月減至18個月，在遵行法例方面，這項建議會造成極大困難。
- (5) 本草案建議，條文中現行的豁免條文，例如與小型屋宇有關的政策，會在本草案制定後兩年內失效。但我們以為不應以立法手段去終止這政策。

此外，我們應該讓性別及殘疾歧視條例實施一段時間，取得實際經驗，才考慮應否修訂。因此，我們不支持。

第三部份：平等機會(種族)條例草案

對於種族歧視問題，政府現在進行公眾諮詢。在公眾諮詢有結果之前，我們對立法和其他方案所存在的利弊，保持開放的態度。

此外，對出入境法例和政策的影響條例草案並未載有豁免條文，配合有關驅逐出境、進入、逗留及離開香港的出入境法例，使香港能繼續有效地管制出入境事宜。

為了能進一步向立法局草案事務委員會闡釋我們對有關條例草案的立場，我們希望約見梁智鴻主席及委員會成員。

貴局於三月十八日傳真來本會之開會日期(四月一日下午四時三十分)通知，由於本會社會事務小組召集人不在港，於該日未克出席，故此希望能另安排日期會見。

本會會致電立法局秘書處，確實約見日期及時間。

主席

謹啓

一九九七年三月十九日

香港灣仔皇后大道東228號中華大廈10樓B室
電話：28336131 傳真：28336909

10/F, B, JONSIM PLACE, 228 QUEEN'S ROAD EAST, WANCHAI, HONG KONG.
TEL.: 28336131 FAX: 28336909

(Translation)

(Letterhead of the Hong Kong Federation of Women)

19 March 1997

Mr. LEONG Che-hung
Chairman of Bills Committee
Legislative Council

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

Dear Mr. LEONG,

We would like to thank the Legislative Council for its letters dated 23 January and 5 March this year inviting views from the Federation on the above three Bills.

After deliberation, members of the Federation wish to put forward their views as set out in the following paragraphs.

Part 1 - The Equal Opportunities (Family responsibility, Sexuality and Age) Bill

While we support the elimination of all forms of discrimination, we do not find it appropriate to enact the Equal Opportunities (Family responsibility, Sexuality and Age) Bill on the following grounds:

- (1) Under the Bill, family responsibility and family status include those of spouses in co-habiting and non-matrimonial relationships. We strongly object to the recognition by the law of the status of spouses in such relationships. Families are the basic units of society, but the problem of husbands keeping mistresses in recent years has already led to the breaking up of many families. The recognition of co-habiting spouses by the law is an act of adding fuel to the flames and will certainly aggravate this social problem.

- (2) The Bill is impractical in that it does not provide a grace period to small employers to assist them in complying with the provisions of the Bill.
- (3) The Bill links its purpose to international covenants and obligations. This is an inappropriate and unnecessary repetition of recognized rules of interpretation.
- (4) On sexuality, we object to the elimination of discrimination by legislation, although we agree that administrative measures should be taken in this regard. For instances, public education should be strengthened to promote the principle of equal opportunities, and efforts should be made to remove general misunderstanding of the minority with certain sexuality so that an increasing number of people will accept the fact that these people also have the right to equal opportunities.
- (5) On age discrimination, we urge the Government to act with extra caution for the following reasons:
 - * It was only after the promulgation of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance in July 1995 and the formation of the Equal Opportunities Commission (the EOC) in May 1995 that Hong Kong employers became aware of possible contravention of the law in the recruitment, employment, promotion and training of staff. To legislate against age discrimination is too aggressive a step to take at this stage.
 - * Existing laws in Hong Kong allow the imposition of various types of age requirements. For example, documents signed by anyone under the legal age is considered void, the law stipulates the legal age for marriage, and minors have no right to vote or to be elected. Even jobs, such as those of watchmen, have age requirements.
 - * Due to keen competition in the industrial and commercial sectors, employers in general demand not only satisfactory but outstanding performance from employees. Further, unlike those in other developed countries, small employers in Hong Kong are normally lack of a well established set of standards for the assessment of jobs. While neither the employers nor the employees have a full understanding of what genuine occupational requirement means, any law that prohibits age discrimination may be too complicated for employees to understand on the one hand, and become a legal trap for employers on the other.

- * We do not object to the enactment of legislation against age discrimination, but the community's readiness to accept such a piece of law should be taken into account. As Rome is not built in one day, any aggressive measures will only create an obstacle in the development of Hong Kong's discrimination and human rights legislation. We can draw experience from places such as Japan, European countries and Singapore in legislative and other security measures which can provide better employment opportunities to elderly members of the workforce. At the same time, public education can be provided through the EOC on the elimination of discrimination in the hope that better job opportunities will be available to those who are more advanced in age.

Part 2: Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

We consider certain provisions in this Bill inappropriate and untimely for the following reasons:

- (1) The Bill proposes that the EOC promote international covenants and examine relevant bills. We, however, consider it the responsibility of the Legislative Council to examine bills, while the EOC should only be charged with the tasks of execution and promotion.
- (2) The Bill seeks to empower the EOC to investigate any named person, whether it believes or not the person has committed an unlawful act. We, however, consider it fair and reasonable for the EOC to commence investigation only if it firmly believes the person concerned has committed an unlawful act.
- (3) The Bill seeks to enable the EOC to bring proceedings in its own name even when a complainant drops the lawsuit. We are of the view that if the complainant withdraws from the legal proceedings on his/her own initiative, the EOC should not compel the other parties concerned to continue with the lawsuit.
- (4) The Bill proposes the shortening of the grace period for small employers from 36 to 18 months. The proposal will impose tremendous difficulty on compliance.
- (5) The Bill proposes that existing exceptions, such as the policy on small houses, shall expire in two years from the enactment of the Bill, but we do not agree to the termination of the policy by legislative means.

Additionally, we find it more appropriate for the Sex Discrimination Ordinance and the Disability Discrimination Ordinance to be in force for a certain period of time and for Hong Kong to accumulate some experience of their operation before amendments are considered. We, therefore, do not support this Bill.

Part 3: Equal Opportunities (Race) Bill

As the Government's consultation exercise on racial discrimination is underway, we keep an open mind on the merits and demerits of legislation as well as other options.

In respect of the impact of the Bill on immigration law and policy, the Bill does not provide for any exceptions in line with immigration law on expulsion from, entry to, stay in and departure from Hong Kong so as to allow Hong Kong to maintain effective control of immigration matters.

To further explain our positions on the Bills to the Bills Committee, we wish to arrange a meeting with the Chairman Mr. LEONG Che-hung and other committee members.

We were happy to be notified by fax on 18 March of the meeting date (4:30 p.m. on 1 April) but are sorry not to be able to attend due to the absence of our social affairs convenor from the territory. We would therefore like to appoint an alternative date for a meeting.

We will arrange with the LegCo Secretariat by telephone to confirm the time and date.

Peggy LAM
Chairperson

**Note to Members of the Bills Committee studying
the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

Amendments to update the Bill

The following recommendations take account of changed circumstances since the Bill was gazetted on 5 July 1996.

1. Commencement dates

Recommendation: Delete Clauses 2 and 25.

1.1. The Bill sets commencement dates for the SDO and the DDO. By now, however, both Ordinances have come into force, making these Clauses obsolete.

2. New EOC functions

Recommendation: Amend Clause 3 to reflect the fact that CEDAW has been applied to Hong Kong.

2.1. The Bill gives to the EOC an optional function of promoting standards set by international instruments which are relevant to its work. The Bill lists 2 sets of relevant international instruments: first, those that are binding (e.g. the ICCPR as applied to Hong Kong) and second, those that are non-binding (e.g. the UN Declaration on the Elimination of Violence Against Women). The Bill lists CEDAW as a non-binding instrument, but because it has by now been applied to Hong Kong it should be listed as binding instead.

3. Exceptions for small employers

Recommendation: Amend Clauses 7(b)-(c) and 28 to make the small employer exceptions in both Ordinances expire 3 months after the Bill's enactment.

3.1. Both the SDO and the DDO exempt small employers (those with 5 or fewer employees) for 3 years after enactment, a period expiring respectively on 14 July and 3 August 1998. The Bill cuts these exemptions to 18 months, extendible for 1 more year by Legco resolution. The resulting expiry dates have already passed, however, so new ones must be chosen.

3.2. Small employers have already had more than 18 months to make arrangements for compliance since the Ordinances were enacted. The exemptions should therefore be made to expire as soon as possible after the Bill is enacted, with no provision for further extension by Legco. Only a short delay of 3 months is suggested to allow for public notice of the new expiry dates.

4. Remedies obtainable in civil proceedings

Recommendation: Amend Clause 16 and add a new Clause 33A. to make clear that the \$120,000 limit ordinarily applicable to civil proceedings in the District Court does not apply to DDO or SDO proceedings.

4.1. Both Ordinances require proceedings to be brought in the District Court, which does not normally hear civil proceedings concerning more than \$120,000. This limit was not meant to apply to SDO and DDO proceedings: both Ordinances intended to empower the District Court to exercise the High Court's unlimited remedial powers. However, in an amendment made to the DDO before it was enacted, a drafting mistake caused the ordinary District Court limit to apply to DDO proceedings. The Bill makes the same drafting mistake when amending the SDO. Both should be corrected.

5. Civil proceedings by the EOC

Recommendation: Amend Clauses 18 and 35 to enable the EOC to bring any judicial review proceedings that are relevant to its functions.

5.1. The Bill enables the EOC to bring judicial review proceedings under the Bill of Rights or the Letters Patent, in relation to the types of discrimination that concern the EOC. More flexibility is needed, however, to enable the EOC to adapt to changes in administrative law after the handover. After 1 July, for example, litigation under the Letters Patent will no longer be possible. Moreover, after that date the EOC may wish to bring proceedings under certain provisions of the Basic Law, e.g. challenging a discriminatory law as contrary to the ICCPR as entrenched by Article 39.

Office of Christine Loh
27 March 1997

Urgent by fax

27 March 1997

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

Dear Miss Ma,

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

The Hon. Lau Chin-shek has asked me to respond on his behalf to the Secretary for Home Affairs' letter to the President, dated 17 March 1997.

2. In that letter, Mr. Ng Hon-wah argues for the Secretary that clause 103 of the captioned Bill ("the Bill") is alien to the Bill's subject matter, and that the clause is therefore contrary to Clause XXV(3) of the Royal Instructions. (Mr. Ng makes the same argument in regard to an identical clause in the Hon. Elizabeth Wong's Equal Opportunities (Race) Bill, and this response applies equally to that argument.)
3. In most cases, Clause XXV(3) of the Royal Instructions is given effect by Standing Order 45(4)(a). I wish to emphasise, however, that the ruling called for in this case is wholly different from a ruling under SO 45(4)(a), and should not be considered in similar terms. A ruling under SO 45(4)(a) concerns whether an amendment is relevant to the subject matter of the bill to which it relates. Clause 103, however, is not an amendment to the Bill. Rather, clause 103 stands part of the Bill as originally put forward by the Member in charge.
4. It is one thing to apply Standing Order 45(4)(a) in order to control the expansion of a bill's subject matter by way of subsequent amendments to the bill. It is quite another thing to suggest, as the Secretary for Home Affairs does, that a bill cannot contain some of the elements that the Member (or public officer) in charge of the bill originally judged proper to his or her bill. It is such policy judgements by the bill's sponsor that shape a bill in the first place. It serves little purpose, and is needlessly disruptive, to open the sponsor's original, defining policy judgements to technical challenges, except perhaps in a truly extraordinary case where the presence of a particular element in a Bill is irrational or inexplicable.
5. It is worth recalling that elements vastly more disparate than those contained in this Bill have usefully been put forward as a single item of legislation in the past. For example, the Law Reform (Miscellaneous Provisions and Minor Amendments) Bill 1996 covered no fewer than 12 entirely unrelated subjects, which ranged from the taxation of foreign lawyers' bills through the guardianship of minors, the registration

2737



of dentists, proceedings for the restitution of conjugal rights, and the equal status of the Chinese and English languages. (Hong Kong Government Gazette, 22 November 1996, page C2693.)

6. A Member (or public officer) in charge of a bill should therefore be accorded a wide margin of discretion in a ruling of this type: any clause originally put forward as part of a bill should enjoy a strong presumption of propriety.

7. This particular ruling concerns clause 103 of the Bill, which amends the Hong Kong Bill of Rights Ordinance (Cap. 383, "the BORO"). All that need be said for present purposes about the effect of clause 103 is that it removes an undesirable anomaly in the way the BORO repeals prior, inconsistent legislation. As such, clause 103 bears an integral relation to the rest of the Bill, for the following reasons.

8. First, the Bill as a whole is directly related to the BORO. The purpose of the BORO is to incorporate the International Covenant on Civil and Political Rights, as applied to Hong Kong, into the law of Hong Kong. (BORO s. 2(3), long title.) To fulfil that purpose, the BORO as originally put forward applied to the private sector as well as to Government and public authorities. Upon enactment, however, its original application to the private sector was deleted on the understanding that, in relation to the private sector, certain matters such as equal opportunity rights would be better addressed by detailed, future legislation. In the absence of any Government legislation to implement this understanding, private member's legislation (the Hon. Anna Wu's Equal Opportunities Bill) was put forward to do so in 1994. This Bill descends from the 1994 private member's legislation, and is still intended as a step towards the fulfilment of the original BORO project.

9. The Bill's connection to the BORO is clearly indicated by the Bill itself. One of the Bill's stated objects is "to give effect to obligations applicable to Hong Kong under international treaties to take appropriate steps, including legislative measures, to eliminate discrimination, in particular obligations under the International Covenant on Civil and Political Rights ..., as applied to Hong Kong." (Bill, s. 2(d).) The Bill's explanatory memorandum reiterates in its first paragraph that "[t]he Bill is also intended to give effect to a variety of international obligations pertaining to discrimination that are applicable to Hong Kong."

10. Because of the close relation between the BORO and the Bill, it is both expected and intended that parallel claims of unlawful discrimination may often arise under both laws, e.g. where the government or a public authority is the author of the discrimination. In particular, where discriminatory legislation is concerned, the availability of parallel claims under the BORO is integral to the Bill's own enforcement scheme.

11. Unlike the earlier private member's bills on which the Bill is based, this Bill does not expressly repeal prior, inconsistent legislation. This is one of only a few

respects in which the Bill differs from the earlier private member's bills. (See clause 8, headed "Effect of Ordinance on legislation and common law," in the 1994 Equal Opportunities Bill and in the 1995 Equal Opportunities (Family Responsibility, Sexuality and Age) Bill — no similar clause is contained in the captioned Bill.) Recalling discussion of the earlier bills in the Legislative Council last term, it was considered that an express repeal clause in the Bill would raise difficult technical questions, e.g. as to the date from which a resulting repeal would take effect. Where repeal by the BORO is concerned, however, such technical questions have already been worked out by the courts over a period of years. It was therefore decided to rely solely on the familiar mechanism of the BORO to repeal pre-existing discriminatory legislation, rather than to create a new, parallel mechanism for that purpose in the Bill. In other words, full enforcement of the rights created in the Bill partly depends, by design, on section 3 of the BORO.

12. It therefore cannot be said, in the words of the Royal Instructions, that clause 103 and the other elements of the Bill "have no proper relation to each other." On the contrary, clause 103 is integral to the Bill's overall enforcement scheme. Moreover, clause 103 is far from being "foreign" to the Bill's long title. On the contrary, by improving the mechanism for challenging discriminatory legislation, clause 103 directly serves the purposes set out in the Bill's long title, namely "to promote equality of opportunity in Hong Kong and to provide remedies in respect of discrimination on the grounds of family responsibility and family status," etc.

13. The amendment made by clause 103 will also, of course, affect BORO cases that concern issues other than the discrimination prohibited in the rest of the Bill. It may therefore be asserted that the clause's effect goes beyond other elements in the Bill and its long title. That assertion, however, is not the same as saying that clause 103 and the Bill's other elements "have no proper relation to each other," nor is it the same as saying that clause 103 is "foreign" to the Bill's long title. In other words, such an assertion does not engage Clause XXV(3) of the Royal Instructions, and should not bar the clause from being enacted as part of the Bill as originally intended by the Member in charge. At most, there may be an argument for adding an express reference to clause 103 into the Bill's long title at committee stage.

Yours sincerely,

Adam C. Mayes
Legislative Assistant

一部份：平等機會（家庭責任、性傾向及年齡）條例草案

我們支持消除各種形式的歧視，但我們認為制定（平等機會〈家庭責任、性傾向及年齡〉條例草案）並不恰當，因為：

- (一) 根據本草案，任何人士的家庭責任或家庭崗位，涵蓋了同居和未婚同居配偶的家庭責任或家庭崗位。對於法律上承認同居及未婚配偶的地位，我們強烈反對。家庭是構成社會的單元，近年二奶問題已令香港很多家庭解體，在法律上承認同居配偶，實在火上加油，必使社會問題更嚴重。
- (二) 在性傾向方面，我們反對立法消除歧視，但贊成採取行政措施，例如推行公民教育，宣傳平等機會的原則，力求消除一般人士對有某種性傾向的少數人士的誤解，使更多人接受他們也應獲得平等機會的權利。
- (三) 在年齡歧視方面，我們認為當局應更加小心研究，因為：
 1. 政府在95年7月頒佈性別歧視及殘疾歧視條例，及96年5月平等機會委員會成立以來，香港僱主才開始注意在招聘、僱用、提升及訓練員工時可能觸犯歧視條例。在現階段立法管制年齡歧視，我們認為實在太急進。
 2. 香港的工商業競爭激烈，一般僱主要求員工有出色的表現；但與其他已發展的國家相比，香港一般規模較小的機構並無一套完善的職位評審標準，現在立法禁止年齡歧視，對員工條例可能複雜難明。
 3. 我們並不反對立法管制年齡歧視，但要視乎社會對立法消除這種歧視的承受力，避免揠苗助長，防礙了香港發展歧視及人權法案的進程。

沙田婦女會

97年3月27日



新界鄉議局 HEUNG YEE KUK NEW TERRITORIES

九龍塘金巴倫道四十七號
47, Cumberland Road, Kowloon Tong,
Kowloon, Hong Kong.
Tel: 3361151-2, 3388818, 3368659

檔案編號：廿九／四／〇五四九號
日期：一九九七年四月一日

九六注別及殘疾歧視（雜項規定）條例草案意見書（更正本）

敬啟者：

蒙邀出席 貴局於四月一日召開之《九六注別及殘疾歧視（雜項規定）條例草案》委員會會議，謝甚。本局對該條例之意見如下：

（一）小型屋宇政策的歷史背景：

- (a) 新界在尚未租借予英國，亦即一八九八年之前，新界原居民所擁有的土地既沒有使用年期的限制，村民亦有權在其土地上建屋居住，無須先向當時政府申請批准。
- (b) 英政府於一八九八年租借新界，到一九〇〇年，香港政府制訂新界（土地法庭）條例，規定並宣告在一八九八年六月九日條約所定程期內，新界一切土地均屬政府產業。至一九〇五年，政府單方面制訂「集體官批」把村民原有的土地批租給原有業主，為期七十五年，又加二十四年。「集體官批」條文對土地用途卻加以限制，規定凡在土地上進行建築，必須先向政府申請許可。實際上，新界居民過去“自由建屋居住的權利”已遭剝奪。
- (c) 雖然「集體官批」規定建屋必須先獲政府批准，但由一九〇五年至六十年代中期，新界居民無論是否原居民，很容易亦很快捷可取得政府建屋的批准，惟到六十年代中期以後，向政府取得建屋的批准越來越困難，鑑於居住問題無法解決，新界鄉民強烈不滿，新界鄉議局遂向政府提出交涉，經磋商後，政府鑑於鄉民有實際需要，而且，市區居民有「居屋政策」照顧，而村民是不能按「居屋政策」而申請居屋的，結果政府於一九七二年制訂「小型



新界鄉議局 HEUNG YEE KUK NEW TERRITORIES

九龍塘金巴倫道四十七號
47, Cumberland Road, Kowloon Tong,
Kowloon, Hong Kong.

Tel: 3361151-2, 3388818, 3368659

屋宇政策」。在此政策下，年滿十八歲的男性原居民可一生人一次申請建一間小型村屋，而且屋宇落成後，倘若轉讓，需要補地價給政府。因此，在該政策下原居民興建丁屋的權利是被政府將其原有自由建屋權利剝奪後剩餘下來的權利而已。

(二) 小型屋宇政策與性別歧視無關

本局認為小型屋宇政策的目的是有助舒緩鄉郊地區居住的逼切需要，有關的措施大體上關注到鄉民的生活習慣及一向以來鄉民在自己家鄉有建屋居住的權利。雖然外間有些人不時針對該政策而大做文章，批評該政策是歧視女性，但究其實，根據此項政策，年滿十八歲的男性原居民可以「一生人一次」申請興建一間小型屋宇並非建基於性別歧視，而是基於鄉民的生活習慣和實際需要。按鄉村的一貫傳統是成長女性嫁予外姓夫君後，便「嫁雞隨雞」離開本村。因此，女性們並無因建立家庭而有房屋的需求。反之，男性鄉民在這方面卻有實際需要；從這個角度看，男性鄉民是作為一個家庭的代表去申請建屋，因此，這項政策與性別歧視是扯不上關係的。

(三) 基本法第四十條列明：「新界原居民的合法傳統權益受香港特別行政區的保護」

新界男性原居民「一生人一次」可建一間丁屋的權利是新界原居民最重要的合法傳統權益，是毫無疑問的受到基本法第四十條保護，任何法例將原居民興建丁屋的權利取消必然抵觸基本法第四十條，即使貿然獲立法局通過，將來亦必會由特區政府按照基本法的規定修改或停止生效。



新 界 鄉 議 局

HEUNG YEE KUK NEW TERRITORIES

九龍塘金巴倫道四十七號
47, Cumberland Road, Kowloon Tong,
Kowloon, Hong Kong.
Tel: 3361151-2, 3388818, 3368659

(四) 香港政府於一九九五年提出的《注別歧視條例草案》

在此條例草案中第六十二條，政府把小型屋宇政策豁免，不受注別歧視的限制。梁智鴻議員卻提出修訂，動議取消小型屋宇政策的豁免，後經本局主席劉皇發先生指出，該政策與注別歧視無關，經議員激烈辯論後，梁智鴻的修訂動議便以三十三票對二十四票被否決。結果「小型屋宇政策」仍獲豁免，不受注別歧視的限制。

(五) 一九九六年性別及殘疾歧視（雜項規定）條例草案

「注別歧視條例」於一九九五年六月二十八日通過後，只不過是一年光景，陸恭蕙議員又於一九九六年七月五日提出此「注別殘疾歧視（雜項規定）條例草案」，其中第十二條的條文企圖把「小型屋宇政策」終止豁免，目的是取消該政策，將原居民的建丁屋權利完全剝奪。這是不明白及不理解制訂小型屋宇政策的歷史及背景，亦無視小型屋宇政策是有助舒緩新界地區對房屋的迫切需求，而作出不負責的動議。

(六) 丁屋申請個案嚴重積壓

本局知悉目前申請興建「小型屋宇」的個案已經積壓至超過一萬宗，若根據目前地政署處理申請的進度，每年可獲處理的申請只約一千宗，但「性別及殘疾歧視（雜項規定）條例草案」並未對取消小型屋宇政策後，應如何妥善處理該萬多宗申請及應如何解決鄉郊地區房屋迫切需求的難題作出任何建議。在未有任何詳及妥善的辦法解決這些難題之下而貿然提出終止豁免「小型屋宇政策」，可說是不顧現實及不負責任的行為。



新 界 鄉 議 局
HEUNG YEE KUK NEW TERRITORIES

九龍塘金巴倫道四十七號
47, Cumberland Road, Kowloon Tong,
Kowloon, Hong Kong.
Tel: 3361151-2, 3388818, 3368659

(七) 總結

基於上述實際情況，「小型屋宇政策」明顯的不但是與性別歧視無關而是有助解決一部份鄉郊地區逼切的房屋需求。政府是有責任改善民生，立法局議員亦有義務敦促政府推行改善民生的政策。因此本局懇請立法局各議員否決該「性別殘疾歧視（雜項規定）條例草案」有關將「小型屋宇政策」終止豁免的動議，本局更要求各議員敦促政府將嚴重積壓的興建丁屋的申請加速處理，使民生得以改善。

此 致
《九六性別及殘疾歧視（雜項規定）條例草案》委員會主席
梁智鴻先生
暨
立法局全體議員

新界鄉議局主席：劉皇發
副主席：林偉強
藍國賢



基本法透視

李昌道 龔曉航 著

今日香港系列



李呂運，上海復旦大學法學系主任、
教授，比較法研究室、香港法研究中心主
任。上海市政協委員。上海法學會理事、
上海海峽兩岸法律研究會副會長、全國外
國法制史研究會理事。

1987-1990年在香港參加《基本法》
起草工作，已發表論著《美國憲法史
稿》、《香港法制漫談》、《中美憲法比
較》、《美國總統彈劾制研究》等。



國曉航，華東政法學院香港法研究室
主任，法學碩士。中國法學會、中國國際
法學會及上海法學會會員。

1987-1990年在香港參加《基本法》
起草工作，已發表論著《地方政府的比
較研究》、《中央集權與地方分權》、
《新科技革命與憲法》、《美國司法審
查制度述議》等。

新界原居民合法傳統權益問題

基本法草委第二次全體會議通過了基本法結構，在香港居民的基本權利和義務一章內規定：“新界原居民的合法傳統權益受香港特別行政區的保護。”其後，在《徵求意見稿》、《基本法（草案）》中都有此條款。新界原居民問題是一個歷史遺留下來的複雜問題，如何適宜處理，爭議頗多。現將何謂新界原居民、現存的合法傳統權益有那些、基本法的有關規定作一簡述。

（一）何謂新界原居民

英國由一八九八年七月一日起根據《中英拓展界址專條》租借新界，為期九十九年，根據租約的規定，當時新界居民的土地擁有權及使用權得到特別保障，這規定一直保留至今。所以其父系在一八九八年為香港新界鄉村居民的人士，他們在土地擁有和使用上所享有的一些權益，是其他香港居民沒有的。這裏所指的新界，便是上述專條裏規定的界限街以北至深圳河以南及各大小離島，但日前香港地方行政的劃分，未有將獅子山以南至界限街一帶列作新界，雖然該地亦存有原有鄉村及原居民。

據查資料，所謂原居民的名稱，來源於一九七二年行政局有關小型屋宇的政策文件，它把一八九八年七月一日居住於新界鄉村的男性及其後裔稱為原居民，自此，原居民名稱被合法引用。《聯合聲明》附件三《關於土地契約》中也有規定，指出：“至於舊批約地段、鄉村屋地、丁屋地和類似的農村土地，如該土地在一九八四年六月三十日的承租人，或在該日以後批出的丁屋地的承租人，其父系為一八九八年在香港的原有鄉村居民，只要該土地的承

租人仍為該人或其合法父系繼承人，租金將維持不變。”一九八八年一月二十一日，立法局三讀通過的《一九八七年新界土地契約（續期）條例》第九條，對原居民界定為：指一八九八年居住於新界原有鄉村的村民或其男性後裔，他們都有權享有在一九九七年土地期滿後，自動續期五十年，毋須另行補地價。概括地說，新界原居民是其父系為一八九八年在新的原有鄉村居民。

（二）合法傳統權益的範圍

第一，收地賠償：清政府與英國簽署《中英拓展界址專條》註明：新租之地，以九十九年為限期；在展拓界內，不可將居民迫令遷移，產業入官，若因修建衙署，築用炮台等官工需用地段，皆應從公給價。一九〇〇年，香港政府制定《田土法庭條例》，把上述租期內土地的用途作出限制。一九〇五年港府正式對政府認為擁有新界土地的人發出“官批”文件，“官批”即土地的官方契約，而這個契約的假定是建立在一個政府限制土地用途的法律基礎之上。然而，這個法律基礎卻是引起新界土地官民紛爭的源頭。自此，新界土地持有官批契約的人士，只可以把其擁有租借權或使用權的土地，用作契約內列明的指定用途，其他用途須獲得政府批准。

由於一九〇五年政府批出“官批”時，已列明當時新界土地的實際用途，因此，日後當政府收回新界居民私家地作公共用途時，徵收費用的賠償辦法便引起爭論。另一方面，新界居民亦由於原本擁有的土地發展的權力受到限制，例如，他們絕不可以把“官批”中的農

地、荒地作屋宇發展，除非獲政府批准，這又涉及向政府補地價的利益問題。因此，無論政府要收地發展或新界原居民更改土地用途，都涉及補償的利益衝突，而其中的主要問題是收地的賠償問題。七十年代後，港府為了解決港九市區居民的居住問題，大量徵收新界土地，發展工業村、公共屋邨及居者有其屋等計劃，令新界村民拆拆搬村，當局便制定了新界原居民搬村的補償政策。賠償辦法包括現金賠償及發出換地證作為以後投標新界土地之用。

第二，興建丁屋：丁屋政策是一九七二年，新界民政署長與鄉議局協議達成的新界居民居住環境改善的建屋政策，正式名稱為“新界小型屋宇政策”。該政策只提供予超過十八歲的男性原居民，並必須是屬於一八九八年一個認可村落居民的男系後代，方可向政府有關部門申請在其村內為自己興建一所指定面積和高度的小型屋宇，他在一生中只可獲一次特別許可。這些因該政策而興建的小型村屋俗稱“丁屋”。

小型屋宇政策的制定基於兩項條件：一是新界原居民在本身擁有業權的土地上興建居所的權利問題；因為根據一九〇〇年條例，所有新界土地已經為政府所擁有，原來擁有土地業權的原土地業主便只獲“官批”的契約，而這些契約是限制了土地的用途。因此，在農地上或在屋地上興建或改建屋宇便需要獲得政府的批准。所以，小型屋宇政策不過是把原居民申請興建的準則，作規律化審核。二是麥理浩港督十年建屋計劃在新界的影響；十年建屋計劃為了解決本港居民一直困擾的居住問題，但對新界原居民環境的改善無明顯的妥善解決，該政策很可能是爭議之中的一種協調措施。

丁屋的申請可分兩類，第一類是在私有業權的私家地上興建，如果在完工紙發出日計五年內不轉讓的話，是不須向政府補地價的，第二類是官地上申請興建丁屋，轉讓時必須向政府補地價。政府認為丁屋的興建是為了改善原居民的居住環境，因此，對於原居民把丁屋轉讓牟利及丁屋出租，便認為是違反了丁屋政策的精神。

第三，鄉議局的法律地位：新界鄉議局於一九二六年成立，一九五九年香港政府制定香港條例第一〇九七章《鄉議局條例》，作為政府諮詢新界居民的法定組織。它的歷史和地位的確證，是從新界原居民與港府有關土地問題的紛爭中發展出來的，可以說是反映新界原居民經濟利益的政治代表組織。

一九二二年，港府修改香港條例第二四章《收回官地條例》，就有關收地補償問題引起新界居民不滿，這促成了新界居民通過組織與官方交涉的需要性。新界鄉議局的前身——農工商業研究總會，就是由於護產的需要，由新界各鄉村鄉紳組成，於一九二三年成立。由於一九二四至一九二五年間，中國內地農會紛紛成立，為了避免與內地農會雷同的政治形象，當時港督金文泰特別為該會改名為新界鄉議局。至一九五九年，港府通過條例，規定鄉議局的組織及選舉辦法，承認它為新界民意諮詢制度的最高層結構。由此可見，鄉議局的法定地位可以說是政府控制或安撫的一種手段，使新界問題不會成為香港社會動亂的一根導火線，相對來說，它同時又是新界社會的重要穩定力量。一九六七年的騷動中，鄉議局清晰的向港府表明了它的忠誠，而被當時新界民政署長稱為維持穩定與秩序的一個重要因素。

七十年代中期以來，隨著新界新市鎮的發展，市區人口的遷移，新界原居民在新市鎮中逐漸由人口的主流成為少數。面對這個新的人口結構，港府要面對的是在政治架構上讓新居民有發言的權利。一九七七年在新界首先設立地區諮詢委員會，這是新界鄉議局以外的另一個政府諮詢機構，及至一九八一年區議會成立，一九八五年新界區域市政局設立，這些都直接打擊鄉議局作為代表新界所有居民的代表性地位，其傳統地位受到動搖。

第四，豁免差餉：根據香港政府於一九七三年制定的香港條例第一一六章《差餉條例》，規定凡鄉村發展區範圍內的鄉村屋宇及鄉村發展範圍外的自住鄉村屋宇，可獲豁免差餉。同時對新界的村公所、鄉事委員會會所及祠堂、廟宇也一律予以豁免差餉。其他屋宇優惠權的細節，有：一、二層高的鄉村屋，可以改建為三層，毋須補繳地價，只須繳交行政費用，豁免差餉；在村莊範圍內的官地，可針對申請人的實際情況需要，以低廉地價批予申請人，興建鄉村屋；居住人口擠迫的村莊，可針對實際情況需要，將村莊範圍擴展。

第五，遺產繼承：新界原居民的遺產一向是依循傳統習俗由男丁繼承，一九一〇年訂立的《新界條例》亦訂明凡處理屋宇及土地條件，地方法院及最高法院有權承認及執行中國習俗及傳統權利，即在無遺囑的情形下，遺產的繼承權是屬男丁所有。該條例亦規定新界“家族”、“堂”及“祖”等名下的物業是由司理人管理。而按照傳統習俗，凡家族、堂、祖業名下的物業，只有男丁才有享受權。

第六，安葬權利：政府免費批地予新界原居民安葬死者的墓地可算是一種有形的權益。新界租約於一八九八年開始以來，政府一向尊重新界原居民及其家屬安葬於其村落附近山邊的傳統習俗，並在清拆此等山墳時付給特惠津貼。山墳地不受年期限制，土葬或火葬，任由選擇。漁民安葬在山墳的權利，同樣獲得承認。新界原居民可向各區政務處領取安葬許可書，將其去世的家屬安葬於鄉村附近山邊，而毋須在公眾墳場安葬。

第七，習俗文物：在生活習俗及文物保護方面，有下列幾項：一為尊重地方傳統習俗，廟宇、神壇、教堂、道觀、保留原有狀態；醮會、神誕，照常舉行。二為廟產，祖業、慈善機構、教育機構、社會團體財產物產，只須辦理登記手續，仍由原來機構管理。三為傳統性的組織，與原居民有關者，如鄉議局、鄉事委員會、村公所等，給予保留。四為新界邊境兩方居民，保留在習慣上可以在指定關口依照規定時間來往的優待辦法。

（三）基本法的有關規定

《徵求意見稿》頒佈後，香港不少人士對上述條款有意見，他們認為新界原居民的傳統權益，受到基本法明確規定保護，在法理基礎看，固然不合理，從邁向一個平等、文明現代社會角度分析，也受到質疑。主要的理由為：

第一，新界原居民所享有的權利顯然屬於特權，對其他人來說是不合理的，將此等權益保留，與香港居民在法律面前一律平等的原則矛盾。

第二，傳統權益富殖民地色彩，應逐步消除，不應於一九九七年後予以保留。

第三，保存這些傳統權益會妨礙社會進步，它們已不合時宜。

第四，只有男性新界原居民可享有傳統權益，這是歧視婦女的表現。

草委根據各方建議，反覆研究後，仍保留上述條款，其主要理由為：

第一，符合《聯合聲明》。在中英談判時，在土地問題上寫上一條有關保護新界原居民的權利，其中包括將來不增加租金、建丁屋的權利等，因此，將保護新界原居民的合法傳統權益列入基本法，完全符合《聯合聲明》。

第二，保持原有制度不變。基本法要盡量保持九七年後原有制度不變，而新界原居民的權利也不宜變，因為現行香港法律亦包括了他們的權利。

第三，宜照顧少數人利益。從法理的角度看，既要包括一般利益，也要包括少數人利益，這並不矛盾。內地也會照顧少數民族的利益，使他們得到自治，這有利少數民族及人民之間的團結，而新界原居民的問題是歷史遺留下來的問題，保障他們的權利是有利於香港居民的團結。

第四，傳統權益不是特權。為尊重歷史的淵源，在一九九七年後新界原居民的概念應予以保留，他們享有的合法傳統權益不是特權，是傳統習俗，亦有利於穩定海外新界原居民對香港的信心，減輕他們的心理負擔。至於婦女界提出反對，認為丁屋是保護男性的權利，這是可以理解的，但如要改變，亦須有一個逐步漸變的過程，不能立即加以變化。

摘錄自李昌迪從院航編著基本法透視

敬啓者：

議員條例草案
〈 1997 香港人權法案(修訂)條例〉

本人擬向立法局提交上述名稱之議員條例草案，現隨函附上該條例草案的中英文草擬文本，煩請 貴署人員提供法律草擬方面的意見。並希望能早日獲得 閣下發出的證書，以便把條例草案提交立法局。

閣下如有任何問題或進展，煩致電 25372444 或 72339797 與本人助理張月鳳聯絡，或傳真至 23685895。謹謝！

此致
律政署法律草擬專員
嚴元浩先生

劉千石 謹啓
(張月鳳代行)

一九九七年四月三日

本條例草案 旨在

修訂《香港人權法案條例》

由香港總督參照立法局意見並得該局同意制定。

1. 簡稱

本條例可引稱為《1997年香港人權法案(修訂)條例》。

2. 對先前法例產生的影響

《香港人權法案條例》(第383章)第3條現予修訂, 加入—

“(3) 現宣布立法機關的意圖為本條例的條文(包含其所載的保證)對所有法適用, 不論該法例影響政府、公共主管當局及私人間的法律關係, 或不不論該法例只影響私人間的關係。

(4) 為免生疑問, 第(3)款自《1997年香港人權法案(修訂)條例》(1997年第 號)生效當日起實施。”

摘要說明

本條例草案的主要目的在於修訂《香港人權法案》(第383章)•據上訴法院(在 Tam Hing-Yee v Wu Tai-wai (1991)1HKPLR261, [1992] 1HKLP(85) 的解釋, 若政府依賴此《香港人權法案條例》抵觸的先前法例, 則該法例由《香港人權法案條例》撤銷, 但若同一法例由一般市民所依賴, 則該法例仍然生效。草案第二條藉對《香港人權法案條例》作出修訂消除此不合常規的情況, 使其適用於所有法例而不單只適用於政府或公共主管當局所引用的法例。

本條例草案 旨在

修訂《香港人權法案條例》

由香港總督參照立法局意見並得該局同意制定。

1. 簡稱

本條例可引稱為《1997年香港人權法案(修訂)條例》。

2. 對先前法例產生的影響

《香港人權法案條例》(第383章)第3條現予修訂,加入—

“(3) 現宣布立法機關的意圖為本條例的條文(包含其所載的保證)對所有法適用,不論該法例影響政府、公共主管當局及私人間的法律關係,或不論該法例只影響私人間的關係。

(4) 為免生疑問,第(3)款自《1997年香港人權法案(修訂)條例》(1997年第 號)生效當日起實施。”。

摘要說明

本條例草案的主要目的在於修訂《香港人權法案》(第383章)。¹據上訴法院(在 Tam Hing-Yee v Wu Tai-wai (1991)1HKPLR261, [1992] 1HKLP(85) 的解釋,若政府依賴此《香港人權法案條例》抵觸的先前法例,則該法例由《香港人權法案條例》撤銷,但若同一法例由一般市民所依賴,則該法例仍然生效。草案第二條藉對《香港人權法案條例》作出修訂消除此不合常規的情況,使其適用於所有法例而不單只適用於政府或公共主管當局所引用的法例。

A BILL

To

Amend the Hong Kong Bill of Rights Ordinance.

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 Hong Kong Bill of Rights (Amendment) Ordinance 1997.

2. Effect on pre-existing legislation

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

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

(4) For the avoidance of doubt, subsection (3) shall come into operation upon commencement of the Hong Kong Bill of Rights (Amendment) Ordinance 1997 (of 1997).”.

Explanatory Memorandum

The purpose of this Bill is to amend the Hong Kong Bill of Rights Ordinance (Cap. 383). As interpreted by the Court of Appeal (in *Tam Hing-ye v Wu Tai-wai* (1991) 1 HKPLR 261, [1992] 1 HKLR 185), the Hong Kong Bill of Rights Ordinance repeals inconsistent pre-existing legislation when that legislation is relied upon by the Government, but the same legislation nonetheless remains in force when relied upon by private citizens. Clause 2 of this Bill removes this 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.

Application of the Convention to Hong Kong

2755

In October 1996, the Government of the United Kingdom extended the Convention on the Elimination of All Forms of Discrimination against Women (the Convention) to Hong Kong with the following reservations and declarations:

"GENERAL.

(a) The United Kingdom on behalf of Hong Kong understands the main purpose of the Convention, in the light of the definition contained in Article 1, to be the reduction, in accordance with its terms, of discrimination against women, and does not therefore regard the Convention as imposing any requirement to repeal or modify any existing laws, regulations, customs or practices which provide for women to be treated more favourably than men, whether temporarily or in the longer term. Undertakings by the United Kingdom on behalf of Hong Kong under Article 4, paragraph 1, and other provisions of the Convention are to be construed accordingly.

(b) The right to continue to apply such immigration legislation governing entry into, stay in and departure from Hong Kong as may be deemed necessary from time to time is reserved by the United Kingdom on behalf of Hong Kong. Accordingly, acceptance of Article 15(4), and of the other provisions of the Convention, is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of Hong Kong to enter and remain in Hong Kong.

一九九六年一月，聯合王國政府將《消除對婦女一切形式歧視公約》伸延至香港，並作出以下的保留和聲明。

一般保留

- (a) 鑑於公約第 1 條所載的定義，聯合王國代表香港將公約的主要目的理解為根據公約規定減少對婦女的歧視，因而不將公約視為規定必須廢除或修改任何向婦女暫時或長遠地提供較男子更住待遇的現有法律、規例、風俗或習慣；在詮釋聯合王國代表香港根據公約第四條第 1 款及其他條文所作的承擔時，須以此為依據。
- (b) 聯合王國代表香港保留權利，不時按其需要，繼續實施有關管制進入香港，是留於香港及離開香港的出入境法例。因此，對公約第 1 條第 4 款及其他條文的接受，須受任何上述法例關於當時在香港法例下無權進入香港及有該地停留的人上的規定所限制。
- (c) 鑑於第一條所載的定義，聯合王國將其公約批准伸延至香港，但其在於公約下在香港的義務，概不得當作伸延適用於宗教派別或宗教組織的事務。
- (d) 適用於新界，使男性原居民得以行使某些有關財產的權利，以及就原居民或其合法繼承人所有土地或財產提供租金優惠規定的法律，將繼續適用。

特別保留

第九條

自一九八三年一月起生效的（一九八一年英國國籍法）所載的原則不容許在婦女取得、改變或保留國籍方面，或在其子女的問題方面，出現第一條所指的任何對婦女的歧視。然而，聯合王國代表香港接受第九條的規定，不得被視為把某些臨時或過渡性的條文廢除效力，它們在上述日期後繼續有效。

第十一條

聯合王國代表香港保留權利，實施所有關於退休金、遺囑福利，以及其他與去世或退休（包括因裁員而退休）有關福利有關的所有香港法例和規例，而不論其該等退休金、遺囑福利或其他福利是否源於社會保障計劃。

本保留同樣適用於日後制訂以修改或代替上述法例或長條計劃規則的任何法例，惟該等法例的規定必須與聯合王國在公約下就香港所承擔的義務並無抵觸。

聯合王國代表香港保留權利，以任何行政裁量的方式，規定為適用第十一條第 2 款而須滿足的服務期。

第十五條

就第十五條第 3 款而言，據代表香港的聯合王國所理解，此規定的用意只在於將合同或其他私人文書中具有所載歧視性質的條款或成分視為無效，而不一定要將合同或文書的整個視為無效。

**Ruling of the President on whether the
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill
and the Equal Opportunities (Race) Bill
Offend clause XXV(3) of the Royal Instructions**

DOCUMENT

The Hon LAU Chun-shek introduced the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill (EO (FR, S&A) B) into the Legislative Council on 10 July 1996.

2. The Hon Elizabeth WONG introduced the Equal Opportunities (Race) Bill (EO (R) B) into the Council also on 10 July 1996.

3. Both bills are being studied by a Bills Committee which started work on 15 January 1997.

4. The Administration wrote to me on 17 March 1997 alleging that the above two bills might offend clause XXV(3) of the Royal Instructions which reads as follows .

“Each different matter shall be provided for by a different Ordinance, without intermixing in one and the same Ordinance such things as have no proper relation to each other, and no clause is to be inserted in or annexed to any Ordinance which shall be foreign to what the title of such Ordinance imports, and no perpetual clause shall be part of any temporary Ordinance ”

5. The Administration says that the long title of the EO (FR, S&A) B is to “promote equality of opportunity in Hong Kong and to provide remedies in respect of discrimination on the grounds of family responsibility or family status, sexuality, or age, or involving harassment on the ground of sexuality”; whereas the long title of the EO (R) B is to “promote equality of opportunities in Hong Kong and to provide remedies in respect of discrimination on the grounds of race, colour, nationality, national or ethnic origin, or involving racial harassment” .

6. Both clause 103 of Mr LAU’s EO (FR, S&A) B and clause 55 of Mrs WONG’s EO (R) B, which incidentally are identical, seek to amend section 3 of the Hong Kong Bill of Rights Ordinance (Cap 383) (BORO) by adding to it a subsection declaring that the intention of the legislature is to apply the BORO to all legislation whether that legislation affects legal relations between the Government, public authorities and private persons, or whether it affects only relations between private persons.

7. The Administration considers it evident from a reading of the long titles of the two bills that the two clauses in question are clearly foreign to what the titles of their respective Ordinances import and therefore takes the view that the amendment to the BORO is outside the ambit of the two bills.

8. In addition, of all the 103 clauses in Mr LAU’s bill, 102 clauses will become a new, free-standing Ordinance with a novel subject

matter. Only one clause, clause 103, the very last one, amends an existing Ordinance. That clause is not made necessary by anything in the rest of Mr LAU's bill. It is not consequential at all, but simply tacked on to the bill in order to effect a separate legislative purpose, namely, to amend an existing Ordinance for a purpose totally unconnected with the rest of the bill. The same argument applies to Mrs WONG's bill in that only the last clause, clause 55, amends an existing Ordinance and that clause is unnecessary and not consequential at all.

9. I have invited the views of the Members-in-charge of the above two bills on the Administration's objection and their response is as follows :

- (a) Bills each containing more than 10 entirely unrelated subjects, such as the Law Reform (Miscellaneous Provisions and Minor Amendments) Bill, have been introduced into the Council before;
- (b) One of the stated objects of the EO (FR, S&A) B and the EO (R) B is "to give effect to obligations applicable to Hong Kong under international treaties to take appropriate steps, including legislative measures, to eliminate discrimination, in particular obligations under the International Covenant on Civil and Political Rights, as applied to Hong Kong". This clearly indicates the bills' connection to the BORO. Because of the close connection between the BORO and the two bills, parallel claims of unlawful discrimination may often arise under both laws; and

- (c) The said clause, clause 103 of the EO (FR, S&A) B and clause 55 in the case of EO (R) B, is integral to the bill overall performance scheme. By improving the mechanism for challenging discriminatory legislation, the said clause in either case directly serves the purposes set out in the bill long titles

10. I have examined the arguments from the two sides and come to the view that clause 103 of the EO (FR, S&A) B is not properly related to the rest of the bill; neither is clause 55 of the EO (R) properly related to the rest of the bill.

11. I am of the opinion that although both bills are related to human rights protection, they should be regarded as 'specific' legislation under the overall umbrella of human rights legislation. Whereas the bills are comprehensive legislative schemes for specific areas of human rights protection, the two clauses mentioned above seek to make clear the legislative intent of the BORO in relation to its effect on legislation enacted before the commencement of the BORO, which is clearly a different subject matter. I therefore rule that the EO (FR, S&A) B intermix two separate subjects which have no PROPER relation to each other, so does the EO (R) B.

12. As regards the contention that bills containing entirely unrelated subjects have been introduced into the Council, I regard such bills as 'omnibus' bills seeking to effect a number of amendments to different ordinances. Neither the EO (FR, S&A) B nor the EO (R) B can be 'classified' as 'omnibus' bills

13 Despite my ruling that the two bills offend clause XXV(3) of the Royal Instructions through the inclusion in the bills of the two clauses mentioned above, I am reluctant to order that the two bills not be proceeded with at this late stage, both bills having been referred to the House Committee which has decided to appoint a Bills Committee to scrutinise them. I will therefore allow the two bills to continue to be scrutinised. If the two bills received second reading in Council and were committed to the committee of the whole Council, I would direct the Clerk during committee stage to call the numbers of only clause 1 to clause 102 in the EO (FR, S&A) B and only clause 1 to clause 54 of the EO (R) B. As the numbers of clause 103 of the EO (FR, S&A) B and clause 55 of the EO (R) B are not to be called, though the two clauses are regarded as having been dealt with, they will not stand part of the two respective bills. If the two bills received third reading, they would be passed without the two clauses and the resultant ordinances would not offend clause XXV(3) of the Royal Instructions.

Andrew WONG
President

Legislative Council Secretariat
8 April 1997

LEGISLATIVE COUNCIL BRIEF
FAMILY STATUS DISCRIMINATION BILL

INTRODUCTION

At the meeting of the Executive Council on 8 April 1997, the Council ADVISED and the Governor ORDERED that the Family Status Discrimination Bill (the Bill) should be introduced into the Legislative Council.

BACKGROUND

2. The Government issued a consultative document on the study of discrimination on the ground of family status in early 1996. Taking into account the opinions received in the public consultation exercise, the Government proposed in June 1996 to legislate against discrimination on the ground of family status. Shortly later, a Legislative Council Member introduced a Members' Bill which covered the same subject. After studying the Members' Bill and discussing with the Member concerned, the Government found that the definition of "family status" therein differed widely from the opinions obtained in the public consultation exercise. Besides, the Members' Bill contained some clauses which, if enacted, would cause difficulties. The Government therefore started the drafting of the Bill in late 1996 and in view of its complexity, it is not ready for introduction into the Legislative Council earlier than 23 April 1997.

Scope

3. In view of the overwhelming support for legislation, but given the strong public objections to legal recognition for the "de-facto spouse relationship" as a form of family status, the Government proposes to define family status as the status of having responsibility for the care of an

immediate family member. An immediate family member must be related to the person concerned by blood, marriage, adoption or affinity. This proposed definition will cover, inter alia, relationships between husband and wife, parent and child as well as near relatives. The proposal is modelled on the Sex Discrimination Ordinance (SDO) which renders unlawful discrimination in the areas of employment, education, disposal and management of premises, provisions of goods, facilities and services, eligibility to vote for and be elected or appointed to advisory bodies, activities of clubs and Government activities.

Exceptions

4. Apart from those exceptions provided for in the SDO which are also relevant to discrimination on the ground of family status, employers should also be allowed to afford special benefits to suit the special needs of employees with a particular family status. This will cover arrangements such as offering education allowance for married employees with children only. Employers having not more than five employees will also be given a grace period of three years to comply with provisions in the new legislation.

5. An avoidance of doubt provision to preserve the present scoring system under the Primary One Admission Scheme, which takes into account the presence of siblings studying in the same school, is also provided.

Equal Opportunities Commission

6. To oversee the implementation of the new legislation, the remit of the Equal Opportunities Commission (EOC) should be extended to handle complaints of discrimination on the ground of family status.

7. As with the SDO, civil claims for damage can be filed through district court proceedings.

THE BILL

8. **Part I** of the Bill contains the provisions for interpretation defines what is family status for the purposes of the legislation. It provides for the application of the legislation.

9. **Part II** describes what constitutes "discrimination" for purposes of the Bill. They are discrimination on the ground of family status including both direct and indirect discrimination, and discrimination by of victimisation.

10. **Part III** renders discrimination on the ground of family status in the employment field unlawful. **Clause 8** provides that it is unlawful for a person to discriminate against prospective or existing employees, both in respect of the terms on which employment is offered and access to opportunities for promotion, transfer or training.

11. **Part IV** relates to discrimination in other fields which include education (**clause 18**) and the provision of goods, facilities, services and premises (**clauses 19 to 21**). **Clause 18(2)** states, for the avoidance of doubt that it is not unlawful for a person to do an act in order to comply with the Primary One Admission Scheme or other related school admission schemes.

12. **Part V** provides for other unlawful acts relating to discrimination, in particular where persons engage in practices, which result, or may result, in unlawful discrimination (**clause 30**). It also provides that it is unlawful for persons to instruct, or exercise pressure on, another person to do an act which is unlawful under the Bill (**clauses 32 and 33**).

13. **Part VI** provides for general exceptions from the Bill, including arrangements to provide differential treatment to persons of different family status, such as education and housing allowances as specified in the Civil Service Regulations (**clause 43 and Schedule 2**).

14. **Part VII** relates to the extension of the remit of the EOC to handle complaints in relation to discrimination on the ground of family status (**clauses 44 to 52**). The EOC will have similar powers and functions under this Bill as currently provided for under the SDO.

15. **Part VIII** relates to the enforcement of the provisions of the Bill and in this respect extends jurisdiction of the District Court to entertain claims of unlawful discrimination on the ground of family status in the same manner as any claims in SDO (**clause 54**). Like the SDO, the EOC is empowered to issue enforcement notices (**clause 55**) and to assist claimants and potential claimants (**clauses 61, 62 and 63**).

16. **Part IX** provides that the Secretary for Home Affairs may make regulations, inter alia, to enable the EOC to bring proceedings in its own name (**clause 67**).

FINANCIAL AND STAFFING IMPLICATIONS

17. The EOC will need an additional \$1.26 million, for recurrent expenditure, to perform its function under the Bill which includes a strong conciliation role.

18. Although a precise assessment cannot be made at this stage, implementation of the provisions in the Bill in respect of the new legislation will have financial implications for both the Judiciary and the Legal Aid Department. They will each absorb the additional resource requirements from within their own global allocations.

ECONOMIC IMPLICATIONS

19. Further anti-discrimination legislation would be seen as a hindrance to free play of market forces and might impede investment incentives and economic growth in Hong Kong. However, the various exceptions and the conciliation role of the EOC should help to minimise the impact of legislation.

PUBLIC CONSULTATION

20 The proposed legislation to outlaw discrimination on the ground of family status is a direct result of consultation with the general public, District Boards and other interested parties in 1996

LEGISLATIVE TIMETABLE

21	The legislative timetable will be -	
	Publication in the Gazette	11 April 1997
	First Reading and commencement of Second Reading Debate	23 April 1997
	Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

22. A press release will be issued on 11 April 1997 to announce the introduction of the Bill into the Legislative Council.

ENQUIRIES

23. For enquiries on this brief, please contact Miss Helen TANG, Principal Assistant Secretary for Home Affairs, at 2835 1373.

10 April 1997
Home Affairs Branch
File Reference: HAB/CR/1/2/34 Pt. IX

**Legal Advice regarding the impact of the linkage of the bills
with International Labour Organisation Recommendations
("ILO Recommendations")**

**Equal Opportunities (Family Responsibilities, Sexuality and Age) Bill
("EO(F) Bill")**

The court is generally obliged, as a matter of common law principle, to interpret legislation capable of more than one meaning in a way consistent with Hong Kong's international legal obligations (e.g. ILO treaties). This approach does not apply, however, in relation to non-binding international recommendations (e.g. ILO recommendations). But making it an object of the Bill to give effect to non-binding ILO Recommendations No. 111 and 165, Clause 2(f) of the EO(F) Bill will effectively require the court to interpret the Bill, as far as possible, in a way consistent with these international recommendations. In other words, where a provision of the Bill is capable of more than one interpretation, the court would be obliged to interpret such a provision in a way most consistent with these ILO Recommendations.

2. The above rules are simply rules of statutory interpretation to assist the court to ascertain the intention of the legislature which is the primary duty of the court in the discharge of its judicial function. It therefore follows that the Hong Kong Government will not become legally obliged by the EO(F) Bill (i.e. domestic law) to implement the ILO Recommendations in Hong Kong by way of other legislation. (This, of course, is without prejudice to any international legal obligation arising from the relevant Convention for which the ILO Recommendations may serve as useful aid of interpretation).

HEIGHT AND WEIGHT REQUIREMENTS FOR NEW RECRUITS**I. Fire Services Department**

	Weight (kg)	Height (cm)
Male Station Officer	53 - 88.75	168 - 191
Female Station Officer	50 - 83	168 - 191
Fireman	55 - 86.75	168 - 191
Firewoman	50 - 83	168 - 191
Male Ambulance Officer	52 - 86.75	165 - 191
Female Ambulance Officer	48.25 - 83	165 - 191
Ambulanceman	52 - 86.75	165 - 191
Ambulancewoman	48.25 - 83	165 - 191

II. Royal Hong Kong Police Force

	Height	Weight
Male	163	50
Female	152	42

III. Correctional Services Department

	Height	Weight
Male	162	50
Female	152	42

IV. Immigration Department

	Height	Weight
Male	162	50
Female	152	42

V. Customs and Excise Department

	Height	Weight
Male	162	50
Female	152	42

UNIFORM & EQUIPMENT REQUIREMENTS

Fire Services Department : same design for one type of uniform and slight variance (trousers for male and skirts for female) for the remaining two types.

Royal Hong Kong Police Force : different, albeit similar, uniforms and equipment in recognition of the physical differences between the sexes.

Correctional Services Department : same uniform design and same type of equipment.

Immigration Department : similar design for male and female officers and same type of equipment.

Customs and Excise Department : similar design for male and female officers to cater for different in sexes. No discrimination in the use of equipment.

FIREARMS TRAINING

Fire Services Department and Immigration Department : Not applicable.

Royal Hong Kong Police Force : same training to both sexes

Correctional Services Department : female officers are trained on the use of weapons when there is a need to do so.

Customs and Excise Department : all recruits will undergo weapons training as part of their initial training. However, only male officers are required to undergo continuation weapons training. Female officers do not need to wear firearms on duty except in cases of particular need. Female officers required to wear firearms in cases of need would normally received appropriate weapons training.

**Note to Members of the Bills Committee studying
the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

Amendments to update the Bill

The attached committee-stage amendments give effect to the recommendations made in the Note to Members dated 27 March 1997.

Office of Christine Loh
15 April 1997

SEX AND DISABILITY DISCRIMINATION (MISCELLANEOUS PROVISIONS) BILL 1996

Amendments to be moved by the Hon. _____

Clause

Amendment Proposed

2 By deleting the clause.

3 By deleting the clause and substituting -

“3. Interpretation

Section 2 is amended -

(a) in subsection (1), by adding -

““relevant international instruments” ()

means -

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

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

(c) 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” ()

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, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, as applied to Hong Kong;”;

(b) by adding -

“(11) For the purposes of the definition of “relevant international obligations” ().

“discrimination” () means discrimination

within the meaning of the treaties referred to in that definition and, although including every form of discrimination falling within section 4, 5, 6, 7 or 8, is not limited to discrimination so falling.”.”.

7 By deleting paragraphs (b) and (c) and substituting -

“(b) by repealing subsection (7) and substituting -

“(7) Subsection (3) shall expire 3 months after the day on which the Sex and Disability Discrimination (Miscellaneous Provisions) Ordinance 1997 (L.N. of 1997) is enacted.”.”.

16 By deleting the clause and substituting -

“16. Claims under Part III or IV

Section 76 is amended -

(a) by repealing subsections (3) and (4) and substituting -

“(3) Proceedings under subsection (1) shall be brought in the District Court 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.

(3A) 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.

(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 subsections (3) and (3A), to grant an injunction under section 81 or 82(4), or to make an order under section 82(5).”;

(b) by repealing subsections (5), (7) and (8).”.

18 By deleting the clause and substituting -

“18. Section added

The following is 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, in relation to this Ordinance or any other law, pursuant to its functions under section 64(1).”.

25 By deleting the clause.

28 By deleting paragraph (a) and substituting -

“(a) by repealing subsection (5) and substituting -

“(5) Subsection (3) shall expire 3 months after the day on which the Sex and Disability Discrimination (Miscellaneous Provisions) Ordinance 1997 (L.N. of 1997) is enacted.”.

New By adding the following -

“33A. Claims under Part III or IV

Section 75 is amended by adding the following -

“(4A) 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 subsections (3) and (3A), to grant an injunction under section 77 or 78(4), or to make an order under section 78(5).”.

35 By deleting the clause and substituting -

“35. Section added

The following is added -

“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) This section is without prejudice to the Commission’s power to bring proceedings by way of judicial review, in relation to this Ordinance or any other law, pursuant to its functions under section 62(1).”.

布政司署
政務科
香港灣仔
軒尼詩道一百三十號
修訂中心
三十一樓



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

本署覆號 OUR REF. : HAB CR 1/2/34

來函編號 YOUR REF :

電話 TEL NO. : 2835 1373

圖文傳真 FAXLINE : 2591 6002

URGENT BY FAX

17 April 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, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill and
Sex & Disability Discrimination (Miscellaneous Provisions) Bill 1996

Small House Policy

At the last meeting of the above Bills Committee on 1 April 1997, Members wished to know more about the background of the Small House Policy.

The present New Territories Small House Policy was established in December 1972 to enable indigenous villagers who needed housing to build houses for themselves. Its aims were to improve the low standard of housing in rural areas of the New Territories by allowing the replacement of the temporary housing then prevalent by permanent structures providing accommodation and proper sanitary arrangements; and to preserve the cohesive pattern of indigenous communities in their villages. The Policy was intended to regularise the pre-1972 practices whereby heads of families were allowed to build for himself and each son upon marriage a house within

the village areas, either on their own agricultural land or on village building lots acquired through auctions restricted to villagers of a particular village.

Members would also like to know whether the removal of the exemption in respect of the Small House Policy would result in a breach of Article 40 of the Basic Law. Article 40 of the Basic Law provides that the lawful traditional rights and interests of the indigenous inhabitants of the "New Territories" shall be protected by the Hong Kong Special Administrative Region. In the absence of legal precedence, it cannot be said for certain what would constitute "lawful traditional rights and interests of the indigenous villagers". Hence, whether the removal of the exemption in respect of the Small House Policy would result in a breach of the Basic Law would depend upon the Court's interpretation of whether Small House Policy confers a "lawful traditional right and interest" for the purpose of Article 40.

Quarters allocation in disciplined services

A Member has commented that under Section 48 of the Sex Discrimination Ordinance (SDO), the Administration's existing policy of allocating quarters to married disciplined staff only might not be rendered unlawful. We would like to clarify that according to the Attorney General's Chambers' advice, Section 48 would not save this policy from being declared unlawful under the SDO. As such, I hope Members would appreciate the need to retain the exception in Schedule 5 of the Ordinance.

Yours sincerely,

(Miss Helen TANG)
for Secretary for Home Affairs

北區婦女聯會

North District Women's Association

(HKWDA)LET 4doc

立法局草案事務委員會主席
梁智鴻先生：

在一九九五年七月，我們會就當時的立法局議員胡紅玉提出，有關三個平等條例草案發表了反對的意見，並呼籲立法局議員擱置其條例草案，要求政府就有關問題諮詢公眾意見，最後由於胡議員的條例草案內容複雜及倉卒，終於遭立法局的否決。但現時又有三位議員向立法局提出：平等機會(家庭責任、性傾向及年齡)條例草案；平等機會(種族)草案；1996年性別及殘疾歧視(雜項規定)條例草案。我們認為他們這樣的做法只是將已被立法局否決了的東西，變相再上立法局，實是浪費公帑之舉。

“性別及殘疾歧視條例”實施至今還不夠一年時間，一九九六年五月“平等機會委員會”成立，九月開始運作，現還在推廣和施行的階段，市民實在需要時間去消化有關條例。據我們了解，不少市民對條例不清楚，對平等機會委員會的功能還很模糊。而政府也需要時間看條例在施行期間所產生的問題進行檢討，使法例更加完善。而議員在這時卻提出，“一九九六年性別及殘疾歧視(雜項規定)條例草案”，實質是對“性別及殘疾歧視條例”進行修訂，這樣的做法，實是非常不合時宜的。

現時政府已發出“平等機會”：關於種族歧視的研究，這是政府履行去年的承諾，聽取市民對上述問題的意見。有關調查還在進行中，但有議員卻在這個時候向立法局遞交“平等機會(種族)條例”草案，這樣急不及待，實令人費解。我們認為應待政府的有關研究有了結果，看市民的取向，才決定是否立法。

北區婦女聯會

North District Women's Association

立法是一件嚴肅的事情，在立法時應考慮是否適應社會大多數人的需要，並作出認真的研究方可進行，也應顧及政府的承受能力及市民的長遠利益。我們認為香港很快就回歸中國，在這個時候有很多問題急需要解決。而七月一日不是立法的終止期，現時三位議員提出的三項條例並不是一些已經到了非立法解決不可的社會問題。

我們懇請各位委員及立法局議員應從香港市民利益出發，不要將“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”；“1996年性別及殘疾歧視(雜項規定)條例草案”提交立法局三讀。

北區婦女聯會

一九九七年四月十二日



聯絡人：黃來娣
電話：2670 7782
傳真：2679 7938

2779



長洲婦女會

Cheung Chau Island Women's Association

立法局草案事務委員會主席
梁智鴻先生：

就近期多位立法局議員向立法局提交三份條例草案
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
1996年性別及殘疾歧視(雜項規定)條例草案

本會有以下意見：

第一部份：平等機會(家庭責任、性傾向及年齡)條例草案

我們支持消除各種形式歧視，但對未經廣泛諮詢，且甚具爭議性的問題，倉促立例，恐不恰當，因為：

(1)本港近年因第三者介入家庭，二奶問題等已令很多家庭解體，草案卻將家庭責任或家庭崗位，涵蓋了同居和未婚同居配偶，在法律上承認同居及未婚同居配偶的地位，將造成更多家庭破裂及家庭糾紛，導致單親家庭及青少年問題的個案上升。

東方社會文化概念，對家庭的完整性有明確的定義，必須是經法例認可的婚姻關係、及血緣親屬關係，這種嚴謹的關係，是維繫一個家庭的健康發展，使生活在這樣家庭中的每一成員，感到溫暖和安全。家庭是構成每一個社會的基本單元，倘家庭問題頻頻發生，社會給予支持輔導的需求隨之而標升，增加社會的負擔，對社會的整體發展造成障礙。

(2)在性傾向方面，本會是反對立法消除歧視。對於是否採取立法這一途徑，我們要看這個問題的普遍性、嚴重性及是否根深蒂固至非用法律阻嚇才可行，甚至是改變這狀況的最佳方式。

Ref : CB2/BC/55/95
Tel : 2869 9266
Date : 21 April 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 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 forward for members' consideration the following submissions -

- Paper No. CB(2)1972/96-97(01) - Hong Kong Outlying Island Women's Association
- Paper No. CB(2)1972/96-97(02) - Yuen Long Women's Association Limited
- Paper No. CB(2)1972/96-97(03) - Tsuen Wan Kwai Ching District Women's Association
- Paper No. CB(2)1972/96-97(04) - New Territories Association of Societies Women's Centre
- Paper No. CB(2)1972/96-97(05) - Tuen Mun District Women's Association Limited

Paper No. CB(2)1972/96-97(06) - Sai Kung Women's Association
Limited

Paper No. CB(2)1972/96-97(07) - Hong Kong Women Development
Association

(Colin CHUI)
for Clerk to Bills Committee

Encl.

c.c. Hon Mrs Elizabeth WONG, CBE, ISO, JP
ALA4

c:\doc\ec\970428\cb2-1972.doc

香港離島婦女聯會

HONG KONG OUTLYING ISLAND WOMEN'S ASSOCIATION

會 址：梅窩鄉事會路39號地下 TEL：29849248 FAX：29842124
坪洲婦女中心：坪洲好景台發利街6號地下 TEL：29831272 FAX：29830475
大澳聯絡處：大澳永安街5號地下 TEL：29856404 FAX：29856404
南丫島聯絡處：南丫島榕樹灣大街35號A三樓 TEL：29821308 FAX：29821448

致：立法局草案事務委員會主席
梁智鴻先生

就近期立法局劉千石議員、陸恭蕙議員、黃錢其濂議員向立法局提交的三個條例草案：

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
1996年性別及殘疾歧視（雜項規定）條例草案

本會有如下意見：

一. 平等機會（家庭責任、性傾向及年齡）條例草案：

本會支持消除各種形式的歧視，但對未經廣泛諮詢，且甚具爭議性的問題便倉促立例，恐不恰當，本會認為：

1. 本港近年因第三者介入家庭，二奶問題，已產生大量社會及家庭問題，草案卻將家庭責任或家庭崗位，涵蓋了同居和未婚同居配偶，在法律上承認同居及未婚同居配偶的地位，將制造更多家庭破裂及家庭糾紛，導至單親家庭及青少年問題的個案暴昇。
東方社會文化概念，對家庭的完整性有明確的定義，必須是經法例認可的婚姻關係及血緣親屬關係，這種嚴謹的關係，是維繫一個家庭的健康發展，使生活在這樣家庭中的每一成員感到溫暖和安全。而社會的細胞是由家庭為核心所組成的。倘家庭問題頻生，社會給予支援輔導的需求隨而上昇，則社會福利負擔的資源需求增高。對社會的整體發展並非好事。

2. 在性傾向方面，本會認為：

以香港的自由社會，任何人選擇以何種方式生活、相處，這是個人的自由，我們不應歧視，回顧香港社會，從未出現因歧視別人有某種性傾向行為而導至侵犯個人自由的事例，因此，無必要特地立法去保障有某種性傾向的人士。

關於年齡歧視問題，本會認為在立法前應廣泛聽取意見，以利平衡各階層利益，有利香港經濟發展。政府現正就平等機會（僱傭實務指引－消除就業方面的年齡歧視）諮詢市民意見，我們認為，待綜合市民意見，再研究立法問題，更為穩妥。

香港離島婦女聯會

HONG KONG OUTLYING ISLAND WOMEN'S ASSOCIATION

會址：梅窩鄉事會路39號地下	TEL：29849248	FAX：29842124
坪洲婦女中心：坪洲好景台登利街6號地下	TEL：29831272	FAX：29830475
大澳聯絡處：大澳永安街5號地下	TEL：29856404	FAX：29856404
南丫島聯絡處：南丫島榕樹灣大街35號A三樓	TEL：29821308	FAX：29821448

二. 平等機會（種族）條例草案

對於種族歧視問題，政府正進行公眾諮詢，本會已就該文件內容去信政務科表達意見，我們認為：在公眾諮詢未有報告結果前儉促立法，是罔顧民意的行爲。

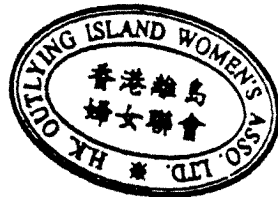
三. 1996年性別及殘疾歧視（雜項規定）條例草案

“性別及殘疾歧視條例”實施至今還不到一年時間，平等機會委員會現正努力向公眾推廣宣傳，市民還需要時間認識及理解該兩條例的條文，以及認識平等機會委員會的功能。至於政府方面，對推行該兩條例的進展尚未來得及檢討。議員卻急不及待再提出修訂“性別及殘疾歧視條例”的所謂（雜項）條例草案。這種冒進行爲，令人廢解。

至於條文中將小型屋宇政策納入性別及殘疾歧視範圍，更是無稽。

維護人權，提倡平等機會，應是我們共建現代化文明社會的目標。但在實施、推廣過程應是循序漸進，確立新法例前，應作廣泛諮詢，兼容各方意見，達致大多數人的共識，立法的最終目標是保障大多數人，使之共同遵守，並應顧及政府的承受能力和市民的長遠利益。本會認為，香港回歸在即，政府面臨的工作千頭萬緒。此時期不宜再加入大量條例草案，引起社會紛爭。

基於以上理據，我們懇請主席暨草案委員會全體委員，閱置三讀該三條條例草案。



香港離島婦女聯會
一九九七年四月十七日

聯絡人：周轉香
電話：29849248

元朗區婦女會

Yuen Long Women's Association Limited

(HKWDA)LET 4doc

立法局草案事務委員會主席
梁智鴻先生：

在一九九五年七月，我們曾就當時的立法局議員胡紅玉提出，有關三個平等條例草案發表了反對的意見，並呼籲立法局議員擱置其條例草案，要求政府就有關問題諮詢公眾意見，最後由於胡議員的條例草案內容複雜及倉卒，終於遭立法局的否決。但現時又有三位議員向立法局提出：平等機會(家庭責任、性傾向及年齡)條例草案；平等機會(種族)草案；1996年性別及殘疾歧視(雜項規定)條例草案。我們認為他們這樣的做法只是將已被立法局否決了的東西，變相再上立法局，實是浪費公帑之舉。

“性別及殘疾歧視條例”實施至今還不夠一年時間，一九九六年五月“平等機會委員會”成立，九月開始運作，現還在推廣和施行的階段，市民實在需要時間去消化有關條例。據我們了解，不少市民對條例不清楚，對平等機會委員會的功能還很模糊。而政府也需要時間看條例在施行期間所產生的問題進行檢討，使法例更加完善。而議員在這時卻提出，“一九九六年性別及殘疾歧視(雜項規定)條例草案”，實質是對“性別及殘疾歧視條例”進行修訂，這樣的做法，實是非常不合時宜的。

現時政府已發出“平等機會”：關於種族歧視的研究，這是政府履行去年的承諾，聽取市民對上述問題的意見。有關調查還在進行中，但有議員卻在這個時候向立法局遞交“平等機會(種族)條例”草案，這樣急不及待，實令人費解。我們認為應待政府的有關研究有了結果，看市民的取向，才決定是否立法。

元朗區婦女會

Yuen Long Women's Association Limited

立法是一件嚴肅的事情，在立法時應考慮是否適應社會大多數人的需要，並作出認真的研究方可進行，也應顧及政府的承受能力及市民的長遠利益。我們認為香港很快就回歸中國，在這個時候有很多問題急需要解決。而七月一日不是立法的終止期，現時三位議員提出的三項條例並不是一些已經到了非立法解決不可的社會問題。

我們懇請各位委員及立法局議員應從香港市民利益出發，不要將“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”；“1996年性別及殘疾歧視(雜項規定)條例草案”提交立法局三讀。

元朗區婦女會



一九九七年四月十二日

聯絡人：

電話：2479 0650

傳真：2479 6510

荃灣葵青區婦女會

T'suen Wan Kwai Ching District Women's Association

(HKWDA)LET.466x

立法局草案事務委員會主席
梁智鴻先生：

在一九九五年七月，我們曾就當時的立法局議員胡紅玉提出，有關三個平等條例草案發表了反對的意見，並呼籲立法局議員擱置其條例草案，要求政府就有關問題諮詢公眾意見，最後由於胡議員的條例草案內容複雜及倉卒，終於遭立法局的否決。但現時又有三位議員向立法局提出：平等機會(家庭責任、性傾向及年齡)條例草案；平等機會(種族)草案；1996年性別及殘疾歧視(雜項規定)條例草案。我們認為他們這樣的做法只是將已被立法局否決了的東西，變相再上立法局，實是浪費公帑之舉。

“性別及殘疾歧視條例”實施至今還不夠一年時間，一九九六年五月“平等機會委員會”成立，九月開始運作，現還在推廣和施行的階段，市民實在需要時間去消化有關條例。據我們了解，不少市民對條例不清楚，對平等機會委員會的功能還很模糊。而政府也需要時間看條例在施行期間所產生的問題進行檢討，使法例更加完善。而議員在這時卻提出，“一九九六年性別及殘疾歧視(雜項規定)條例草案”，實質是對“性別及殘疾歧視條例”進行修訂，這樣的做法，實是非常不合時宜的。

現時政府已發出“平等機會”：關於種族歧視的研究，這是政府履行去年的承諾，聽取市民對上述問題的意見。有關調查還在進行中，但有議員卻在這個時候向立法局遞交“平等機會(種族)條例”草案，這樣急不及待，實令人費解。我們認為應待政府的有關研究有了結果，看市民的取向，才決定是否立法。

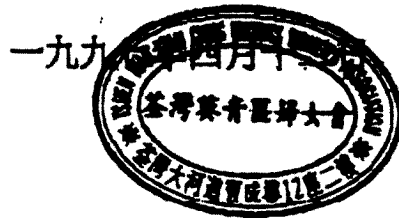
荃灣葵青區婦女會

Tsuen Wan Kwai Ching District Women's Association

立法是一件嚴肅的事情，在立法時應考慮是否適應社會大多數人的需要，並作出認真的研究方可進行，也應顧及政府的承受能力及市民的長遠利益，我們認為香港很快就回歸中國，在這個時候有很多問題急需要解決。而七月一日不是立法的終止期，現時三位議員提出的三項條例並不是一些已經到了非立法解決不可的社會問題。

我們懇請各位委員及立法局議員應從香港市民利益出發，不要將“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”；“1996年性別及殘疾歧視(雜項規定)條例草案”提交立法局三讀。

荃灣葵青區婦女會



聯絡人：李潔明
電話：2493 3628
傳真：2416 9375



DISPATCH 1400

立法局草案事務委員會主席
梁智鴻先生：

在一九九五年七月，我們會就當時的立法局議員胡紅玉提出，有關三個平等條例草案發表了反對的意見，並呼籲立法局議員擱置其條例草案，要求政府就有關問題諮詢公眾意見，最後由於胡議員的條例草案內容複雜及倉卒，終於遭立法局的否決。但現時又有三位議員向立法局提出：平等機會(家庭責任、性傾向及年齡)條例草案；平等機會(種族)草案；1996年性別及殘疾歧視(雜項規定)條例草案。我們認為他們這樣的做法只是將已被立法局否決了的東西，變相再上立法局，實是浪費公帑之舉。

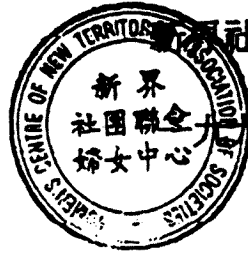
“性別及殘疾歧視條例”實施至今還不夠一年時間，一九九六年五月“平等機會委員會”成立，九月開始運作，現還在推廣和施行的階段，市民實在需要時間去消化有關係例。據我們了解，不少市民對條例不清楚，對平等機會委員會的功能還很模糊。而政府也需要時間看條例在施行期間所產生的問題進行檢討，使法例更加完善。而議員在這時卻提出，“一九九六年性別及殘疾歧視(雜項規定)條例草案”，實質是對“性別及殘疾歧視條例”進行修訂，這樣的做法，實是非常不合時宜的。

現時政府已發出“平等機會”：關於種族歧視的研究，這是政府履行去年的承諾，聽取市民對上述問題的意見。有關調查還在進行中，但有議員卻在這個時候向立法局遞交“平等機會(種族)條例”草案，這樣急不及待，實令人費解。我們認為應待政府的有關研究有了結果，看市民的取向，才決定是否立法。



立法是一件嚴肅的事情，在立法時應考慮是否適應社會大多數人的需要，並作出認真的研究方可進行，也應顧及政府的承受能力及市民的長遠利益。我們認為香港很快就回歸中國，在這個時候有很多問題急需要解決。而七月一日不是立法的終止期，現時三位議員提出的三項條例並不是一些已經到了非立法解決不可的社會問題。

我們懇請各位委員及立法局議員應從香港市民利益出發，不要將“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”；“1996年性別及殘疾歧視(雜項規定)條例草案”提交立法局三讀。



新界社團聯會婦女中心

一九九七年四月十六日

聯絡人：黃進有
電話：2652 9008
傳真：2652 2269



屯門區婦女會 Tuen Mun District Women's Association Limited

名譽顧問：

- 李漢才 全國人大代表
- 林貝幸 嘉 M.B.E. 太平紳士
- 范徐麗潔 預委
- 李明海 區事顧問
- 阮文祖 先生
- 梁卓廷 博士
- 新加坡海峽大學 講師

名譽會長：

- 劉少芬 O.B.E. 太平紳士
- 楊少雲 區事顧問
- 周敏華 區事顧問
- 吳雪光 區事顧問
- 馮友雄 區事顧問
- 陳永坤 區事顧問
- 林德光 區事顧問
- 毛志威 區事顧問
- 曹錫輝 區事顧問
- 鍾志輝 區事顧問
- 吳樹培 區事顧問
- 吳若蘭 區事顧問
- 陳奕生 區議員
- 吳靄儀 區議員
- 吳靄儀 區議員
- 古漢強 區議員
- 陶錫源 區議員
- 吳健文 區議員
- 陳有海 區議員
- 陳文華 區議員
- 蘇愛群 區議員
- 謝柏成 先生

法律顧問：

- 何耀庭 律師
- 吳愛詩 律師
- 黃江毅 律師
- 潘鳳瀾 律師
- 何寶怡 律師

董事顧問：

- 關永年 署士
- 鄧文堂 署士
- 邱玉興 署士
- 劉孟威 署士
- 朱小峰 署士
- 陳美齡 署士

主席：

李佩儀

副主席：

鍾鳳蓮

秘書：

陳秀芬

副秘書：

曹惠玲

幹事：

鍾鳳蓮

李佩儀

曹惠玲

鄧文堂

曾麗珍

李佩儀

鄧文堂

陳玉娟

張淑儀

陳文華

李佩儀

陳文華

陳文華

立法局草案事務委員會主席
梁智鴻先生：

在一九九五年七月，我們會說當時的立法局議員胡紅玉提出，有關三個平等條例草案發表了反對的意見，並呼籲立法局議員擱置其條例草案，要求政府就有關問題諮詢公眾意見，最後由於胡議員的條例草案內容複雜及倉卒，終於遭立法局的否決。但現時又有三位議員向立法局提出：平等機會（家庭責任、性傾向及年齡）條例草案；平等機會（種族）草案；1996年性別及殘疾歧視（雜項規定）條例草案。我們認為他們這樣的做法只是將已被立法局否決了的東西，變相再上立法局，實在浪費公帑之舉。

“性別及殘疾歧視條例”實施至今還不夠一年時間，一九九六年五月“平等機會委員會”成立，九月開始運作，現還在推廣和施行的階段，市民實在需要時間去消化有關條例。據我們了解，不少市民對條例不清楚，對平等機會委員會的功能還很模糊。而政府也需要時間看條例在施行期間所產生的問題進行檢討，使法例更加完善，而議員在這時卻提出，“一九九六年性別及殘疾歧視（雜項規定）條例草案”，實質是對“性別及殘疾歧視條例”進行修訂，這樣的做法，實是非常不合時宜的。

現時政府已發出“平等機會”：關於種族歧視的研究，這是政府履行去年的承諾，聽取市民對上述問題的意見。有關調查還在進行中，但有議員卻在這個時候向立法局遞交“平等機會（種族）條例”草案，這樣急不及待，實在令人費解。我們認為應待政府的有關研究有了結果，看市民的取向，才決定是否立法。

地址：屯門德政園18號海盛大廈1樓B座
Flat B, 1/F., Hoi Shing Bldg., No. 18 Tak Ching Court, Tuen Mun, N.T.

Tel: 2457 3781 Fax: 2452 3714



屯門區婦女會

Tuen Mun District Women's Association Limited

名譽顧問：

李進生全國人大代表
林貝宇嘉M.B.E.太平紳士
沈徐慶基預委
李明海區事顧問
高文莊先生
羅永忠博士
新強幼齡大學講師

名譽會長：

劉芝庭 O.B.E. 太平紳士
楊少偉區事顧問
陶繼壽區事顧問
吳偉光區事顧問
馮永強區事顧問
陳啟坤區事顧問
林德亮區事顧問
毛志威區事顧問
曾超偉區事顧問
鍾志輝區事顧問
黃樹區事顧問
吳智區事顧問
陳寶生區事顧問
吳麗英區事顧問
葉巧英區事顧問
古漢強區事顧問
吳健文區事顧問
陳文華區事顧問
廖愛群區事顧問
謝柏成先生

法律顧問：

何雁庭律師
梁愛詩律師
黃仁傑律師
潘展城律師
利寶怡律師

醫事顧問：

關淑華醫生
鄭文宗醫生
邱玉興醫生
劉益敏醫生
李小明醫生
陳美輝醫生

主席：

李麗興

副主席：

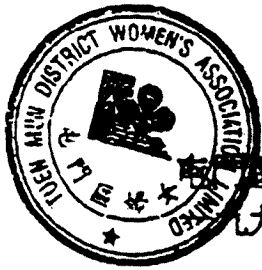
趙鳳霞

委員：

陳秀雲
曾燕玲
陳志榮
卓月玲
鄭新平
鄭麗如
曾運梅
黃麗娟
吳玉蓮
陳玉娟
張淑儀
陳笑玲
傅楚芬
陳麗芳

立法是一件非常嚴肅的事情，在立法時應考慮是否適應社會大多數人的需要，並作出認真的研究方可進行，也應顧及政府的承受能力及市民的長遠利益。我們認為香港很快就回歸中國，在這個時候有很多問題急要解決。而七月一日不是立法的終止期，現時三位議員提出的三項條例並不是一些已經到了非立法用解決不可的社會問題。

我們懇請各位委員及立法局議員應從香港市民利益出發，不要將“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”；1996年性別及殘疾歧視(雜項規定)條例草案”提交立法局三讀。



屯門區婦女會
一九九七年四月十二日

聯絡人：陳秀雲小姐
電話：2457 3781
傳真：2452 3714

西貢婦女會

Sai Kung Women's Association Limited

(HKWDA)LET 4doc

立法局草案事務委員會主席
梁智鴻先生：

在一九九五年七月，我們會就當時的立法局議員胡紅玉提出，有關三個平等條例草案發表了反對的意見，並呼籲立法局議員擱置其條例草案，要求政府就有關問題諮詢公眾意見，最後由於胡議員的條例草案內容複雜及倉卒，終於遭立法局的否決。但現時又有三位議員向立法局提出：平等機會(家庭責任、性傾向及年齡)條例草案；平等機會(種族)草案；1996年性別及殘疾歧視(雜項規定)條例草案。我們認為他們這樣的做法只是將已被立法局否決了的東西，變相再上立法局，實是浪費公帑之舉。

“性別及殘疾歧視條例”實施至今還不夠一年時間，一九九六年五月“平等機會委員會”成立，九月開始運作，現還在推廣和施行的階段，市民實在需要時間去消化有關條例。據我們了解，不少市民對條例不清楚，對平等機會委員會的功能還很模糊。而政府也需要時間看條例在施行期間所產生的問題進行檢討，使法例更加完善。而議員在這時卻提出，“一九九六年性別及殘疾歧視(雜項規定)條例草案”，實質是對“性別及殘疾歧視條例”進行修訂，這樣的做法，實是非常不合時宜的。

現時政府已發出“平等機會”：關於種族歧視的研究，這是政府履行去年的承諾，聽取市民對上述問題的意見。有關調查還在進行中，但有議員卻在這個時候向立法局遞交“平等機會(種族)條例”草案，這樣急不及待，實令人費解。我們認為應待政府的有關研究有了結果，看市民的取向，才決定是否立法。

西貢婦女會

Sai Kung Women's Association Limited

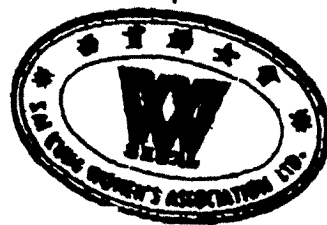
立法是一件嚴肅的事情，在立法時應考慮是否適應社會大多數人的需要，並作出認真的研究方可進行，也應顧及政府的承受能力及市民的長遠利益。我們認為香港很快就回歸中國，在這個時候有很多問題急需要解決。而七月一日不是立法的終止期，現時三位議員提出的三項條例並不是一些已經到了非立法解決不可的社會問題。

我們懇請各位委員及立法局議員應從香港市民利益出發，不要將“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”；“1996年性別及殘疾歧視(雜項規定)條例草案”提交立法局三讀。

西貢婦女會

一九九七年四月十二日

聯絡人：許素珊
電話：2652 9008
傳真：2652 2269



香港婦女發展聯會

Hong Kong Women Development Association

(NEWSPAPER)

立法局草案事務委員會主席
梁智鴻先生：

在一九九五年七月，我們曾就當時的立法局議員胡紅玉提出，有關三個平等條例草案發表了反對的意見，並呼籲立法局議員擱置其條例草案，要求政府就有關問題諮詢公眾意見，最後由於胡議員的條例草案內容複雜及倉卒，終於遭立法局的否決。但現時又有三位議員向立法局提出：平等機會(家庭責任、性傾向及年齡)條例草案；平等機會(種族)草案；1996年性別及殘疾歧視(雜項規定)條例草案。我們認為他們這樣的做法只是將已被立法局否決了的東西，變相再上立法局，實是浪費公帑之舉。

“性別及殘疾歧視條例”實施至今還不夠一年時間，一九九六年五月“平等機會委員會”成立，九月開始運作，現還在推廣和施行的階段，市民實在需要時間去消化有關條例。據我們了解，不少市民對條例不清楚，對平等機會委員會的功能還很模糊。而政府也需要時間看條例在施行期間所產生的問題進行檢討，使法例更加完善。而議員在這時卻提出，“一九九六年性別及殘疾歧視(雜項規定)條例草案”，實質是對“性別及殘疾歧視條例”進行修訂，這樣的做法，實是非常不合時宜的。

現時政府已發出“平等機會”：關於種族歧視的研究，這是政府履行去年的承諾，聽取市民對上述問題的意見。有關調查還在進行中，但有議員卻在這個時候向立法局遞交“平等機會(種族)條例”草案，這樣急不及待，實令人費解。我們認為應待政府的有關研究有了結果，看市民的取向，才決定是否立法。

香港婦女發展聯會

Hong Kong Women Development Association

立法是一件嚴肅的事情，在立法時應考慮是否適應社會大多數人的需要，並作出認真的研究方可進行，也應顧及政府的承受能力及市民的長遠利益。我們認為香港很快就回歸中國，在這個時候有很多問題急需要解決。而七月一日不是立法的終止期，現時三位議員提出的三項條例並不是一些已經到了非立法解決不可的社會問題。

我們懇請各位委員及立法局議員應從香港市民利益出發，不要將“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”；“1996年性別及殘疾歧視(雜項規定)條例草案”提交立法局三讀。



聯絡人：葉順興
電話：2652 9008
傳真：2652 2269

By deleting paragraph (a) and substituting -

“(a) by repealing subsection (3) and substituting -

“(3) The District Court shall have jurisdiction to hear and determine proceedings under subsection (1) and where the court is satisfied that the respondent has committed an unlawful act against the claimant in contravention of this Ordinance, the court may make an order which it considers just and appropriate in the circumstances.”;

New

By adding the following -

“33A. Claims under Part III or IV

Section 72 is amended by repealing subsection (3) and substituting -

“(3) The District Court shall have jurisdiction to hear and determine proceedings under subsection (1) and where the court is satisfied that the respondent has committed an unlawful act against the claimant in contravention of this Ordinance, the court may make an order which it considers just and appropriate in the circumstances.”.

New

By adding -

“Consequential Amendments

District Court Ordinance

**41. Rules in relation to jurisdiction
under Sex Discrimination
Ordinance**

Section 73B(2) of the District Court Ordinance (Cap. 336) is amended in paragraph (c) by repealing everything after “Court” and substituting “under section 82A of the Sex Discrimination Ordinance (Cap. 480).”.

**42. Rules in relation to jurisdiction
under Disability Discrimination
Ordinance**

Section 73C(2) is amended in paragraph (c) by repealing everything after “Court” and substituting “under section 78A of the Disability Discrimination Ordinance (Cap. 487).”.

Ref : F2.03b-V0244/97

25 April 1997

Mrs Anna Lo
Secretary to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road Central
Hong Kong

By Fax : 2509 9055

Dear Mrs Lo

Equal Opportunities (Family Responsibilities, Sexuality and Age) Bill

In the above Bill, exemption has been granted to the insurance industry on discrimination only on the ground of age, but not of family responsibilities and sexuality.

In other anti-discrimination Ordinances like the Disability and Sex Discrimination Ordinances and the lately published Family Status Discrimination Bill, exemption has also been granted to the insurance industry if the treatment of a person in relation to any class of insurance business or similar matter involving the assessment of risk was effected by reference to actuarial or other data and was reasonable having regard to these data or any other relevant factors.

The Hong Kong Federation of Insurers (Federation) believes that it is fair and reasonable to treat the insurance industry in the same manner in all anti-discrimination legislation. Therefore, the Federation considers that the exemption granted on the part of age shall be extended to the parts of family status and sexuality as well in the above Bill.

In this connection, members of the Federation's Legal Sub-Committee would like to meet with members of the Bills Committee to express and to clarify our views on the issue of exemption.

If a meeting can be arranged, please contact me on 2828 8369 or our David Hui on 2861 9377 to fix a date convenient to all parties concerned.

Yours sincerely

Tefence Wu
Chairman
Legal Sub-Committee

TW/DH/vc

註 冊 有 限 公 司
Incorporated with limited liability

香港灣仔告士打道五十六號第一太平銀行中心九樓 電話：二五二零一八六八 傳真：二五二零一九六七
9th Floor, First Pacific Bank Centre, 56 Gloucester Road, Wanchai, Hong Kong Tel: 2520 1868 Fax: 2520 1967



DOCUMENT

CUSTOMS AND EXCISE SERVICE

GUIDE TO DEPARTMENTAL QUARTERS

Service Welfare Division
October 1991
(Reprinted April 1997)

1. INTRODUCTION

1.1. This Quartering Guide is to provide information to members of the Customs & Excise Service in connection with the eligibility, application, allocation and occupation of departmental quarters.

1.2. Enquiries about this Guide and its contents should be addressed to the Service Welfare Division.

2. GENERAL

2.1. The policies in general for departmental quarters are set out in Chapter V of the Civil Service Regulations (CSR) and Chapter V of the Accommodation Regulations (AR). Officers are advised to acquaint themselves with the provisions. More important parts are extracted in this Guide for general information.

- (i) No officer is entitled as of right to reside in quarters.
- (ii) An officer may be required to vacate his quarter on at least one month's notice being given by the Commissioner.
- (iii) An officer who has been allocated a quarter but for any reason fails to occupy it or remain in residence may be required to relinquish such quarter.
- (iv) Quarters are for the accommodation of officers and their families. An officer's family includes his spouse and dependent children defined as sons under the age of 19 years (or under the age of 21 years if undergoing full-time education or full-time vocational training), unmarried daughters under the age of 21 years and children who, regardless of age, are dependent on the officer as a result of physical or mental infirmity.

3. TYPE OF QUARTERS

3.1. A list of Customs & Excise Service departmental quarters is maintained by the Service Welfare Division. The list is open to inspection.

3.2. Departmental quarters can be broadly divided into : -

(a) *Operational Quarters*

These quarters are provided on the broad principle of operational requirements and their allocations are normally made through an open allocation system.

(b) *Post-tied Quarters*

These quarters are for occupation by holders of specific posts. Allocation of the quarters to the officers selected to fill the posts is automatic. Officer will be required to vacate the quarter on or before the date of posting away.

4. GRADING OF QUARTERS

4.1. Quarters are graded from 'AA' to 'L' in descending order with reference to their floor area, localities and facilities provided. For departmental quarters, the grading is determined by the Government Property Administration (GPA).

4.2. The table at Appendix I shows the appropriate grade of quarters by reference to the General Disciplined Services Pay Scale.

5. ELIGIBILITY FOR QUARTERS

5.1. Married serving Customs & Excise Service members are eligible for departmental quarters.

5.2. Application for departmental quarters from a single officer will be considered if he is going to get married within one month of the closing date of application and is able to produce documentary proof of the intended marriage and date thereof to the satisfaction of the Quarters Allocation Committee (QAC). He must also produce his marriage certificate to the Service Welfare Division before taking occupation of the quarter allocated to him.

5.3. An officer should not be allocated or continue in occupation of a quarter, other than a post-tied operational quarter, if that officer or his/her spouse is . -

- (a) a member of a Local Officer's Co-operative Building Society, or
- (b) a lessee of Local Officers' Government Built Housing Scheme, or
- (c) a tenant or an authorized occupant of a public rental housing unit, or
- (d) an owner or an authorized occupant of a flat sold under the -
 - (i) Home Ownership Scheme;
 - (ii) Private Sector Participation Scheme (administered by the HK Housing Authority);
 - (iii) Flat for Sale Scheme (administered by the HK Housing Society);
 - (iv) Urban Improvement Scheme (for flat completed before March 1981 and administered by the HK Housing Society); or
 - (v) Sandwich Class Housing Scheme (administered by the HK Housing Society),which is subject to resale restriction, or
- (e) in receipt of House Allowance, or
- (f) being, or has been, granted assistance under the Home Purchase Scheme, or
- (g) being, or has been granted a loan under the Housing Loan Scheme and was under the age of 45 at the date of submission of his formal application, or
- (h) being, or has been granted assistance under the Home Financing Scheme, or
- (i) in receipt of a Home Purchase Loan granted by the Housing Authority, or
- (j) in receipt of a housing, or housing-related, benefit provided by the spouse's employer, or
- (k) in receipt of Private Tenancy Allowance.

P.4

Application for departmental quarters from officer who or his/her spouse is in receipt of any housing benefit stated above, except in (f), (g) and (h), may be considered if the officer declares in his application that he will relinquish the housing benefit within three months from the date he is allocated a departmental quarter.

5.4. Officers on interdiction, transfer to other Government departments or on no pay leave will not be considered for allocation of quarters.

5.5. Officer's eligibility for quarters ceases on commencement of pre-resignation and pre-retirement leave and the officer is allowed two months from the date he proceeds on his pre-retirement leave to vacate his quarter. If the officer is eligible for public housing/Home Ownership Scheme flats under the Civil Service Quota, the two-month period will run from the date on which the outcome of an application for public housing/Home Ownership Scheme is known, subject to the condition that the officer submits a timely application.

5.6. In the case of officers who resign or who are dismissed from the Service (or invited to retire in the public interest), eligibility for quarters ceases on termination of active service (excluding any period of termination leave which may be due) or one month after notice of resignation or dismissal, whichever is the later.

5.7. Eligibility for quarters normally ceases on the death of an officer. Dependents should thereafter be allowed two months to vacate the quarter from the effective date. In the case of persons eligible for public housing under the Civil Service Quota, the two month period will run from the date on which the outcome of an application for public housing is known. Rent is payable during the grace period at the same rate as would have been payable by the officer himself under CSR 872-875 subject to any relevant adjustment.

5.8. An officer who is occupying a quarter (other than post-tied quarter) will not be considered further allocation if he/she applies for another quarter which is below or of the same grade except on special grounds. This provision does not apply to an officer who has been residing in a quarter for not less than 3 years continuously if the quarter under application is of the same grade and of different locations. 'An officer' includes his or her spouse.

5.9. An officer will not be considered further allocation for a period of 6 months from the date he/she takes occupation of a quarter of an appropriate grade. For the purpose of this paragraph, a quarter will be regarded as being of an appropriate grade when it is of the same as the officer concerned or one grade higher or one grade lower, and 'an officer' includes his or her spouse.

5.10 Without prejudice to para. 5.9, an officer who has been allocated a quarter through open allocation is not eligible to apply for another quarter before the allocated quarter has been taken occupation. 'An officer' includes his or her spouse.

6. VISIT OF QUARTERS UNDER APPLICATION

6.1. Applicants are advised to pay on-site visit to quarters before making an application to ascertain whether the quarters meet with their requirements. Visits to vacant quarters may be arranged by the Service Welfare Division upon request. For quarters which are still occupied, visitors should make prior arrangement with the sitting occupant. Embarrassment and discomfort can be caused to both by an impromptu call.

7. APPLICATION FOR QUARTERS

7.1. Quarters available for allocation will be promulgated in Routine Order. Applications must reach the Service Welfare Division on or before the closing date as stipulated in the Routine Order. An application consists of the following forms :-

- (a) Application for Customs & Excise Departmental Quarters (CED 123) (Appendix II)
- (b) Statement on Housing and Housing Related Benefits Received by An Officer/His Spouse (G F 551) (Appendix III)
- (c) Declaration on Public Housing Benefits (CED 93) (Appendix IV)

Where supporting documents are required (Medical Examination Certificate, Registration for Marriage etc.), they should be forwarded together with the application.

7.2. The application forms, GF 551 and CED 93, must be accurately and fully completed. Incorrect and insufficient information given may render an application disqualified and false statement may render an officer liable to disciplinary action.

7.3. No changes except withdrawals can be made to the applications after the closing date. Withdrawals must be made in writing and they must reach AS(SW) before the deadline specified in the R/O.

7.4. Requests for withdrawals after allocation must be made in writing, giving reason, and must reach AS(SW) before the deadline specified in the R/O. Such requests will be considered and if permitted, the officer (include his or her spouse) will be debarred from applying for departmental quarters for a period of one year from the date of the QAC meeting. Once the above deadline is passed, no request for withdrawal will be considered. If an officer insists on withdrawal, he will be required to pay full market rent of the allocated quarter in accordance with CSR 813(7).

7.5. Where withdrawal after allocation and before the deadline stated in para. 7.4 is permitted, the quarter concerned will be allocated to the eligible applicant with the next best claim and not being allocated any quarter at the relevant QAC meeting.

7.6. An officer who wishes to apply for allocation of quarters on compassionate grounds may submit, together with his application form, a statement expressing his hardship and predicament to AS(SW) who will enquire into the matter and bring it to the QAC for consideration.

8. ALLOCATION OF QUARTERS

8.1. The responsibilities for allocation of quarters other than those of post-tied rest with the QAC which consists of members appointed by the Commissioner. The chairman of the QAC is S(SA).

8.2. The allocation of quarters is in accordance with a Quartering Points System which is described in Appendix V and the departmental policies in regard to departmental quarters.

8.3. The date upon which applications close for any particular allocation shall be taken as the date for determination of eligibility for quartering purposes and calculation of quartering points for that allocation.

8.4. After each QAC meeting, QAC Circular specifying the allocation result will be circularised to all Office Managers and Duty Officers. Only those successful applicants will be notified individually of their allocation. They will be required to sign an undertaking and acknowledge the conditions of allocation of departmental quarters. (Appendix VI)

8.5. Appeal against any allocation of quarter should be made in writing to the Chairman of the QAC before the day specified in that particular QAC Circular. If the appellant does not satisfy with the QAC Chairman's conclusion, he may further appeal to AC(A) whose decision would be final.

8.6. The attention of all officers is drawn to chapter 23 of the Customs & Excise Service Standing Order in regard to allocation of departmental quarters.

9. OCCUPATION OF QUARTERS

9.1. Quarters are deemed to be ready for occupation upon their allocation except that :-

- (a) major repairs or re-decoration are required;
- (b) a date is given in the allocation letter specifying when the quarter is ready for occupation.

9.2. When major repairs or re-decoration are required, it is the responsibility of the occupant to ascertain the ready date for occupation from the Assistant Director of Architectural Services (Property Services) (AD(PS)). The occupant should contact and liaise closely with staff of AD(PS) in regard to the repairs and redecoration of the quarter allocated to him.

9.3. Officers allocated with quarters which are under the management of the Private Managing Agents (PMA) employed by the GPA should ascertain the ready date of occupation from the staff of PMA in charge of the quarters.

9.4. Occupants should make their own arrangements with relevant institutions for the provision of ancillary facilities such as telephone, electricity and towngas etc.

10. RETENTION OF QUARTERS

10.1. Departmental quarters may not be retained by officers on leave exceeding 60 days unless prior approval is obtained from the Commissioner. Application for retention of quarters should be made to S(SA) via AS(SW) by using a prescribed form at Appendix VII and it should reach AS(SW) at least one month prior to the commencement of leave.

11. RENT AND WATER CHARGES

11.1. An officer who occupies a quarter will pay rent in accordance with CSR 872 (Appendix I). The rent payable is normally deducted from the officer's salary.

11.2. Rent for quarter will be charged from the 7th day following the effective date of allocation or the ready date for occupation, whichever is the later. If an officer is moving from one quarter to another, rent for the quarter already occupied by him continue to be charged until he vacates the quarter.

11.3. Water charges in quarter where it is individually metered are made according to the meter reading and officer will pay his individual water bills to the Government. Where the quarter is fed through a common water meter, charges will be made to each occupant according to the grade of quarter occupied as laid down in CSR 876(1)(b) and will be deducted from the officer's salary normally.

12. MAINTENANCE AND REPAIRS

12.1. An officer to whom a quarter has been allocated is responsible for the care of that quarter whether or not he is in actual occupation.

12.2. Requests for repairs of government domestic electrical appliances and other electrical fittings should be made by telephone to the Electrical and Mechanical Services Department.

12.3. Requests for repairs of government domestic town gas appliances should be made by telephone to the HK & China Gas Co. Ltd. For LPG appliances, Architectural Services Department should be contacted.

12.4. Requests for repairs other than those in paragraphs 12.2 & 12.3 above may report to Service Welfare Division in writing in order to issue GF 282 to the Architectural Services Department.

12.5. For quarters under the management of PMA, request for repairs should be made to the staff of the relevant PMA in charge of the quarters.

12.6. An officer receiving a substantive salary on or above GDS(O) point 6 or GDS(R) point 17 may have his quarter re-decorated at Government's expenses, once in each tour (normally 2 1/2 years) in the colour of his choice. Since re-decoration is related to the officer's eligibility and not to the quarter, an officer who has had one re-decoration carried out during his tour and subsequently moves into another quarter will not be eligible for another re-decoration.

13. FURNITURE

13.1. For quarters of grade G and above, application for supply and collection of government furniture should be made to the Director of Government Supplies by using GF 225 or GF 225A (Appendixes VIII & IX) respectively. Relevant scale of furniture entitlement can be found on both forms. Requests for repairs of furniture should be made to Director of Government Supplies in writing.

13.2. For quarters of grade H and below, application for supply and collection of government furniture should be made to Customs & Excise Supplies Section on the prescribed form at Appendix X or XI as appropriate. The scales of furniture entitlement is at Appendix XII. Requests for repairs of furniture should be made to Customs & Excise Supplies Section.

13.3. If any furniture has to be moved within one year of supply, the officer may be required to pay for the cost of removal.

13.4. An officer may apply for a Furniture Allowance of \$ 100 per month under CSR 872(6) if he :-

- (a) pays a rent for his quarter;
- (b) is receiving a substantive salary on or above GDS(O) point 6 or GDS(R) point 17; and
- (c) is drawing no item of government furniture for the quarter.

Application for the above allowance should be made on the prescribed form at Appendix XIII.

14. DOMESTIC APPLIANCES

14.1. The domestic appliances and fittings set out in Appendix XIV, when available, may be supplied to quarters not lower than Grade 'G'.

14.2. An officer may apply for a Domestic Appliances Allowance of \$ 50 per month under CSR 872(6) if he :-

- (a) pays a rent for his quarter;
- (b) is receiving a substantive salary on or above GDS(O) point 6 or GDS(R) point 17; and
- (c) is drawing no item of domestic appliances for the quarter.

Application for the above allowance should be made on the prescribed form at Appendix XIII.

15. VACATION OF QUARTERS

15.1. An officer intending to vacate a quarter, other than moving from one quarter to another, must notify the Service Welfare Division in writing at least two months beforehand.

15.2. If a quarter is left vacant because the requisite period of notice required under para 15.1 has not been given, the officer concerned will be required to pay the rent of such quarter for the period of vacancy, or for the period which the notice falls short of the requisite period, whichever is the less.

15.3. If an officer voluntarily surrenders his/her quarter, he/she will be debarred from applying for departmental quarters for a period of one year from the date he vacates the quarter.

6 November 1996

IMMIGRATION DEPARTMENT CIRCULAR NO. 33/96

**(This IDC should be read by ALL Service Grade Staff
and those handling departmental quarters)**

**Eligibility for and Method of Allocation
of Departmental Quarters
(including both general and operational quarters)**

Eligibility

1. Both general and operational quarters (except barrack type quarters) administered by this Department are open to all Immigration Service staff, subject to their fulfilment of the following conditions at the time of application. The applicant :-

- (a) must be on the permanent and pensionable establishment (however, serving married female officers who were re-appointed on non-pensionable terms of service in the circumstances under CSR 343 and 144 are also eligible to apply so long as they satisfy the qualifying criteria.);
- (b) must be employed on non-expatriate terms;
- (c) must be married (including divorced, separated or widowed officers with at least one dependent child);
- (d) must be of a substantive salary appropriate to the grade of quarters in accordance with CSR 814(3) and 872(1);
- (e) must not be (including his/her spouse) in receipt of any of the following housing benefits :-
 - (i) Home Purchase Allowance and/or Downpayment Loan granted under the Home Purchase Scheme;
 - (ii) Home Financing Allowance and/or Downpayment Loan granted under the Home Financing Scheme;
 - (iii) Housing Loan granted under the Housing Loan Scheme;

- (iv) Acquisition of a legal title through accepting the first assignment of a lease to a flat and land which belonged at some time to a Local Officers' Co-operative Building Society or a Local Officers' Government Built Housing Scheme, and the officer was a member of that Society or underlessee of that Scheme immediately before such assignment (except that this sub-paragraph shall not apply in the case where an officer became a member of such Society or underlessee of such Scheme through beneficial succession, or had inherited the flat and land after such assignment);
- (v) Acquisition of an underlease/license to a flat and land which belonged at some time to a Local Officers' Co-operative Building Society from an ex-member of such society who does not acquire legal title through accepting assignment after such Society has been dissolved;
- (vi) Membership of a Local Officers' Co-operative Building Society, or Underlease of a Local Officers' Government Built Housing Scheme (other than membership or underlease acquired through beneficial succession);
- (vii) Being a tenant or an authorized occupant of a public rental housing flat (i.e. a rental flat provided by the Hong Kong Housing Authority, Hong Kong Housing Society and Hong Kong Settler' Housing Corporation), regardless of whether or not the flat was acquired through the Civil Service Public Housing Quota;
- (viii) Being an owner or an authorized occupant of a flat sold under the Home Ownership Scheme (including flats sold under the Home Ownership Scheme and the Private Sector Participation Scheme administered by the Hong Kong Housing Authority, and the Flat for Sale Scheme and the Urban Improvement Scheme (only Urban Improvement Scheme flats completed before March 1981) administered by the Hong Kong Housing Society) which is subject to resale restriction, regardless of whether or not the flat was acquired through the Civil Service Public Housing Quota;
- (ix) Being the recipient of a loan granted under the Home Purchase Loan Scheme administered by the Hong Kong Housing Authority regardless of whether or not the loan concerned was acquired through the Civil Service Public Housing Quota;
- (x) Being an owner or an authorized occupant of a flat sold under the Sandwich Class Housing Scheme administered by the Hong Kong Housing Society which is subject to resale restriction;
- (xi) Being a recipient of a loan granted under the Sandwich Class Loan Scheme administered by the Hong Kong Housing Society;

- (xii) Private Tenancy Allowance;
- (xiii) House Allowance; or
- (xiv) A housing benefit/housing related benefit provided by a private employer.

2. However, if an officer (including his/her spouse) is in receipt of the housing benefits at paragraph 1(e)(vi) to (xiv) above, he/she is allowed to apply for quarters subject to the condition that the housing benefit being received should have to be relinquished before occupying the quarter or within three months as from the date of IDN promulgating the result of the allocation, whichever is the earlier. An officer who fails to comply with this regulation may render himself liable to disciplinary and/or legal proceedings and/or withdrawal of the allocated quarters.

3. To avoid breaching the Government rules on prevention of double housing benefits, officers should observe strictly CSR 809 and the related regulations. Officers who fail to comply with these rules are liable to the penalties specified under these rules.

Method of Allocation

4. A quarter will be allocated to an applicant with the highest quartering points. In the event that two or more applicants for the same quarter have scored equal quartering points, seniority will take precedence. The quartering points are calculated as follows :-

(a) Service

For each year in the Immigration Service (service here means service with the Immigration Department, which includes service rendered on overseas training course or secondments to other Departments/ Secretariat for immigration/other duties as directed by the Department but does <u>not</u> include no pay study leave or service with other Departments on agreement/probation/trial terms.)	4 points	for Officer Grade
	6 points	for Rank and File Grade

(b) Dependents

- (i) For a spouse who is a Hong Kong resident)
OR)
For the first child in respect of widowed,) 20 points
separated or divorced officers)

- (ii) For each child (except the first child in (i) above)
 - living in Hong Kong 10 points
 - living outside Hong Kong 5 points
- (iii) For a child expected to be born within 4 months as from the date of application (a medical certificate is required) 10 points

(c) Salaries

- For each \$285 of salary at the closing date for application (excluding acting and other allowances) 1 point

5. For operational reasons, eligibility for some operational quarters will be restricted to certain ranks of officers, e.g. application for a grade G operational quarter will be restricted to officers of the Immigration Officer rank.

6. The allocation of a quarter will be approved by the Assistant Director (Administration & Planning) on the advice of the Departmental Quarters Allocation Sub-Committee and the results of each allocation exercise will be promulgated in an Immigration Department Notice. The conditions of allocation of general and operational quarters are set out in Annexes A and B.

7. For operational quarters, the Director of Immigration reserves the right to allocate these quarters by direction as and when he sees fit to do so. Where an officer is directed to occupy an operational quarter, he/she (including his/her spouse) may be allowed to retain his/her other housing benefit as listed in para 1(e)(i) to (xiv) above.

Appeals

8. Appeals against allocation decisions may be made to the Departmental Quarters Allocation Sub-Committee within 7 working days after promulgation of the results. Further appeals, if any, may be made to the Assistant Director (Administration & Planning) and final appeals should be addressed to and dealt with by the Director of Immigration.

Undertaking

9. Successful applicant of quarter will be required to sign an undertaking signifying that he fully understands the conditions relating to the allocation of the quarter. (Annex C for general quarters and Annex D for operational quarters)

Change of Quarters

10. An officer who is occupying a quarter of an inappropriate grade may apply for changing to a quarter of an appropriate or own grade and an officer who is occupying a quarter of an appropriate grade may apply for another quarter of his own grade in the normal course.

11. However, an officer who is occupying a quarter of his appropriate or own grade may only apply for another quarter of the same grade or his appropriate grade after fulfilling the 3 year 'live-in' requirement.

12. An officer who chooses to surrender his quarter on his own accord may not apply for another quarter within a period of twelve months as from the date of his vacating the quarter. An officer who has to vacate his/her quarter on acquisition of a housing benefit at paragraph 1(e)(vi) to (xiv) above or on moving to his/her spouse's quarter may not apply for another quarter within a period of twelve months as from the date of vacating the quarter.

Penalties

13. An applicant who withdraws his application after the closing date for application will not be allowed to apply for quarters in the next department notice inviting application for quarters.

14. A successful applicant who, subsequently, without reason acceptable to the Management, rejects the offer of a quarter formally allocated to him/her will be debarred from applying for quarters for a period of twelve months with effect from the date of rejection.

15. Officer whose eligibility for continued occupation of quarters has been withdrawn is debarred from applying for other quarters for a period of thirty-six months with effect from the date of retrieval of the allocated quarters.

Temporary/Permanent Vacation of Quarters Upon the Requests of Architectural Services Department(ASD)/Government Property Agency (GPA)

16. ASD will, as situation requires, carry out large-scale refurbishment programme which necessitates temporary vacation of quarters by the occupants. Furthermore, GPA may, for various reasons, recover quarters from the Department and require occupants to vacate permanently.

17. In the above cases, affected officers should vacate the quarters and choose either one of the following options :-

- (i) to be awarded 72 directional points which should be used in 3 consecutive allocation exercises (with own/appropriate grade quarters) following advice of vacation of quarters (the directional points will cease to count once the officers have acquired long-term quarter); or
- (ii) to move to temporary quarters provided by the Department and to move back to the original quarters after refurbishment/to formally occupy replacement quarters provided by GPA or the Department for officers who are required to permanently vacate their quarters.

18. For officers who opt for (i) above, they may be required to vacate the quarters even before they have successfully acquired another quarters so that ASD's refurbishment programme or GPA's quarter recovery exercise will not be affected. In this case, officers may approach the Quartering Unit for the provision of temporary quarters (subject to availability) until they have finally acquired quarters in accordance with paragraph 17(i).

19. Affected officers will be eligible for one removal allowance in accordance with CSR 894.

The Director's Power to make Exceptions

20. Notwithstanding the above rules and regulations, the Director of Immigration personally has the authority to make exceptions as and when he sees fit.

21. This Circular supersedes IDC No. 16/95 dated 20-7-95. Enquiries on the subject should be directed to Senior Assistant Secretary (Accommodation & Transport) at 2829 3904.

K C CHEUK
for Director of Immigration

{dc-16-w}

QUARTERS

62-19 Allocation of JPO Married Quarters

Vacant married quarters which are available for allocation are advertised in Headquarter Orders Part Five. The closing date for receipt of applications is stated in the Headquarter Orders. Late applications would not be considered.

2. Personnel eligible for JPO married quarters are officers of the rank of S/SGT and below who are : —

- (a) married with their spouse residing with him in Hong Kong (an officer who will marry within one calendar month of the closing date of application of the relevant QAC meeting will be considered eligible subject to production of adequate documentary proof of the forthcoming marriage and date thereof); or
- (b) widows/widowers with resident dependent children; or
- (c) divorced, judicially separated or who are living apart from their spouse and are subject to a judicial order governing maintenance payments or access to children, providing their dependent children are to be resident with them.

3. Eligible officers may apply for quarters, subject to the rules and conditions contained in this Procedure and 62-18 above. Officers submitting such applications should indicate their order of preference of the desired quarters on the application form.

4. Applications for quarters graded 'G' or higher may only be accepted from JPOs on PPS Point 13 or above. All officers may apply for quarters below 'G' grade. All applicants are subject to the following : —

- (a) an officer who has occupied his/her present quarters for a period of less than 12 months may not apply;
- (b) an officer who has applied under the annual allocation of Public Housing to the Disciplined Services and has been successful may not apply; and
- (c) an officer already occupying a quarters is not permitted to apply for another quarters of the same grade within the same Region (e.g. Hong Kong Island, Kowloon and New Territories) unless the quarters applied for is at least five square metres larger or smaller than the quarters occupied.

5. With the exception of any quarters allocated by the QAC on compassionate grounds, the allocation of quarters should be in accordance with the following points system, irrespective of rank or seniority : —

- (a) 'Salary' points
These are computed to one decimal place, at 1 point for each \$100 of basic salary, including expatriation pay but excluding allowances, that the applicant is receiving on the last pay day immediately preceding the closing date of application;
- (b) 'Service' points
2 points are given for each full year of service since joining the Force. 'Service' points, to be determined as at the closing date of application, are computed to two decimal places to take account of completed months of service. Previous service counts for this purpose only if the break in service is less than 12 months; and

QUARTERS

(c) 'Family' points

- (i) 10 points for the officer's spouse if in Hong Kong or arriving within 30 days of the closing date of application. (10 points would similarly be awarded where marriage will take place within one calendar month of the closing date of application, subject to production of documentary proof of the forthcoming marriage and the date thereof); 3/94
- (ii) 5 points for each dependent child aged ten and below;
- (iii) 5 points for each dependent child expected to be born within four months from the closing date of application. A medical certificate from a doctor certifying the pregnancy and stating the expected date of birth shall be submitted with the application form;
- (iv) 7 points for each dependent child aged over ten; and
- (v) in respect of widowed, divorced or separated officers, dependent children in their legal custody and residing with them will generate points as follows :—
 - First child — 10 points
 - Other children — in accordance with sub-sub-paragraphs 5(c)(ii) to (iv) above.

For the purpose of sub-paragraph 5(c) above, a child ceases to be dependent on reaching the age of 21. "Family" points are calculated to show the position on the closing date of application.

6. Applications should be submitted in duplicate to the Commissioner (EO Quarters) through Formation Commanders.

7. Seniority in overall service counts when two or more officers applying for the same quarters have equal points.

8. Date of birth is taken for determination of priority when two or more officers applying for the same quarters have equal points and length of service. 3/95

62-20 Allocation of Overseas Inspectorate Quarters

Vacant quarters for both married and single overseas Inspectors which are available for allocation are advertised in Headquarter Orders, Part Five. Two closing dates for receipt of applications are stated clearly in the Headquarter Orders — the later date applies to officers returning from vacation leave on or after the earlier date and the earlier date applies to all other officers. Under no circumstances would applications be received after the respective closing dates be considered. The earlier closing date of applications would be taken as the date for determination of eligibility for quartering purposes and calculation of quartering points.

2. Eligible officers may apply for quarters they wish to be considered for, in order of preference, subject to the rules and conditions contained in the relevant Headquarter Orders and 62-18 above. An eligible officer may apply for a quarters which is one grade higher or in any grade lower than his appropriate grade. He may also apply for a quarters which is more than one grade higher than his appropriate grade, but priority for allocation will be accorded to officers who are appropriate to the grade of the quarters in question.

QUARTERS

3. A minimum residence period of three months in a particular quarters is required before an officer or his/her spouse, if eligible can submit a further application for a departmental quarters.

4. With the exception of any quarters allocated by the QAC on compassionate grounds, the allocation of quarters should be in accordance with the points system as set down below :—

(a) 'Salary' points

These are computed to four decimal places, at 1 point for each \$150 of basic salary, excluding allowances, that the applicant is receiving on the

last pay day immediately preceding the closing date of application.

(b) 'Service' points

4 points are given for each full year of service since joining the Force. Service points which are to be determined as at the closing date of application, are computed to three decimal places to take account of completed months of service. Previous service counts for this purpose only if the break in service is less than 12 months.

(c) 'Family' points

(i) 10 points for the officer's spouse if in Hong Kong or arriving within 30 days of the closing date of application. (10 points would similarly be awarded where marriage would take place within one calendar month of the closing date of application, subject to production of adequate documentary proof of the forthcoming marriage and the date thereof);

(ii) 5 points for each dependent child in Hong Kong or arriving within 30 days of the closing date of application (points would not be granted for children who visit Hong Kong only for school holidays or a comparable period);

(iii) 5 points for each dependent child expected to be born within four months of the closing date of application. A medical certificate from a doctor certifying the pregnancy and stating the expected date of birth should be submitted with the application form;

(iv) in respect of widowed, divorced or separated officers, dependent children in their legal custody and residing with them in Hong Kong would generate points as follows :—

First child — 10 points

Other children — in accordance with sub-sub-paragraphs 4(c)(i) to (iii) above;

(v) for the purpose of this sub-paragraph 4(c), a child ceases to be dependent on reaching the age of 21, 'Family' points are calculated to show the position on the closing date of application;

(d) 'Hotel/Leave Flat' points

For each week, up to a maximum of 12 weeks spent in a hotel or leave flat since arriving on first appointment or last returning from vacation leave :—

QUARTERS

	without children	with children
For each week during the first four weeks	1	1
For each week during the 5th to 8th week	1½	2
For each week during the 9th to 12th week	2	3
Maximum	18	24

(e) 'Temporary' points

For each week, up to a maximum of twenty-four since arriving on first appointment or last returning from vacation leave, spent in temporary accommodation not covered by sub-paragraph 4(d) above (e.g. a Service Flat) :—

	without children	with children
For each week, during the first eight weeks	½	½
For each week during the 9th to 16th week	¾	1.
For each week during the 17th to 24th week	1	1½
Maximum	18	24

(f) Where two or more single officers wish to apply for a quarters on a shared basis, an additional 10 points would be added to the points of the more senior officer who is applying for the quarters. When one of the officers vacates the quarters, for any reason, the other officer(s) must likewise vacate it forthwith and move to Service Flat accommodation provided by the PQD. The quarters would then be advertised for re-allocation. Alternatively the remaining officer(s) may, if a replacement sharing officer can be identified, apply to the Commissioner (PQD) to retain the quarters; and

(g) Seniority in service counts when two or more officers applying for the same quarters having equal points.

5. The exigencies of the service may dictate where an officer must reside and in these circumstances, officers may be directed to occupy a specific quarters, or reside in a certain District, irrespective of his total 'points'.

6. Applications should be submitted to the Commissioner (EO Quarters) through Formation Commanders.

62-21 Allocation of Local Inspectorate Quarters

Vacant departmental quarters for married local Inspectorate Officers of and below the rank of CIP which are available for allocation are advertised in Headquarter Orders Part Five. The closing date for receipt of applications is stated clearly in the Headquarter Orders. Under no circumstances would late applications be considered.

QUARTERS

2. Eligibility for quarters within this pool extends to local Inspectorate Officers who are : —

- (a) married with their spouse residing with him in Hong Kong (an officer who will marry within one calendar month of the closing date of application of the relevant QAC meeting will be considered eligible subject to production of adequate documentary proof of forthcoming marriage and date thereof); or
- (b) widows/widowers with resident dependent children; or
- (c) divorced, judicially separated or are living apart from their spouse and are subject to a judicial order governing maintenance payments or access to children, providing their dependent children are to be resident with them.

3. Eligible officers may apply for quarters they wish to be considered for, in order of preference, subject to the rules and conditions contained in this Procedure and 62-18 above. An eligible officer may apply for a quarters which is one grade higher or in any grade lower than his appropriate grade. He may also apply for a quarters which is more than one grade higher than his appropriate grades, but priority for allocation will be accorded to officers who are appropriate to the grade of the quarters in question.

4. A minimum residence period of three months in a particular quarters is required before an officer or his/her spouse, if eligible can submit a further application for a departmental quarters.

5. With the exception of any quarters allocated by the QAC on compassionate grounds, the allocation of quarters should be in accordance with the following points system as set down below : —

- (a) 'Salary' points
These are computed to four decimal places, at 1 point for each \$150 of basic salary, including expatriation pay but excluding allowances, that the applicant is receiving on the last pay day immediately preceding the closing date of application;
- (b) 'Service' points
4 points are given for each full year of service since joining the Force. Service points which are to be determined as at the closing date of application, are computed to three decimal places to take account of completed months of service. Previous service counts for this purpose only if the break in service is less than 12 months;
- (c) 'Family' points
 - (i) 10 points for the officer's spouse if in Hong Kong or arriving within 30 days of the closing date of application;
 - (ii) 5 points for each dependent child;
 - (iii) 5 points for each dependent child expected to be born within four months of the closing date of application. A medical certificate from a doctor certifying the pregnancy and stating the expected date of birth should be submitted with the application form; and
 - (iv) in respect of widowed, divorced or separated officers, dependent children in their legal custody and residing with them in Hong Kong will generate points as follows : —

FORCE PROCEDURES MANUAL — CHAPTER 62

QUARTERS

- First child — 10 points
- Other children — in accordance with sub-sub-paragraphs 5(c)(ii) and (iii) above

(d) Temporary Points

For each week, up to a maximum of 24 weeks, spent in quarters designated by the PQD as 'temporary'.

- for each week during the first eight weeks 1 point
- for each week during the 9th to 16th week 2 points
- for each week during the 17th to 24th week 3 points
- Maximum 48 points

- (e) for the purposes of sub-paragraph 5(c) above, a child ceases to be dependent on reaching the age of 21. 'Family' points are calculated to show the position on the closing date of application; and
- (f) seniority in overall service counts when two or more officers applying for the same quarters have equal points.

6. Applications should be submitted to the Commissioner (Attn.: EO Quarters) through Formation Commanders.

Departmental Quartering Policy/ Guidelines

Purpose

1. This paper sets out the general principles of the departmental quartering policy and the guidelines for its implementation.

Background

2. The Department's policy is to provide accommodation at each institution for staff employed on operational duties because of the need to have a sufficient number of them available for emergencies. Quarters, as defined under Civil Service Regulation 800, are thus provided for married officers; and Single Officers' Quarters / shared quarters / barrack accommodation are provided for those who do not reside in quarters but need to perform overnight on-call duties in their own institutions.

General Principles

3. The following principles have been established in respect of the quartering policy :
 - (a) All quarters are departmental quarters (DQ) provided by the government only to house those officers who must be so housed to meet departmental and operational requirements. According to Para. 17, Annex XII of Accommodation Regulations 541, allocation of DQ is the responsibility of the Commissioner.
 - (b) Quarters are tied to a particular institution for management purpose.
 - (c) Staff are allowed to retain quarters upon transfer.
 - (d) Staff not residing in quarters in the vicinity of the institution where they are posted to work will be provided with Single Officers' Quarters/ shared quarters/ barrack accommodation thereat when performing overnight on-call duties.
 - (e) Unless directed to move, staff are not eligible for removal allowance under Civil Service Regulation 894.
 - (f) Staff residing in quarters in the urban area and working on Lantau Island, Hei Ling Chau and at Cape Collinson Correctional Institution are not eligible for Remote Station Allowance.
 - (g) Staff residing in quarters on Lantau Island, Hei Ling Chau and at Cape Collinson Correctional Institution and working in institutions in the urban area are not eligible for Remote Station Allowance and Remote Station (Children) Allowance.
 - (h) Partial reimbursement of travelling expenses could be claimed by eligible staff under Civil Service Regulations 731 and 732.
 - (i) Staff occupying quarters adjacent to or tied to an institution will be required to be on-call when situation warrants and respond to emergencies of the institution(s) concerned.
 - (j) The allocation of quarters does not carry any implications on the present or future postings of staff. In other words, they cannot request for a change of posting simply because they have been allotted a quarters in another institution.

- (k) A quarters may be allocated to an officer upon request on exceptional or compassionate reasons.
- (l) The allocation and management of departmental quarters will as far as possible follow Civil Service Regulations on non-departmental quarters (NDQ), unless a Civil Service Regulation explicitly indicates that it only applies to NDQ.

Quartering Guidelines

4. In line with the stated principles, the following guidelines will be adopted in the administration of departmental quarters :

A. Allocation of Quarters

All departmental quarters are to be allocated by way of the following machinery :

- Allocation for departmental and operational reasons
- Quarters Allocation Exercise
- Allocation on exceptional compassionate grounds

1. Allocation for departmental and operational reasons

- (i) Subject to availability of appropriate-graded quarters, Superintendents and above at institutions will be provided with an operational quarters except those whose residence are located within 15 minutes travelling distance away from their institutions.
- (ii) Subject to availability of appropriate-graded quarters, Chief Officers on operational and hospital duties at institutions, Principal Officers assigned as Day Orderly Officers, Principal Officer (Hospital-in-charge) and Principal Officer (Security) may be provided with quarters only when they declare that their families will reside with them therein on a full-time basis.
- (iii) Apart from the above, all other officers who are required to perform overnight on-call duties will normally be provided with Single Officers' Quarters / shared quarters / barrack accommodation at their institutions.
- (iv) In order to enable the above officers to fully fulfil their on-call requirements, the quarters provided for them should not be located more than 15 minutes' travelling distance away from their institutions.

- 1 1 The allocation of operational quarters to eligible couples in (i) and (ii) above will be assessed on a case by case basis.

2. Quarters Allocation Exercise

- 2.1 All vacant quarters, except those reserved for meeting departmental and operational requirements, will be allocated through Quarters Allocation Exercises as advised by the Quarters Allocation Committee. The exercise is open to application for all eligible officers. The vacant quarters advertised are allocated to eligible officers in accordance with their score of quartering points, sequence of choices and appropriate grades.

2.1.1 Appropriate-graded Quarters

In general, CSR 814 (1) will apply, i.e. a quarters is of an appropriate grade if the officer's salary is the same as, or one level above or below the grading of the quarters applied for, except with the following modifications:

- (a) Owing to overall shortfall of appropriate-graded JSMQs in the Department, the delineation bar between Grade "G" and Grade "H" JSMQ will remain to apply in quarters allocation exercises, i.e.,
- (i) Assistant Officers and equivalent ranks on GDS(R) Point 17 and above are eligible for "F" and "G" grade JSMQ only; and
- (ii) Assistant Officers and equivalent ranks on GDS(R) Point 16 and below are eligible for JSMQs at grade "H" and below only.
- (b) In order to make full allocation of the higher grade OMQs, namely grades "C" and "B", staff eligible to grade "D" and grade "CD" OMQs may, subject to advice of Government Property Administrator, apply for quarters which are 2 levels above their eligible grades. The priority of allocation will still be stuck to the spirit of CSR 814 (1) when there are applications for quarters of their appropriate grade.

2.1.2 Quartering Points

A quartering point system basically following CSR 815 will be adopted, except with the according of the bonus points and the directional points :

- (a) Bonus Points are to be granted to those officers residing as a tenant in married quarters on Lantau Island and Hei Ling Chau at the rate of 0.5 point for each month of continuous occupancy up to a maximum of 48 points.
- (b) Pursuant to CSR 815 (1)(i), directional points at the rate of 72 points may be granted to quarters tenants affected under decantation programmes in which their quarters are either demolished or returned to the Government.

2.2 Concessionary Points for TI/ I

The deduction of 20 concessionary points for TI/ I applying for quarters is to remain unchanged, with the exception of TI/ I of the catering trade who apply for quarters tied to their working institutions.

* 2.3 Handling of Staff who give up allotted quarters

There are cases in which a successful applicant gives up an allotted quarters in an allocation exercise without actual occupation. This will not only deprive other applicants of the chance to be allotted quarters but also is a waste of Government resources and are subject to Audit queries. Along the spirit of CSR 823(2) and 873(8), the staff concerned will be required to pay a charge equal to 2 months' rental for the quarters given up. Furthermore they will be subject to "low priority" in subsequent Quarters Allocation Exercises held within the next 24 months. The 24 months low priority period will run from the move-in deadline as stipulated on the notification letter/ memo of the respective Quarters Allocation Exercise.

2.3.1 An officer occupying a self-applied quarters for less than 24 months and applying for another quarters will be given lower priority than any other applicants.

2.4 "Low priority" will be accorded in Quarters Allocation Exercises to staff who and/ or whose spouse fall in the following categories:-

- (i) tenant of public rental housing flat administered by Hong Kong Housing Authority or Hong Kong Housing Society or Hong Kong Settlers' Housing Corporation
- (ii) owner/ co-owner of Home Ownership Scheme flat (including flats sold under Home Ownership Scheme / Private Sector Participation Scheme / the Sandwich Class Housing Scheme / the Flat for Sale Scheme in the Urban Improvement Scheme administered by Hong Kong Housing Society) which is still under re-sale restriction
- (iii) recipient of Home Purchase Loan administered by Hong Kong Housing Authority or Housing Society and has not repaid the loan in full
- (iv) recipient of housing benefits provided by private sector
- (v) civilian staff working in the Department

2.4.1 For the purpose of this guideline, "low priority" means allocation of quarters shall ONLY be considered when the quarters applied for received no application from eligible staff under the normal allocation considerations.

2.5 Staff who and/ or whose spouse have joined any one of the following Schemes will be ineligible to application for quarters in Quarters Allocation Exercise :-

- (i) Home Purchase Scheme
- (ii) Home Financing Scheme
- (iii) Housing Loan Scheme
- (iv) Any form of housing scheme which renders irrevocable forfeiture to other civil service housing benefits

2.6 Same quartering points attained by 2 or more officers

When 2 or more officers attain the same quartering points, the Quarters Allocation Committee will accord priority in the following sequence :

- (i) the applicant is not a quarters occupant
- (ii) the applicant is working in the institution to which the quarters applied is attached
- (iii) the applicant is higher in the seniority list

2.7 Need to relinquish double housing benefits

For those successful applicants in Quarters Allocation Exercise who are also tenants/ authorised occupants of public rental housing flats, or owners/ co-owners/ authorised occupants of Home Ownership Scheme flats that are subject to re-sale restriction, or recipient of Home Purchase Loan, they are required to give up their respective public housing benefits and produce the relevant documentary proofs to the management before they are issued keys to the quarters allocated.

* 2.8 Undertaking to have personal information verified with Agencies

As a measure to prevent double housing benefits enjoyed by quarters occupants, the application forms for vacant quarters will include a section in which the applicant undertakes to give consent to have his/her, and his/her spouse's personal information verified with Agencies authorised to process housing information.

* 2.9 Application from VM staff

In view of the imminent redundancy plan for VM staff, applications from this category of staff will normally not be considered.

***2.10 Staff under Interdiction**

Staff under interdiction are suspended from applying departmental quarters. If they are already occupants of departmental quarters, their application for re-allocation to another quarters will be treated in like manner.

***2.11 Application by staff whose spouse is also a member of the Department**

The applicant is required to indicate in the application form whether the spouse is a member of the Department. If both of the couple are CSD staff and are eligible to the same category and grade of quarters, only 1 application from either one of the couple will be accepted. If they are eligible to different category and grade, they may submit different applications. Once the application for higher category or grade quarters turns out to be successful, the other would not be processed further.

***2.12 Composition of Quarters Allocation Committee**

(i) for allocation of Officers' Married Quarters

SS(P)	Chairman
S(P)	Vice Chairman
CO(Q)	Member
1 CSOA representative (must bear the rank of Officer or above)	Member
PO(Q)	(Secretary)

(ii) for allocation of JSMQs

SS(P)	Chairman
S(P)	Vice Chairman
CO(Q)	Member
2 CSOA representative (at least 1 of them is from Rank & File)	Members
PO(Q)	(Secretary)

*** B. Quarters tenant who is demoted in rank**

When a quarters occupant is demoted to a lower rank, he/ she will be directed to occupy another quarters of appropriate category or grade as necessary and within the same precinct as possible. Flexibility will be given in accordance with CSR 814 under the provision of which the staff may be allocated quarters one grade higher or lower than his eligible grade.

* C. Quarters tenant who becomes separated/ divorced/ widowed

In line with the spirit of CSR 801 (b) & (c), separated/ divorced/ widowed officers without legal custody of a child or with over-aged child (more than 19 years of age and not undergo full-time schooling or over 21 years of age) are treated as single. He / She is required to relinquish the quarters that has been allocated to him/ her on being given a reasonable advance notice.

* D. Change of Tenancy

If a quarters was allocated to either one of a couple both of whom are staff of the Department, and a subsequent request for change of tenancy between the couple is approved later, the date of approval letter/ memo for change of tenancy will be treated as the hand-over date, i.e. it will be treated as the date of allocation to the new tenant starting from which restriction of 24 months' "low priority" and entitlement of bonus points, if applicable, will start to count.

Appeals against Quarters Allocation

5. A deadline for appeals against the decision of quarters allocation will be set in the departmental circular announcing the allocation result. The appeals will be decided by the Assistant Commissioner (Personnel).

6. Appeals submitted after the deadline will not be considered.

Occupation of Quarters

7. After the expiration of the appeal period, a memo will be issued to confirm the results of allocation. Successful applicants are required to occupy their allotted quarters within 2 weeks of the confirmation memo and rental will start to be charged. If for any reason they cannot meet the deadline, they should inform Headquarters in writing immediately.

Implementation

8. This quartering policy/ guidelines will supersede the previous one promulgated in (74) in PD PER 023/036 dated 7.5.1993 immediately on the date the implementation of which is announced. Staff wishing to apply for departmental quarters should pay particular attention to the contents of the departmental circular inviting applications for vacant quarters which would set out specific guidelines for applications.

Personnel Section
CSD HQs
10 February 1997

2831

Quarters, General

22-13 (i) Any married member is eligible to apply for a quarter subject to the provision(s) contained in this Chapter. 22-13

(ii) Departmental Quarters will be allocated in accordance with GOs 22-16 to 22-20.

(iii) A member may not transfer from one quarter to another without permission.

(iv) Members will consult their Senior Commander before communicating, either in writing or by telephone, with the Quartering Officer on matters relating to Non-Departmental Quarters.

(v) No member will occupy simultaneously Departmental Quarters and other housing wholly or partially subsidized by Government Funds unless directed otherwise.

(vi) A member allocated with and/or residing in a quarter, upon being given reasonable prior notice will grant every facility and assistance to Government officer(s) and other authorized person(s) who require access to his quarter at all reasonable times for the purpose of carrying out inspection, repair, maintenance, improvement or any other works the Government considers necessary.

(vii) A member allocated with a quarter is required to personally live in the quarter unless directed otherwise or unless written approval for exemption has been given. Failure to observe this requirement will, apart from subjecting the member to disciplinary proceedings, result in a review being conducted to consider the continued eligibility of the member for quarters. The member may then be directed to move out of his allocated quarter and debarred from applying for quarters in future.

Promulgation of Departmental Quarters

22-14 (i) All vacant quarters ready for allocation will be promulgated in HQACs which will also announce the date of the subsequent Quarters Allocation Committee meeting. 22-14

(ii) Quarters which are expected to be vacated or available in the near future will also be promulgated in the same manner with the expected date on which the quarters will be vacated or available.

A.S. No. 476/5

Applications for Departmental Quarters

22-15 (i) Applications for vacant quarters will be invited by notification in HQACs and will be made on FS 207.

22-15

(ii) Unit Commanders will be responsible for ensuring the accuracy of applications before forwarding them to FSHQ.

(iii) If any applicant or his spouse is

- (a) a member of a Local Officers' Co-operative Building Society; or
- (b) a lessee of a Local Officers' Government Built Housing Scheme; or
- (c) a principal tenant/registered occupant of a public rental housing unit; or
- (d) an owner of a Home Ownership Scheme flat; or
- (e) in receipt of Housing Allowance; or
- (f) in receipt of a housing, or housing-related benefit provided by the spouse's employer.

he will submit an undertaking to the effect that if his application is successful he will forthwith delete his/her name from the tenancy record or relinquish the housing benefits above-mentioned within a reasonable period of time which should not normally exceed three months from the date of issue of the letter of allocation.

(iv) A member who is or has been granted

- (a) assistance under the Government Home Financing Scheme or Home Purchase Scheme; or
- (b) a loan under the Government Housing Loan Scheme and was under the age of 45 at the date of submission of his formal application in respect of such scheme;

may not apply for quarters because he has already forfeited such eligibility upon joining the Home Financing/Home Purchase/Housing Loan Scheme.

A.S. No. 476/6

(v) If any applicant or his spouse has received and is still repaying a Home Purchase Loan under the Home Purchase Loan Scheme administered by the Housing Authority, he will submit an undertaking to the effect that if his application is successful he will arrange for the loan to be settled with the Housing Authority immediately.

Eligibility to Apply for Departmental Quarters

22-16 The following criteria will be observed by 22-16
members applying for departmental quarters :-

- (i) For Officers Up to ADO/Supt(Amb)
 - (a) Officers who are not "adequately housed", will be eligible to apply for departmental quarters of the appropriate grades to which they are entitled under relevant CSR or any Officer quarters of grades below their entitlement.
 - (b) Officers who have already been housed in departmental quarters, but of inappropriate grades, are encouraged to and will only apply for quarters of a higher grade if not the appropriate grades, thus releasing quarters for further allocation to junior Officers.
 - (c) Officers who are already housed in departmental quarters of appropriate grades are still eligible to apply for other departmental quarters of their own grades and one grade above as tabled in CSR 872(1) provided that they have been residing in their present quarters for more than three years. Such applications will be considered on equal terms as other applications.
 - (d) If an Officer is housed in any public rental housing unit (Housing Society or Housing Department) irrespective of whether he is the principal tenant or not, he is treated as NOT "adequately housed".
 - (e) If an Officer or his spouse is a member of a Local Officers' Co-operative Building Society, a lessee of a Local Officers' Government Built Housing Scheme, or an owner of a Home Ownership Scheme flat, he is treated as "adequately housed".

A.S. No. 476/7

- (f) With the exception of para. (g) below, 22-16(1)
an Officer who is categorized under
para. (e) above or who has been
occupying departmental quarters but has
given up such accommodation/quarters
voluntarily will be treated as
"adequately housed" for a period of 12
months effective from the date of his
vacating the accommodation/quarters.
Thereafter, he will be considered on
equal terms as other applicants when he
applies for departmental quarters.
- (g) An Officer who has been directed to
occupy departmental quarters for any
reason but subsequently is permitted to
give it up at his own request, may
still apply for quarters irrespective
of para. (f) above. Such Officer will
be eligible to apply for quarters of
appropriate grades only.
- (h) An Officer will not be eligible to
apply for another departmental quarters
within 12 months of his taking up
occupation of departmental quarters
whether he was directed to occupy the
present quarters or not.
- (i) A widowed, separated or divorced
Officer is not eligible for
departmental quarters unless he is
residing with at least one dependent
child who is unmarried and is under 21
years of age.
- (j) Officers who have been treated as
"adequately housed" may still apply for
departmental quarters but their
applications will only be considered
after all applications from Officers
(all Officer ranks) not "adequately
housed" have been considered.
- (k) An Officer who has received a Home
Purchase Loan under the Home Purchase
Loan Scheme administered by the Housing
Authority will not be treated as
"adequately housed".
- (l) Officers who are housed in any grade of
Other Ranks quarters will be treated as
NOT "adequately housed".

A.S. No. 476/8

(ii) Additional Criteria for Officers eligible for Private Tenancy Allowance

22-16(ii)

Officers eligible for Private Tenancy Allowance under relevant CSR are additionally bound by the following criteria :-

- (a) Such Officers are encouraged to apply for Private Tenancy Allowance irrespective of whether they have been housed in any departmental quarters or not.
- (b) Officers who have not been housed in any departmental quarters will be eligible to apply for quarters of appropriate grades only.
- (c) If an Officer is drawing Private Tenancy Allowance under relevant CSR, he is treated as "adequately housed".
- (d) An Officer drawing Private Tenancy Allowance who has given up such benefit will be treated as "adequately housed" for a period of 12 months from the date when he ceases to draw such allowance. Thereafter, he will be considered on equal terms as other applicants when he applies for departmental quarters.

(iii) For Other Ranks

- (a) Members who are not "adequately housed", will be eligible to apply for departmental quarters of the appropriate grades to which they are entitled under relevant CSR or any other quarters of grades below their entitlement. CSR 872(1) is applicable in respect of the grade of quarters for which a member is eligible on the basis of his substantive salary.

A.S. No. 497/1

- 22-16(iii)
- (b) Members who have already been housed in departmental quarters, but of inappropriate grades, are encouraged to and will only apply for quarters of a higher grade if not the appropriate grades, thus releasing quarters for further allocation to junior members. Quarters are regarded as being of an appropriate grade when it is of the same (own) grade as the grade of the substantive salary of the member concerned or one grade higher or one grade lower in accordance with CSR 814.
- (c) Members who are already housed in departmental quarters of appropriate grades are still eligible to apply for other departmental quarters of their own grades as tabled in CSR 872(1) provided that they have been residing in their present quarters for more than five years. Such application will be considered on equal terms as other applications. However, for the purpose of this GO only, 'F' & 'G' grades quarters are deemed to be the own grade for members who are on GDS(R) points 26 and 27.
- (d) If a member or his spouse is the principal tenant of a public rental housing unit (Housing Society or Housing Department), a member of a Local Officers' Co-operative Building Society, a lessee of a Local Officers' Government Built Housing Scheme, or an owner of a Home Ownership Scheme flat, he is treated as "adequately housed" with the exception of para. (e) below.

A.S. No. 497/2

- (e) If a member or his spouse is the principal tenant of a public rental housing unit which is not provided with self-contained toilet and bathroom facilities (Appendix I for reference) or is less than 40 sq.m. (430 sq.ft.) in gross area, he is treated as NOT "adequately housed".
- (f) Members previously occupying departmental quarters but later move to public rental housing unit under the Junior Government Servants quota are considered as "adequately housed" with the exception of para. (g) below.
- (g) Members previously occupying departmental quarters but later move to public rental unit under the Junior Government Servants quota which is not provided with self-contained toilet and bathroom facilities (Appendix I for reference), or is less than 40 sq.m. (430 sq.ft.) in gross area are treated as NOT "adequately housed".
- (h) Members who move from departmental quarters to public rental housing under the Disciplined Service quota and have been granted Removal Allowance for such removal are treated as "adequately housed" irrespective of the type of housing or the gross floor area. Should a member categorised under this paragraph subsequently give up such accommodation, he will still be considered as "adequately housed".
- (i) Members who have been treated as "adequately housed" may still apply for departmental quarters but their applications will only be considered after all applications from members not "adequately housed" have been considered.

A.S. No. 521/1

- (j) A member will not be eligible to apply for another departmental quarter within 3 years of his taking up occupation of a departmental quarter. However, for occupation taken up before 1.6.90, the ineligible period will be 12 months.
- (k) A member who is categorised under para. (d) or (f) above or who has been occupying a departmental quarter but has given up such accommodation/quarter voluntarily will be treated as "adequately housed" for a period of 12 months effective from the date of his vacating the accommodation/quarter. Thereafter, he will be considered on equal terms as other applicants when he applies for a departmental quarter.
- (l) A widowed, separated or divorced member is not eligible for departmental quarters unless he is residing with at least one dependent child who is unmarried and is under 21 years of age.
- (m) A member who has received a Home Purchase Loan under the Home Purchase Loan Scheme administered by the Housing Authority will be treated as "adequately housed" forever whether or not he has fully repaid the loan and/or sold the flat acquired under the scheme.

Allocation of Departmental Quarters

22-17 (i) The Director reserves the right to allocate any quarter of appropriate grade to any member or to direct any member to occupy any quarter of appropriate grade. 22-17

(ii) Departmental quarters for Divisional Officers and above or equivalent will be allocated and/or obtained by FSHQ staff as necessary.

(iii) The allocation of departmental quarters (other than those provided for specific posts) for personnel not included in (ii) above will, where possible and subject to Service exigencies, be in accordance with the principles observed by the Quarters Allocation Committees with reference to the relevant CSR.

A.S. No. 521/2

(iv) Only in exceptional circumstances will O/R members on probation or on trial be considered eligible to apply for departmental quarters.

(v) Married Officers on trial/probation are eligible to apply for departmental quarters and their applications will be considered on equal terms as applications from confirmed married Officers. Regarding Officers on trial, the following principles will apply to cater for reversion in rank :

- (a) Upon allocation of a DQ, the Officer should undertake to vacate the DQ within 6 months if the DQ then becomes inappropriate to his reverted rank;
- (b) If the DQ remains to be an appropriate grade, the Officer should be permitted to retain it; and
- (c) If an Officer has to vacate the DQ, he would be permitted to apply for another DQ notwithstanding GO 22-16(i)(h) and 22-16(iii)(j).

(vi) If a member will be married within 3 weeks after the closing date of application, he will be considered as married. However, he will not occupy the quarter allocated until the marriage certificate has been forwarded to FSHQ. If such certificate is not produced within 14 days of the date on which the result of the allocation exercise is promulgated in HQAC, the quarter concerned will be re-allocated.

(vii) Whenever a relatively large number of quarters are made available to FSD and if the Director thinks fit, GO 22-16 may be suspended. Applications will then be invited from all members concerned and quarters will be allocated on points system and other rules laid down as appropriate.

Quarters Allocation Committee

22-18 Departmental quarters will be allocated by the following Committees :-

22-

Officer Quarters Allocation Committee (For Officers up to the rank of ADO/ Supt(Amb))

The composition of the above Committee is as follows :-

A.S. No. 526/1

- Chairman - Departmental Secretary
- Secretary - Assistant Secretary (General)
- Member - Senior Divisional Officer
(Management Group)
- Member - 1 representative from each of
HKFS Local Officers' Association
and the FSD Ambulance
Officers' Association.

Other Ranks Married Quarters Allocation
Committee

The composition of the above Committee is as follows :-

- Chairman - Deputy Departmental Secretary
(Personnel & General)
- Secretary - Assistant Secretary (General)
- Member - Divisional Officer
(Management Group)
- Member - One representative from each of
the
HKFSD Staff's General Association
HKFSD Ambulancemen's Union
HKFS Control Staff's Union

Quartering Points

22-19 (i) Departmental quarters will be allocated in accordance with the following point system : 22-19

(ii) Officer Quarters

- (a) Basic - Quartering points calculated
Salary in accordance with CSR 815(1)(a).
- (b) Service - 6 points for each year of
unbroken Officer service in the
Department and 1 point for each
year of unbroken service in the
Civil Service.
- (c) Family - 10 points for wife, if residing
with her husband in HK, or
arriving within 1 calendar month
of the date of the Quarters
Allocation Committee meeting.
- Unmarried children under 21
residing in HK will be awarded
points as follows :-

A.S. No. 526/2

1st child - 5 points
2nd child - 4 points
3rd child - 3 points
4th child - 2 points
5th child - 1 point
6th child - no point

- A child expected to be born within 4 months after the closing date for application (a medical certificate is required) will be awarded points in accordance with the above point system.

- Unmarried child under 21 studying overseas will be awarded 50% of points based on the above point system.

(d) Widowed, separated or divorced members with dependent children (unmarried and under 21) in H.K. or with children (unmarried and under 21) in their legal custody and residing with them in H.K.

- 10 points for first child.

- 2nd child - 5 points
3rd child - 4 points
4th child - 3 points
5th child - 2 points
6th child - 1 point
7th child - no point

- Unmarried child under 21 studying overseas will be awarded 50% of points based on the above point system.

(iii) Other Ranks Married Quarters

(a) Basic Salary - 1 point for each \$200.00

(b) Service - 4 points for each year of unbroken service in a disciplined post in a Disciplined Service.

A.S. No. 445/9

- (c) Family
- 10 points for wife, if residing with her husband in H.K., or arriving within 1 calendar month of the date of the Quarters Allocation Committee meeting.
 - Unmarried children under 21 residing in H.K. will be awarded points as follows :-
 - 1st child - 5 points
 - 2nd child - 4 points
 - 3rd child - 3 points
 - 4th child - 2 points
 - 5th child - 1 point
 - 6th child - no point
 - A child expected to be born within 4 months after the closing date for application (a medical certificate is required) will be awarded points in accordance with the above point system.
 - Unmarried child under 21 studying overseas will be awarded 50% of points based on the above point system.
- (d) Widowed, separated or divorced members with dependent children (unmarried and under 21) in H.K. or with children (unmarried and under 21) in their legal custody and residing with them in H.K.
- 10 points for first child.
 - 2nd child - 5 points
 - 3rd child - 4 points
 - 4th child - 3 points
 - 5th child - 2 points
 - 6th child - 1 point
 - 7th child - no point

A.S. No. 445/10

- Unmarried child under 21 studying overseas will be awarded 50% of points based on the above point system.

(vi) When two or more members apply for the same quarter and have equal points, the allocation will be determined by the Committee according to the following factors in a decreasing importance :-

- (a) Years of service in FSD;
 - (b) Rank;
 - (c) Seniority in the rank if of the same rank, or comparable rank in a different grade;
 - (d) Housing situation;
 - (e) No. of children.
- (v) (a) According to the point system in para. (ii) and (iii) above a waiting list showing applicants in descending order of points obtained will be drawn up for the purpose outlined in para. (b) below. This waiting list will be retained through out the allocation exercise and will be annulled when the exercise is completed.
- (b) In case a successful applicant secures approval to withdraw his application under FSGO 22-21, the quarter concerned will be allocated to the applicant top most on the waiting list. If the offer is declined, the quarter will then be allocated to the applicant next highest on the waiting list. The same procedure will be repeated until the quarter is successfully allocated or the waiting list is exhausted.

A.S. No. 445/11

- (c) In re-allocating the quarter in para. (b) above, consideration will be given to the applicant's choice and his eligibility to the quarter with regard to grading.

Compassionate Cases/Extenuating Circumstances

22-20 (i) Applicants who apply for allocation of departmental quarters on compassionate grounds will be required to attach statements stating their hardship and predicaments to their applications which should be forwarded to FSHQ through the proper channels.

22-20

(ii) Such applications will be passed to FSWO in the first instance. FSWO will investigate the validity of the applications and he will advise the respective committee Chairman on the priority for the allocation of quarters.

Withdrawal

22-21 (i) Members wishing to withdraw their applications for departmental quarters will apply in writing with reasons to the Chairman of the appropriate Quarters Allocation Committee.

22-21

(ii) Approval to withdraw applications for departmental quarters after the closing date for application will only be granted as follows :-

- (a) if the member has been successful with an application for a Home Ownership Scheme flat, a public rental housing unit, or assistance under the Government Home Financing/Home Purchase/Housing Loan Scheme;
- (b) in other exceptional circumstances as approved personally by the Chairman of the appropriate Quarters Allocation Committee.

(iii) A member who is given approval to withdraw his application under para. (ii) above will :-

- (a) be debarred from applying for another quarter for a period of 12 months with effect from the date of his application to withdraw; and

A.S. No. 445/12

Firearms Training

Correctional Services Department

Prior to April 1993, all female officers received training in the use of firearms. Such training resumed in February 1997 because they may be required to carry firearms while performing duties similar to those of their male counterparts. Female members of the Emergency Support Group of the Department are also required to use firearms alongside their male counterparts. They are also required to train staff in the use of firearms.

Customs & Excise Department

2. Since 1972, every male or female officers joining the Customs & Excise Department has to receive revolver training during the induction training period. In addition, all male officers and those female officers engaging in investigation duties will have their revolver firing practices on an annual basis. All male officers are required to carry revolvers whilst on duty if there is an operational need. There is no such requirement for female officers.

3. The Customs & Excise Department is now planning to arm all female officers with revolver whilst on duty to meet operational need. However, no date has been fixed yet for implementation.

**Note to Members of the Bills Committee studying
the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

Departmental quarters for married officers

The Administration has provided its guidelines on the allocation of departmental quarters in the discipline services (Legco Paper No. CB(2)2033/96-97). After consideration of the guidelines, we see no justification for retaining an exception in the SDO to authorise marital status discrimination under them.

2. Generally, the guidelines show that available quarters are allocated to officers according to salary, years of service, and the number of dependants living with the officer. Allocation on these grounds is clearly reasonable and unobjectionable.
3. The guidelines also show, however, that eligibility for quarters is restricted to married officers. There is no apparent reason why a single officer with a child, or with a dependent parent, should be treated less favourably than a divorced or widowed officer with the same salary, service, and number and type of dependants. The need for access to available quarters is identical in either case. Nevertheless access is denied to the single officer as a matter of policy.
4. The policy was likely adopted for administrative convenience, following the observation that single officers are less likely to have dependants than married officers. A rigid policy based on such a generalisation is clearly unfair to the exceptional single officer who does have dependants.
5. The SDO is intended to eliminate unfair treatment of this type. Under the SDO, the policy is *prima facie* discrimination on the ground of marital status and would be unlawful,¹ but for an exception to the SDO.² The Bill repeals the exception.³ The Bill would thereby require the Administration to afford single officers fair access to available quarters. The Bill provides a 1-2 year transitional period for the Administration to comply.
6. Compliance should pose no difficulty whatever. Most Departments allocate quarters according to a point system that measures salary, service and dependants. Such a point system needs little or no modification. Single officers need only be allowed to apply. It is noteworthy that the Police Force already operates such a point system for both single and married overseas inspectors.
7. Members should also be aware that the government discrimination in question

¹ Section 7(1)(a) together with sections 11(2)(a), 21, 30 (1) and 38

² Section 62 together with part 2, item 3 of schedule 5

³ Clause 12

is very likely unlawful today under Article 22 of the Hong Kong Bill of Rights Ordinance (Cap. 383, the BORO).

8. To justify a departure from equal treatment under the BORO, the Government must show that a genuine need for different treatment exists that would be recognised by sensible and fair-minded people. The Government must also show that the particular treatment is both rationally selected to meet that need, and proportionate to it.⁴ Based on the discussion above, it is highly unlikely that exclusion of single officers from eligibility for departmental quarters can be so justified.

9. The absence to date of any legal action to force the Government to comply with its obligations under the BORO does not diminish their force. It is not acceptable to except from the SDO discrimination that is already unlawful under the BORO.

Office of Christine Loh
28 April 1997

⁴ 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

- Q1 Can indigenous villagers apply for public housing?
- A1 They can, provided that they satisfy the Housing Authority's requirements.
- Q2 When did the Administration start the review of the Small House Policy?
- A2 The Administration started the review in August 1995.
- Q3 What is the number of claims pertaining to the Small House Policy?
- A3 It is very difficult, if not impossible, to provide any reasonable estimate. Under the Small House Policy, a male indigenous villager may apply once in a lifetime, to build a small house on his own land or Government land. The number of outstanding small house applications is about 13,300.
- Q4 How much land is available for small house development?
- A4 There is no readily available information. It should be noted that most of the small houses were built on land owned by the villagers.
- Q5 More details about the background to the Small House Policy.
- A5 Before 1972, concession was mainly in the form of free building licenses granted to villagers to enable heads of families to build for himself and each son upon marriage a house on their own land within the village areas. The concession in a way was tied to marriage. There was also a system of restricted auctions of Government land within village areas.
- Q6 Will the removal of the exemption in respect of the Small House Policy result in a breach of Article 40 of the Basic Law?
- A6 Our position is that the Policy does not confer legal rights. As regards the question of Policy vis-à-vis Article 40 of the Basic Law, our position is the same as stated previously, in the absence of legal precedence, it cannot be said for certain what would constitute "lawful traditional rights and interests of the indigenous villagers". Hence, whether the removal of the exemption in respect of the Small House Policy would result in a breach of Article 40 would depend upon the court's interpretation of whether the Small House

Policy confers a "lawful traditional right and interest" for the purposes of Article 40.

Q7 Was there a previous practice whereby non indigenous villagers were allowed to build village houses?

A7 There used to be a policy of allowing people who had held Crown Land Permit for more than 10 years to "convert" their structures into permanent houses. The policy was discontinued in 1979 mainly because it led to an unsatisfactory effect of scattered distribution of village houses.

(U:\USER\GENERAL\NOTE117.DOC)

OFFICE OF CHRISTINE LOH, LEGISLATIVE COUNCILLOR

Room 322, 3/F, West Wing, Central Government Offices,
11 Ice House Street, Central, Hong Kong
Tel. (852) 2537-2485 Fax (852) 2537-6937

FACSIMILE TRANSMISSION FORM

To : Andrew Byrnes From : Adam Mayes
(Direct line:2537-2436)

Date : 28/4/97 Total pages : 2 (including this page)

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

You will recall that the Bill replaces the UK definition of indirect discrimination which language adapted from the 1995 Australian federal amendments. (Both the other new Equal Opportunities Bills also incorporate the new definition.)

2. We began clause by clause discussion of the Bill today, and the Administration raised several queries about the drafting which, though a bit half-baked, have to be taken seriously:

- (1) The old definition concerns a requirement, etc., which a respondent "applies or would apply" to a complainant. Why does the new definition add "imposes or would impose"?
- (2) Why does the new definition also cover a respondent who "proposes to" apply or impose a requirement, etc.? Does this mean it may be unlawful merely to discuss and consider a policy even if the policy is not actually adopted or applied to the complainant?
- (3) Why is the word "reasonable" used instead of "justifiable"? Why is the notion of "disadvantage" substituted for the proportion test? Do these changes mean UK precedents will no longer apply to the SDO definition? In particular, does it mean that the European Court's judgment in the Bilka case will no longer apply?

3. To avoid raising concerns, I think it best to return to the SDO language as far as possible. Possible CSAs are attached. What do you think are the implications?

4. I particularly wonder what are the implications of using either the term "reasonable" or "justifiable" and specifying the factors to take into account in applying it. (I was surprised no queries were raised today about the proposed subsections specifying such factors, but I am sure there will be queries next time.) A review of Colin & Bourne's discussion (p. 79-80) leaves me uncertain of the meaning of "justifiable", particularly whether it implies the Eur. Court's Bilka test or not.

I'd be grateful if we could talk it over by phone. Thanks and regards,

“4. Sex discrimination against women

Section 5(1)(b) is repealed and the following substituted -

- “(b) he applies to her a requirement, condition, practice or policy which he applies or would apply equally to a man but -
- (i) which is such that the proportion of women who are disadvantaged by it is considerably greater than the proportion of men who are disadvantaged by 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 disadvantage.”.

5. Sex discrimination against married, etc. persons in employment field

Section 7 is amended -

- (a) in the heading, by repealing “in employment field”;
- (b) by repealing subsection (1)(b) and substituting -
 - “(b) he applies to that person a requirement, condition, practice or policy 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 of the relevant marital status who are disadvantaged by it is considerably greater than the proportion of persons of the same sex with a different marital status who are disadvantaged by 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 disadvantage.”.

6. Discrimination against pregnant women in employment field

Section 8 is amended -

- (a) in the heading, by repealing “in employment field”;
- (b) by repealing subsection (1)(b) and substituting -
 - “(b) he applies to her a requirement, condition, practice or policy which he applies or would apply equally to a person who is not pregnant but -

For discussion
on 28 April 1997

**PAPER FOR THE LEGISLATIVE COUNCIL
PANEL ON MANPOWER**

**PRACTICAL GUIDELINES FOR EMPLOYERS -
ELIMINATING AGE DISCRIMINATION IN EMPLOYMENT**

INTRODUCTION

The Government has drafted the "Practical Guidelines for Employers" on how to eliminate age discrimination in employment. This paper outlines the main points of the Practical Guidelines and invite Members' comments.

BACKGROUND

2. Following a public consultation exercise on age discrimination in employment conducted last year, the Government decided to launch a sustained programme of public education, publicity and self-regulation to deal with the issue. Among the three elements of the programme, self-regulation means that employers have the responsibility of ensuring fair treatment in all aspects of employment, irrespective of age. We believe that the development of a code of employment practices will greatly facilitate this process. Accordingly, we have drafted the non-statutory "Practical Guidelines for Employers : Eliminating Age Discrimination in

Employment" with a view to providing practical and useful guidance to employers on how they could eliminate age discrimination in employment.

THE GUIDELINES

4. The guidelines seek to provide practical guidance in a wide range of employment situations. Employer and employment agencies are encouraged to follow the guidelines and the recommended practices therein.

Consistent Selection Criteria

5. One way for equal employment opportunities to be achieved is for employers to develop a set of consistent selection criteria. These would provide clear guidelines in various employment situations and in this way, each individual can be assessed according to his or her abilities to carry out a given job and not be judged by irrelevant considerations, including age.

6. The criteria should only address requirements that are specific to the job. None of the above requirements should deal with or identify age, unless it is a genuine requirement of the job.

Exceptions where age may be a genuine requirement of a job

7. There should be very few instances where age is a genuine job or occupational requirement. Situations where an age requirement might be justified include the need to recruit an actor of a particular age to provide authenticity in a play, or to fulfil the statutory requirements of relevant legislation.

Guidance in Specific Areas

8. Practical guidance in the following specific areas are provided by the Guidelines :

- (a) Recruitment;

- (b) Advertising;
- (c) Employment Agencies and Services
- (d) Shortlisting;
- (e) Interviewing;
- (f) Selection Tests;
- (g) Appraisal, Promotion and Training;
- (h) Dismissal and Redundancies;
- (i) Retirement; and
- (j) Grievance and related procedures.

9. More details can be found in the Practical Guidelines at Annex.

THE WAY FORWARD

10. We have sought comments on the Practical Guidelines from various interested parties such as employer and employee organizations, and women's groups. In the light of their and Panel Members' comments, we shall refine the guidelines accordingly. We shall distribute the guidelines widely to employers in different sectors and shall make them available for reference by the public.

11. We are confident that the guidelines will facilitate elimination of discrimination in employment on the ground of age.

ADVICE SOUGHT

12. Members are invited to comment on the Practical Guidelines.

Education and Manpower Branch
Government Secretariat
April 1997

c:\francis\paper\note-aga.doc

Practical Guidelines for Employers
Eliminating Age Discrimination in Employment

The Government believes that a programme of public education, publicity and self-regulation is the most appropriate way of dealing with age discrimination in employment. Self-regulation means that employers also have the responsibility to ensure fair treatment in all aspects of employment, irrespective of age. We believe that the development of a code of employment practices will facilitate this process. Employers and employment agencies are encouraged to follow the guidelines and the recommended good practices in the ensuing paragraphs

Consistent Selection Criteria

2. We believe that one way to help eliminate age discrimination in employment is for employers to develop a set of consistent selection criteria. These would provide clear guidelines for employers in recruitment, training, promotion, transfer, redundancy and dismissal situations. In this way, each individual can be assessed according to his or her abilities to carry out a given job and will not be judged by irrelevant considerations, including age.

3. These criteria should cover topics that relate specifically to the job, e.g.

- the type of experience the applicant should have, e.g. clerical, or merchandising experience,
- the amount of experience required, e.g. three years, or two to four years' experience;
- any educational qualifications that may be required, e.g. a higher diploma;
- any specific managerial or technical skills that may be required, e.g. the need to speak Putonghua or be familiar with Information Technology;
- the specific personal qualities required for the job, e.g. willingness to do shift work, or to travel abroad for a number of days each month;

4. The criteria should only address requirements that are specific to the job. None of the above requirements should deal with or identify age, unless it is a genuine requirement of the job.

Exceptions where age may be a genuine requirement of a job

5. There should be very few instances where age is genuine job or occupational requirement. Situations where an age requirement might be justified include the need to recruit an actor of

particular age to provide authenticity in a play, or to fulfil the statutory requirements of relevant legislation, e.g. under the Dutiable Commodities Ordinance (Liquor) Regulations, persons below a certain age are forbidden to work in licensed premises selling alcohol; while under the Security and Guarding Services Ordinance there are both minimum and maximum age limits for persons performing security work.

Guidelines for Recruitment

6. We urge employers to make all recruitment decisions on the basis of consistent selection criteria. In addition, staff handling applications and conducting interviews should be trained to provide fair treatment to applicants of different age groups, e.g. by avoiding questions which could lead to discrimination on the ground of age.

Advertising

7. We recommend that employers should :
- (a) advertise for jobs on the basis of consistent selection criteria, and in neutral terms, so as to encourage applications from suitable candidates of all ages, and to ensure that no one age group will be treated more favourably than another, unless age is a genuine job

requirement, or there are statutory requirements under the relevant legislation;

- (b) avoid specifying an age range or an upper or lower age limit when placing advertisements for employment, unless age is a genuine requirement of the job or there are statutory requirements under the relevant legislation; and
- (c) where vacancies are to be filled by promotion or transfer, publish the information to all eligible employees so that there is no restriction on applications from different age groups.

Employment Agencies and Services

8. We recommend that employers using such services should specify that the vacancies are open to suitably qualified persons of any age as this could send out a clear message that applicants of all ages are welcome. Employment agencies and other providers of employment services are also encouraged to follow this and other principles and the recommended good practices in this "Practical Guidelines for Employers."

Shortlisting

9 We encourage employers to use the consistent selection criteria as the basis for shortlisting of applicants, and avoid making any generalisations or assumptions about the abilities of a particular age group which may not be true of the individual.

Interviewing

10. We encourage employers to :
- (a) ensure that personnel staff, line managers and all other employees who may be involved in staff recruitment receive training in non-discriminatory practices.
 - (b) only ask questions at job interviews that either relate directly to the genuine requirements of the job or facilitate a better understanding of the applicant's personality and aptitude;
 - (c) keep records of interviews to show the reasons for appointing or not appointing a particular applicant.

Selection Tests

11. If selection tests are used then these should be professionally designed and relate specifically to the job requirements. Age should have no place in such tests, unless it is a genuine job requirement.

Appraisal, Promotion and Training

12. We recommend that where an appraisal system exists, the assessment criteria should be examined carefully to ensure fair treatment to employees of all age groups. In a similar way, opportunities for promotion, training or transfer should be available to all, irrespective of their age. Care should be taken not to deny promotion or other opportunities to an employee simply on the ground of age.

Dismissal and redundancies

13. No employee should be dismissed simply on the ground of age. In the case of redundancy, either on a voluntary or compulsory basis, the decision should be made on the basis of which jobs are being eliminated and the performance of individual workers, not on age grounds. Employers should also ensure that conditions for access to voluntary departure or redundancy scheme, if any, be on equal terms to employees, irrespective of their age.

Retirement

14. We recommend that employers should review from time to time their company policy on retirement, and consider in particular whether a compulsory retirement age is necessary.

Grievance and related procedures

15 The employer has the main responsibility for eliminating age discrimination in the workplace, and for encouraging equal employment opportunities. However, employees also have a clear role to play in helping create a climate at work where age discrimination is unacceptable. When appropriate, employees should also encourage their employers to formulate anti-discrimination policies.

16. When an employee does make a complaint, then it should be handled according to a set of procedures which have been laid down and agreed by all concerned. All complaints or grievances should be handled in the same way, irrespective of the age of the complainant or the alleged perpetrator. Procedures should allow for discussion or conciliation between the parties, as well as the intervention of a neutral third party.

[prat-gui]

Progress Report on the Work of the Equal Opportunities Commission

Introduction

This paper provides Members of the LegCo Panel on Home Affairs with information on the progress of work of the Equal Opportunities Commission (EOC) since its establishment and its plans ahead.

Role and Functions of the EOC

The Equal Opportunities Commission (EOC), appointed by the Governor in May 1996, has the responsibility of eliminating discrimination on the basis of gender, marital status, pregnancy or disability, and promoting equal opportunities between men and women, and between people with and without a disability. At present, the EOC has responsibilities for implementing the Sex Discrimination Ordinance (SDO) and Disability Discrimination Ordinance (DDO). Its main functions are as follows:

- (1) investigate complaints of discrimination and endeavour to settle the complaints by conciliation;

- (2) promote equal opportunity through public education and publicity;
and
- (3) conduct review of relevant legislation and make recommendation for amendments, where appropriate.

Work of the EOC since its Establishment

The EOC Office has been set up and commenced operation on 20 September 1996. By March 1997, the 66 staff positions have been filled. Training sessions on the ordinances, operating procedures, and specific aspects of handling complaints have been conducted for the officers and supporting staff. In addition to setting up the office, recruiting and training staff, five main areas of work undertaken by the EOC between 20 September 1996 and 30 April 1997 are given in the following paragraphs:

(1) **The implementation of the SDO and the DDO**

- The EOC began to implement the non-employment related provisions of the SDO and the DDO on 20 September 1996.
- All provisions of the SDO and the DDO were fully implemented on 20 December 1996.
- The Codes of Practice on Employment under the SDO and the DDO were gazetted in November and came into effect on 20 December 1996 after two rounds of consultation. Since January

1997, about 90,000 copies of the COP have been distributed to the public.

- The total number of general and specific enquiries handled is 2332, that for complaints is 110. Details are given in Annex A and Annex B.

(2) Publicity on the two ordinances and the work of EOC

- Regular press releases were issued on EOC activities. (Total 16)
- Press briefings were given after each EOC meeting. (Total 7)
- Advertisements on the commencement of EOC service were placed on 8 newspapers.
- Advertisements were placed on 8 newspapers and one TV API was produced on consultation on Codes of Practice on Employment.
- Advertisements on the full implementation of the two ordinances were placed on 8 newspapers.
- Three TV APIs and two Radio APIs were produced to promote equal opportunities.
- MTRC and KCRC Poster Ads Campaign was launched to promote equal opportunities.
- “EOC News” — a newsletter, published quarterly, was launched in January 1997 and the second issue was also published in April 1997.

- Two EOC promotional leaflets to promote the work of the EOC were published. About 25,000 copies were distributed to the public.
- An EOC homepage has been set up in the Internet in October 1996 for access by the general public.

(3) Public education

- A total of 135 educational talks and public speeches were given.
- A large-scale conference on “Equal Opportunities Legislation and Educational Institutes” was held and attended by 330 participants.
- An experience-sharing session on discriminatory advertisements for publishers was held.
- The design of three training modules on (i) Sexual Harassment, (ii) Equal Opportunities for Men and Women at the Workplace and (iii) Disability Discrimination respectively were commissioned.

(4) Research

- Three baseline surveys respectively on (i) Public Perception on Equal Opportunities (Gender), (ii) Employment Situation of People with Disabilities and (iii) Public Attitudes towards Persons with a Disability had been commissioned and the baseline survey on Public Perception on Equal Opportunities (Gender) was

completed in April 1997. A statistical analysis project on census data to provide objective indicators on equal opportunities and a feasibility study on equal pay for work of equal value were also undertaken.

(5) Community participation

- A pilot funding programme to encourage community organizations to carry out projects in promoting equal opportunities was launched. Twelve organizations received funding in February 1997.
- Participated in a number of exhibitions including the Civic Education Exhibition, the Eastern District Festival and the 7th Career and Education Expo to promote equal opportunities and the work of the EOC. The estimated attendance for these functions are 16,000 , 100,000 and 185,200 respectively.

Plans of EOC Ahead

In 1997/98, EOC has a planned programme of activities which aimed at strengthening public education and community participation in promoting equal opportunities. Details are given in Annex C.

In the area of research, four research projects are expected to be completed. Other specific areas of research will be commissioned during the year.

In the review of legislation, EOC will conduct a comprehensive review of the SDO and the DDO in December 1997, one year after their full implementation with a view to recommending changes, if any, to the legislation.

Subject to the enactment of the Family Status Discrimination Bill, EOC will assume the additional responsibility of administering the ordinance and promoting equal opportunities in this particular aspect.



Equal Opportunities Commission
May 1997

Annex A

Statistics on Enquiries **Period : 20 September 1996 to 30 April 1997**

	<u>Accum. Total</u>
<u>Total Enquiries</u>	2332
(a) General Enquiries (*)	1244
(b) Specific Enquiries	1088
 <u>Specific Enquiries (Topics)</u>	
SDO	454
DDO	334
SDO/DDO	90
EOC	37
Outside Jurisdiction	173
<u>Areas (**)</u>	
Age	28
Race	22
Sexual Orientation	5
Family Status	3
Religion	5
Others	114

(*) General enquiries include enquiries received at HOTLINE regarding EOC's address, office hours, availability of COP and both Ordinances, EOC's events, etc. Statistics on general enquiries were collected since 1 January 1997.

(**) Total calculated may exceed the number of telephone enquiries received as each enquiry may involve more than one area.

May 1997

Statistics on Complaints
Period : 20 September 1996 to 30 April 1997

	<u>Accum. Total</u>		
<u>Total Complaints</u>	110		
Complaints (for investigation and conciliation)		<u>Conciliated</u>	<u>Discontinued</u>
Total	49	2	5
<u>Topics</u>			
SDO	24	2	3
DDO	25		2
<u>Other Complaints and Actions (*)</u>		<u>Resolved</u>	
Total	61	37	
SDO	38	31	
DDO	23	6	

(*) Other complaints and actions outside Section 84 of the SDO or Section 80 of the DDO which include discriminatory advertisements and matters that were brought to EOC's attention by a third party.

May 1997

**1997/98 Public Education and
Community Participation Programme**

- (1) Regular liaison with government bodies, community organizations and concern groups to foster an active partnership including co-organizing talks and other programmes to promote equal opportunities.
- (2) Organizing regular talks on subjects related to equal opportunities including the SDO and the DDO and the work of the EOC on Saturday mornings on a bi-weekly basis commencing in June which are available free of charge to members of the public from all walks of life.
- (3) Funding support will be extended to community organizations through the "Community Participation Funding Programme on Equal Opportunities" for organizing activities to promote community participation in equal opportunities education. There will be two funding batches with the application deadlines set for May and October 1997 respectively.
- (4) Working with RTHK to produce a Docu-Drama Series and a Radio Programme targeting youths to publicize equal opportunities between men and women and persons with and without a disability.

- (5) Production and promotion of the three training modules. Design of new training modules to be commissioned.
- (6) Organizing large-scale public seminars for target audience such as human resources practitioners, line managers, trade union and concern group leaders.
- (7) Promoting the concept of equal opportunities through contributing articles to periodicals published by major federation of trade unions, human resources personnel or employers' organizations which have an extensive network of circulation.
- (8) Continuing on regular press briefings, press releases, meetings with the media, updating EOC's information on the Internet and creating a Newspaper Equal Opportunities Column.
- (9) Organizing mobile exhibitions or participating in events at community centres, public estates and shopping centres to promote the messages of equal opportunities.

May 1997

平等機會委員會工作進度報告

引言

本文件就平等機會委員會自成立以來的工作進度及未來計劃，向立法局民政事務委員會委員提供資料。

平等機會委員會的角色及職能

平等機會委員會於 1996 年 5 月由總督委任，負責消除基於性別、婚姻狀況、懷孕或殘疾的歧視，以及推廣男女之間，以及殘疾人士及非殘疾人士之間的平等機會。目前，平等機會委員會負責推行《性別歧視條例》及《殘疾歧視條例》。委員會的主要職能如下：

- (1) 調查關於歧視的投訴，及致力以調解方式處理投訴；
- (2) 通過公眾教育及宣傳推廣平等機會；和
- (3) 檢討有關條例，並在適當的時候提出修訂建議。

平等機會委員會成立以來的工作

平等機會委員會辦事處於 1996 年 9 月 20 日成立及開始運作。於 1997 年 3 月，辦事處的 66 個職位均覓得合適人選，並已全部到職。委員會亦為主任級員工及輔助人員就有關法例、運作程序及如何處理投訴舉辦訓練班。除了成立辦事處、招聘及培訓員工之外，在 1996 年 9 月 20 日至 1997 年 4 月 30 日期間委員會的主要工作共有 5 方面，計有：

(1) 《性別歧視條例》及《殘疾歧視條例》的實施

- 平等機會委員會在 1996 年 9 月 20 日起執行《性別歧視條例》及《殘

疾歧視條例》中僱傭範疇以外的條文。

- 《性別歧視條例》及《殘疾歧視條例》所有條文於 1996 年 12 月 20 日起全面生效。
- 《性別歧視條例》及《殘疾歧視條例》的「僱傭實務守則」於 11 月刊於憲報，並在經過兩輪諮詢之後，於 1996 年 12 月 20 日起生效。自 1997 年 1 月以來，已向公眾派發超過 9 萬本「僱傭實務守則」。
- 委員會處理的一般查詢及與兩條條例有關的查詢共 2332 宗，投訴個案則有 110 宗，詳情載於附件 A 及附件 B。

(2) 有關兩條條例及平等機會委員會工作的宣傳

- 定期發出有關平等機會委員會活動的新聞稿。(共 16 次)
- 在每次平等機會委員會會議後舉行記者會。(共 7 次)
- 在 8 份報章刊登廣告宣布平等機會委員會開始提供服務
- 在 8 份報章刊登廣告及製作 1 個電視宣傳短片，讓市民知道委員會已就僱傭實務守則展開諮詢
- 在 8 份報章刊登廣告宣布兩條條例全面實施
- 為推廣平等機會而製作 3 個電視宣傳短片及兩個電台宣傳聲帶。
- 在地下鐵路及九廣鐵路推出海報，以推廣平等機會。
- 於 1997 年 1 月起出版一份名為「平等機會委員會通訊」的季刊，第二期通訊亦已於 1997 年 4 月出版。
- 印製兩份推廣平等機會委員會工作的宣傳單張，約派出了 25,000 份。
- 自 1996 年 10 月起在國際電腦網絡上設立平等機會委員會網頁，供市民大眾閱覽。

(3)公眾教育

- 共進行了 135 次教育演講及公開演說。
- 舉辦了大型的「平等機會法例與教育機構研討會」，參加人數為 330 人。
- 就歧視性廣告為出版商舉辦經驗交流研討會。
- 委託了機構為 3 個資料套進行設計工作，3 個資料套分別是(i)預防及處理性騷擾，(ii)認識男女平等就業機會及(iii)防止殘疾歧視。

(4)研究調查

- 3 個分別關於(i)公眾對香港(在性別方面)平等機會的看法，(ii)香港殘疾人士就業情況及(iii)大眾對殘疾人士的態度的基線調查已經委託研究機構進行，而公眾對香港(在性別方面)平等機會的看法基線調查已於 1997 年 4 月完成。此外亦已展開一個可提供客觀指標的人口普查數據分析研究及同值同酬的可行性研究的工作。

(5)社會參與

- 為鼓勵社會團體舉辦推廣平等機會的活動，推行了一個資助試驗計劃。共有 12 個團體於 1997 年 2 月獲得撥款。
- 參與了數個展覽會，包括公民教育展覽、東區節及第七屆職業及教育博覽，以宣傳平等機會和平等機會委員會的工作。上述 3 項活動的參加人數分別約為 16,000 人、100,000 人及 185,200 人。

平等機會委員會的未來計劃

在 1997/98 年度，為加強公眾教育及社會參與以推廣平等機會，平等機會委員會已定立了各項活動的計劃，詳情載於附件 C。

關於研究調查方面，預計會完成 4 個研究項目，委員會亦將於今年委託研究機構進行其他方面的研究。

關於檢討法例方面，平等機會委員會將於 1997 年 12 月，即兩條條例全面生效一年之後，就《性別歧視條例》及《殘疾歧視條例》進行全面檢討，以便在有需要時，提出修訂建議。

若《家庭崗位歧視草案》制定，平等機會委員會將負起推行這條條例及推廣這方面平等機會的責任。

平等機會委員會
一九九七年五月

查詢個案數目

日期：1996年9月20日至1997年4月30日

	<u>累積總數</u>
<u>查詢總數</u>	2332
(a)一般查詢(*)	1244
(b)與兩條條例有關的查詢	1088
<u>與兩條條例有關的查詢範疇</u>	
〈性別歧視條例〉	454
〈殘疾歧視條例〉	334
〈性別歧視條例〉 / 〈殘疾歧視條例〉	90
平等機會委員會	37
不在委員會權限之內的事宜	173
<u>範圍(**)</u>	
年齡	28
種族	22
性傾向	5
家庭崗位	3
宗教	5
其他	114

(*)一般查詢包括在電話熱線收到的查詢，普遍問及平等機會委員會的地址、辦公時間、索取僱傭實務守則及兩條條例，以及平等機會委員會活動等。有關一般查詢的數據是在1997年1月1日起開始收集的。

(**)計算所得的總數可能超過電話查詢的次數，理由是查詢人可能問及超過一個範圍的問題。

一九九七年五月

投訴個案數目

日期：1996年9月20日至1997年4月30日

	<u>累積總數</u>		
<u>投訴個案總數</u>	110		
投訴 (需調查及調解)		<u>已獲調解</u>	<u>已終止調查</u>
總數	49	2	5
<u>投訴範疇</u>			
〈性別歧視條例〉	24	2	3
〈殘疾歧視條例〉	25		2
<u>其他投訴及行動(*)</u>			
		<u>已獲圓滿解決</u>	
總數	61	37	
〈性別歧視條例〉	38	31	
〈殘疾歧視條例〉	23	6	

(*)涉及〈性別歧視條例〉第84條或〈殘疾歧視條例〉第80條以外的其他投訴及行動，包括歧視性廣告及由第三者向委員會提出需關注的事項。

一九九七年五月

1997/98 年度公眾教育及社會參與計劃

- (1) 與政府團體、社會組織及關注團體定期聯絡，以促進積極的合作關係，包括合辦講座及其他活動，以推廣平等機會。
- (2) 在 6 月開始，每兩星期一次在週六上午舉行定期演講，題目將環繞平等機會，包括《性別歧視條例》、《殘疾歧視條例》和委員會的工作。各界市民均可免費參加。
- (3) 透過「平等機會社會參與資助計劃」，撥款資助社會團體組織活動以推廣平等機會訊息。資助計劃將分兩期進行，申請截止日期分別定於 1997 年 5 月及 10 月。
- (4) 與香港電台合作製作一輯實況劇集及一個以年青人為對象的電台節目，藉以推廣男女之間，以及殘疾人士與非殘疾人士之間的平等機會。
- (5) 跟進 3 個資料套的製作及宣傳工作。並將委託機構進行新資料套的設計工作。
- (6) 為人力資源從業員、部門經理、工會及關注組織領袖等舉辦大型的公開研討會。
- (7) 通過向讀者網絡廣闊的主要工會聯會、人力資源從業員或僱主組織等所辦的期刊投稿，推廣平等機會的觀念。
- (8) 繼續定期舉行新聞簡報會、發出新聞稿、與傳媒會面、更新國際電腦網絡上有關平等機會委員會的資料，以及在報章闢設平等機會專欄。

- (9) 在社區中心、公共屋邨及商場舉辦流動展覽，或參與其他機構的活動，宣揚平等機會的訊息。

一九九七年五月

(Summary translation)

**Biannual Supervision Report on
the Equal Opportunities Commission**

I Background and purpose

1. The Equal Opportunities Commission (the EOC) has been in operation for half a year since 20 September 1996. At this juncture, The Hong Kong Women's Coalition on Equal Opportunities, as a civilian organization, would like to present its initial supervision report, setting out its observations and recommendations.
2. Examples cited in this report include opinions publicly expressed by the EOC prior to 20 September 1996 when it officially began to receive complaints. Given that the public image and stance of the EOC will reflect its future position, these examples need to be cited for illustrative purpose.
3. The EOC is charged with the enforcement and promotion of the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO). As a women's organization, we will focus our comments on sex discrimination.

II An outline of the work of the EOC in the first six months (in the area of sex discrimination)

1. Internal - recruitment of staff, production of the EOC emblem, establishment of a home page on the Internet, setting up administrative structure, formation of working groups, etc.;
2. external - publicity, lobbying, answering enquiries, receiving complaints, etc.;
3. issue of the Code of Practice on Employment and making of subsidiary legislation, namely, the Sex Discrimination (Proceedings by Equal Opportunities Commission) Regulation, the Sex Discrimination (Investigation and Conciliation) Rules, and the Sex Discrimination (Formal Investigation) Rules;
4. production of educational/training materials and publicity items;

5. sponsorship of activities of relevant organizations;
6. conduct of surveys to collate fundamental information on the circumstances of women; and
7. sending staff to Britain for the purpose of learning from relevant experience.

III Controversial issues and the ways they were handled

1. A rigid concept of equality of the sexes

Example 1 - The EOC wrote to bars to caution them against designating "lady nights" while offering no privilege to the male sex; it also labelled the half-price concession offered to "Smart Girls" by the Mario's as sexist.

Example 2 - The educational materials prepared by a women's organization for the EOC used women as examples to illustrate their right to complain to the EOC and initiate proceedings under the law if being discriminated. The EOC replaced the women used in the illustrations to the effect that the situations applied to men and women alike and changed all the pronouns to "he/she".

Analysis - Example 1 reflects EOC's sensitivity towards discrimination against the male sex. The EOC has, on different occasions, publicly reiterated that men are also subject to discrimination and are in need of protection. We have to point out that the SDO was enacted in view of the discrimination prevalently suffered by women in society. The whole piece of legislation is targeted at women except that a few provisions also apply to men. In fact, women account for a major proportion of those being discriminated. It follows that it is realistic to use women as examples. The EOC's obsession with equality of the sexes will only serve to play down the original purpose of the SDO, namely, to protect women who are subject to extensive discrimination in society and to put men and women on the same ground.

2. Evasiveness in face of discrimination and the lack of initiative

- Example 1 - Being asked to give its views on an incident in June of last year in which female employees of a company were compelled to wear skirts/dresses at work, the EOC refused to comment on what they called "individual cases".
- Example 2 - The EOC rejected a complaint about sexual harassment filed by a female employee of a bank in July of last year on the ground that it was not yet officially in operation.
- Example 3 - A TV ad of the Macdonald's stereotyped the roles of boys and girls and was condemned on TV.
- Example 4 - The EOC rejected a complaint lodged by the Movement Against Discrimination about disability discrimination on the ground that the complaint was not filed by a victim.
- Analysis - To avoid commenting on individual cases, the EOC can express views that are based on general principles. With regard to the alleged sexual harassment case, instead of bluntly rejecting the complaint, the EOC should have gained an insight into the case for subsequent reference as well as for the sake of showing concern. With regard to certain alleged cases of discrimination (such as Examples 3 & 4), the EOC should have taken the initiative in understanding the cases and given advice to the parties concerned rather than encouraging discrimination by remaining indifferent.

3. Staff's insufficient understanding of sex discrimination

- Example 1 - A staff member of the EOC was told by a male employee that he felt uneasy when he heard a discussion among a group of female employees on the pain of labour, and the EOC staff member interpreted this uneasy feeling as one type of sexual harassment, which we do not agree.

Example 2 - Another EOC staff member expressed the view that it was all right to prevent a woman from joining a board of directors as long as this is not an established company policy or a stipulated ban.

Analysis - The Code of Practice on Employment defines sexual harassment as an act related to sexual advances, requests for sexual favours and conduct of a sexual nature. Sexual harassment in the work place also involves the demonstration of power which renders the harassed person unable to resist. Example 1 obviously does not constitute sexual harassment. Example 2 illustrates the lack of understanding of structural sex discrimination and social and historical factors that have led to the inequality of men and women today. If the banning of women from boards of directors is considered acceptable simply because it is not a stipulated restriction, women will hardly be able to reach the basic point same as that of men. As a matter of fact, Section 48 "Special measures" and Section 57 "Acts done for the purpose of protection of women" under the SDO are designed to give encouragement to women and to promote equal opportunities between the sexes. They seek to remove the past obstacles women used to face and put women on the same ground as men.

4. Inadequacy of publicity

Example 1 - A women's organization requested over the phone 400 copies of publicity pamphlets for distribution in the streets in December 1996, but were told that only 300 copies were available. Staff members of the women's group who arrived at the EOC offices to collect the pamphlets were provided with them only after 30 minutes of disturbances. The reason given for the confusion was that the reception had not received any instruction.

Example 2 - The EOC visited major companies and district boards in the last six months to publicize its work, but it turned down the request of a religious group for a talk on the enforcement of the two ordinances and the

content of the Code of Practice, the reason being that the religious group was unable to secure an audience of at least 50 persons.

- Analysis - The shortage of publicity pamphlets is an indication of inadequate effort being put in publicity work. The confusion in spite of the prior arrangement made reflects administrative disorder. Furthermore, the EOC has focused too much attention on large organizations and employers, but neglected the need of employees. To secure an audience of 50 persons is a harsh condition for most trade unions and concern groups in general. With its present resources, it is unlikely that the EOC is able to monitor all employers. In light of this, it is very important to educate employees and members of the grass-roots level about their own rights.

5. Lack of transparency

- Example 1 - The EOC does not hold open meetings and their papers are not made available to the public. There is no way for the public to know about its work plans and their progress.

- Example 2 - The EOC does have a home page on the Internet, but it is so brief that only the relevant ordinances, the Code of Practice and some news about the EOC are displayed.

- Example 3 - The EOC has turned down, on the grounds of confidentiality, requests of women's groups for the disclosure of sex discrimination cases successfully handled by the EOC.

- Analysis - A lack of transparency is an obstacle to effective communication between the EOC and the public, without which improvement will be limited. The confidentiality reason referred to in Example 3 is unjustified, given that the EOC can disclose the cases without providing the names of persons involved. Only when the public can comment on the handling of specific cases and give their views will the EOC be able to improve. Given that the EOC acquires its resources from public revenue, there is every reason

for it to be supervised by the public. A home page on the Internet is certainly a very good channel for the EOC to communicate with the public, but it is after all only accessible to a small sector of the community. The EOC should explore other channels, say the issue of news letters, to enhance communication with the public.

6. Maladministration

- Example 1 - While the closing date for applications under the Equal Opportunities Project Funding Programmes fell in the middle of January of this year, and results were not known until the end of January, organizations were required to conduct all projects no later than March.
- Example 2 - A women's group submitted a report at the EOC offices on a project it had been in charge of only to be told by the reception that they had no knowledge who was to receive the report.
- Analysis - A number of organizations have complained about the rush in carrying out community projects. Such projects, if launched in a hurry, will hardly achieve the publicity and educational objectives. A review ought to be conducted in this regard. Example 2 reflects improper administration of the EOC and poor communication among its staff.

IV Recommendations and expectations

1. To promote equality of the sexes, the first and foremost step is to eliminate discrimination against women. Equality of the sexes should then be cultivated on this basis. The EOC should not, before a strong foundation is laid, talk high-soundingly about equality of the sexes and equal protection of men and women. We hope the EOC will try to understand further the situation women face in society. The EOC should, by eliminating discrimination against women, lay a strong foundation, on which to bring the two sexes to the same ground. For the sake of enforcing the SDO, the EOC should head forward in the right direction.

2. The staff of the EOC, in order to carry out the work of the EOC on the right track, should gain an insight into the root causes and social factors of sex discrimination, as well as the situation faced by women. To enhance staff training is therefore an urgent task.
3. The elimination of discrimination rely very much on public education and public experience. The lack of transparency is a fatal mistake that hinders improvement of the EOC. The confidentiality principle has to be reviewed. Only when transparency is enhanced can experience and views be effectively exchanged.
4. What causes concern is that the EOC lacks a clear stance, is slow to respond and has little initiative. The EOC should review its involvement in the issue of discrimination. It must be proactive and have a firm stance if it is to promote the anti-discrimination concept.
5. Publicity and education are instrumental in the effective enforcement of anti-discrimination legislation. The EOC should deliver clear messages and set out the channels for complaints in its advertisements. Community projects should be widely publicized to encourage participation.

平等機會委員會半年監察報告

I 背景及目的

1. 平等機會婦女聯席的其中一項工作是監察平等機會委員會（下稱「平委會」），因此，在「平委會」正式在96年9月20日運作半年後，作一初步的監察報告，提出我們的觀察及建議，期望「平委會」在民間團體的監察下，不斷進步，使受歧視者受到法律保障，使社會更趨平等。
2. 下文引述的例子中，還包括了「平委會」在9月20日正式接受投訴之前的一些對外發言，由於從96年5月「平委會」成立至9月20日期間，其對外形象、立場反映了該會日後的定位，因此有需要引述這些例子以作說明。
3. 「平委會」要執行及推動的條例包括有《性別歧視條例》及《殘疾歧視條例》，但作為婦女組織，我們的評述內容則以性別歧視為主。

II 「平委會」首半年工作概述（性別歧視部份）

1. 內部組織：招聘職員、會徽製作、上網、建立行政架構、成立工作小組等。
2. 對外：宣傳、游說、接受查詢、投訴等。
3. 訂立守則及附屬法例：制訂《僱傭實務守則》；附屬法例則包括《法律程序規例》、《調查及調解規則》、《正式調查規則》。
4. 製作教育／培訓教材及宣傳品。
5. 資助團體舉辦有關活動。
6. 開展婦女狀況基本資料調查。
7. 到英國訪問吸收有關經驗。

III 具爭議性事件及處理手法

1. 僵化的性別平衡態度

例一：「平委會」去信警告酒吧只有「女士夜」，而沒有男士優惠，也對馬里奧最初推出的「叻女一族」半價優惠質疑是否有性別歧視成分。

例二：一婦女團體為「平委會」撰寫性別歧視的教材套，其中多個例子皆為女性，並指出女性如受到所述歧視，可根據法例向「平委會」投訴及提出訴訟。有關教材套初稿送交「平委會」後，有關例子的主角則被改為性別男女皆可，在使用代名詞時，都一而再寫上他／她，你／妳。

分析：例一反映了「平委會」對男性的歧視狀況相當敏感，「平委會」在不同的公開場合中重申男性也同樣受到歧視，需要有關保障。我們必須指出，《性別歧視條例》的制訂，是源於社會上對婦女的歧視，因此才立例保障，整條法例也是以女性為主體的，只有個別條款指出某些保障亦適用於男性。事實上，社會上受歧視的性別絕大部份是女性，因此，單張上以女性為例是符合大多數的現實，「平委會」過份抱性別平衡的心態，只會凸顯不到《性別歧視條例》原來是為保障社會上廣泛受歧視的女性，使女性與男性可在同一基礎上前進。

2. 對歧視狀況迴避及欠主動

例一：去年 6 月，有關力寶公司強迫女僱員穿裙上班一事，「平委會」主席在傳媒要求提供意見下，表示不會就個別事件評論。

例二：去年 7 月，「平委會」以未正式運作為由，拒絕一名瑞士聯合銀行女職員遭性騷擾的投訴。

例三：去年下半年，一個麥當勞的電視廣告強化男孩子與女孩子的傳統角色，指男孩子應該活潑好動，女孩子文靜愛扮靚。這種角色定型是製造性別不平等的根源之一，曾有人在傳媒上譴責該廣告。

例四：今年初，反歧視大聯盟向「平委會」投訴屯門黃金海岸酒店有歧視弱智人士事件，「平委會」以沒有苦主投訴而不受理有關事件。

分析：「平委會」在 96 年 5 月成立，以執行立法局於 95 年 7 月通過的《性別歧視條例》的有關宣傳、推廣、調解、調查等工作，大眾對「平委會」都有期望，及急欲理解法例上的定義，因此，「平委會」應以原則性發表評論，這樣也不會與個別事件有抵觸；對涉嫌的性騷擾事件，「平委會」更應先作了解，作為日後正式投入工作時的一個參考，同時也表示一份關注，而不是斷然拒絕來投訴的人。至於就一些涉嫌的歧視事件（如例三、例四），「平委會」應主動理解情況，向有關方面提出意見。如果對公開的歧視無動於衷，只會助長歧視者的行為。

3. 職員對性別歧視理解不足

例一：一名「平委會」職員與婦女聯席茶聚時，對性騷擾有如下的理解：一名男性僱員向她說，他聽到旁邊一群女同事在談論生仔苦況，心感不安；由於該男性僱員感到不安，該名「平委會」的職員則將此「不安」理解為性騷擾的一種。我們不敢苟同。

例二：另一名「平委會」職員在一公開場合談及香港大公司的董事局，雖然男性遠比女性多，但只要沒有既定的公司政策及障礙，阻止婦女加入董事局，便沒有問題。此言論也使大眾失望。

分析：根據《僱傭實務守則》對性騷擾下的定義，其行為必須與性要求、獲取性的好處及涉及性的行徑有關；此外，工作間的性騷擾通常涉及權力關係，使受性騷擾的一方難以反抗。例一的情況顯然與性騷擾扯不上關係。例二明顯反映該名「平委會」職員不理解結構性的性別歧視及其他社會因素、歷史因素導致今日男女處境有異，單以公司沒有明文限制女性不准出任董事局成員便稱無問題，只會阻礙女性在長期受歧視下攀上與男性接近的基點。《性別歧視條例》第48條「特別措施」及第57條「為保護女性而作出的作為」便是為對女性起積極鼓勵及促進兩性平等機會而設，使女性盡快消除過去障礙，可與男性在同一基點進發。

4. 宣傳工作上的失誤

例一：96年12月一婦女團體致電要求獲取四百份宣傳單張，打算安排時間到街上派發，但「平委會」職員稱只能提供三百份單張，然而在該會職員到達「平委會」辦事處時卻未能取得宣傳單張，據稱是接待處未獲上司通知，經過一番掙扎，該會職員在30分鐘後才拿到單張；此事後經立法局議員梁耀忠獲悉，曾在立法局會議上提及此事，並要求「平委會」做好宣傳工作。

例二：「平委會」過去半年到過大公司、區議會等地進行宣傳工作。由於該會工作之一是宣傳有關條例的執行及實務守則的內容，一個教會團體曾要求「平委會」派員到該教會講解，但「平委會」以該教會團體未能找得起碼50名聽眾而拒絕有關要求。

分析：從宣傳單張不足看到「平委會」沒有積極及充份預備有關宣傳工作，團體在預約下領取單張時也出現問題，也反映到「平委會」的內部行政出現混亂。此外，「平委會」應訂立外出宣傳介紹其工作及有關條例的準則。從過去的工作，「平委會」只著重大機構而忽略了小團體，推介對象主要為僱主（包括《僱傭實務守則》）而無視僱員的需要。要有50名聽眾才赴約相信對大部份工會、關注團體來說

是十分苛求的。以「平委會」目前的資源，可能未足以監督所有僱主，因此，加強僱員及基層人士對有關權益的認識便更加重要，一來可發揮監督功能，二來可將主動權交回可能的受害者手上。

5. 欠缺透明度

例一：現時「平委會」的會議及文件均不公開，使市民無法知道其工作計劃及進展。

例二：「平委會」設有網頁，但內容簡單，除有關條例、實務守則的全文，其餘的只屬「平委會」的簡訊。

例三：婦女團體與「平委會」職員會唔時，要求公開有關性別歧視的成功處理個案，但「平委會」以保密為理由拒絕要求。

分析：執行反歧視需要公眾教育及吸收公眾經驗，如果「平委會」透明度不足，只會窒礙與民間作深度交流，導致進步緩慢，現時房屋委員會的會議及議程亦是公開，公眾人士如關注某一項議程，可前往旁聽。從例三可見，保密並非理由，因為可隱去人名，只述事件。只有在公開事件，讓公眾監察所處理個案是否做得恰當，及早給「平委會」反映意見，「平委會」才會在不斷的工作中獲得進步。況且，「平委會」是來自公眾資源，應受公眾監察。設立網頁原本是一個很好的渠道，「平委會」可透過網頁，向市民交代工作計劃，進行狀況，使大家可及時監察，但網頁亦只能向一小部份市民交代，因此，「平委會」應探討不同的渠道，例如「平委會」的通訊，以加強與大眾市民的溝通。

6. 行政處理失當

例一：社區活動計劃在本年1月中截止申請，1月底通知團體獲得有關撥款申請，但該等計劃要在3月中全部完成。

例二：有婦女團體完成社區活動，往「平委會」辦事處遞交活動報告，接待處職員稱不知其事，不知報告交給誰，著該婦女團體致電回自己辦事處問活動報告應交回「平委會」那名職員。

分析：有多個團體反映有關活動計劃的推展過於倉促，並指「平委會」要求的完成時間未能顧及實際的活動需要，例如，有時預訂一個活動場地需時一、兩個月。社區活動計劃必須達致宣傳教育目標才有效，只有個多月時間進行有關活動，顯然絕不理想，金錢花去了，團體做得辛苦，但未必有好效果，「平委會」要檢討有關活動計劃的推展的時間需要。例二反映了「平委會」內部行政混亂，員工之間溝通不足，實應盡快檢討。

IV 建議及期望

1. 要推動兩性平等，首先要將過去對女性的歧視態度扭轉過來，給長期受壓迫的婦女帶來平等機會，然後再從這個基礎上維持兩性平等，達致社會和諧。「平委會」不應在基礎未打好前，便高喊要搞性別平衡，說不能只講女性的一面，同時也要講男性的一面。我們希望「平委會」多了解社會上婦女面對的實況，做好消除婦女受歧視的根基，拉近兩性在社會上面對種種問題的距離，為執行《性別歧視條例》走向正確的方向。
2. 職員要對性別歧視的根源、社會因素、婦女實況有深刻的認識和理解，才可使「平委會」的工作走上正確的軌道，因此，增強對職員的培訓，刻不容緩。
3. 執行反歧視需要公眾教育及吸收公眾經驗，「平委會」透明度不足，不公開議程、文件、會議等，使不能與民間有深度的交流，是「平委會」難以進步的致命傷。「平委會」應檢討有關保密原則，增強透明度，才可以做到互相交流經驗及快速傳遞意見。
4. 「平委會」立場不明，反應遲緩，欠缺主動，令人憂慮，為免陷入一個官僚架構，純行政管理的境地，「平委會」應重新策劃如何介入社會上的歧視問題，要主動積極，立場鮮明，才可推動反歧視意識。
5. 歧視法例是否執行得好，宣傳教育十分重要，新婦女協進會去年 12 月做的調查，顯示知道有關法例及「平委會」的人少於一半。「平委會」在宣傳廣告上，應傳遞清晰訊息，及列出投訴渠道。此外，社區活動計劃應廣為宣傳，讓更多團體參與。

平等機會婦女聯席

九七年五月九日

Amendments to be moved by the Hon. Christine LOH Kung-wai

Clause

Amendment Proposed

2 By deleting the clause.

3 By deleting the clause and substituting -

“3. Interpretation

Section 2 is amended -

(a) in subsection (1), by adding -

““relevant international instruments” ()
means -

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

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

(c) 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” ()

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, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, as applied to Hong Kong;”;

(b) by adding -

“(11) For the purposes of the definition of “relevant international obligations” (), “discrimination” () means discrimination within the meaning of the treaties referred to in that

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

4 to 6

By deleting the clauses and substituting -

“4. Sex discrimination against women

Section 5(1)(b) is repealed and the following substituted -

“(b) he applies to her a requirement, condition or practice which he applies or would apply equally to a man but -

- (i) which is such that the proportion of women who are disadvantageded by it is considerably greater than the proportion of men who are disadvantageded by 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 disadvantage.”.

5. Discrimination against married, etc. persons in employment field

Section 7 is amended -

- (a) in the heading, by repealing “in employment field”;
- (b) by repealing subsection (1)(b) and substituting -

“(b) he applies to that person a requirement, condition or practice 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 of the relevant marital status who are disadvantageded by it is considerably greater than the proportion of persons of the same sex with a different marital status who are disadvantageded by 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 disadvantage.”.

6. Discrimination against pregnant women in employment field

Section 8 is amended -

- (a) in the heading, by repealing “in employment field”;
- (b) by repealing subsection (1)(b) and substituting -

“(b) he applies to her a requirement, condition or

practice which he applies or would apply equally to a person who is not pregnant but -

- (i) which is such that the proportion of persons who are pregnant who are disadvantaged by it is considerably greater than the proportion of persons who are not pregnant who are disadvantaged by 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 disadvantage.”.”.

7(b) to (c) By deleting the subsections.

14 to 15 By deleting the clauses.

16 By deleting the clause and substituting -

“16. Claims under Part III or IV

Section 76 is amended -

(a) by repealing subsection (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.”;

(4A) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.”;

(b) by repealing subsections (7) and (8).”.

New By adding the following -

“16A. Claims under Part III or IV

Section 76(5) is repealed.”.

18 By deleting the clause and substituting -

“18. Section added

The following is 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, in relation to this Ordinance or any other law, pursuant to its functions under section 64(1).”.

19 By deleting the clause.

25 By deleting the clause.

27 By deleting the clauses and substituting -

“27. Discrimination against persons with a disability, etc.

Section 6(b) is repealed and the following substituted -

“(b) he applies to that other person a requirement, condition,

practice or policy 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 are disadvantaged by it is considerably greater than the proportion of persons without a disability who are disadvantaged by it;
- (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 disadvantage.”.

28 By deleting the clause.

29 By deleting the clause.

32 to 33. By deleting the clauses.

New By adding the following -

“33A. Claims under Part III or IV

Section 72 is amended -

- (a) by repealing subsection (3) and substituting -

“(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 71(1), would be obtainable in the High Court.”;

- (b) by adding -

“(4A) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.”.”.

35 By deleting the clause and substituting -

“35. Section added

The following is added -

“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) This section is without prejudice to the Commission’s power to bring proceedings by way of judicial review, in relation to this Ordinance or any other law, pursuant to its functions under section 62(1).”.”.

36 By deleting the clause.

39 to 40 By deleting the clauses.

New By adding -

“Consequential Amendments

District Court Ordinance

41. Rules in relation to jurisdiction under Sex Discrimination Ordinance

Section 73B(2)(c) of the District Court Ordinance (Cap. 336) is repealed and the following substituted -

“(c) to make special provision for any proceedings in the Court under section 82A of the Sex Discrimination Ordinance (Cap. 480).”.

42. Rules in relation to jurisdiction under Disability Discrimination Ordinance

Section 73C(2)(c) is repealed and the following substituted -

“(c) to make special provision for any proceedings in the Court under section 78A of the Disability Discrimination Ordinance (Cap. 487).”.”.

BY FAX
LegCo Paper No. CB(2)2277/96-97

Ref : CB2/BC/55/95

Tel : 2869 9266

Date : 14 May 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-ban
Hon CHEUNG Hon-chung
Hon Albert HO Chun-yan
Hon LAU Chin-shek
Hon LEUNG Yiu-chung
Hon Bruce LIU Sing-lee
Hon NGAN Kam-chuen

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill,
Equal Opportunities (Race) Bill,
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and
Family Status Discrimination Bill**

Meeting on Thursday, 15 May 1997

I forward, for your consideration, an excerpt from the book entitled "Race and Sex Discrimination" [Paper No. CB(2)2277/96-97(01)] provided by Hon Christine LOH. Paragraphs 2.46 to 2.49 succinctly describes the problem with indirect discrimination that the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 seeks to overcome.

(Colin CHUT)
for Clerk to Bills Committee

Encl.
c.c. Hon Mrs Elizabeth WONG, CBE, ISO, JP
ALA4

c:\doc\cc(97)(8)\S\papers\cb2-2277.doc

RACE AND SEX DISCRIMINATION

COLIN BOURN B.Sc.(Econ.)

Barrister,

*Director of the Instructional Centre for Management, Law and Industrial Relations,
Senior Lecturer in the Faculty of Law, University of Leicester*

JOHN WHITMORE B.A., BCL

Practising Barrister,

formerly Legal Director, Commission for Racial Equality

SECOND EDITION

LONDON
SWEET & MAXWELL
1993

possible in the substantial evidence for indirect discrimination if the respondent proves that the requirement or condition was not applied with the intention of treating the claimant less favourably. The EOC has proposed the removal of this provision, which would make it more attractive in both a case on the indirect discrimination provisions.

2.44 The Sex Discrimination Act and the Race Relations Act provisions on indirect discrimination are aimed at the effect of each widely accepted practice on minorities. It is these practices which have been termed "institutional racism," by which is meant the lasting effect of socially accepted arrangements on the expectations of minorities. There are several phenomena which operate in relation to women, which often have the effect of keeping them out of "men's work" and which constitute the stuff of indirect discrimination claims under the Sex Discrimination Act. In the recent equality case of *James v. Chief Adjudicator Office*,¹⁰ Mustill L.J. in the Court of Appeal formulated the following approach to indirect discrimination.

1. Identify the criteria for selection;
2. Identify the relevant population, comprising all those who satisfy all the other criteria for selection;
3. Divide the relevant population into groups representing those who satisfy the criterion and those who do not;
4. Predict statistically what proportion of each group should consist of women;
5. Ascertain what are the actual comparative figures in the two groups;
6. Compare the actual with the predicted balances;
7. If women are found to be under-represented in the first group and over-represented in the second, it is proved that the criterion is discriminatory.

It was in *Hyman-Kayphans GmbH v. Weber* was *Horst*¹¹ that the ECJ first formulated a clear statement of indirect discrimination in Community law. In the United States courts of disparate impact discrimination. As explained in chapter 1,

¹⁰ *Legal Treatment for Men and Women: Strengthening the Act*, EOC, 1987.
¹¹ See the American Report Card 1987, 1988, at p. 11 and the Commission's Communication, "Institutional Discrimination", 2 *Official Journal of the European Communities* (1987). For examples of the widely accepted and fully institutionalised practices of indirect discrimination, see J. Turner & C. Davies "What would we do without her?" *British Women's Journal* 1987. "Alcoholism", in *Women's World: Essays on Women's Work, Education, Professions, Spouses and Partners etc.*, Theobald Publications, 1987. D. Spencer and A. Spencer, "Gender & The Labour Market: the case of women and men lawyers" in *Gender and the Labour Market*, (Ed. by A. Williams et al., Clarendon, 1986); A. Fisher, *Old, Young & Power: Law, Gender, 1983*, Oxford Institute, Oxford & Heinemann (Oxford, Berkeley Press, 1986).
¹² [1989] I.R.L.R. 317.
¹³ [1985] I.R.L.R. 317.

indirect discrimination had acquired the character of "hidden or disguised" discrimination in the second *Dyffryn* case and only returns to the British equality cases of indirect discrimination, clear of impositions of responsibility, when the ECJ holds in *Dillon* that the respondent employer infringes Article 119 of the EEC Treaty when

"It excludes part-time employees from its occupational pension scheme whose that exclusion affects a much greater number of women than men, unless the employer shows that the exclusion is based on objectively justified factors which are unrelated to any discrimination based on sex."

Tests of indirect discrimination

2.45 The two Acts define indirect discrimination in exactly identical terms.¹² These are four tests of indirect discrimination:

1. Has a requirement or condition been applied equally to both sexes or all racial groups?
2. Is that requirement or condition one which a considerably smaller number of women (or men) or persons of the racial group in question can comply with than those of the opposite sex or persons not of that racial group?
3. Is the requirement or condition justifiable irrespective of the sex, colour, race, nationality, ethnic or national origins of the person in question?
4. Has the imposition of the requirement or condition operated to the detriment of a person who could not comply with it?

2.46 1. Is there a requirement or condition?

Unjustified indirect discrimination arises from rules or practices which are on their face neutral, but which put

¹⁴ SDA, s.1(1) "A person discriminates against a woman in any circumstances where for any purpose of this Act (a) he applies to her a requirement or condition which he applies or would apply equally to men but (b) 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, and (c) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and (d) which in its operation puts women at a disadvantage compared with men." SDA, s.1(1) "A person discriminates against a man in any circumstances where for any purpose of this Act (a) he applies to him a requirement or condition which he applies or would apply equally to women but (b) which is such that the proportion of men who can comply with it is considerably smaller than the proportion of women who can comply with it, and (c) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and (d) which in its operation puts men at a disadvantage compared with women."

protected groups as a disadvantage. For example, an age limit can be an apparently neutral requirement which puts women who have or wish to have children at a disadvantage.²⁶ Another apparently neutral requirement which can have a disproportionate impact upon women is that of reaching full-time.²⁷ Racial minorities may have difficulty in complying with a requirement for "O" level English.²⁸

2.67 All the above requirements are clear cut and act as an absolute bar on entering or continuing in employment. It is, however, commonly the case that there is an absolute bar to gaining employment or access to some other benefit, but a selection procedure which imposes a set of intricate requirements on which candidates are to be assessed. Whilst the EAT in *Wander of Southampton v. South*²⁹ held that this would not satisfy the requirements of a selection procedure could lead to a condition or requirement under section 1(1)(b), the application of this decision is uncertain in view of the subsequent Court of Appeal decision in *Peters v. Civil Service Commission and Department of Customs & Excise (No. 2)*.³⁰ In that case, an applicant for a post in a legal assistant had to be either a qualified solicitor or barrister and had to receive a satisfactory assessment from an interviewing board. The interviewing board was charged with having regard to a number of factors, particularly experience in the United Kingdom. The Court of Appeal held that this procedure could not constitute a requirement or condition because it was not an absolute bar to selection. Candidates could compensate for poor performance on one of the factors by excelling in some other respect, so that no one factor constituted an absolute bar and hence there could be no requirement or condition. This decision leads to substantial managerial discretion in the balancing of criteria for selection or promotion. Absolute requirements for a job are generally of the most basic sort likely to be presented by any rational candidate, whilst the actual selection decision will be based on a combination of factors, one or more of which may be highly discriminated to women. As it is almost inevitably the case that candidates are assessed upon a balance of criteria, it would be hard to find cases of a balance of criteria, which would satisfy section 1(1)(b).³¹

²⁶ See *Pain v. Civil Service Commission* [1978] I.C.R. 27.

²⁷ See *Chick v. Bly (RMC) Spent Ltd* [1988] I.C.R. 165 (House of Lords).

²⁸ See *Shaw v. Bly* [1988] I.C.R. 165.

²⁹ [1988] I.C.R. 165.

³⁰ [1988] I.C.R. 165, C.A.

³¹ See also *Why would the following conditions not satisfy?*

Requirement that an applicant should have a previous employment record in the relevant industry. This would seem to be a requirement of the kind which would satisfy section 1(1)(b) if it were not for the fact that it is a requirement which is not based on a balance of criteria.

Requirement that an applicant should have a certain level of English.

2.68 The requirement that a condition or requirement must be an absolute bar was reiterated by the Court of Appeal in *Morr v. London Borough of Tower Hamlets*,³² in which the Court felt bound to follow *Peters*. In *Morr* the Authority had positive selection criteria for applicants for the post of housing solicitor, one of which was experience in Tower Hamlets. The applicant complained this criteria discriminatory, but because it was not in itself a "bar" for applicants to the post, it did not constitute a requirement. The EOC and CMA agree that any practice or policy having an adverse impact on the protected groups should be open to challenge. It is submitted that it is also implicit in the *Dougherty*³³ decision, that if it is sufficient in the context of an equal pay claim under Article 119 for women to show that there is a discrepancy in treatment for the burden of proof to be reversed, there is no need to show that this is brought about by a "requirement or condition" as opposed to a policy or practice. In the earlier case of *Chick v. Bly (RMC) Spent Ltd*,³⁴ the E.A.T. emphasized that the purpose of the legislation is to eliminate established practices which have a disproportionate impact upon minorities. Consequently:

"If the elimination of such practices is the policy (by which the Act, although such policy cannot be used to give the words any other meaning than they normally bear) it is our view a powerful argument against giving the words a narrower meaning thereby excluding cases which fall within the mischief which the Act was meant to deal with."³⁵

2.69 Much of the mischief which this section aims at is beyond its reach, if it is only requirements or conditions which constitute an absolute bar which fall within the purview of section 1(1)(b). It is only if such a condition can be shown to have been based upon grounds of race or sex that it would be possible to proceed successfully under section 1(1)(a) as an alternative. Otherwise there is very little

from the provisions of the Equal Treatment directive and could be reached through that route. See M. R. G. Williams, "The Equal Treatment Directive", in *Women, Employment & Domestic Agency* (1988) I.L.J. 309, C.A. Williams L.J. pronounced absolute bars were incompatible with the purpose of the Act in a different sense, but relying on the Court of Appeal in *Peters* as authority for the proposition that the Court of Appeal is bound by its previous decisions.

³² [1988] I.C.R. 165.

³³ [1988] I.C.R. 165.

³⁴ [1988] I.C.R. 165.

³⁵ [1988] I.C.R. 165.

³⁶ [1988] I.C.R. 165.

³⁷ [1988] I.C.R. 165.

³⁸ [1988] I.C.R. 165.

³⁹ [1988] I.C.R. 165.

⁴⁰ [1988] I.C.R. 165.

⁴¹ [1988] I.C.R. 165.

⁴² [1988] I.C.R. 165.

⁴³ [1988] I.C.R. 165.

⁴⁴ [1988] I.C.R. 165.

⁴⁵ [1988] I.C.R. 165.



Department for
Education and Employment

Caxton House
6-12 Tothill Street
London SW1H 9NF

Telephone 0171 270 3000
Fax 0171 270 5124

Ms Cora Ho—
Government Secretariat
Home Affairs Branch
31st Floor
Southern Centre
130 Hennessy Road
Wan Chai
Hong Kong

14 May 1997

Dear Ms Ho

THE SEX DISCRIMINATION ACT 1975

The Sex Discrimination and Equal Pay (Miscellaneous Amendments) Regulations 1996 provide, amongst other things, for industrial tribunals to award compensation to a person who has suffered indirect discrimination under Part II of the Sex Discrimination Act. This applies even where the respondent did not intend to treat the claimant unfavourably on the ground of his sex or marital status, where it would not be just and equitable to grant other remedies alone. These provisions came into effect from 25 March 1996. I attach a copy of the Statutory Instrument for information.

I hope this is of assistance.

Yours sincerely

M Moore

1996 No. 438

SEX DISCRIMINATION

The Sex Discrimination and Equal Pay
(Miscellaneous Amendments) Regulations 1996

Made 22nd February 1996

Laid before Parliament 4th March 1996

Coming into force

Regulations 1 and 2 25th March 1996

Regulation 3 31st July 1996

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to equal pay for men and women and to equal treatment for men and women in matters of employment, self-employment and vocational training(b), in exercise of the powers conferred by that section, hereby makes the following Regulations:

Citation and commencement

- 1.—(1) These Regulations may be cited as the Sex Discrimination and Equal Pay (Miscellaneous Amendments) Regulations 1996.
- (2) This Regulation and Regulation 2 shall come into force on 25th March 1996.
- (3) Regulation 3 shall come into force on 31st July 1996.

Amendment of the Sex Discrimination Act 1975

- 2.—(1) The Sex Discrimination Act 1975(c) is amended as follows.
- (2) After section 65(1) there is inserted—
 - “(1A) In applying section 66 for the purposes of subsection (1)(b), no account shall be taken of subsection (3) of that section.
 - (1B) As respects an unlawful act of discrimination falling within section 1(1)(b) or section 3(1)(b), if the respondent proves that the requirement or condition in question was not applied with the intention of treating the complainant unfavourably on the ground of his sex or marital status as the case may be, an order may be made under subsection (1)(b) only if the industrial tribunal—
 - (a) makes such order under subsection (1)(a) and such recommendation under subsection (1)(c) (if any) as it would have made if it had no power to make an order under subsection (1)(b); and
 - (b) (where it makes an order under subsection (1)(a) or a recommendation under subsection (1)(c) or both) considers that it is just and equitable to make an order under subsection (1)(b), as well.”

(a) 1972 c.58
(b) The European Communities (Designation) (No. 3) Order 1993 (S.I. 1993/266).
(c) 1975 c.55

3. In section 55(3) (b), for the words "could have been made but was not" there is substituted "was not made".

4. In section 66(3) the words from "For a case" to "section 21 (b)" and the words "for marital status as the case may be" are omitted.

Amendment of the Equal Pay Act 1970

3—(1) Section 2A of the Equal Pay Act 1970(a) is amended as follows.

(2) In subsection (1), for the words from "shall not determine" to the end there is substituted—

"may either—

(a) proceed to determine that question; or

(b) unless it is satisfied that there are no reasonable grounds for determining that the work is of equal value as so mentioned, require a member of the panel of independent experts to prepare a report with respect to that question;

and, if it requires the preparation of a report under paragraph (b) of this subsection, it shall not determine that question unless it has received the report."

(3) In subsection (2) the words "paragraph (a) of" are omitted, and for the words "that paragraph" there is substituted "that subsection".

22nd February 1996

Cheryl Gillan
Parliamentary Under Secretary of State,
Department for Education and Employment

(a) 1970 c.41, section 2A was inserted by regulation 2(1) of the Equal Pay (Amendment) Regulations 1983 (S.I. 1933/1794).

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make changes to the powers of industrial tribunals in certain cases under the Sex Discrimination Act 1975 and the Equal Pay Act 1970. Regulations 1 and 2 come into force on 25th March 1996; regulation 3 comes into force on 31st July 1996.

Regulation 2 extends the remedies available for sex discrimination, pursuant to Council Directive 1976/207/EEC(a). It enables an industrial tribunal to award compensation to a person who has suffered indirect discrimination under Part II of the 1975 Act, even where the respondent did not intend to treat the claimant unfavourably on the ground of his sex or marital status, where it would not be just and equitable to grant other remedies alone.

Regulation 3 improves the provisions implementing Council Directive 1975/117/EEC(b), which provides among other matters for claims to equal pay for work of equal value. The regulation alters the procedure for such claims, so that an industrial tribunal considering such a claim will no longer be obliged to refer the question of equal value to an independent expert, and will have no power to do so where it is satisfied that there are no reasonable grounds for determining that the work in question is of equal value.

(a) OJ No. L 39, 14.2.76, p.40.
(b) OJ No. L 43, 19.2.75, p.19.



Department for
Education and Employment

Caxton House
5-12 Totterill Street
London SW1H 9NF

Telephone 0171 273 3000
Fax 0171 273 5124

Ms Cora Ho
Government Secretariat
Home Affairs Branch
31st Floor
Southern Centre
130 Hennessy Road
Wan Chai
Hong Kong

15 April 1997

Dear Ms Ho

**SEX AND DISABILITY DISCRIMINATION (MISCELLANEOUS PROVISIONS)
BILL 1996**

Thank you for your letter of 13 May.

The Recommendation was discussed further with the Equal Opportunities Commission (EOC). However, in view of the fact that the Commission for Racial Equality had made a similar proposal in the review of the Race Relations Act which the Home Office had decided to adopt, Department for Education and Employment Ministers decided not to proceed with the EOC proposal in parallel with the Home Office, but to wait and see whether the change was a success in the field of race relations. The decision whether to go ahead could then be taken later in the light of the Home Office's experience. However, owing to lack of legislative time it has not yet been possible for the Home Office to proceed and therefore the matter is currently on hold.

I hope this is of assistance.

Yours sincerely

M Moore

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/1/2/34 Pt.11

來函編號 YOUR REF : CB(3)/B/HA/4

Tel No. : 2835 1383

Faxline : 2591 6002

20 May 1997

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

Dear Miss Ma,

Family Status Discrimination Bill

I refer to your letter of 5 May 1997 regarding the Committee Stage Amendment proposed to be moved by the Hon. Lau Chin-shek to the Family Status Discrimination Bill (the Bill).

The Administration was asked to assess whether the amendment has a "charging effect" within the meaning of Clause XXIV(2) of the Royal Instructions, as reflected in Standing Order 45(6) of the Legislative Council.

The amendment proposed by Mr. Lau seeks to broaden the scope of the class of persons which the Bill would protect from discrimination and victimisation by reason of what the Bill terms "family status". The Bill defines that expression, in relation to a person, to mean "the status of having responsibility for the care of an immediate family member", while "immediate family member" in relation to a person means someone who is related to the person "by blood, marriage, adoption or affinity". The proposed amendment, however, goes further by including within the meaning of "family status" in relation to a person : -

- (a) the status of having responsibility for the care of another person (other than in the course of paid employment), whether or not that person is a dependant;
- (b) the status of being a "particular relative", that latter term being defined more widely than "immediate family member" by including a person who is wholly or mainly dependant on a person or is simply a member of that persons' household; and
- (c) the status of being a relative of "a particular person".

This definition follows verbatim the equivalent definitions in Mr. Lau Chin-shek's Equal Opportunities (Family Responsibility, Sexuality and Age) Bill.

The change in the definition of "family status" would enlarge very substantially the class of persons who would be entitled to bring civil proceedings in respect of discrimination which the Bill makes unlawful. This is evident upon considering actual examples of cases which would be brought within the scope of the Bill's protection, for example, those having responsibility for the care of non-dependant members of a person's household, persons in extra-marital relationships, persons cohabiting in a homosexual relationship, and the somewhat nebulous status of being a relative of a "particular person" - presumably, a person whose identity and characteristics give rise to discrimination against a relative.

It follows that the volume of work which will fall on the Equal Opportunities Commission (EOC) is likely to be much greater if the proposed amendment is accepted. Indeed, wherever a complaint is lodged, the EOC is bound to pursue an investigation into conduct which is the subject of the complaint and to attempt conciliation : see clause 62(1) and (3) of the Bill. Investigation of the complaint can only be discontinued for one of the reasons set out in clause 62(4). Clause 63(2) also imposes a mandatory duty on the EOC to consider an application made by the aggrieved person for seeking the Commission's assistance to institute proceedings under the Bill.

In tandem with these mandatory functions, the EOC is also vested with responsibility for conducting investigations, including formal investigations, for the purpose of carrying out its statutory function of working towards the elimination of discrimination of the kinds to which the Bill applies (clauses 44 and 48). This may lead to its issuing of enforcement notices (clause 55) and embarking upon further investigation to determine whether such notices are being complied with (clause 57). Furthermore, just as under the Sex Discrimination Ordinance (section 89), regulations may provide for proceedings for discrimination to be brought and maintained by the EOC where an individual could have instituted such proceedings but has not done so (clause 67).

The Administration therefore takes the view that the proposed amendment has a "charging effect" within the meaning of clause XXIV(2) of the Royal Instructions. This is in line with the approach adopted by the President in his ruling of 18 December 1996 on an amendment put forward by the Hon. Cheung Bing-leung in respect of the Commissioner of Administrative Complaints (Amendment) Bill 1996. The Administration submits that that is the correct approach to follow in the present instance.

In so far as the amendment will lead to an increased work-load which is attributable to the performance of discretionary, rather than mandatory, functions by the EOC, the decision of the previous President on amendments to the Sex Discrimination Bill in 1995 should be borne in mind.

In delivering his reasons, the President laid down the general principle that where an amendment conferred a new discretion on the EOC, so that it was free to do an act if it wished to do, then public expenditure would arise if and when it chose to avail itself of the power. In those circumstances, the effect of the amendment may be to dispose of or charge the public revenue within the meaning of Standing Order 45(6)

In the present instance, the proposed amendment would extend the range of persons in respect of whom a discretion could be exercised. Public expenditure would arise on every occasion when it chose to employ the power available to it.

As the class of persons which the Bill would protect from discrimination and victimisation is broadened and, indeed, to be enlarged very substantially by the proposed amendment, it follows that additional funds have to be voted for the EOC to exercise its statutory functions, involving both mandatory and discretionary functions. In our view, a disposal of the revenue is bound to occur.

I would be most grateful if you would convey our assessment to the President. Please let me know his decision on the matter.

Yours sincerely,

(NG Hon-wah)
for Secretary for Home Affairs



URGENT

本署檔號 Our Ref
來函檔號 Your Ref

EMB CR 2/1/3231/95

電話 Telephone 2810 2018
傳真 Faxline 2530 3780

22 May, 1997

Dr Hon LEONG Che-hung, OBE, JP
Chairman
Bills Committee on the Equal Opportunities
(Family Responsibility, Sexuality and
Age) Bill
Room 1101, Central Building
1-3 Pedder Street
Central
Hong Kong

I am writing to you in respect of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, currently under examination by the Bills Committee which you chair.

At the meeting of the Bills Committee on 19 May 1997, a member expressed concern about the far-reaching implications on the community of those clauses of the Bill relating to discrimination on the ground of age in areas other than employment. As you know, these include :

- education;
- access to places and vehicles;
- goods, services and facilities;
- accommodation;
- land;
- clubs;

- sports;
- application forms;
- superannuation schemes and provident funds; and
- administration of laws and government programmes.

The same member suggested that the Bills Committee should invite representations on these provisions in the Bill from interested parties within the community to ensure that all its aspects are given a full and proper airing.

Given that this is a Member's Bill, I am writing to invite you as Chairman of the Bills Committee to give this proposal your serious consideration. I am sure you will agree how important it is for the implications of all facets of the Bill to be considered carefully.

For our part, we are collating views within the Administration on the effect of the age discrimination clauses of the Bill on areas other than employment. We shall brief Members on our findings at the next meeting of the Bills Committee on Thursday, 29 May.

(Joseph W P Wong)
Secretary for Education and Manpower

cc All LegCo Members



本署檔號 Our Ref.:
來函檔號 Your Ref.:

EMB CR 2/1/3231/95

電話 Telephone: 2810 2018
傳真 Faxline: 2810 7235

急件

香港中環畢打街 1-3 號
中建大廈 1101 室
平等機會(家庭責任、性傾向及
年齡歧視)條例草案委員會主席
梁智鴻議員

梁議員：

由你出任主席的條例草案委員會現正研究平等機會(家庭責任、性傾向及年齡歧視)條例草案；因此，我想向你表達下列意見。

在一九九七年五月十九日條例草案委員會會議中，一位議員關注到條例草案內有關年齡歧視的一些條文，除就業方面，在其他範疇可能對社會帶來深遠影響。這些範疇包括：

- 教育
- 進入地方及交通工具
- 貨品、服務及設施
- 居停地方
- 土地
- 會社

- 體育
- 申請表格
- 有關離職計劃及公積金
- 法律及政府計劃的執行

該位議員建議，條例草案委員會應邀請有關團體和人士，就這些條文提出意見，確保各界可以全面和徹底地就各個範疇發表意見。

由於平等機會(家庭責任、性傾向及年齡歧視)條例草案是議員條例草案，因此，我希望你以條例草案委員會主席的身份，詳細考慮這項建議，因為審慎研究條例草案每個部分可能帶來的影響，至為重要。

我們現正要求政府其他部門，對除就業方面外，年齡歧視條文在其他範疇可能造成的影響提出意見。我們將在五月二十九日(星期四)舉行的條例草案委員會會議中，向各委員簡述收到的意見。

教育統籌司

一九九七年五月二十二日

副本送：各位立法局議員

鄭耀棠、陳婉嫻、陳榮燦
工聯會立法局議員聯合辦事處

地址：士瓜灣馬頭涌道50號2字樓

致：

發文者：

電話：2761 1263

圖文傳真：

圖文傳真：2712 7108

頁數(連此頁)：

日期：



**Issues arising under the
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
as amended by Christine Loh's CSAs**

Remedies for unlawful discrimination

- | | | | |
|----|---|--|---------|
| 1. | \$150,000 cap on SDO damages for work-related discrimination or harassment | <i>repeal</i> | csa 16 |
| 2. | \$120,000 implied cap on all DDO damage awards | <i>repeal</i> | csa 33A |
| 3. | Court cannot order reinstatement under SDO | <i>empower Court to do so, as in DDO</i> | csa 16A |
| 4. | Court cannot award damages for unintentional indirect discrimination under SDO | <i>empower Court to do so, as in DDO</i> | csa 16B |
| 5. | Court may or may not accept a claim that is made late because of conciliation efforts | <i>require Court to do so</i> | 20; 37 |

Scope of protection against discrimination

- | | | | |
|----|--|---|--------------------|
| 1. | SDO exception allows discrimination in death & retirement benefits | <i>new benefits should not discriminate; limit exception to pre-existing arrangements</i> | 7(a), 8, 9, 22, 23 |
| 2. | Indirect discrimination limited to cases involving an absolute bar | <i>widen definition to cover discriminatory preferences</i> | csa 4 to 6; csa 27 |
| 3. | SDO exception for marital status discrimination in Home Ownership Scheme, etc. | <i>repeal</i> | csa 24 |
| 4. | SDO exception for marital status discrimination in housing-related employment benefits | <i>replace with exception permitting rules against double benefits for couples</i> | 10, 24 |
| 5. | SDO exception for security of Hong Kong | <i>repeal, as in DDO</i> | 11 |
| 6. | SDO exception for indirect sex discrimination by disciplined services | <i>repeal with 1-2 year transition</i> | 12 |
| 7. | SDO exception for NT small house policy | <i>repeal with 1-2 year transition</i> | 12 |

EOC functions and powers

- | | | | |
|----|--|---|-------------------|
| 1. | EOC has express power to litigate under SDO & DDO only | <i>clarify that EOC may also seek judicial review under other discrimination-related laws (e.g. BORO Art 22, Basic Law Art. 39)</i> | csa 21; csa 38 |
| 2. | EOC has general function of promoting equality and specific function of administering DDO/SDO | <i>also give EOC specific (but optional) functions of
-- promoting international standards
-- reporting on proposed legislation</i> | 13, csa 3; 30, 26 |
| 3. | EOC unable to make an enforceable settlement with a suspected discriminator who is willing to stop | <i>empower EOC to accept & enforce voluntarily given "binding undertakings" to stop discriminating</i> | 17: 34 |

**Answers to Questions
from Members of the Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill and
Sex & Disability Discrimination (Miscellaneous Provisions) Bill 1996**

Q1 Is there a relationship between tso or tong and the Small House Policy?

A1 There is no relationship between tso or tong matters and the Small House Policy.

Q2 Are male indigenous villagers eligible for public housing?

A2 Male indigenous villagers are eligible for public housing as long as they do not own domestic property and satisfy other prescribed eligibility criteria. The domestic property ownership criteria are set out in A1 in our answers of 17 May 1997.

**Planning, Environment & Lands Branch
28 May 1997**

TOTAL P. 02
TOTAL P. 03

2920

TOTAL P. 007

Our Ref F2.03b/V0261-97

28 May 1997

Dr The Honourable Leong Che-hung, OBE, JP
 Chairman, The Bills Committee
 Legislative Council Secretariat
 Legislative Council Building
 8 Jackson Road Central
 Hong Kong

By Fax & By Mail
 (Fax No. 2509 9055)

Dear Dr The Honourable Leong

Equal Opportunities (Family Responsibilities, Sexuality and Age) Bill

The Hong Kong Federation of Insurers (Federation) made the attached submission on 25 April 1997 seeking an extension of exemption to the insurance industry in the parts of family status and sexuality.

You may wish to note that mortality and morbidity for underwriting life or medical insurance are largely dependent upon sexuality and age. The sexual orientation or behaviour, which also include promiscuous behaviours, would no doubt provide an impact on underwriting reason and affect the amount of the premium on life insurance as it is closely associated with health conditions being exposed to risk.

Insurers will also consider family responsibility and/or life style for underwriting certain insurance businesses such as personal accident, motor, life, etc. Statistical data would show that an adult with family responsibility would be a safer driver and would be less prone to be involved in dangerous activities.

The Federation makes the above further submission to clarify the areas under family responsibility and sexuality which may affect the treatment of a person in relation to any class of insurance business or similar matter involving the assessment of risk by reference to actuarial or other data and by reasons having regard to these data or any other relevant factors.

If you require further information, please feel free to contact me.

Yours sincerely

Frank Chan
 Chairman

FC/DH/vc

Encl

cc The Commissioner of Insurance (Attn: Mr S K Leung)

註 冊 有 限 公 司
 Incorporated with limited liability

香港灣仔告士打道五十六號第一太平銀行中心九樓 電話：二五二零一八六八 傳真：二五二零一九六七
 9th Floor, First Pacific Bank Centre, 58 Gloucester Road, Wanchai, Hong Kong Tel: 2520 1868 Fax: 2520 1967

2921

Ref: F2.03b-V0244/97

25 April 1997

Mrs Anna Lo
Secretary to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road Central
Hong Kong

Dear Mrs Lo

Equal Opportunities (Family Responsibilities, Sexuality and Age) Bill

In the above Bill, exemption has been granted to the insurance industry on discrimination only on the ground of age, but not of family responsibilities and sexuality.

In other anti-discrimination Ordinances like the Disability and Sex Discrimination Ordinances and the lately published Family Status Discrimination Bill, exemption has also been granted to the insurance industry if the treatment of a person in relation to any class of insurance business or similar matter involving the assessment of risk was effected by reference to actuarial or other data and was reasonable having regard to these data or any other relevant factors.

The Hong Kong Federation of Insurers (Federation) believes that it is fair and reasonable to treat the insurance industry in the same manner in all anti-discrimination legislation. Therefore, the Federation considers that the exemption granted on the part of age shall be extended to the parts of family status and sexuality as well in the above Bill.

In this connection, members of the Federation's Legal Sub-Committee would like to meet with members of the Bills Committee to express and to clarify our views on the issue of exemption.

If a meeting can be arranged, please contact me on 2828 8369 or our David Hui on 2861 9377 to fix a date convenient to all parties concerned.

Yours sincerely

Terence Wu
Chairman
Legal Sub-Committee

TW/DH/vc

F:\aact\devid\wila\oc\ref_5m_244

註 冊 有 限 公 司
Incorporated with limited liability

香港灣仔告士打道五十六號第一太平銀行中心九樓 電話:二五二零一八六八 傳真:二五二零一九六七
9th Floor, First Pacific Bank Centre, 56 Gloucester Road, Wanchai, Hong Kong Tel: 2520 1868 Fax: 2520 1867

2922

Our Ref: F2.04/V0262-97

28 May 1997

By Fax & By Mail
(Fax No. 2509 9055)

Dr The Honourable Leong Che-hung, OBE, JP
Chairman, The Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road Central
Hong Kong

Dear Dr The Honourable Leong

Family Status Discrimination Bill

- The Hong Kong Federation of Insurers (Federation) has reviewed the above Bill and supports the exemption given to the insurance industry under Section 38 of the Bill that it would not be unlawful for discrimination on the ground of family status if any differential treatment was effected by reference to actuarial or other data from a reliable source or was reasonable having regard to other data and any other relevant factors.

The Federation does not have any other comments on the Bill.

Yours sincerely

Frank Chan
Chairman

FC/DH/vc

cc The Commissioner of Insurance (Attn: Mr S K Leung)

註 冊 有 限 公 司
Incorporated with limited liability

香港灣仔告士打道五十六號第一太平銀行中心九樓 電話：二五二零一八六八 傳真：二五二零一九六七
9th Floor, First Pacific Bank Centre, 56 Gloucester Road, Wanchai, Hong Kong Tel: 2520 1868 Fax: 2520 1967

**Parallel issues in the
Family Status Discrimination Bill
and the
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

Remedies for unlawful discrimination

- | | |
|---|-------------------------------|
| 1. \$150,000 cap on work-related damages
[cl 54(7)-(8)] | <i>delete</i> |
| 2. Court has no power to order reinstatement | <i>empower Court to do so</i> |
| 3. Court may not award damages for unintentional
indirect discrimination
[cl 54(5)] | <i>empower Court to do so</i> |
| 4. Court may or may not allow a late claim if the
delay was caused by conciliation efforts
[cl 64(3)-(4)] | <i>require Court to do so</i> |

Scope of protection against discrimination

- | | |
|---|---|
| 1. Indirect discrimination limited to cases
involving an absolute bar
[cl 5(b)] | <i>widen definition to cover discriminatory
practices</i> |
| 2. Exception for marital status discrimination in
housing-related employment benefits
[cl 43 & Sched 2] | <i>replace with exception permitting
reasonable rules to prohibit double benefit.</i> |

EOC functions and powers

- | | |
|---|--|
| 1. EOC has general function of promoting equality
and specific function of administering FSDB
[cl 44] | <i>also give EOC specific (but optional)
functions of:
-- promoting international standards
-- reporting on proposed legislation</i> |
| 2. EOC has no power to make an enforceable
settlement with a suspected discriminator who
is willing to stop | <i>empower EOC to accept & enforce
voluntarily given "binding undertakings"
to stop discriminating</i> |

Office of Christine Loh
29 May 1997

**Administration's Assessment on the Age Aspects of
the Equal Opportunities (Family Status, Sexuality and Age) Bill**

The Administration has completed an analysis of the likely impact of the part concerning age discrimination in the Member's Bill on Equal Opportunities (Family Status, Sexuality and Age) sponsored by the Hon Lau Chin-shek. The major areas of concern and controversy are set out below. The analysis clearly indicates that the Bill would have far-reaching implications on the community and would lead to considerable problems in a wide-range of areas. For these reasons, it is undesirable for the Bill to be taken forward. It is important to note that this analysis focuses mainly on Government policies and practices. It is likely that other private sector activities would also be adversely affected by the Bill.

Clause	Issues of Concern
55	<ul style="list-style-type: none"> • From the employers' point of view, training or promoting employees who will soon leave the company upon retirement on account of age will not be an efficient use of training resources and will upset the manpower and succession planning of the company. The Bill should provide exemption for this. • The Bill may render many current civil service practices unlawful, such as: <ul style="list-style-type: none"> - the offer of a separate housing benefits scheme to officers aged 45 and above only, to allow them to repay their housing loans by paying interest only with principals to be repaid on the date of retirement by off-setting the amounts against their pension gratuities; and - the entitlement to higher leave earning rate generally by overseas officers aged 40 or above and local officers on pay scale D4 and above than those below 40, except for those aged 35-39 with 10 or more years of service.
59	<ul style="list-style-type: none"> • Section 17(1A) of the Trade Unions Ordinance (TVO) stipulates that "<i>any person who has lawfully been a member of a registered trade union may, upon his retirement on account of age or ill-health from the trade, industry or occupation in which he was engaged or employed and by virtue of which he was a</i>

	<p><i>member of the trade union, remain a member thereof, but shall not be a voting member.”</i> Members who have left the trade for good because of old age are not actively engaged in the trade. Retirees who are not actively engaged in the trade will not have direct interest in the business of the union. They should not have a voting right to decide on the running of the union.</p> <ul style="list-style-type: none"> • Under Section 17(4) of the TUIO, “a person under the age of 16 years may be a member of a registered trade union, unless provision is made in the rules thereof to the contrary, but shall not be a voting member or a member of the executive of a registered trade union.” The age limit should not be removed as it will ensure that voting members and executive officers are sufficiently mature when they cast their votes or make decisions affecting all members. • Section 17(5) of the TUIO specifies that “a person under the age of 21 years, but of or over the age of 16 years, may be a member of a registered trade union, unless provision is made in the rules thereof to the contrary, and may, subject to the rules of the trade union, enjoy all the rights of a member and execute all instruments and give all acquaintances necessary to be executed or given under the rules, but shall not be a member of the executive of a registered trade union.” To have a basic age limit for election to office is reasonable and to the members’ interests as it ensures that the leaders have certain degree of maturity and experience in the trade. • Overseas countries also have age requirements for members or officials of trade unions. Hong Kong is not particularly restrictive in this area. Based on the above, the Government objects to an amendment to the TUIO along the line of clause 59 of the Bill.
62	<ul style="list-style-type: none"> • Certain tertiary institutions such as PolyU, CityU, CUHK and HKIEd impose age limits for specific types of courses for various reasons, including: <ul style="list-style-type: none"> - maturity and relevant working experience of the student would enable him or her to benefit more from the course; - to meet the age requirement for joining a profession after graduation; and - to be able to qualify for certain types of civil service jobs after graduation, etc. <p>The general exemption clauses 72 -81, however, are not adequate to allow the institutions to continue to</p>

	<p>impose age limits on student admission for these specific purposes.</p> <ul style="list-style-type: none"> • One of the eligibility criteria of the Sir Edward Youde Memorial Fellowship for Overseas Studies is that the applicant must be aged 21 to 30 as at 1 September of the commencement year of course and one of the eligibility criteria of the Sir Edward Youde Memorial Scholarship is that the applicant must be aged 17 to 21 as at 1 September of the commencement year of study. These will become unlawful under this Clause
64	<ul style="list-style-type: none"> • Banks usually adopt different and more stringent requirements in relation to opening of accounts for minors. This is a prudent practice to protect both the banks and the minors themselves. Clause 64 will render this unlawful and it is unclear whether Clause 74 would provide the necessary exemption. • It is reasonable for banks to take into account the age of a customer in making credit decision, e.g. whether a 70 years old is able to service a long term mortgage loan of 25 years. The Bill does not provide any exemption on this. • Given the vagueness of the term “bona fide benefits” under Clause 64(2), the provision of services to children and young people (such as day nurseries, day creches, children and youth centres, outreaching social work for young people, etc.) and the elderly (such as residential homes for the aged, social/multi/day care centres for the elderly, etc.) may be affected by the Bill..
66	<ul style="list-style-type: none"> • The Small House Policy provides that male indigenous villagers aged 18 or above may submit small house applications. The age criterion is justified on the ground that persons under 18 are likely to be living with their families and do not have separate housing needs. Given that an overall review of the policy is ongoing, it is not appropriate to amend or remove the age criterion at this stage.
67	<ul style="list-style-type: none"> • Clubs holding a Private Recreational Lease (PRL) may refuse membership of a person if he or she is too young to be a member of a club without adult supervision. This clause will however render this unlawful.
68	<ul style="list-style-type: none"> • Regulations laid down by international sports governing bodies may prohibit people of above a certain age from officiating as referees or umpires. This clause would however make this unlawful and put local sports association in a very difficult position when organizing internationally sanctioned events.
69	<ul style="list-style-type: none"> • Applicants for the Civil Aid Services (CAS) and the Auxiliary Medical Services (AMS) are required to provide in the application form information of their parents or guardians (e.g. names, HKID Card No.,

71	<p>addresses) if they are under the age of 18. This clause may render this unlawful.</p> <ul style="list-style-type: none">• In exercising its responsibilities under the Banking Ordinance, e.g. in approving applications to become controllers, directors or chief executives of authorized institutions, Hong Kong Monetary Authority (HKMA) does look at the individual's experience which has significant correlation with age. There would be problems if this would be regarded as discrimination under the Bill.• Under existing immigration policies, parents under 50 years of age are normally not allowed to join their sons/daughters in Hong Kong, whereas children over 21 cannot join their parents in Hong Kong as dependants. The Bill may provide ground for people to challenge the above and other similar immigration policies on the ground of age discrimination.• Under the Amusement Games Centres Ordinance (AGCO), applicants applying for an AGC licence must have attained the age of 18. The licence holder is required under the law and the licence conditions to manage the AGC in a manner that is acceptable to the Licensing Authority. This clause will render this requirement unlawful, and the exemption provision in Clause 74 is unlikely to apply in this case as it would be difficult to argue that the setting of age restrictions for a licence holder is to protect the welfare of minors.• The Employees Retraining Board is providing retraining courses primarily for unemployed persons aged 30 or above. It is also running retraining programmes specifically designed for the elderly employees aged 50 or above, and those for which the degree of sponsorship varies with the age of the retrainees and the size of the establishment concerned. These age-based arrangements have been adopted for the purpose of encouraging employers to provide more training and employment opportunities to the more elderly group of workers who are potentially more vulnerable to being displaced from the market. These practices may be regarded as unlawful under this bill.• The Bill is likely to affect the recruitment of Panel of Advisers of Film Censorship as Television and Entertainment Licensing Authority (TELA) only appoints persons aged 18 or above. It would not be logical to appoint persons under the age of 18 to pass judgement to whether a film is suitable for viewing only for those who are aged 18 or above, but the Bill may render the restriction unlawful.
----	--

	<ul style="list-style-type: none"> • Under the Police Superintendents' Discretion Scheme (PSSD), a Police Officer of superintendent rank or above may, at his discretion, caution a young offender instead of initiating criminal prosecution. The scheme is obviously for the benefit of minors who are first-time offenders and should fall within the exemption provided by Clause 74. Legal advice, however, shows that uncertainty exists in the terms of that exemption clause. In order to rely on this exemption, the clause must be interpreted to apply to the <u>decision of not prosecuting a young offender and the act of administering a caution</u>. This may sound artificial and leads one to doubt if that provision is ever intended to cover the Scheme. • The Bill may affect the continuing operation of a number of Housing Authority (HA) policies and practices which involve age restrictions: <ul style="list-style-type: none"> - imposing minimum age limit of 18 for application for rental housing and HOS/PSPS; - under the existing clearance policies, rehousing eligible singletons aged 50 and above to public rental housing whereas those under the age of 50 to Interim Housing; - under the existing addition policy, admitting addition of dependent children of under 18 to a household upon application. For addition of dependent children over 18, each case has to be considered on its merits. Also, applications for addition of elderly relatives are given sympathetic consideration under existing practice; and - under existing policy, admitting transfer of the tenancy to an adult member (over 18) of the household upon the death of the tenant and his/her spouse.
74	<ul style="list-style-type: none"> • The term "welfare" is not well defined in this clause and may be subject to interpretation. It is doubtful whether the exemptions under this clause and Clause 76 are adequate for enabling the Administration to continue to administer age restrictions in certain necessary areas, such as: <ul style="list-style-type: none"> - the segregation of centres into children centres for persons under the age of 16 and adult centres for persons of 16 years and above under the Amusement Games Centres Ordinance (AGCO); - the prohibition on publication of indecent articles to persons under the age of 18 under the Control of Obscene and Indecent Articles Ordinance (COIAO); - the prohibition on the exhibition of films as well as publishing of video tapes or laser discs being

	<p>classified as Category III to a person under the age of 18 under the Film Censorship Ordinance (FCO); and the prohibition of persons under the age of 18 to play mahjong/tinkau in licensed premises under the mahjong/tinkau licence conditions.</p>
76	<ul style="list-style-type: none"> It is not evident from the reading of the exemption provisions as to whether they relate to the welfare or legal capacity of minors. The Government intends to standardise the various age limits contained in the age-specific provisions relating to the making of legal orders under the Separation and Maintenance Orders Ordinance (Cap 16), Matrimonial Causes Ordinance (Cap. 179), and Matrimonial Proceedings and Property Ordinance (Cap. 192) at 18 years of age by the Marriage and Children (Miscellaneous Amendments) Bill 1997. All these provisions are reasonable and there is no need to impose a sunset requirement on them under Clause 77.
77	<ul style="list-style-type: none"> The existing provisions for long service payment (LSP) under the Employment Ordinance (EO) provides a percentage reduction in the calculation of LSP for employees who are less than 45 years of age. The Administration noted the age discrimination involved in the provisions and introduced the Employment (Amendment) (No. 2) Bill 1996 into the LegCo on 29.5.96 to remove the percentage reductions by 2 stages. The Bill is now in the Committee Stage. There will be confusion if the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill is passed before the passage of the Employment (Amendment) (No. 2) Bill 1996. Currently, trade unions would specify in their rules the qualifications and rights for membership. If the age factor is removed from the TUC, the trade unions have to amend their rules accordingly. This involves holding general meetings and submission of the rules to the Registrar of Trade Unions for registration. To render the age-specific provisions of the TUC compatible with Clause 77 within the proposed grace period of 2 years would create inconvenience to trade unions. As at end of April 1997, there are 577 registered trade unions and there will be operational problems for the Registrar of Trade Unions (RTU) to complete the registration of new rules of all the unions in two years. The existing compensation system under the Employees Compensation Ordinance, the Pneumoconiosis

	<p>Compensation Ordinance and the Occupational Deafness Compensation Ordinance will become unlawful upon the expiry of the two years' grace period. The reason is that the compensation system under these three ordinances is operating on the principle of differential treatment for different age groups, i.e. the younger the worker, the more he should get. This principle was adopted in recognition of the fact that a younger person injured at work inevitably suffers a greater loss of future earning capacity than an older person. The age factors in these ordinances thus serve to provide an objective and rational basis for compensation with reference to an injured worker's loss of earning capacity during the rest of his working life. This should not be regarded as age discrimination. We therefore see no reason why this age differential in the compensation legislation should be removed in two years' time.</p>
84 - 861	<ul style="list-style-type: none">• There are a host of private ordinances relating to the work of charitable and voluntary organisations, and religious bodies in Hong Kong which contain certain age-specific provisions. It is questionable whether the protection given to these bodies under these clauses are adequate to cover such provisions. <p>TKB - working list of laws 500, 500 511.</p>

Ref. CB2/BC/55/95

**Paper for the House Committee Meeting
on 30 May 1997**

**Report of the Bills Committee on
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill,
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and
Family Status Discrimination Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on the **Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**, a member's bill introduced by Hon Christine LOH Kung-wai.

Background

2. Almost all the amendments contained in the Bill were previously recommended by the Bills Committee to study the Equal Opportunities Bill (a member's bill introduced by Hon Anna WU Hung-yuk), Sex Discrimination Bill and Disability Discrimination Bill in 1995. The Sex Discrimination Ordinance (SDO) and Disability Discrimination Ordinance (DDO), which are substantially based on the UK Sex Discrimination Act 1975, were enacted on 14 July 1995 and 3 August 1995 respectively without these amendments. 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

3. The main purpose of the Bill is to strengthen and improve the SDO which establishes the Equal Opportunities Commission (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 DDO where appropriate.

The Bills Committee

4. At the House Committee meeting on 30 September 1996, a bill committee was formed to study the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, Equal Opportunities (Race) Bill and

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 introduced by Hon LAU Chin-shek, Hon Mrs Elizabeth WONG CHIEN Chien and Hon Christine LOH Kung-wai respectively. Subsequently, at the House Committee meeting on 25 April 1997, it was agreed that this Bills Committee should also study the Family Status Discrimination Bill (a public bill).

5. Dr Hon LEONG Che-hung was elected Chairman of the Bills Committee. A membership list of the Bills Committee is at **Appendix I**.

6. As at 29.5.97 the Bills Committee has held ten meetings, including eight with the Administration. The Bills Committee has also met deputations during its meetings. The Bills Committee has completed scrutiny of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and is currently examining the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill in parallel with the Family Status Discrimination Bill.

Views of deputations

7. A total of 28 organizations/individuals have given views on the four Bills under study by the Bills Committee. A list of the deputations/written submissions is at **Appendix II**. Most of these organizations/individuals presented views to the Bills Committee on the equal opportunities bills in 1995. As previously, their views are diversified with some for and some against the Bill.

Deliberations of the Bills Committee

General

8. There are also divergent views among Members of the Bills Committee. Members of the Liberal Party take the view that any changes to the SDO and DDO should be considered after the comprehensive review on the two Ordinances by the EOC in December 1997.

9. The Administration does not support the Bill. As the SDO and DDO were only fully commenced on 20 December 1996, the Administration firmly believes 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. Besides, the 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 amendments to the Ordinances are made now, bearing in mind that further amendments might be introduced after the EOC's review.

10. Given that the two Ordinances have been fully operational and the related Codes of Practice on employment issued only for a few months, the EOC considers that it may be premature to consider amending any of the existing provisions without local operational experience. Although changes to the two Ordinances, 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. In this connection, 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.

Major issues

Remedies for unlawful discrimination

11. 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, clause 16 of the Bill -

- (a) 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;
- (b) 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
- (c) 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.

12. In addition, Miss LOH proposes to amend clause 16 and to add a new clause 33A to ensure that the \$120,000 implied cap ordinarily applicable to civil proceedings in the District Court does not apply to SDO and DDO damage awards. Both Ordinances require proceedings to be brought in the District Court, which does not normally hear civil proceedings concerning more than \$120,000. This limit was not meant to apply to SDO and DDO proceedings: both Ordinances intended to empower the District Court to exercise the High Court's unlimited remedial powers. However, in an amendment made to the DDO before it was enacted, a drafting mistake caused the ordinary District Court limit to apply to DDO proceedings. The Bill makes the same drafting mistake when amending the SDO. Both should be corrected.

13. The Administration points out that the \$150,000 cap on damages under SDO was proposed by a Member and passed in 1995. The availability of remedy of reinstatement under the DDO but not the SDO is because the two Ordinances deals with different areas of discrimination. The Administration highlights the importance of mutual consent as a pre-requisite for the court order for reinstatement, which is not presently provided in the DDO. With regard to damages for unintentional sex discrimination, the Administration states that the UK Sex Discrimination and Equal Pay (Miscellaneous Amendments) Regulations 1996 provides, among other things, for industrial tribunals to award compensation to a person who has suffered indirect discrimination with a condition 'where it would not be just and equitable to grant other remedies alone'. Clause 16 of the Bill does not impose such a condition.

14. Clause 20 of the Bill provides that time used to attempt conciliation of a complaint does not count against the time limit to initiate legal proceedings in respect of it. The Administration has no objection to this amendment in principle.

Scope of protection against discrimination

15. The SDO makes many exceptions. The Bill repeals these exceptions with the provision for the expiry of several major ones in 1-2 years after the Bill's enactment.

16. The Bills Committee has concentrated on deliberating the exceptions for the small house policy, indirect sex discrimination by disciplined services and security of Hong Kong.

17. The majority Members of the Bills Committee support the repeal of the exception for the small house policy. Some are of the view that applying the principle of equal rights for all citizens of Hong Kong, the policy should be discontinued altogether. It is unfair that only indigenous villagers have a right to build small houses in the New Territories. A Member of the Bills Committee and the Heung Yee Kuk point out that the policy is not related to sex discrimination because before the introduction of the policy in 1972 traditionally heads of families, who were usually males, (but might include female indigenous villagers in special circumstances e.g. a widow whose husband died without a house) were allowed to build houses within the village areas. The policy aims at improving the low standard of housing in rural areas and to preserve the cohesive pattern of indigenous communities. They will not object to extending the policy to cover indigenous villagers of both sexes. The implications on the housing needs of the indigenous villagers should be addressed to before removing the exception and the policy. Miss LOH argues that clause 12 of her Bill provides a one to

two years transitional period for this exception, whereby allowing adequate time for the Administration to consider the way forward on the policy.

18. After considering the departmental guidelines on the allocation of quarters for the disciplined services, Miss LOH sees no justification for retaining an exception in the SDO to authorise discrimination against single officers. There is no apparent reason why a single officer with a child, or with a dependent parent, should be treated less favourably than a divorced or widowed officer with the same salary, service and number and type of dependents. The exception referred to in Schedule 5 Part 2 item 3(b)(i) should be repealed as proposed in clause 12. Miss LOH also considers that the provisions on indirect discrimination under the SDO would be sufficient to avoid rendering the differential treatments referred to in Schedule 5 Part 2 item 1 (i.e. requirement relating to height, uniform, weight or equipment etc.) unlawful. It is therefore unnecessary to retain the exceptions.

19. The Administration considers that the existing exception provisions in the two Ordinances, such as those related to the small house policy, are reasonable and necessary. Any unilateral termination of the policy or practice by legislative means is not acceptable.

20. The Administration is conducting a comprehensive review of the small house policy which includes, among other things, the issues of land supply, adequacy of existing arrangements and options on the way forward. The Administration's position is that the policy does not confer legal rights. As regards the question of the policy vis-a-vis Article 40 of the Basic Law, its position is that, in the absence of legal precedence, it cannot be said for certain what would constitute "lawful traditional rights and interests of the indigenous villagers". Hence, whether the removal of the exemption in respect of the small house policy would result in a breach of Article 40 would depend upon the court's interpretation of whether the policy confers a "lawful traditional right and interest" for the purposes of Article 40.

21. On the exceptions for indirect sex discrimination by disciplined services, there are operational requirements to provide departmental quarters for married officers in the disciplined services. For the same reason, there is differential treatment between male and female officers in certain practices of the disciplined services. The proposed deletion of the exception clause for acts safeguarding security of Hong Kong could undermine our security.

22. Clauses 4, 5 and 6 of the Bill amend the definitions of indirect discrimination. The Bill amends the test used in the two Ordinances to identify indirect discrimination. The existing test is copied from UK law, and has been criticized by the UK EOC. The Bill replaces it with a simplified test used in

recent Australian legislation. Indirect discrimination as amended by Miss LOH's CSA may include -

- (a) in addition to conditions and requirements that are indirectly discriminatory, practices of that type as well; and
- (b) any practice, condition or requirement that disadvantages a person because of sex, marital status and pregnancy (as the case requires), regardless of whether the person can comply with it.

23. The Administration states that the UK Government does not encounter any problem in implementing the relevant provision and therefore has not accepted the UK EOC's proposal. The existing definition of "requirement or condition" is broad enough to include policies, practices, rules or stipulations which may appear neutral but have a discriminatory effect in practice. The Administration also fails to see why the Bill proposes to compare the proportion of men and women who are disadvantaged by the requirement, condition or practice to assess the impact on one sex instead of comparing the proportion of men and women who can comply with it.

24. After considering the views of the Bills Committee and the Administration, Miss LOH proposes to revise the wording in clauses 4 -6 in order to tie in with the wording of the relevant provisions in the SDO and DDO, which are based on the UK legislation.

EOC functions and powers

25. The Bill clarifies that the EOC may also seek judicial review under other discrimination-related laws (e.g. BORO Article 22, Basic Law Article 39).

The Bill also gives the EOC specific (but optional) functions-

- (a) of promoting relevant international standards; and
- (b) of reporting on proposed legislation.

26. 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. 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.

27. The Administration points out that, according to legal advice, the EOC is able to bring judicial review proceedings under the two Ordinances. The

proposal to charge the EOC with the responsibility to promote international instruments and examine any proposed legislation is inappropriate as the EOC is established to implement and promote the SDO and DDO. The Administration considers 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.

Committee stage amendments (CSAs)

28. After considering the views of the Bills Committee, the Administration and deputations, Miss LOH has agreed to propose some amendments to her Bill. A summary of the issues arising under the Bill as amended by CSAs is at **Appendix III**. A full set of the CSAs is at **Appendix IV**.

Recommendation

29. The Bills Committee feels that as consensus cannot be reached by further deliberation, it recommends that the Second Reading debate of the Bill be resumed at the LegCo sitting on 11 June 1997.

Advice sought

30. Members are invited to support the recommendation of the Bills Committee at paragraph 29 above.

Legislative Council Secretariat

29 May 1997

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill,
Equal Opportunities (Race) Bill,
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and
Family Status Discrimination Bill**

Membership list

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-yea, 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 NGAN Kam-chuen

(Total : 15 members)

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill,
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and
Family Status Discrimination Bill**

**List of deputations/written submissions
(Position as at 29.5.97)**

1. The British Chamber of Commerce in Hong Kong
2. Employers' Federation of Hong Kong
3. Federation of Hong Kong Industries
4. Hong Kong General Chamber of Commerce
5. The Hong Kong Association of Banks
6. Hong Kong Women's Coalition on Equal Opportunities (formerly known as Coalition of Women's Organisations)
7. Hong Kong Association of Business and Professional Women
8. Hong Kong Federation of Women
9. Hong Kong Council of Social Service
10. Movement Against Discrimination (MAD)
11. Committee on Disability Discrimination Ordinance (formerly known as the Task Group on Anti-Discrimination Legislation for Disabled Persons)
12. Mr Timothy CHEUNG
13. Mr Robin Adams
14. Hong Kong Women Professionals and Entrepreneurs Association

15. Shatin Women's Association
16. Heung Yee Kuk New Territories
17. Hong Kong Outlying Island Women's Association
18. Cheung Chau Island Women's Association
19. Yuen Long Women's Association Limited
20. Tsuen Wan Kwai Ching District Women's Association
21. New Territories Association of Societies Women's Centre
22. Tuen Mun District Women's Association Limited
23. Sai Kung Women's Association Limited
24. Hong Kong Women Development Association
25. Hong Kong Tin Shui Wai Women Association
26. North District Women's Association
27. Association of Retailers & Tourism Services
28. The Hong Kong Federation of Insurers

**Issues arising under the
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
as amended by Christine Loh's CSAs**

Remedies for unlawful discrimination

1.	\$150,000 cap on SDO damages for work-related discrimination or harassment	<i>repeal</i>	csa 16
2.	\$120,000 implied cap on all DDO damage awards	<i>repeal</i>	csa 33A
3.	Court cannot order reinstatement under SDO	<i>empower Court to do so. as in DDO</i>	csa 16A
4.	Court cannot award damages for unintentional indirect discrimination under SDO	<i>empower Court to do so. as in DDO</i>	csa 16B
5.	Court may or may not accept a claim that is made late because of conciliation efforts	<i>require Court to do so</i>	20; 37

Scope of protection against discrimination

1.	SDO exception allows discrimination in death & retirement benefits	<i>new benefits should not discriminate; limit exception to pre-existing arrangements</i>	7(a), 8, 9, 22, 23
2.	Indirect discrimination limited to cases involving an absolute bar	<i>widen definition to cover discriminatory preferences</i>	csa 4 to 6; csa 27
3.	SDO exception for marital status discrimination in Home Ownership Scheme, etc.	<i>repeal</i>	csa 24
4.	SDO exception for marital status discrimination in housing-related employment benefits	<i>replace with exception permitting rules against double benefits for couples</i>	10, 24
5.	SDO exception for security of Hong Kong	<i>repeal, as in DDO</i>	11
6.	SDO exception for indirect sex discrimination by disciplined services	<i>repeal with 1-2 year transition</i>	12
7.	SDO exception for NT small house policy	<i>repeal with 1-2 year transition</i>	12

EOC functions and powers

1.	EOC has express power to litigate under SDO & DDO only	<i>clarify that EOC may also seek judicial review under other discrimination-related laws (e.g. BORO Art 22, Basic Law Art. 39)</i>	csa 21; csa 38
2.	EOC has general function of promoting equality and specific function of administering DDO/SDO	<i>also give EOC specific (but optional) functions of:</i> <i>-- promoting international standards</i> <i>-- reporting on proposed legislation</i>	13, csa 3; 30, 26
3.	EOC unable to make an enforceable settlement with a suspected discriminator who is willing to stop	<i>empower EOC to accept & enforce voluntarily given "binding undertakings" to stop discriminating</i>	17; 34

COMMITTEE STAGE

Amendments to be moved by the Hon. Christine LOH Kung-wai

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 2 | By deleting the clause. |
| 3 | By deleting the clause and substituting -

“3. Interpretation
Section 2 is amended -
(a) in subsection (1), by adding -
““relevant international instruments” (有關國際文書)
means -
(a) the Declaration on the Elimination of
Violence Against Women proclaimed by the
General Assembly of the United Nations on
20 December 1993;
(b) the International Labour Organisation
Recommendation No. 90 on Equal
Remuneration for Men and Women Workers
for Work of Equal Value; and
(c) 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, the International Covenant on
Economic, Social and Cultural Rights and the
Convention on the Elimination of All Forms of
Discrimination Against Women, as applied to
Hong Kong;”;
(b) by adding -
“(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 4, 5, 6, 7 or 8, is not limited to discrimination so falling.”.

4 to 6

By deleting the clauses and substituting -

“4. Sex discrimination against women

Section 5(1)(b) is repealed and the following substituted -

“(b) he applies to her a requirement, condition or practice which he applies or would apply equally to a man but -

- (i) which is such that the proportion of women who are disadvantageded by it is considerably greater than the proportion of men who are disadvantageded by 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 disadvantage.”.

5. Discrimination against married, etc. persons in employment field

Section 7 is amended -

- (a) in the heading, by repealing “in employment field”;
- (b) by repealing subsection (1)(b) and substituting -

“(b) he applies to that person a requirement, condition or practice 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 of the relevant marital status who are disadvantageded by it is considerably greater than the proportion of persons of the same sex with a different marital status who are disadvantageded by 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 disadvantage.”.

6. Discrimination against pregnant women in employment field

Section 8 is amended -

- (a) in the heading, by repealing “in employment field”;
- (b) by repealing paragraph (b) and substituting -

“(b) he applies to her a requirement, condition or practice which he applies or would apply equally

to a person who is not pregnant but -

- (i) which is such that the proportion of persons who are pregnant who are disadvantaged by it is considerably greater than the proportion of persons who are not pregnant who are disadvantaged by 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 disadvantage.”.”.

7(b) to (c) By deleting the subsections.

10 (a) In the Chinese text of the proposed section 56B, by deleting subsection (1) and substituting -

“ (1) 第 IV 或 V 部並不將因提供生育科技程序而產生的、在婚姻狀況不同的人之間的待遇差別定為違法。 ” .

(b) In the proposed section 56B(2), by deleting “醫學” and substituting “醫療” .

(c) By deleting the Chinese text of the proposed section 56C and substituting -

56C 領養”

第 III · IV 或 V 部並不將關於《領養條例》(第 290 章) 第 2 條所指的領養幼年人的設施或服務的提供而產生的、在婚姻狀況不同的人之間的待遇差別定為違法。 ” .

14 to 15 By deleting the clauses.

16 By deleting the clause and substituting -

“16. Claims under Part III or IV

Section 76 is amended -

(a) by repealing subsection (4) and substituting -

“(4) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.”;

(b) by repealing subsections (7) and (8).”.

New By adding the following -

"16A. Claims under Part III or IV

Section 76 is amended by adding -

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

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and order that the respondent shall not repeat or continue such unlawful conduct or act;
- (b) order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent shall employ or re-employ the claimant;
- (d) order that the respondent shall promote the claimant;
- (e) order that the respondent pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;
- (f) order that the respondent shall pay to the claimant punitive or exemplary damages; or
- (g) make an order declaring void in whole or part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.".

New By adding the following -

"16B. Claims under Part III or IV

Section 76(5) is repealed."

18 By deleting the clause.

19 By deleting the clause.

21 By deleting the clause and substituting -

"21. Regulations to empower Commission to bring certain proceedings

Section 89 is amended by adding -

"(3) This section is without prejudice to the Commission's power to bring proceedings by way of judicial review, in relation to

this Ordinance or any other law, pursuant to its functions under section 64(1).”.

24(b) By adding “6,” before “7 and 8”.

25 By deleting the clause.

27 By deleting the clause and substituting -

“27. Discrimination against persons with a disability, etc.

Section 6(b) is repealed and the following substituted -

“(b) he applies to that other person a requirement, condition or practice 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 are disadvantaged by it is considerably greater than the proportion of persons without a disability who are disadvantaged by it;
- (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 disadvantage.”.

28 By deleting the clause.

29, 31, 39
and 40 By deleting the clauses.

32 to 33. By deleting the clauses.

New By adding the following -

“33A. Claims under Part III or IV

Section 72 is amended -

(a) by repealing subsection (3) and substituting -

“(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 71(1), would be obtainable in the High Court.”;

(b) by adding -

“(4A) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to

provide, grant or make any remedy, injunction or order mentioned in this Ordinance.”.”.

35 By deleting the clause.

36 By deleting the clause.

38 By deleting the clause and substituting -

“38. Regulations to empower Commission to bring certain proceedings

Section 86 is amended by adding -

“(3) This section is without prejudice to the Commission’s power to bring proceedings by way of judicial review, in relation to this Ordinance or any other law, pursuant to its functions under section 62(1).”.”.

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 :
Date :

From : Adam Mayes
(Direct line 2537-2436)

Total pages : (including this page)

FAMILY STATUS DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Hon. LAU Chin-shek

<u>Clause</u>	<u>Amendment Proposed</u>
2(1)	<p>By deleting the definitions of “family status” () and “immediate family member” () and substituting -</p> <p> ““family status” (), in relation to a person, means -</p> <p> (a) the status of having responsibility for the care of another person, whether or not that person is a dependant, other than in the course of paid employment;</p> <p> (b) the status of being a particular relative; or</p> <p> (c) the status of being a relative of a particular person;”.</p> <p> “relative” (), in relation to a person, means a person who is related to the person by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the person;”.</p>
New	<p>In Part VII, by adding -</p> <p> “43A. Family status limited to immediate family for purposes of the Commission</p> <p> (1) For purposes of this Part, sections 55 to 63, and section 67 -</p> <p> (a) despite section 2(1), “family status” (), in relation to a person, means the status of having responsibility for the care of an immediate family member;</p> <p> (b) “immediate family member” (), in relation to a person, means a person who is related to the person by blood, marriage, adoption or affinity,</p> <p> and sections 5 and 6 shall be construed accordingly.</p> <p> (2) Upon a proposal by the Governor, the Legislative Council may, by resolution, repeal this section.”.</p>

回應政府及議員 5 月 29 日平等機會委員會會議問題

條次及問題

回應

- | | |
|---------------------------------|--|
| 84 與《性別歧視條例》不
85 致。 | 同意 84 條改爲與《性別歧視條例》相關條次一致；由於《性別歧視條例》無 85 條所述的「志願團體」項目，因此保持不變。 |
| 86 不應對宗教團體及其所辦學
87 校的年齡歧視豁免。 | 基於宗教自由的原則，該兩條內容是原則上爲宗教上的教義、教條或信念與本條例草案相抵觸時提供豁免。 |
| 90 沒有提出過渡性規例的終止
生效日期。 | 每條規例的情況不同，不宜寫死時限。政務司可按不同的過渡性規例提出合理的終止生效日期，由立法局審議日期是否合理及批准有關規例。 |
| 100 與《性別歧視條例》不一致。 | 同意加一條款，使本條例不適用於刑事程序。 |

劉千石

1997 年 6 月 3 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 : Jimmy Ma
Stephen Lam
From : Adam Mayes
(Direct line:2537-2436)
Date : 3/6/97
Total pages : (including this page)

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

I spoke ^{yesterday} ~~earlier today~~ with Stephen about two legal/procedural questions arising in connection with the Bill. On reflection, I'd like to set one of them out in writing.

2. What happens if Members make wholesale deletions to the Bill at committee-stage, resulting in references which are legally ineffective and even incoherent, both in proposed CSAs, and in the Bill itself as amended?

3. The Bill makes discrimination unlawful on 3 grounds, covered in 3 separate parts of the Bill (Parts II, III and IV). Members may very well delete one or more of these parts in its entirety, not by moving CSAs (which would take account of consequential technicalities), but simply by voting that the unamended clauses should not stand part of the Bill.

4. Some provisions in the preliminary, enforcement and other general parts of the Bill (Parts I, V, VI and VII) are drafted in general terms and pose no problems. Others, however, refer either generally or specifically to the deleted material. For example, assuming for purposes of argument that Members strike out Part III of the Bill on sexuality discrimination:

- the short title of the Bill under clause 1 will be "Equal Opportunities (Family Responsibility, Sexuality and Age) Bill", even though the Bill will no longer deal with sexuality discrimination;
- clause 2 will state that one of the objects of the Bill is to eliminate sexuality discrimination, even though it no longer serves that purpose;
- clause 3 will contain a definition for a term, "sexuality", which will no longer be used in the Bill (except in clause 2...);
- a CSA to improve the enforcement provisions will refer to "claims under Part II, III or IV", even though Part III will have been deleted.

5. This seems to go beyond the kind of problem, such as renumbering clauses and cross-references, ^{met} the Director for Administration can deal with on his own. Is it procedurally possible for the Member-in-charge to propose amendments without notice at committee stage to deal with such problems? If not, will such problems have the effect of preventing 3rd reading?

6. What about the enforcement CSA? Can it be similarly modified without notice by the Member proposing it, or can it no longer be moved?

Very grateful for your advice. Regards,

Legislative Council Secretariat

Facsimile Transmission Leader Page

Faxline No. : 2877 5029

To:	Your Fax No.:
From:	Your Ref: Our Ref:
Total No. of Pages: (including this page) 5	Date/Time Fax Sent:
Please notify _____ on Tel No. _____ if message received is incomplete	

Message/Remark

Question that clause 1, as amended, stand part of the Bill put and agreed to.

Clause 2(a)

The Chairman stated that Mr LEE Wing-tat, Mrs Selina CHOW and Mr LEUNG Yiu-chung had separately given notices to amend sub-clause (a) of clause 2. He proposed that the amendments be debated together in a joint debate. There being no dissenting voice, the Chairman ordered that the proposed amendments be debated together in a joint debate.

The Chairman said that the order in which the amendments would be moved was determined in accordance with Standing Order No. 25(4). He further stated that Mrs Selina CHOW should first move her motion by virtue of her seniority.

Mrs Selina CHOW moved her amendment to sub-clause (a) of clause 2 and addressed the Committee.

Question on Mrs Selina CHOW's amendment proposed.

Mr LEUNG Yiu-chung and Mr LEE Wing-tat spoke on Mrs Selina CHOW's amendment as well as their proposed amendments respectively.

Two other Members and the Secretary for Housing spoke on the amendments.

Mrs Selina CHOW replied.

The Chairman reminded Members that if Mrs Selina CHOW's amendment was agreed, it would mean Mr LEUNG Yiu-chung's and Mr LEE Wing-tat's proposed amendments were not approved.

Question on Mrs Selina CHOW's amendment to sub-clause (a) of clause 2 put. Mrs Selina CHOW claimed a division. The Chairman then ordered the Committee to divide under Standing Order No. 36(4).

The Chairman announced that there were 28 votes for the amendment and 28 votes against it. (Voting record in Appendix VII.) The Chairman stated that he had previously exercised his casting vote in accordance with Speaker DENISON's decision in 1867. He then exercised his casting vote in the negative and declared that Mrs Selina CHOW's amendment to sub-clause (a) of clause 2 was negatived.

Mr LEUNG Yiu-chung moved his amendment to sub-clause (a) of clause 2.

Question on the amendment proposed and put. Mr LEUNG Yiu-chung claimed a division. The Chairman then ordered the Committee to divide under Standing Order No. 36(4).

The Chairman announced that there were seven votes for the amendment and 50 votes against it. (Voting record in Appendix VIII.) He declared that Mr LEUNG Yiu-chung's amendment to sub-clause (a) of clause 2 was negatived.

Mr LEE Wing-tat moved his amendment to sub-clause (a) of clause 2.

Question on the amendment proposed and put. Mr TSANG Kin-shing claimed a division. The Chairman then ordered the Committee to divide under Standing Order No. 36(4).

The Chairman announced that there were 28 votes for the amendment and 29 votes against it. (Voting record in Appendix IX.) He declared that Mr LEE Wing-tat's amendment to sub-clause (a) of clause 2 was negatived.

Question on sub-clause (a) of clause 2 stand part of the Bill put. The Chairman stated that he thought the motion had been carried.

Mrs Selina CHOW and Mr CHAN Kam-lam claimed a division. The Chairman then ordered the Committee to divide under Standing Order No. 36(4).

The Chairman announced that there were 28 votes for the motion and 29 votes against it. (Voting record in Appendix X.) He declared that the motion that sub-clause (a) of clause 2 stand part of the Bill was negatived.

Clause 2(b)

The Chairman stated that Mrs Selina CHOW might not move her proposed amendment to sub-clause (b) of clause 2 since her proposal was inconsistent with the decision already taken in regard to sub-clause (a) of clause 2.

Clause 2(c)

Mrs Selina CHOW moved an amendment to sub-clause (c) of clause 2 and addressed the Committee.

Question on the amendment proposed.

A Member and the Secretary for Housing spoke on the amendment.

In response to Mr Bruce LIU's query, the Chairman suspended the sitting at 11:35 pm to enable Mrs Selina CHOW to revise the drafting of her amendment to sub-clause (c) of clause 2.

The Committee resumed at 11:40 pm.

The Chairman stated that the President had during the suspension granted leave for Mrs Selina CHOW to make a technical amendment to her amendment to sub-clause (c) of clause 2 and address the Committee.

Question on Mrs Selina CHOW's amended amendment to sub-clause (c) of clause 2 proposed and put. Mrs Selina CHOW claimed a division. The Chairman then ordered the Committee to divide under Standing Order No. 36(4).

The Chairman announced that there were 28 votes for the amendment and 28 votes against it. (Voting record in Appendix XI.) The Chairman stated that he had previously exercised his casting vote in accordance with Speaker DENISON's decision in 1867. He then exercised his casting vote in the negative and declared that Mrs Selina CHOW's amendment to sub-clause (c) of clause 2 was negatived.

The Chairman stated that the President had during the suspension decided to grant leave for Mr LEE Wing-tat to alter the terms of sub-clause (c) of clause 2 in the Bill. Mr LEE confirmed that he wished to alter the said terms and addressed the Committee.

Question on the question that the altered sub-clause (c) of clause 2 stand part of the Bill proposed.

A Member spoke on the question.

Question that sub-clause (c) of clause 2 stand part of the Bill put. Mr TSANG Kin-shing and Mr CHAN Kam-lam claimed a division. The Chairman then ordered the Committee to divide under Standing Order No. 36(4).

The Chairman announced that there were 28 votes for the motion and 29 votes against it. (Voting record in Appendix XII.) He declared that the question that sub-clause (c) of clause 2 stand part of the Bill was negatived.

Mr LEE Wing-tat asked for permission to withdraw sub-clauses (d) and (e) of clause 2.

There being no dissenting voice, the Chairman stated that sub-clauses (d) and (e) of clause 2 in the Bill were withdrawn and that no further proceeding would be taken on the two sub-clauses.

Clause 3

Question on clause 3 put. The Chairman stated that he thought the motion had been negatived.

Mr Martin LEE claimed a division. The Chairman then ordered the Committee to divide under Standing Order No. 36(4).

The Chairman announced that there were 27 votes for the motion and 30 votes against it. (Voting record in Appendix XIII.) He declared that the motion that clause 3 stand part of the Bill was negatived.

The Council then resumed.

Third Reading

Mr LEE Wing-tat reported that

the Housing (Amendment) Bill 1996

had passed through Committee with amendments. He moved that the Bill be read the third time and do pass.

Question on the Third Reading proposed.

Three Members, the Secretary for Housing and the Attorney General spoke on the motion.

Question on the Third Reading put. Mr TSANG Kin-shing claimed a division. The President then ordered the Council to divide under Standing Order No. 36(4).

The President announced that there were 27 votes for the motion and 30 votes against it. (Voting record in Appendix XIV.) He declared that the motion on Third Reading of the Bill was negatived.

2957

The Legislative Council

LegCo Paper No. CB(3)1120/96-97

Ref : CB(3)/B/P2/LKW2

Tel : 2869 9498

Date : 4 June 1997

From : Clerk to the Legislative Council

To : Members of the Legislative Council

Sitting on 11 June 1997

Committee Stage Amendment

The Second Reading debate on the following Bill will be resumed on 11 June 1997:

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

Subject to the Bill receiving a Second Reading, the Hon Christine LOH will move the attached amendments to the Bill during the Committee stage.

(Miss Betty MA)
for Clerk to the Legislative Council

Encl.

立法局

立法局 CB(3)1120/96-97 號文件

檔號： CB(3)/B/P2/LKW2
電話： 2869 9498
日期： 一九九七年六月四日
由： 立法局秘書
致： 立法局各議員

一九九七年六月十一日
立法局會議

全體委員會審議階段修正案

本局將於一九九七年六月十一日恢復二讀辯論下列條例草案：

〈1996年性別及殘疾歧視（雜項規定）條例草案〉

倘此條例草案獲予以二讀，陸恭蕙議員將於全體委員會審議階段就條例草案動議附件所載的修正案。

立法局秘書
(馬淑霞代行)

連附件

SEX AND DISABILITY DISCRIMINATION (MISCELLANEOUS
PROVISIONS) BILL 1996

COMMITTEE STAGE

Amendments to be moved by the Hon Christine LOH Kung-wai

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 1 | By deleting the clause and substituting -
"1. Short title and commencement
(1) This Ordinance may be cited as the Sex
and Disability Discrimination (Miscellaneous
Provisions) Ordinance 1996.
(2) Sections 7, 8 and 9 shall come into
operation on 15 October 1997." |
| 2 | By deleting the clause. |
| 3 | By deleting the clause and substituting -
"3. Interpretation
Section 2 of the Sex Discrimination Ordinance
(Cap. 480) is amended -
(a) in subsection (1), by adding -
""relevant international
instruments" (有關國際文書)
means -
(a) the Declaration
on the
Elimination of
Violence Against
Women proclaimed
by the General
Assembly of the
United Nations
on 20 December
1993;
(b) the
International
Labour
Organisation
Recommendation |

Clause

Amendment Proposed

No. 90 on Equal
Remuneration for
Men and Women
Workers for Work
of Equal Value;
and

(c) 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

ClauseAmendment Proposed

International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, as applied to Hong Kong;"

(b) by adding -

"(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 4, 5, 6, 7 or 8, is not limited to discrimination so falling.".

4 to 6 By deleting the clauses and substituting -

"4. Sex discrimination against women

Section 5(1)(b) is repealed and the following substituted -

ClauseAmendment Proposed

"(b) he applies to her a requirement, condition or practice which he applies or would apply equally to a man but -

- (i) which is such that the proportion of women who are disadvantaged by it is considerably greater than the proportion of men who are disadvantaged by 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 disadvantage."

5. Discrimination against married, etc. persons

Section 7(1)(b) is repealed and the following substituted -

"(b) he applies to that person a requirement, condition or practice 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 of the relevant marital status who are disadvantaged by it is considerably greater than the proportion of persons of the same sex with a different marital status who are disadvantaged by it;

ClauseAmendment Proposed

- (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 disadvantage."

6. **Discrimination against pregnant women**

Section 8(b) is repealed and the following substituted -

"(b) he applies to her a requirement, condition or practice which he applies or would apply equally to a person who is not pregnant but

-

- (i) which is such that the proportion of persons who are pregnant who are disadvantaged by it is considerably greater than the proportion of persons who are not pregnant who are disadvantaged by 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 disadvantage."."

7

By deleting paragraphs (b) and (c).

ClauseAmendment Proposed

10 (a) In the Chinese text, by deleting the proposed section 56B(1) and substituting -

“(1) 第IV或V部並不將因提供生育科技程序而產生的、在婚姻狀況不同的人之間的待遇差別定為違法。”。

(b) In the proposed section 56B(2), by deleting “醫學” and substituting “醫療”。

(c) In the Chinese text, by deleting the proposed section 56C and substituting -

“56c. 領養

第III、IV或V部並不將關乎《領養條例》(第290章)第2條所指的領養幼年人的設施或服務的提供而產生的、在婚姻狀況不同的人之間的待遇差別定為違法。”。

14 and 15 By deleting the clauses.

16 By deleting the clause and substituting -

“16. Claims under Part III or IV

Section 76 is amended -

(a) by repealing subsection (4) and substituting -

“(4) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any

ClauseAmendment Proposed

remedy, injunction or order

mentioned in this Ordinance.";

(b) by repealing subsections (7) and (8).".

New

By adding -

"16A. Claims under Part III or IV

Section 76 is amended by adding -

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

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

ClauseAmendment Proposed

damage suffered by reason of the respondent's conduct or act;

(f) order that the respondent shall pay to the claimant punitive or exemplary damages; or

(g) make an order declaring void in whole or part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance."."

New

By adding -

"16B. Claims under Part III or IV
Section 76(5) is repealed."

18

By deleting the clause.

19

By deleting the clause.

21

By deleting the clause and substituting -

"21. Regulations to empower Commission
to bring certain proceedings

Section 89 is amended by adding -

"(3) This section is without prejudice to the Commission's power to bring proceedings by way of judicial review, in relation to this Ordinance or any other law, pursuant to its functions under section 64(1)."."

ClauseAmendment Proposed

- 24(b) By adding "6," before "7 and 8".
- 25 By deleting the clause.
- 26 By adding "of the Disability Discrimination Ordinance (Cap. 487)" after "Section 2".
- 27 By deleting the clause and substituting -
- "27. Discrimination against persons with a disability, etc.**
- Section 6(b) is repealed and the following substituted -
- "(b) he applies to that other person a requirement, condition or practice 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 are disadvantaged by it is considerably greater than the proportion of persons without a disability who are disadvantaged by it;
- (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

Clause

Amendment Proposed

(iii) which is to that person's disadvantage;".

28 By deleting the clause.

29, 31, By deleting the clauses.
39
and
40

32 and By deleting the clauses.
33

New By adding -

"33A. Claims under Part III or IV

Section 72 is amended -

(a) by repealing subsection (3) and substituting -

"(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 71(1), would be obtainable in the High Court.";

(b) by adding -

"(4A) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all

Clause

Amendment Proposed

such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance."."

35 By deleting the clause.

36 By deleting the clause.

38 By deleting the clause and substituting -

"38. Regulations to empower Commission to bring certain proceedings

Section 86 is amended by adding -

"(3) This section is without prejudice to the Commission's power to bring proceedings by way of judicial review, in relation to this Ordinance or any other law, pursuant to its functions under section 62(1)."."

FAMILY STATUS DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by Hon. LAU Chim-shek

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 2(1) | <p>By deleting the definitions of "family status" (家庭崗位) and "immediate family member" (直系家庭成員) and substituting-</p> <p style="padding-left: 2em;">" "family status" (家庭崗位), in relation to a person, means-</p> <ul style="list-style-type: none">(a) the status of 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; <p style="padding-left: 2em;">"relative" (親屬), in relation to a person, means a person who is related to the person by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the person; "</p> |
| New | <p>In part VII, by adding -</p> <p style="padding-left: 2em;">"43A, Family status limited to immediate family for purposes of the Commission</p> <p style="padding-left: 2em;">(1) For purposes of this part, sections 55 to 63, and section 67-</p> <ul style="list-style-type: none">(a) despite section 2(1), "family status"(家庭崗位), in relation to a person, means the status of having responsibility for the care of an immediate family member ;(b) "immediate family member"(直系家庭成員), in relation to a person, means a person who is related to the person by blood, marriage, adoption or affinity, <p style="padding-left: 2em;">and sections 5 and 6 shall be construed accordingly.</p> <p style="padding-left: 2em;">(2) The Governor in Council may, by notice in the Gazette, repeal this section."</p> |

**EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY, SEXUALITY
AND AGE) BILL**

COMMITTEE STAGE

Amendments to be moved by Hon. LAU Chin-shak

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>By deleting the clause and substituting -</p> <p>"1. Short title and commencement</p> <p>(1) This Ordinance may be cited as the Equal Opportunities (Sexuality and Age) Ordinance.</p> <p>(2) Section 90 shall come into operation upon the enactment of this Ordinance.</p> <p>(3) The Governor may, by notice in the Gazette, appoint -</p> <p>(a) a day; or</p> <p>(b) different days in respect of different provisions,</p> <p>for the coming into operation of this Ordinance (other than section 90) and such a day, or the later or last of such different days, shall be a day no later than 1 January 1998.</p> <p>(4) Subject to subsection (3), this Ordinance (other than section 90) shall come into operation on 1 January 1998."</p>
2(a)	<p>By deleting "family responsibility or family status, sexuality, or age" and substituting "sexuality or age".</p>
2	<p>(a) In paragraph (c), by adding "and" after ";</p> <p>(b) In paragraph (d), by deleting ";" and substituting ".".</p> <p>(b) By deleting paragraphs (e) and (f).</p>
3(1)	<p>By deleting the definition for "charitable benefits" (慈善利益).</p>
3(1)	<p>By deleting the definitions for "educational authority" (教育主管當局), "educational institution" (教育機構) and substituting -</p> <p>"educational establishment" (教育機構) has the same meaning as in the Sex Discrimination Ordinance (Cap. 480);"</p>

- 3(1) By deleting the definition for "employment" (僱用) and substituting -
 "barrister's clerk" (大律師書記) includes any person carrying out any of the functions of a barrister's clerk;
 "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;
 "pupil" (見習大律師), "pupillage" ((大律師)見習職位), "tenant" (租戶) and "tenant" (承租人) have the meanings commonly associated with their use in the context of a set of barristers' chambers;".
- 3(1) By deleting the definitions for "family responsibility or family status" (家庭責任或家庭地位) and for "relative" (親屬).
- 3(1) In the definition for "voluntary body" (志願團體), by deleting paragraph (b) and substituting -
 "(b) a body whose recurrent expenditure is funded wholly or in part by the Government; or".
- 4 By deleting the clause and substituting-
 "4. Act done for 2 or more reasons
 If -
 (a) an act is done for 2 or more reasons; and
 (b) one of the reasons is the sexuality or age 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)."
- 5 By deleting "Crown" and substituting "Government".
- 6 By deleting the clause.
- 7(3) By deleting the subsection.
- Part II By deleting the part.
- 37(2) to (4) By deleting the subsection and substituting -

not members of the relevant occupier's household;
 and
 (M) the premises are small premises; or
 (b) accommodation provided by a religious body.
 (4) Premises shall be treated for the purposes of subsection (3) as small premises if -
 (a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any members of his or her household reside in the accommodation occupied by him;

"(2) For the purposes of this Ordinance, a person ("the discriminator") discriminates against another person ("the aggrieved person") on the ground of that person's sexuality if the discriminator applies to the aggrieved person a requirement, condition or practice which the discriminator applies or would apply equally to a person who is not of the same sexuality as the aggrieved person but -

- (a) which is such that the proportion of persons of the same sexuality as the aggrieved person who are disadvantaged by it is considerably greater than the proportion of persons who are not of the same sexuality who are disadvantaged by it;
- (b) which the discriminator cannot show to be justifiable irrespective of the sexuality of the person to whom it is applied; and
- (c) which is to the aggrieved person's disadvantage."

35 By deleting "educational authority" each time it appears and substituting "educational establishment".

38(3) By deleting the subsection and substituting -

"(3) Nothing in this section applies to or in respect of -

(a) the provision of accommodation in premises if -

(i) the person who provides or proposes to provide the accommodation or a near relative of that person ("the relevant occupier") resides, and intends to continue to reside, on those premises;

(ii) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier's household; and

(iii) the premises are small premises; or

(b) accommodation provided by a religious body.

(4) Premises shall be treated for the purposes of subsection (3) as small premises if -

(a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any members of his or her household reside in the accommodation occupied by him;

(b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his or her household.

(5) The Governor in Council may, by notice in the Gazette, amend subsection (4)(b) by substituting another number for the number appearing in that subsection."

New

By adding -

"42A. Barristers

(1) It is unlawful for a barrister or a barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person on the ground of the person's sexuality -

- (a) in the arrangements which are made for the purposes of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which the pupillage or tenancy is offered; or
- (c) by refusing, or deliberately omitting, to offer the pupillage or tenancy to the person.

(2) It is unlawful for a barrister or barrister's clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person's sexuality -

- (a) in respect of any terms applicable to the person as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person;
- (c) in the benefits, facilities or services which are afforded or denied to the person; or
- (d) by terminating the person's pupillage or by subjecting the person to any pressure to leave the chambers or any other detriment.

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

44(1)
and (2)

By deleting "educational institution" each time it appears and substituting "educational establishment".

54(2) to (4)

By deleting the subsection and substituting -

"(2) For the purposes of this Ordinance, a person ("the discriminator") discriminates against another person ("the aggrieved

person") on the ground of that person's age if the discriminator applies to the aggrieved person a requirement, condition or practice which the discriminator applies or would apply equally to a person who is not of that age but -

- (a) which is such that the proportion of persons of the same age as the aggrieved person who are disadvantaged by it is considerably greater than the proportion of persons who are not of that age who are disadvantaged by it;
- (b) which the discriminator cannot show to be justifiable irrespective of the age of the person to whom it is applied; and
- (c) which is to the aggrieved person's disadvantage."

- 62
- (d) In subsections (1) to (3), by deleting "educational authority" each time it appears and substituting "educational establishment".
 - (h) In subsection (4), by deleting "educational institution" each time it appears and substituting "educational establishment".

65(3) By deleting the subsection and substituting -

"(3) Nothing in this section applies to or in respect of -

- (a) the provision of accommodation in premises if -
 - (i) the person who provides or proposes to provide the accommodation or a near relative of that person ("the relevant occupier") resides, and intends to continue to reside, on those premises;
 - (ii) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier's household; and
 - (iii) the premises are small premises;
- (b) accommodation provided by a religious body;
- (c) accommodation provided by a charitable or other voluntary body solely for persons of a particular age;
- (d) the provision of bona fide benefits, including concessions, to a person by reason of his or her age.

(4) Premises shall be treated for the purposes of subsection (3) as small premises if -

- (a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than

2 such households and only the relevant occupier and any members of his or her household reside in the accommodation occupied by him;

- (b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his or her household.

(5) The Governor in Council may, by notice in the Gazette, amend subsection (4)(b) by substituting another number for the number appearing in that subsection."

New

By adding -

"71A. Barristers

(1) It is unlawful for a barrister or a barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person on the ground of the person's age -

- (a) in the arrangements which are made for the purposes of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which the pupillage or tenancy is offered; or
- (c) by refusing, or deliberately omitting, to offer the pupillage or tenancy to the person.

(2) It is unlawful for a barrister or barrister's clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person's age -

- (a) in respect of any terms applicable to the person as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person;
- (c) in the benefits, facilities or services which are afforded or denied to the person; or
- (d) by terminating the person's pupillage or by subjecting the person to any pressure to leave the chambers or any other detriment.

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

New

By adding -

"77A. Further exceptions for statutory authority

(2) Nothing in this Ordinance shall -

- (a) be construed as affecting a provision to which this subsection applies; or
- (b) render unlawful an act which is done in order to give effect to such a provision.

(3) Subsection (2) applies to a provision for conferring benefits on persons of a particular age or sexuality (disregarding any benefits to other persons which are exceptional or relatively insignificant), being a provision which constitutes the main object of a voluntary body."

88

By deleting the clause.

91, 92
and 94

By deleting the clauses and substituting -

"91. Claims under this Ordinance

(1) A claim by any person ("the claimant") that another person ("the respondent") -

- (a) has committed an act against the claimant which is unlawful by virtue of Part III or IV, or section 82;
- (b) is by virtue of section 99, 100 or 101 to be treated as having committed such an act against the claimant; or
- (c) has committed an act which is unlawful by virtue of section 49 or 83,

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 33 or 60 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, would be obtainable in the High Court.

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

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

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

(5) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.

(6) For avoidance of doubt, it is hereby declared that damages in respect of an unlawful act against the claimant may include compensation for injury to feelings whether or not they include compensation under any other head."

100 By adding -

"(5) For the avoidance of doubt, it is hereby declared that this section shall not apply for the purposes of any criminal proceedings".

New By adding -

"SCHEDULE I

[s. 77A]

PROVISIONS SPECIFIED FOR PURPOSES OF SECTION 77A

1. Section 31R(1)(b) of the Employment Ordinance (Cap. 57).
2. Employees' Compensation Ordinance (Cap. 282).
3. Pneumoconiosis (Compensation) Ordinance (Cap. 360).
4. Occupational Deafness (Compensation) Ordinance (Cap. 469)".

Long title By deleting "family responsibility or family status, sexuality, or age" and substituting "sexuality or of age".

Paper No. CB(2)2655/96-97(01)

**EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY, SEXUALITY
AND AGE) BILL**

COMMITTEE STAGE

Amendments to be moved by Hon. LAU Chin-shek

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 1 | By deleting the clause and substituting -

"1. Short title and commencement
(1) This Ordinance may be cited as the Equal Opportunities (Sexuality and Age) Ordinance.
(2) Section 90 shall come into operation upon the enactment of this Ordinance.
(3) The Governor 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 (other than section 90) and such a day, or the later or last of such different days, shall be a day no later than 1 January 1998.
(4) Subject to subsection (3), this Ordinance (other than section 90) shall come into operation on 1 January 1998." |
| 2(a) | By deleting "family responsibility or family status, sexuality, or age" and substituting "sexuality or age". |
| 2 | (a) In paragraph (c), by adding "and" at the end.
(b) In paragraph (d), by deleting the semicolon and substituting a fullstop.
(c) By deleting paragraphs (e) and (f). |
| 3(1) | By deleting the definition of "charitable benefits". |
| 3(1) | In the Chinese text, in the definition of "合約工作者", by deleting "進行工作的任何人" and substituting "而替該另一人工作的人". |
| 3(1) | By deleting the definitions of "educational authority" and of "educational institution" and substituting - |

““educational establishment” (教育機構) has the same meaning as in Section 2 of the Sex Discrimination Ordinance (Cap. 480);”.

- 3(1) By deleting the definition of “employment”) and substituting -
 ““barrister’s clerk” (大律師書記) includes any person carrying out, any of the functions of a barrister’s clerk;
 “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;
 “pupil” (見習大律師), “pupillage” (見習職位), “tenancy” (租賃) and “tenant” (承租人) have the meanings commonly associated with their use in the context of a set of barristers’ chambers;”.
- 3(1) By deleting the definitions of “family responsibility or family status”
- 3(1) In the definition of “voluntary body”, by deleting paragraph (b) and and of “relative”.substituting -
 “(b) a body whose recurrent expenditure is funded wholly or in part by the Government; or”.
- 4 By deleting the clause and substituting-
 “4. Act done for 2 or more reasons
 If -
 (a) an act is done for 2 or more reasons; and
 (b) one of the reasons is the sexuality or age 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).”.
- 5 By deleting “Crown” and substituting “Government”.
- 6 By deleting the clause.
- 7(3) By deleting the subclause.
- Part II By deleting the Part.

- 27 By deleting subclauses (2) to (4) and substituting -
- “(2) For the purposes of this Ordinance, a person (“the discriminator”) discriminates against another person (“the aggrieved person”) on the ground of that person’s sexuality if the discriminator applies to the aggrieved person a requirement, condition or practice which the discriminator applies or would apply equally to a person who is not of the same sexuality as the aggrieved person but -
- (a) which is such that the proportion of persons of the same sexuality as the aggrieved person who are disadvantaged by it is considerably greater than the proportion of persons who are not of the same sexuality who are disadvantaged by it;
 - (b) which the discriminator cannot show to be justifiable irrespective of the sexuality of the person to whom it is applied; and
 - (c) which is to the aggrieved person’s disadvantage.”.
- 35 By deleting “educational authority” wherever it appears and substituting “educational establishment”.
- 38(3) By deleting the subclause and substituting -
- “(3) Nothing in this section applies to or in respect of -
- (a) the provision of accommodation in premises if -
 - (i) the person who provides or proposes to provide the accommodation or a near relative of that person (“the relevant occupier”) resides, and intends to continue to reside, on those premises;
 - (ii) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier’s household; and
 - (iii) the premises are small premises; or
 - (b) accommodation provided by a religious body.
- (4) Premises shall be treated for the purposes of subsection (3) as small premises if -
- (a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any members of his or her household reside in the accommodation occupied by him;

- (b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his or her household.

(5) The Governor in Council may, by notice in the Gazette, amend subsection (4)(b) by substituting another number for the number appearing in that subsection.”.

New By adding -

“42A. Barristers

(1) It is unlawful for a barrister or a barrister’s clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person on the ground of the person’s sexuality -

- (a) in the arrangements which are made for the purposes of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which the pupillage or tenancy is offered; or
- (c) by refusing, or deliberately omitting, to offer the pupillage or tenancy to the person.

(2) It is unlawful for a barrister or barrister’s clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person’s sexuality -

- (a) in respect of any terms applicable to the person as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person;
- (c) in the benefits, facilities or services which are afforded or denied to the person; or
- (d) by terminating the person’s pupillage or by subjecting the person to any pressure to leave the chambers or any other detriment.

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

42 In the Chinese text, by deleting “皇室”

44(1) By deleting “educational institution” wherever it appears and substituting
and (2) “educational establishment”.

New By adding -

“53A. Insurance

Nothing in this Part renders it unlawful for a person to discriminate against a person who is of a particular sexuality on the ground of the person’s sexuality with respect to the terms on which an annuity, a life assurance policy, a policy of insurance against accident or any other policy of insurance is offered to or may be obtained by the person of that sexuality if that discrimination-

- (a) is based upon actuarial or statistical data from a source on which it is reasonable to rely or, if there are no such data, on such other data as may be available; and
- (b) is reasonable having regard to the data referred to in paragraph (a), if any, and any other relevant factors.”.

54 By deleting subclauses (2)to (4) and substituting -

“(2) For the purposes of this Ordinance, a person (“the discriminator”) discriminates against another person (“the aggrieved person”) on the ground of that person’s age if the discriminator applies to the aggrieved person a requirement, condition or practice which the discriminator applies or would apply equally to a person who is not of that age but -

- (a) which is such that the proportion of persons of the same age as the aggrieved person who are disadvantaged by it is considerably greater than the proportion of persons who are not of that age who are disadvantaged by it;
- (b) which the discriminator cannot show to be justifiable irrespective of the age of the person to whom it is applied; and
- (c) which is to the aggrieved person’s disadvantage.”.

- 62 (a) In subclauses (1) to (3), by deleting “educational authority” wherever it appears and substituting “educational establishment”.
- (b) In subclause (4), by deleting “educational institution” wherever it appears and substituting “educational establishment”.
- (c) In the Chinese text, in subclause (4) by adding “訂定” after “該計劃”.

65(3) By deleting the subclause and substituting -

- “(3) Nothing in this section applies to or in respect of -
- (a) the provision of accommodation in premises if -
 - (i) the person who provides or proposes to provide the accommodation or a near relative of that person

- (“the relevant occupier”) resides, and intends to continue to reside, on those premises;
- (ii) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier’s household; and
- (iii) the premises are small premises;
- (b) accommodation provided by a religious body;
- (c) accommodation provided by a charitable or other voluntary body solely for persons of a particular age;
- (d) the provision of bona fide benefits, including concessions, to a person by reason of his or her age.
- (4) Premises shall be treated for the purposes of subsection (3) as small premises if -
- (a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any members of his or her household reside in the accommodation occupied by him;
- (b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his or her household.
- (5) The Governor in Council may, by notice in the Gazette, amend subsection (4)(b) by substituting another number for the number appearing in that subsection.”.

71 In the Chinese text, by deleting “皇室”.

New By adding -

“71A. Barristers

(1) It is unlawful for a barrister or a barrister’s clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person on the ground of the person’s age -

- (a) in the arrangements which are made for the purposes of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which the pupillage or tenancy is offered; or
- (c) by refusing, or deliberately omitting, to offer the pupillage or tenancy to the person.

(2) It is unlawful for a barrister or barrister's clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person's age -

- (a) in respect of any terms applicable to the person as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person;
- (c) in the benefits, facilities or services which are afforded or denied to the person; or
- (d) by terminating the person's pupillage or by subjecting the person to any pressure to leave the chambers or any other detriment.

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

New By adding -

"77A. Further exceptions for statutory authority

- (1) Nothing in this Part affects the operation of a provision specified in the Schedule .
- (2) Nothing in this Part renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of a provision specified in the Schedule .
- (3) The Governor in Council may, by notice in the Gazette, amend the Schedule.
- (4) A notice under subsection (3) shall be subject to the approval of the Legislative Council."

83(7) By deleting the subclause.

84 and 85 By deleting the clauses and substituting -

"84. Charities

- (1) Nothing in this Ordinance shall -
 - (a) be construed as affecting a provision to which this subsection applies; or

(b) render unlawful an act which is done in order to give effect to such a provision.

(2) Subsection (1) applies to a provision for conferring benefits on persons of a particular sexuality or age (disregarding any benefits to other persons which are exceptional or are relatively insignificant), being a provision which is contained in a charitable instrument.

(3) In applying this section, account shall be taken of section 88 of the Inland Revenue Ordinance (Cap. 112).

(4) In this section -

“charitable instrument” (慈善文書) means an enactment or other instrument so far as it relates to charitable purposes;

“charitable purposes” (慈善目的) means purposes which are exclusively charitable according to any enactment or rule of law.

85. Voluntary bodies

(1) Nothing in this Ordinance shall be construed as rendering unlawful -

- (a) the restriction of membership of a voluntary body to persons of a particular sexuality or age (disregarding any minor exceptions) where such restriction is reasonable having regard to the main object of the body; or
- (b) the provision of benefits, facilities or services to members of a voluntary body where the membership is so restricted,

even though membership of the body is open to the public, or to a section of the public.

(2) Nothing in this Ordinance shall -

- (a) be construed as affecting a provision to which this subsection applies; or
- (b) render unlawful an act which is done in order to give effect to such a provision.

(3) Subsection (2) applies to a provision for conferring benefits on persons of a particular age or sexuality (disregarding any benefits to other persons which are exceptional or relatively insignificant), being a provision which constitutes the main object of a voluntary body.”.

88 By deleting the clause.

91, 92 and 94 By deleting the clauses and substituting -

“91. Claims under this Ordinance

(1) A claim by any person (“the claimant”) that another person (“the respondent”) -

- (a) has committed an act against the claimant which is unlawful by virtue of Part III or IV, or section 82;
- (b) is by virtue of section 99, 100 or 101 to be treated as having committed such an act against the claimant; or
- (c) has committed an act which is unlawful by virtue of section 49 or 83,

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 33 or 60 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, would be obtainable in the High Court.

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

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and order that the respondent shall not repeat or continue such unlawful conduct or act;
- (b) order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent shall employ or re-employ the claimant;
- (d) order that the respondent shall promote the claimant;
- (e) order that the respondent pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;
- (f) order that the respondent shall pay to the claimant punitive or exemplary damages; or
- (g) make an order declaring void in whole or part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.

(5) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.

(6) For avoidance of doubt, it is hereby declared that damages in respect of an unlawful act against the claimant may include compensation for injury to feelings whether or not they include compensation under any other head."

100 By adding -
“(5) For the avoidance of doubt, it is hereby declared that this section shall not apply for the purposes of any criminal proceedings.”.

New By adding -
“SCHEDULE [s. 77A]

PROVISIONS SPECIFIED FOR PURPOSES OF SECTION 77A

1. Section 31R(1)(b) of the Employment Ordinance (Cap. 57).
2. Employees' Compensation Ordinance (Cap. 282).
3. Pneumoconiosis (Compensation) Ordinance (Cap. 360).
4. Occupational Deafness (Compensation) Ordinance (Cap. 469).”.

Long title By deleting “family responsibility or family status, sexuality, or age” and substituting “sexuality or of age”.

EQUAL OPPORTUNITIES (RACE) BILL

COMMITTEE STAGE

Amendments to be moved by Hon. Mrs. Elizabeth WONG CHIEN Chi-lien

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 1 | By deleting the clause and substituting -

"1. Short title and commencement
(1) This Ordinance may be cited as the Equal Opportunities (Race) Ordinance.
(2) Section 42 shall come into operation upon the enactment of this Ordinance.
(3) This Governor 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 (other than section 42) and such a day, or the later or last of such different days, shall be a day no later than 1 January 1998."
(4) Subject to subsection (3), this Ordinance (other than section 42) shall come into operation on 1 January 1998." |
| 2(a) | By deleting "colour, nationality, and national or" and substituting "colour and". |
| 3(1) | By deleting the definition of "charitable benefits". |
| 3(1) | By deleting the definitions of "educational authority" and of "educational institution" and substituting -
"“educational establishment” (教育機構) has the same meaning as in the Sex Discrimination Ordinance (Cap. 480);”. |
| 3(1) | In the Chinese text, in the definition of "合約工作者", by deleting "進行工作的任何人" and substituting "而替該另一人工作的人". |
| 3(1) | By deleting the definition of "employment" and substituting -
"“barrister's clerk” (大律師書記) includes any person carrying out any of the functions of a barrister's clerk;
“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; “pupil” (見習大律師), “pupillage” (見習職位), “tenancy” (租賃) and “tenant” (承租人) have the meanings commonly associated with their use in the context of a set of barristers’ chambers;”.

3(1) In the definition of “race”, by deleting “ethnic or national origin, or nationality” and substituting “or ethnic origin”.

3(1) In the definition of “voluntary body”, by deleting paragraph (b) and substituting -
 “(b) a body whose recurrent expenditure is funded wholly or in part by the Government; or”.

4 By deleting the clause and substituting-

“4. Act done for 2 or more reasons

If an act is done for 2 or more reasons and one of the reasons is the race 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 of the person’s race.”.

6 By deleting the clause.

7(3) By deleting the subclause.

8(2) to (4) By deleting the subclauses and substituting -

“(2) For the purposes of this Ordinance, a person (“the discriminator”) discriminates against another person (“the aggrieved person”) on the ground of that person’s race if the discriminator applies to the aggrieved person a requirement, condition or practice which the discriminator applies or would apply equally to a person not of the same race as the aggrieved person but -

- (a) which is such that the proportion of persons of the same race as the aggrieved person who are disadvantaged by it is considerably greater than the proportion of persons not of that race who are disadvantaged by it;
- (b) which the discriminator cannot show to be justifiable irrespective of the race of the person to whom it is applied; and
- (c) which is to the aggrieved person’s disadvantage.”.

- 16
- (a) By deleting “educational authority” wherever it appears and substituting “educational establishment”.
 - (b) In subsection (3), by deleting “educational institution” and substituting “educational establishment”.
 - (c) In subsection (3), by deleting “on the ground of national origin or nationality,”.
- 19(3) By deleting the subclause and substituting -
- “(3) Nothing in this section applies to or in respect of -
 - (a) the provision of accommodation in premises if -
 - (i) the person who provides or proposes to provide the accommodation or a near relative of that person (“the relevant occupier”) resides, and intends to continue to reside, on those premises;
 - (ii) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier’s household; and
 - (iii) the premises are small premises;
 - (b) accommodation provided by a religious body; or
 - (c) accommodation provided by a charitable or other voluntary body solely for persons of a particular race;
 - (4) Premises shall be treated for the purposes of subsection (3) as small premises if -
 - (a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any members of his or her household reside in the accommodation occupied by him;
 - (b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his or her household.
 - (5) The Governor in Council may, by notice in the Gazette, amend subsection (4)(b) by substituting another number for the number appearing in that subsection.”.

New

By adding -

“23A. Barristers

(1) It is unlawful for a barrister or a barrister’s clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person on the ground of the person’s race -

- (a) in the arrangements which are made for the purposes of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which the pupillage or tenancy is offered; or
- (c) by refusing, or deliberately omitting, to offer the pupillage or tenancy to the person.

(2) It is unlawful for a barrister or barrister’s clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person’s race -

- (a) in respect of any terms applicable to the person as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person;
- (c) in the benefits, facilities or services which are afforded or denied to the person; or
- (d) by terminating the person’s pupillage or by subjecting the person to any pressure to leave the chambers or any other detriment.

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

33(7)

By deleting the subclause.

36 and 37

By deleting the clauses and substituting -

“36. Charities

(1) Nothing in this Ordinance shall -

- (a) be construed as affecting a provision to which this subsection applies; or
- (b) render unlawful an act which is done in order to give effect to such a provision.

(2) Subsection (1) applies to a provision for conferring benefits on persons of a particular race (disregarding any benefits to other persons which are exceptional or are relatively insignificant), being a provision which is contained in a charitable instrument.

(3) In applying this section, account shall be taken of section 88 of the Inland Revenue Ordinance (Cap. 112).

(4) In this section -

“charitable instrument” (慈善文書) means an enactment or other instrument so far as it relates to charitable purposes;

“charitable purposes” (慈善目的) means purposes which are exclusively charitable according to any enactment or rule of law.

37. Voluntary bodies

(1) Nothing in this Ordinance shall be construed as rendering unlawful -

- (a) the restriction of membership of a voluntary body to persons of a particular race (disregarding any minor exceptions) where such restriction is reasonable having regard to the main object of the body; or
- (b) the provision of benefits, facilities or services to members of a voluntary body where the membership is so restricted,

even though membership of the body is open to the public, or to a section of the public.

(2) Nothing in this Ordinance shall -

- (a) be construed as affecting a provision to which this subsection applies; or
- (b) render unlawful an act which is done in order to give effect to such a provision.

(3) Subsection (2) applies to a provision for conferring benefits on persons of a particular race (disregarding any benefits to other persons which are exceptional or relatively insignificant), being a provision which constitutes the main object of a voluntary body.”.

40

- (a) By deleting “educational authority” and substituting “educational establishment”.
- (b) By deleting paragraphs (a) to (c) and substituting -
 - “(a) the Primary One Admission System, Secondary School Places Allocation System, Junior Education Assessment Scheme, or Form Six Admissions Scheme;
 - (b) any scheme, system or programme that replaces in whole or in part a scheme or system mentioned in paragraph (a); or
 - (c) any provision of a law, being a provision relating to the admission of students.”.

New

By adding -

“41A. Immigration law and policy

(1) As regards persons not having the right to enter and remain in Hong Kong, this Ordinance does not affect -

- (a) any immigration legislation governing entry into, stay in and departure from Hong Kong;
- (b) any government policy for the time being in force providing for the application of any such legislation; or
- (c) any act done by a person if it was necessary to do it in order to comply with such legislation or such a policy.

(2) In this section, "legislation" (立法) means legislation that can be amended by an Ordinance.

41B. Acts done under the Basic Law

Nothing in this Ordinance affects any act done in accordance with a requirement of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China."

43, 44
and 46

By deleting the clauses and substituting -

"43. Claims under this Ordinance

(1) A claim by any person ("the claimant") that another person ("the respondent") -

- (a) has committed an act against the claimant which is unlawful by virtue of Part II, or section 32;
- (b) has committed an act which is unlawful by virtue of section 30 or 33; or
- (c) is by virtue of section 51, 52 or 53 to be treated as having committed such an act,

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 14 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, would be obtainable in the High Court.

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

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

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

(5) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.

(6) For avoidance of doubt, it is hereby declared that damages in respect of an unlawful act against the claimant may include compensation for injury to feelings whether or not they include compensation under any other head.”.

52

By adding -

“(5) For the avoidance of doubt, it is hereby declared that this section shall not apply for the purposes of any criminal proceedings.”.

long title

By deleting “nationality, national or”.

FAMILY STATUS DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by Hon. LAU Chin-shek

<u>Clause</u>	<u>Amendment Proposed</u>
8	By deleting subclauses (3), (7) and (9).
New	By adding - “30A. Requests for information If, because of another provision of Part III or IV, it would be unlawful, in particular circumstances, for a person to discriminate against another person, in doing a particular act, it is unlawful for the first-mentioned person to request or require that other person to provide, in connection with or for the purposes of the doing of the act, information (whether by completing a form or otherwise) that persons who do not have family status would not, in circumstances that are the same or not materially different, be requested or required to provide.”
50(2)(b)(iii)	By adding “30A,” before “31, 32 or 33”.
55(1)(c)	By adding “30A,” before “31, 32 or 33”.
60	(a) In the heading, by adding “30A,” before “31, 32 and 33”. (b) By adding “30A,” before “31, 32 or 33” where it appears twice.

家庭崗位歧視條例草案

委員會審議階段

由劉千石議員動議的修正案

條款

建議修正案

8 刪去第(3), (7)及(9)款。

新條文 加入一

“ 30A. 要求提供資料

如因為第 III 或 IV 部的另一條文，使任何人在某些特定情況下就作出某一作為而歧視另一人會屬違法，則該首述的人若要求或規定該另一人在與該作為的作出有關連的情況下或為該作為的作出的目的而提供的資料(不論藉填寫表格或其他方式)，但在相同或並無重大分別的情況下非具有家庭崗位的人是不會被要求或規定提供該等資料的，即屬違法。”

50(2)(b)(iii) 在“ 31、32 或 33 ”之前加入“ 30A、”。

55(1)(C) 在“ 31、32 或 33 ”之前加入“ 30A、”。

60 (a) 在該條的標題中，在“ 31、32 或 33 ”之前加入“ 30A、”。

(b) 在出現兩次的“ 31、32 或 33 ”之前加入“ 30A、”。

政務司
香港灣仔軒尼詩道一百二十號
修頓中心三十一樓



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

本署編號 OUR REF : HAB/CR/1/2/21

來函編號 YOUR REF

電話 TEL NO : 2835 1368

圖文傳真 FAXLINE : 2834 6176

10 June 1997

To : All Members of the Legislative Council

Hon. Christine Loh's

Sex and Disability Discrimination
(Miscellaneous Provisions) Bill 1996

The captioned Bill will resume Second Reading on 11 June 1997. The Administration objects to the Bill. I am writing to explain our reasons and hope that Members will take them into account when deciding on your votes.

The Bill seeks to amend the Sex Discrimination Ordinance and Disability Discrimination Ordinance, which were enacted in 1995. The Equal Opportunities Commission was established in May 1996 to administer the Ordinances. Since then, the EOC has been explaining the contents of the Ordinances to the public. The two Ordinances commenced full operation on 20 December 1996, after the two Codes of Practice prepared by the EOC to give guidance to employers on compliance with the Ordinances were approved by the Legislative Council in December of the same year.

The EOC is tasked by the two Ordinances to keep the working of the Ordinances under review. Accordingly, it has undertaken to conduct a comprehensive review on the two Ordinances in late 1997, i.e. after it has had about a year's experience in operating the Ordinances. The EOC has also undertaken that in its forthcoming review, it will take into account the proposals in the Bill and any others made by Members of this Council. For those matters of particular concern to Members, the EOC will give them priority consideration and will aim at making its recommendations in time for the Administration to make an announcement in March 1998.

Objection on ground of principle

It is inappropriate to amend the Ordinances at this juncture, when there has been nothing from actual operational experience to suggest that any amendment is necessary. There is no urgency in any of the proposals in the Bill. There is no reason why we cannot defer coming to a view on these proposals until the EOC has examined them in detail in the light of operational experience and further information from in-depth researches. In fact, it is one of the statutory functions of the EOC to keep under review the working of the Ordinances and recommend changes to them as appropriate.

Any amendment to the Ordinances, at a time when the community has started to grasp the relevant provisions, serves no purpose except to cause confusion. To change the law so soon after it has been in operation would be a serious blow to those (especially small employers) who have worked hard to comply with it.

For example, the Bill seeks to change the definition of indirect discrimination. An employer who has taken pains in recent months to revise his personnel policy and practice in order to ensure compliance with the law as it is may, if this Bill is passed, all of a sudden find himself to fall foul of the new law. This would undermine his respect for the law.

Some members of the public might mistake that the EOC gave them the wrong advice in the past. Therefore, the Bill, if enacted, would make the EOC's future work doubly difficult, thus obstructing the smooth implementation of the Ordinances. Anti-discrimination legislation is new to Hong Kong and it is important that we should allow time for the public to develop confidence in the legislation as well as the EOC.

Furthermore, the Bill was apparently not well thought through. This is evident from the fact that while the Bill contains only 40 clauses, Ms. Loh has now proposed some 30 committee stage amendments. Some of these CSAs have been hastily drafted and we have no confidence that they, or any other proposals in the Bill, can stand the test of time.

Specific objections

We object to the Bill not only because it is premature to amend the two Ordinances with no regard to operational experience but also, because many of the proposals therein would present real, practical problems.

Clauses 3, 13, 26 and 30 (and the relevant CSAs proposed by Ms. Loh) seek to impose additional functions on the EOC, including the promotion of standards in certain international instruments which have not been accepted by the Government. Such promotional work would mislead members of the public into thinking that the standards are legally binding. On the other hand, for the EOC to be seen to be pushing for the adoption of standards not yet applicable to Hong Kong would not be conducive to the EOC's political neutrality.

Clauses 4, 5, 6 and 27 (and the relevant CSAs proposed by Ms. Loh) seek to redefine what constitutes indirect discrimination under the SDO and DDO. The proposed amendments are meant to reverse a ruling made by the UK Court of Appeal in *Perera v Public Service Commission [1983] ICR 428*. While the UK EOC recommended such a reversal in 1988, the UK Government has not adopted it. Such an important, operative provision in the Ordinances should not be changed without an in-depth research and detailed assessment of the implications.

The effect of Clause 11, if enacted, is that even acts safeguarding the security of Hong Kong may become unlawful if they accord different treatments to the two genders. We consider that the present exception provided in the SDO for such acts should be retained. While protecting the rights of the individuals, we should not undermine our security.

Clauses 12 and 24 (and the relevant CSAs), if enacted, would mean that the Small House Policy would have to be discontinued one year after enactment of the Bill but might be extended by the Legislative Council for another year. The Policy is being reviewed by the Planning, Environment and Lands Branch. We should not pre-empt the outcome of the review. We must not lose sight of the feelings of the indigenous villagers who are affected by the discontinuation of the Policy.

Clauses 12 and 24 would adversely affect our Disciplined Services. First, the present policy of allocating departmental quarters to married - but not single - members of the Disciplined Services would have to discontinue. This would mean either more quarters will have to be constructed or married officers have to wait longer before being allocated quarters. Second, the present height and weight requirements for recruitment to the Disciplined Services might be challenged in court as being unlawful on ground of sex discrimination, even though during the Bills Committee's discussion of the matter there has been no suggestion that these requirements are unreasonable.

Conclusion

I hope Members will understand and support the Administration's position on the Bill. If you require any additional information, please do not hesitate to give a call to Mr Ng Hon-wah (Tel : 2835 1383) or myself.

(Mrs Stella Hung)
Secretary for Home Affairs (Acting)

c.c. SHW
SEM
S for S
SPEL

Speech by Christine Loh
Legislative Council, 11 June 1997

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

Mr. President, my Bill makes urgently needed amendments to the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. These Ordinances came into force late last year, more than a year after they were enacted. The Administration and some Members argue that it is too early to amend these Ordinances. They have it backwards. Now that the Ordinances have finally come into force, we must make sure that they do not fail the people whom they are supposed to protect.

Right now, a victim of work-related sex discrimination, or of sexual harassment in the workplace, cannot obtain more than \$150,000 in compensation. A victim of any form of disability discrimination cannot claim more than \$120,000.

These damages caps deter any recourse to litigation at all. Contrary to the usual practice in civil proceedings, an award of costs is not normally available under either Ordinance. A victim of discrimination must therefore plan on paying litigation costs out of the damages he or she is awarded. But no one can stay in court for long on \$150,000, still less on \$120,000. The stark reality is that, right now, many victims of discrimination are best advised to swallow their hurt and humiliation, while any discriminator with even moderately deep pockets may rest secure in the Ordinances' defects.

The two Ordinances make discrimination unlawful, but so long as these caps on damages remain in effect, they simply do not provide a remedy for it. Even a victorious plaintiff in a case of unlawful dismissal may have suffered lost pay and benefits exceeding these amounts. Sexual harassment can have a devastating impact on a victim, and in serious cases, expenses for medical treatment and counselling alone may exceed these figures. Meanwhile, some victims of disability discrimination and harassment are cut off from whole realms of activity that other people take for granted. Is \$120,000 just compensation for a person who has endured such suffering?

But the actual damages suffered by a victim of discrimination, and proven in court, do not matter under the Ordinances as they stand. The very law that is supposed to uphold the equality of people has put a special, low price-tag on their victimisation.

Mr. President, the damages caps are so destructive to the purposes of these two Ordinances that their removal alone fully justifies the enactment of this Bill. But there are also other defects in the legislation that demand immediate action. An order for reinstatement can be obtained under the Disability Discrimination Ordinance, but not under the Sex Discrimination Ordinance, even though everyone agrees it may often be the right remedy for discrimination in a large organisation. Death and retirement benefits are simply exempt from the Sex Discrimination Ordinance, and will likely remain so unless this Bill is passed. Both Ordinances are replete with other ill-conceived limitations and exemptions. As long as we continue to dither about these loopholes, real people will keep on falling through them.

Nevertheless, the Administration as well as some Members argue that we should wait in order to gain more experience with the operation of these Ordinances. This is an exceptionally threadbare excuse for inaction.

First, discrimination is an ancient and truly international phenomenon, and we are not breaking new ground in Hong Kong with the methods we have chosen to deal with it. The Sex Discrimination Ordinance, which the Administration treats as the model for all equal opportunity legislation in Hong Kong, is essentially copied from the UK Sex Discrimination Act. Virtually all of the amendments contained in this Bill are based on recommendations made by the UK Equal Opportunities Commission after more than a dozen years experience administering that law. The Administration's obstinate insistence that Members behave like ostriches and stick their heads in the sand when lessons may be learned from experience in the UK and elsewhere is foolish.

Second, it is naive to believe that a vote against this Bill is a vote merely to defer reform for a short time, perhaps a year or so. If this Bill fails, it is likely that we condemn this community to live with the defects of the existing Ordinances until the distant future. I am aware that the Equal Opportunities Commission has undertaken to study the Ordinances and make recommendations within a year. The experience in the UK in this respect, as in so many others, is instructive.

The UK Equal Opportunities Commission made its comprehensive proposal for reform of the Sex Discrimination Act in 1988. For five long years thereafter, the UK

Government responded with ungracious silence. It did not reply until 1993, when it issued a short paper rejecting virtually every major recommendation. In regard to the few minor recommendations it accepted, four years later it has still taken no action, citing excuses such as an inability to secure a legislative time slot. Virtually all the amendments that have been made in the UK were forced on the UK Government by judgments of the European Court of Justice, requiring it to comply with European human rights standards. No equivalent mechanism to force compliance with international standards applies to Hong Kong.

Can we expect the Hong Kong Government to treat equal opportunity law with ^{bcu} more respect than the UK Government has? Nothing in the short history of such legislation in Hong Kong suggests we should. On the contrary, the over-riding purpose that has consistently driven the Administration's policy on equal opportunity legislation has not been to secure equality rights, but to control and contain public pressure to do so.

To be fair, I believe the Disability Discrimination Ordinance was put forward in good faith by the Administration. But in the details even of that Ordinance, the interests of people with disabilities are sacrificed whenever a right enjoyed by them threatens to spill over into other legislation.

Meanwhile, where sex discrimination is concerned, the Administration has done exactly as much as it has been forced to do, and it has seized every politically viable opportunity to undermine what is done. The damages caps in both Ordinances may be cited as examples. One [^]was a last minute proposal by an individual Member, which the Administration enthusiastically endorsed despite its devastating impact and continues to defend. The other [^]was a drafting error which the Administration today does not acknowledge as such, and also defends. The policy seems to be one of opportunistic hostility — the Administration rarely passes by a chance to hobble the legislation. Experience therefore suggests that to entrust the task of progressive law reform to the Administration is to give up the struggle.

Finally, I note that the Equal Opportunities Commission has essentially endorsed the dilatory policy of the Administration. I feel embarrassed for the Commission that it has done so. The Commission failed to offer any views on the substance of my Bill, and failed to endorse even the removal of the damages caps. Such timidity on matters of fundamental importance suggests a truly abject fear of official displeasure, and I fear it has seriously damaged the Commission's credibility.

For the sake of the many people whose rights the Commission is entrusted to protect, I can only hope that it will show more backbone in the future.

Anyone who takes seriously the harm suffered by victims of discrimination and harassment should regard the amendment of these two deeply flawed Ordinances as a matter of urgency. For Members' reference, I will explain in committee stage the purposes of the individual amendments made by the Bill. I urge Members to support the second reading of the Bill now.

Speech by Christine Loh
Legislative Council, 11 June 1997

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
Committee Stage

Clauses 1, 2, 10, 14, 15, 18 and 19
[grace period for death & retirement benefits; new exceptions;
SDO-related clauses dropped from the Bill]

Mr. Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

I believe there is no controversy over these committee stage amendments. Two of them merit explanation.

First, the committee stage amendment to clause 1 was requested by the Financial Services Branch. It delays for 4 months the commencement of certain other clauses that prohibit discrimination in death and retirement benefits. Those clauses will be examined later in this committee stage, but in case they are enacted, the Branch advises that the operators of benefit schemes need a short grace period to comply. Only the grace period is at stake in this vote.

Second, the committee stage amendment to clause 10 corrects the terminology used in the Chinese text. Clause 10 itself adds 3 exceptions into the Sex Discrimination Ordinance. One exception authorises any reasonable restrictions aimed at preventing married couples from obtaining double housing benefits, or any, similar double benefits. The other exceptions authorise providers of reproductive technology services, and of adoption services, to offer such services to married couples only. These latter exceptions are already in effect, and are merely moved from a schedule into the body of the Ordinance.

The remaining committee stage amendments in this group delete clauses 2, 14, 15, 18 and 19. Because of the time constraints on the Bills Committee examining this Bill, I proposed to delete these clauses to allow us to focus on other aspects of the Bill which I consider more urgent.

Speech by Christine Loh
Legislative Council, 11 June 1997

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
Committee Stage

Clause 3

[relevant international standards; goes with cl. 13, new EOC functions]

Mr. Chairman, I move that clause 3 be amended as set out in the paper circulated to Members.

I will speak on clause 13 together with clause 3 because they are connected. Clause 13 gives the Equal Opportunities Commission two new functions, which are:

- first, to promote the public acceptance and understanding of internationally recognised standards for the equal treatment of men and women; and
- second, to examine and report on any proposed legislation that the Commission considers may have equal opportunity implications.

Clause 3 specifies international standards which are relevant for these purposes. Clause 3 mentions obligations to eliminate sex discrimination under the ICCPR, ICESCR and CEDAW, and the committee stage amendment the clause to reflect that CEDAW has been applied to Hong Kong since the Bill was first gazetted. Clause 3 also mentions other relevant guidance provided in the United Nations' 1993 Declaration on the Elimination of Violence Against Women, and provided in two Recommendations by the International Labour Organisation concerning employment discrimination and equal pay.

Members, and the Commission, should be reassured that these clauses do not impose any new legal duties on the Commission; indeed, if they did, the clauses would have been blocked for having a charging effect. The clauses merely give the Commission a discretion to undertake these functions if, in the Commission's strategic judgment, they would be useful.

Moreover, it is undisputed that the Commission could undertake these functions even without these clauses, under the authority of its existing, general function of promoting equality of opportunity between men and women. The legal effect of these clauses is, therefore, rather innocuous.

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
Committee Stage

But I nevertheless insist on putting these clauses forward because an important principle is at stake. Hong Kong is proud of being a cosmopolitan and internationally oriented territory. We participate actively in a wide variety of international organisations, and the laws of Hong Kong, are replete with express references to international standards, conventions and agreements, both binding and non-binding.

Nevertheless, the Administration steadfastly resists the insertion of any reference to the relevant international standards in equal opportunity legislation, even as it regularly represents this legislation to the United Nations as implementing those standards. This is not only hypocritical, it retards the development of equal opportunity law in Hong Kong. Attention to fast developing international standards is valuable in the area of equal opportunity for the same practical reasons as in any other field. As the expert body in the field, the Equal Opportunities Commission should, as a matter of course, take up the task of overseeing and promoting the awareness and implementation of such standards. I hope it will do so whether or not these clauses are enacted, but these clause will substantially assist it in that task.

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
Committee Stage

Clauses 4, 5, and 6
[widen indirect discrimination]

Mr. Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

A major purpose of the Sex Discrimination Ordinance is to eliminate indirect discrimination, that is, apparently neutral rules and practices which, in actual practice, have a disproportionate impact on ~~women~~. This purpose has been thwarted in the UK by a series of Court decisions beginning with *Perera v. Civil Service Commission*. These decisions are virtually certain to be followed in Hong Kong as well unless clauses 4 to 6 of this Bill are enacted.

In the *Perera* case, the UK Court decided that an indirect discrimination claimant had to identify a requirement or condition that absolutely barred her success. This is impossible in most real situations of indirect discrimination. Real decisions, such as the choice of a successful job applicant, are typically based on a balance of criteria. One or more criterion may in practice be highly detrimental to ~~women~~. Nevertheless, no single criterion can be described as an absolute bar by itself. As a result, no such decision can be treated as indirect discrimination, no matter how much difficulty the criteria used actually pose for ~~women~~.

The *Perera* line of cases will almost certainly be applied to the Sex Discrimination Ordinance. The Administration has pointed out that Australian courts have not adopted such a restrictive construction of similar language used in Australian legislation. Unfortunately, because the Ordinance is copied from UK law, Hong Kong courts will follow the UK rather than the Australian construction of the legislation.

Clauses 4 to 6 re-define indirect discrimination to prevent the *Perera* construction from being applied in Hong Kong. The committee stage amendment retains as much of the current statutory language as possible, while still achieving that purpose.

Speech by Christine Loh
Legislative Council, 11 June 1997

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
Committee Stage

Clause 7

[leave the small employer exception; but cover death & retirement benefits]

Mr. Chairman, I move that clause 7 be amended as set out in the paper circulated to Members.

Clause 7(b) and (c) were originally intended to cut by half the duration of the temporary exception for small employers in the Sex Discrimination Ordinance. By now, however, the small employer exception has already passed the half-way mark and has barely a year left to run. The committee stage amendment therefore deletes clause 7(b) and (c) and allows the small employer exception to run its remaining course.

Aside from the committee stage amendment, the remainder of clause 7 merits urgent enactment. It will apply the Sex Discrimination Ordinance for the first time to death and retirement benefits provided for employees. Such benefits are now exempt from the Ordinance, and may lawfully discriminate against women. Too many women rely on such benefits to allow such an exemption to continue.

In some existing benefit schemes, benefits may have been accruing on a discriminatory basis for a long time. The clause therefore does not affect any provision for benefits that has already been made. But it will prohibit benefit schemes from discriminating against women in the future. The Administration agreed in 1995 to apply the Ordinance to death and retirement schemes in this way, but has not yet taken action to do so.

After this clause is enacted and applies the Ordinance to benefit schemes, men and women may still be treated differently if the treatment reasonably reflects an assessment of risk that is based on reliable actuarial or other data. Such differences are permitted by section 51 of the Ordinance, which the Bill does not change.

**Speech by Christine Loh
Legislative Council, 11 June 1997**

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

**Clauses 8, 9, 22 and 23
[cover death & retirement benefits]**

Mr. Chairman, clauses 8 and 9 apply the Sex Discrimination Ordinance to death and retirement benefits that are provided respectively by partnerships, and by trade unions and similar organisations. This is urgent for the same reasons I mentioned in regard to clause 7: many women rely on such benefits and they are entitled to be treated fairly.

Clauses 8 and 9 are also subject to the same reasonable limitations: they do not affect any past provision already made for benefits, and in future provision, different treatment of men and women will still be lawful when it is actuarially justified.

Consequential amendments are made by clauses 22 and 23.

Speech by Christine Loh
Legislative Council, 11 June 1997

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
Committee Stage

Clause 11
[repeal exception for security of Hong Kong]

Mr. Chairman, clause 11 repeals the exception in the Sex Discrimination Ordinance allowing any act done to safeguard Hong Kong's security.

The Administration has never been able to provide an example of what acts the exception is intended to authorise. It is in fact very difficult to imagine an act of sex discrimination which is both so unfair that it doesn't fit it into any of the Ordinance's many other exceptions, and is also necessary for Hong Kong's security.

Whatever the intention, the terms of the exception are grossly wide. Any act done for the purpose of safeguarding security falls within its scope, without regard to whether the act was reasonable, or whether it was actually necessary to achieve the purpose.

Moreover, the exception provides that, in cases outside the employment field, the Chief Secretary may conclusively certify any act as subject to the exception. There is no judicial control of the use of such certificates. Let me underline this point: the exception does not allow a judge to question the Chief Secretary's certificate. The reason there is no similar provision for certification of employment cases is because that provision was struck down in the UK by a judgment of the European Court of Justice before the Administration copied the UK Act.

The exception creates a potentially enormous loophole. I am afraid that in practice, it will be tempting for the Administration to deploy this exception to squelch any discrimination claim that threatens to interfere with an established practice in any security-related part of government.

A similar exception was deleted from the Disability Discrimination Ordinance prior to its enactment, and I urge Members to repeal this one as well.

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
Committee Stage

Clause 12

[Small House Policy; indirect sex discrimination by disciplined services]

Mr. Chairman, I expect that clause 12 may be the single most controversial provision in the Bill. It will cause two exceptions in the Sex Discrimination Ordinance to expire after a grace period of 1 year, extendible for a 2nd year by Legco resolution. One of the exceptions which will expire permits sex discrimination arising from the Small House Policy in the New Territories.

The Administration says the Small House Policy has been under formal review since August 1995, and claimed it was studying the Policy for years before that. Such study is a delaying tactic. The exclusion of women from eligibility under the Policy is patently discriminatory, and should have ended at the latest when the Hong Kong Bill of Rights Ordinance was enacted 6 years ago.

When the grace period under clause 12 expires, the Policy need not necessarily be abolished. It will, however, have to be opened up equally to women if it remains in effect. Given constraints on land supply, if the Policy were extended to women it seems likely that eligibility would have to be limited in some other way, for example by imposing a means test. Such an approach would be consistent with the Government's description of the Policy as a welfare measure, not an innate entitlement of indigenous villagers.

Alternatively, of course, the Government could abolish the Policy. The Government has previously advised that small house applicants have no legal entitlement under the Policy. The Government may choose to compensate those with outstanding applications, but it is not obligated to do so. If it were, this clause would have been blocked for charging effect.

Quite apart from the sex discrimination in the Policy, constraints on land supply mean it cannot be sustainable in its present form indefinitely. Moreover, the shape and content of the Policy have changed often and fundamentally over its history, if indeed the Small House Policy can be said to have a history before it was instituted under that name in 1971. The suggestion that it is intended to be enshrined forever by the ambiguous language of Article 40 of the Basic Law is simply not a realistic construction of that Article.

**Speech by Christine Loh
Legislative Council, 11 June 1997**

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

The other exception that clause 12 sets to expire permits indirect sex discrimination in certain practices of the disciplined services. These practices include height, weight, uniform and equipment requirements, weapons training, participation in the Police Tactical Unit, and overall sex ratios. I am aware that some of the disciplined services have made considerable progress towards eliminating such indirect discrimination, and they deserve credit for doing so. The Administration affirms that parts of this exception are no longer needed.

In principle, however, I cannot accept that the disciplined services should enjoy a special shield against liability indefinitely. One or two years should be ample time to ensure that all their practices which affect women and men differently are objectively reasonable. That is all that the law requires to rebut a claim of indirect discrimination.

**Speech by Christine Loh
Legislative Council, 11 June 1997**

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

**Clause 16
[SDO \$150,000 damages cap]**

Mr. Chairman, I move that clause 16 be amended as set out in the paper circulated to Members.

Clause 16 removes the \$150,000 cap on damage awards for unlawful discrimination or harassment at work. I have already expressed my views on this damages cap at second reading. Its removal, and the removal of a similar cap in the Disability Discrimination Ordinance, are the single most important amendments contained in this Bill. It is not an exaggeration to predict that unless the clause is enacted, the Sex Discrimination Ordinance will fail. So long as the damages cap remains in place, litigation under the Ordinance will be unwise for anyone who is not receiving legal aid. Conciliation will be undermined because there will be little incentive for an alleged discriminator to cooperate. And compensation, especially in serious cases, will be impossible.

The committee stage amendment to clause 16 makes essential technical improvements, and splits off the important but distinct issues of reinstatement and damages for indirect discrimination to be considered separately later in this committee stage. Only the damages cap is at issue in this vote.

I strongly urge Members to support the committee stage amendment and the clause.

**Speech by Christine Loh
Legislative Council, 11 June 1997**

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

**Clause 17
[binding undertakings]**

Mr. Chairman, clause 17 should be uncontroversial. It enables the Commission to register and enforce a voluntarily undertaking made by a person not to do specified discriminatory acts. A binding undertaking of this type operates in every respect the same as an enforcement notice issued by the Commission. Under the law as it stands, the Commission cannot issue an enforcement notice until it completes a formal investigation, which is a lengthy and cumbersome procedure even if unopposed. Essentially, this clause provides a short-cut when a person whom the Commission suspects of unlawful discrimination prefers to resolve the matter voluntarily and without delay.

This one of the very few recommendations made by the UK Commission that was accepted by the UK Government. Four years later, however, the necessary legislation has still not been enacted in the UK because the Home Office says it wasn't able to obtain a legislative time slot. I hope we in Hong Kong can implement the proposal more expeditiously, here and now.

Speech by Christine Loh
Legislative Council, 11 June 1997

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
Committee Stage

Clause 20

[time in conciliation not counted against time to file claims]

Mr. Chairman, there is no sensible reason to oppose clause 20. The clause provides that any time spent in conciliation does not count against the time limit to bring court proceedings.

The time to bring proceedings under the Ordinance is short — 2 years from the date the act in question was done. Everyone, including the Administration, agrees that a person whose complaint is being conciliated should not need to break off conciliation and bring proceedings instead, merely because he or she would otherwise run out of time and lose the right to bring proceedings. In cases where conciliation has caused delay, everyone therefore agrees in principle that the time limit to bring proceedings must be extended.

The current Ordinance does not do so. It gives the District Court a general discretion to allow any claim that is out of time, and specifically directs the Court to consider two circumstances. One is the time elapsed during conciliation. The other is the time elapsed before a claimant entered into conciliation.

Mention of the latter circumstance is discouraging, because it suggests that in some cases, the Court will still disallow a late claim filed as soon as conciliation ends. For a potential claimant who wonders if he or she will be penalised for persisting with conciliation, the existing law offers hope, but by no means certainty. To avoid discouraging conciliation efforts, the time limit for litigation must be certain, and clause 20 makes it so.

Speech by Christine Loh
Legislative Council, 11 June 1997

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
Committee Stage

Clause 21

[EOC judicial review under BORO, Basic Law etc.]

Mr. Chairman, I move that clause 21 be amended as set out in the paper circulated to Members.

Clause 21 ensures that the Equal Opportunities Commission is able to bring judicial review proceedings to uphold laws other than the Sex Discrimination Ordinance itself if they are relevant to its functions. Examples of such laws include Article 22 of the Bill of Rights Ordinance and certain provisions in Chapter III of the Basic Law.

It is well established that the UK Equal Opportunities Commission has such a power, and is not limited to enforcing the UK Sex Discrimination Act only. For example, the UK Commission has successfully invoked applicable European equal pay laws numerous times in judicial review proceedings.

It is doubtful, however, that the Hong Kong Commission has inherited a similar power. The Sex Discrimination Ordinance, unlike UK law, specifically authorises the Commission to litigate, but fails to mention any law other than itself. This omission may prevent the Commission from invoking other laws. Clause 21 ensures that this problem will not arise.

CL -

I forgot to mention in the speeches:

The issue of discrim. v. single officers in departmental quarters arises under cl. 24, which ~~deletes~~ repeals the existing exception to permit it.

Existing point systems for allocation may be extended to cover singles with no resource implications.

Speech by Christine Loh
Legislative Council, 11 June 1997

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
Committee Stage

Clause 24

[Repeal exception for HOS marital status discrim. & some other Sched. 5 exceptions]

Mr. Chairman, I move that clause 24 be amended as set out in the paper circulated to Members.

Clause 24 repeals several exceptions in Schedule 5 of the Sex Discrimination Ordinance. These exceptions are obsolete or redundant because of clauses 7, 8, 9 and 10 of the Bill.

The committee stage amendment to clause 24 repeals an additional exception in the Ordinance. The repealed exception presently permits marital status discrimination in the Home Ownership Scheme and Private Sector Participation Scheme. Single-parent families have long complained of being treated unfairly in this area, and I understand the Government has recently revised the rules of eligibility for these Schemes to eliminate the discrimination.

**Speech by Christine Loh
Legislative Council, 11 June 1997**

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

**Clauses 25, 28, 29, 31, 32, 33, 35, 36, 39 and 40
[DDO-related clauses dropped from Bill]**

Mr. Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

These committee stage amendments delete various clauses relating to the Disability Discrimination Ordinance. I told the Bills Committee I would delete these clauses to allow us to focus on other clauses which are more urgent.

Speech by Christine Loh
Legislative Council, 11 June 1997

Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
Committee Stage

Clause 26

**[DDO: international standards listed for new EOC function;
goes with clause 30, new EOC functions]**

Mr. Chairman, I move that clause 26 be amended as set out in the paper circulated to Members.

Clause 26 and clause 30 go together, so I will speak on both now. Clause 30 gives the Equal Opportunities Commission two new functions in relation to disability discrimination: the function of promoting international standards and the function of examining proposed legislation.

Members will recall that we have already discussed parallel amendments to the Sex Discrimination Ordinance, in clauses 3 and 13. I will not repeat the arguments I made earlier.

For the record, I will only mention the international standards listed in clause 26, which include obligations under the ICCPR and ICESCR, and guidance provided by three other United Nations instruments: the Standard Rules on the Equalization of Opportunities for Persons with Disabilities; the Declaration on the Rights of Disabled Persons; and the Declaration on the Rights of Mentally Retarded Persons.

**Speech by Christine Loh
Legislative Council, 11 June 1997**

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

Clause 27

[DDO: widen indirect discrimination]

Mr. Chairman, I move that clause 27 be amended as set out in the paper circulated to Members.

The clause widens the definition of indirect discrimination in the Disability Discrimination Ordinance. Members will recall our earlier discussion of parallel amendments in clauses 4, 5 and 6.

**Speech by Christine Loh
Legislative Council, 11 June 1997**

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

Clause 34

[DDO: binding undertakings]

Mr. Chairman, this clause will enable the Commission to register and enforce a binding undertaking voluntarily made by a person not to do specified acts of disability discrimination. We have discussed a parallel amendment to the Sex Discrimination Ordinance in clause 17.

**Speech by Christine Loh
Legislative Council, 11 June 1997**

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

Clause 37

[DDO: time in conciliation not counted against time to file claims]

Mr. Chairman, clause 37 provides that any time spent in conciliation does not count against the time limit to bring court proceedings under the Disability Discrimination Ordinance. Members considered a parallel amendment to the Sex Discrimination Ordinance in clause 20.

**Speech by Christine Loh
Legislative Council, 11 June 1997**

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

Clause 38

[DDO: EOC judicial review under BORO, Basic Law etc.]

Mr. Chairman, I move that clause 38 be amended as set out in the paper circulated to Members.

Clause 38 ensures that the Equal Opportunities Commission is able to bring judicial review proceedings in relation to laws other than the Disability Discrimination Ordinance which are nevertheless relevant to its functions. Such laws include Article 22 of the Bill of Rights Ordinance and certain provisions in Chapter III of the Basic Law.

Members considered a parallel amendment to the Sex Discrimination Ordinance in clause 21.

**Speech by Christine Loh
Legislative Council, 11 June 1997**

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

**New clause 16A
[SDO: reinstatement, etc.]**

Mr. Chairman, I move that new clause 16A as set out in the paper circulated to Members be read the second time.

The new clause amends the Sex Discrimination Ordinance to authorise several specific remedies, including in particular reinstatement. These remedies are already available under the Disability Discrimination Ordinance, and are urgently needed in respect of sex discrimination.

The Court will naturally take account of whether an order for reinstatement is practical in the circumstances. Given the novelty of the remedy in Hong Kong (though not in many other places), the Court is likely to err on the side of caution. But we know that in many cases, reinstatement will be by far the best remedy for a person who has been sacked from a large organisation, or forced to leave, because of unlawful sex discrimination or harassment. There is no reason why the Sex Discrimination Ordinance should differ from the Disability Discrimination Ordinance in this respect.

**Speech by Christine Loh
Legislative Council, 11 June 1997**

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

New clause 16B

[SDO: damages for unintentional indirect discrimination]

Mr. Chairman, I move that new clause 16B as set out in the paper circulated to Members be read the second time.

This new clause repeals the bar against damage awards for any indirect sex discrimination that was done unintentionally. This limitation was copied from UK law, but the UK provision was repealed last year, after the European Court concluded that the limitation unjustly deprived a claimant of an effective remedy for indirect discrimination.

The effect of the limitation in the Sex Discrimination Ordinance is even more unjust, because an award of costs is not normally available under the Ordinance. So long as this limitation continues to prevent any damages from being awarded in most cases of indirect discrimination, no one is likely to challenge indirect discrimination at all.

**Speech by Christine Loh
Legislative Council, 11 June 1997**

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

**New clause 33A
[DDO: \$120,000 damages cap]**

Mr. Chairman, I move that new clause 33A as set out in the paper circulated to Members be read the second time.

The new clause removes the \$120,000 cap on damage awards for unlawful disability discrimination or harassment. I regard the removal of this damages cap as one of most important amendments contained in this Bill.

This damages cap, which arises from the District Court Ordinance, was never meant to apply to the Ordinance. The same 1995 committee stage amendment that made the remedy of reinstatement available under this Ordinance also had the accidental effect of allowing the damages cap in the District Court Ordinance to apply. Members who were present during that debate will remember that debate focused on the issue of reinstatement. No one was aware of the possibility of a damages cap, as the Hansard for that day clearly shows.

It is disgraceful that the Administration today defends the damages cap as if it were sensible, without acknowledging that it is the unintended result of a drafting error. In fact, the damages cap fundamentally undermines the Ordinance's value, and should be removed without delay.

投票 VOTE : 13
 日期 DATE : 11/06/97
 時間 TIME : 23:09:41

動議 MOTION : SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - SECOND READING

(1996 年性別及殘疾歧視 (雜項規定) 條例草案)

提議 PROPOSED : - 二讀

MISS CHRISTINE LOH

和議 SECONDED : 陸恭蕙議員

投票總和 VOTE TOTALS :-
 總和 TOTAL : 55
 贊成 YES : 29
 反對 NO : 26
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE
1	1	李鵬飛	反對 NO	31	31	李卓人	贊成 YES
2	2	周梁淑怡	反對 NO	32	32	陳鑑林	反對 NO
3	3	李柱銘	贊成 YES	33	33	陳榮燦	反對 NO
4	4	李國寶	反對 NO	34	34	陳婉嫻	贊成 YES
5	5	倪少傑	反對 NO	35	35	鄭家富	贊成 YES
6	6	司徒華	贊成 YES	36	36	鄭明訓	反對 NO
7	7	劉皇發	反對 NO	37	37	鄭耀棠	反對 NO
8	8	何承天	反對 NO	38	38	張炳良	贊成 YES
9	9	夏佳理	反對 NO	39	39	張漢忠	反對 NO
10	10	劉健儀	反對 NO	40	40	蔡根培	反對 NO
11	11	梁智鴻	贊成 YES	41	41	朱幼麟	反對 NO
12	12	陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13	13	張文光	贊成 YES	43	43	葉國謙	反對 NO
14	14	詹培忠	反對 NO	44	44	劉千石	贊成 YES
15	15	馮檢基	贊成 YES	45	45	劉漢銓	反對 NO
16	16	何敏嘉	贊成 YES	46	46	羅祥國	贊成 YES
17	17	黃貫遐	贊成 YES	47	47	羅致光	贊成 YES
18	18	劉慧卿	贊成 YES	48	48	李啓明	反對 NO
19	19	李永達	贊成 YES	49	49	梁耀忠	贊成 YES
20	20	李家祥	反對 NO	50	50	廖成利	贊成 YES
21	21	李華明	贊成 YES	51	51	羅叔清	反對 NO
22	22	唐英年	反對 NO	52	52	莫應帆	贊成 YES
23	23	徐耀甲	贊成 YES	53	53	吳嘉儀	贊成 YES
24	24			54	54	顧錦全	反對 NO
25	25	黃宜弘	反對 NO	55	55	覃仲備	贊成 YES
26	26	楊森	贊成 YES	56	56	曾健成	贊成 YES
27	27	楊孝華	反對 NO	57	57	謝永齡	贊成 YES
28	28	黃偉賢	贊成 YES	58	58	黃錢其濂	贊成 YES
29	29	陸恭蕙	贊成 YES	59	59	任善寧	贊成 YES
30	30	田北俊	反對 NO				

投票日期
時間

VOTE
DATE
TIME

2006年9月23日
11:30

動議 MOTION : EMPLOYMENT (AMENDMENT) (NO 4) BILL 1996
- SECOND READING
(1996年僱傭(修訂)(第4號)條例草案)
- 二讀

提議 PROPOSED : MR LEUNG YIU-CHUNG
梁耀忠議員

和議 SECONDED :

投票總和 VOTE TOTALS :-
總和 TOTAL : 56
贊成 YES : 22
反對 NO : 30
棄權 ABSTAIN : 4

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE
1	1	李鵬飛	反對 NO	31	31	李卓人	贊成 YES
2	2	周梁淑怡	反對 NO	32	32	陳鑑林	反對 NO
3	3	李柱銘	贊成 YES	33	33	陳榮燦	棄權 ABSTA
4	4	李國寶	反對 NO	34	34	陳婉嫻	棄權 ABSTA
5	5	倪少傑	反對 NO	35	35	鄭家富	贊成 YES
6	6	司徒華	贊成 YES	36	36	鄭明訓	反對 NO
7	7	劉學發	反對 NO	37	37	鄭耀棠	棄權 ABSTA
8	8	何承天	反對 NO	38	38	張炳良	贊成 YES
9	9	夏佳理	反對 NO	39	39	張漢忠	反對 NO
10	10	劉健儀	反對 NO	40	40	蔡根培	反對 NO
11	11	梁智鴻	反對 NO	41	41	朱幼麟	反對 NO
12	12	陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13	13	張文光	贊成 YES	43	43	葉國謙	反對 NO
14	14	詹培忠	反對 NO	44	44	劉千石	贊成 YES
15	15	馮檢基	反對 NO	45	45	劉漢銓	反對 NO
16	16	何敏嘉	贊成 YES	46	46	羅祥國	反對 NO
17	17	黃震遐	贊成 YES	47	47	羅致光	贊成 YES
18	18	劉慧卿	贊成 YES	48	48	李啓明	反對 NO
19	19	李永達	贊成 YES	49	49	梁耀忠	贊成 YES
20	20	李家祥	反對 NO	50	50	廖成利	反對 NO
21	21	李華明	贊成 YES	51	51	羅叔清	反對 NO
22	22	唐英年	反對 NO	52	52	莫應帆	反對 NO
23	23	涂謹申	贊成 YES	53	53	吳靄儀	反對 NO
24	24			54	54	顏錦全	反對 NO
25	25	黃宜弘	反對 NO	55	55	單仲偕	贊成 YES
26	26	楊森	贊成 YES	56	56	曾健成	贊成 YES
27	27	楊孝蕓	反對 NO	57	57	謝永齡	贊成 YES
28	28	黃偉賢	贊成 YES	58	58	黃錢其濤	贊成 YES
29	29	陸恭惠	棄權 ABSTAIN	59	59	任善寧	贊成 YES
30	30	田北俊	反對 NO				

秘書 CLERK: _____

投票 VOTE : 15
 日期 DATE : 12/06/97
 時間 TIME : 00:10:55

動議 MOTION : SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE AMENDMENTS - CLAUSE 3
 (1996 年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 第 3 條

提議 PROPOSED :

MISS CHRISTINE LOH

和議 SECONDED :

陸恭蕙議員

投票總和 VOTE TOTALS :-
 總和 TOTAL : 56
 贊成 YES : 25
 反對 NO : 31
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

座位 SEAT	喺號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	喺號 CARD	議員 MEMBERS
1	1	Hon Allen LEE	NO	31	31	Hon LEE Cheuk-yan
2	2	Hon Mrs Selina CHOW	NO	32	32	Hon CHAN Kam-lam
3	3	Hon Martin LEE	YES	33	33	Hon CHAN Wing-chan
4	4	Dr Hon David LI	NO	34	34	Hon CHAN Yuen-han
5	5	Hon NGAI Shau-Kit	NO	35	35	Hon Andrew CHENG Kar-foo
6	6	Hon SCETO Wah	YES	36	36	Hon Paul CHENG
7	7	Hon LAU Wing-fat	NO	37	37	Hon CHENG Yiu-tong
8	8	Hon Edward HO	NO	38	38	Hon CHEUNG Bing-leung
9	9	Hon Ronald ARTOLETTI	NO	39	39	Hon CHEUNG Hon-chung
10	10	Hon Mrs Marian LIP	NO	40	40	Hon CHOY Kan-pui
11	11	Dr Hon LEUNG Yee-ning	YES	41	41	Hon David CHU Yu-lin
12	12	Hon Albert HAN	YES	42	42	Hon HO Chun-yan
13	13	Hon CHEUNG Man-kwong	YES	43	43	Hon IP Kwok-him
14	14	Hon Chim Fui-chung	NO	44	44	Hon LAU Chin-shek
15	15	Hon Frederick FUNG	NO	45	45	Hon LAU Hon-chuen
16	16	Hon Michael HO	YES	46	46	Dr Hon LAW Cheung-kwok
17	17	Dr Hon HUANG Chen-ya	YES	47	47	Hon LAW Chi-kwong
18	18	Hon Emily LAU	YES	48	48	Hon LEE Kai-ming
19	19	Hon LEE Wing-tat	YES	49	49	Hon LEUNG Yiu-chung
20	20	Hon Eric LI	NO	50	50	Hon LIU Sing-lee
21	21	Hon Fred LI	YES	51	51	Hon LO Suk-ching
22	22	Hon Henry TANG	NO	52	52	Hon MOK Ying-fan
23	23	Hon James TO	YES	53	53	Hon Margaret NG
24	24			54	54	Hon NGAN Kam-cheun
25	25	Dr Hon Philip WONG	NO	55	55	Hon SIN Chung-kai
26	26	Dr Hon YEUNG Sum	YES	56	56	Hon TSANG Kin-shing
27	27	Hon Howard YOUNG	NO	57	57	Dr Hon John TSE Wing-ling
28	28	Hon Zachary WONG	YES	58	58	Hon Mrs Elizabeth WONG
29	29	Hon Christine LOH	YES	59	59	Hon YUM Sin-ling
30	30	Hon James TIEN	NO			

DEPT :

投票日期時間
 VOTE : 16
 DATE : 12/06/97
 TIME : 00:14:29

動議 MOTION : SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE - CLAUSE 3
 (1996年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 第3條

提議 PROPOSED :
 MISS CHRISTINE LOH
 陸恭蕙議員

和議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 55
 贊成 YES : 24
 反對 NO : 31
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

位 咭號	MEMBERS	投票	VOTE	位 咭號	MEMBERS	投票	VOTE
SEAT CARD	議員			SEAT CARD	議員		
1	李鵬飛	Hon Allen LEE	反對 NO	31	李卓人	Hon LEE Cheuk-yan	贊成 YES
2	周梁淑怡	Hon Mrs Selina CHOW	反對 NO	32	陳藍林	Hon CHAN Kam-lam	反對 NO
3	李柱銘	Hon Martin LEE	贊成 YES	33	陳榮燦	Hon CHAN Wing-chan	反對 NO
4	李國寶	Dr Hon David LI	反對 NO	34	陳婉嫻	Hon CHAN Yuen-han	反對 NO
5	倪少傑	Hon NGAI Shiu-kit	反對 NO	35	鄭家富	Hon Andrew CHENG Kar-foo	贊成 YES
6	司徒華	Hon SZETO Wah	贊成 YES	36	鄭明訓	Hon Paul CHENG	反對 NO
7	劉皇發	Hon LAU Wong-fat	反對 NO	37	鄭耀棠	Hon CHENG Yiu-tong	反對 NO
8	何承天	Hon Edward HO	反對 NO	38	張炳良	Hon CHEUNG Bing-leung	贊成 YES
9	夏佳理	Hon Ronald ARCULLI	反對 NO	39	張漢忠	Hon CHEUNG Hon-chung	反對 NO
10	劉健儀	Hon Mrs Miriam LAU	反對 NO	40	蔡根培	Hon CHOY Kan-pui	反對 NO
11	梁智鴻	Dr Hon LEONG Che-hung	贊成 YES	41	朱幼麟	Hon David CHU Yu-lin	反對 NO
12	陳偉業	Hon Albert CHAN	贊成 YES	42	何俊仁	Hon HO Chun-yan	贊成 YES
13	張文光	Hon CHEUNG Man-kwong	贊成 YES	43	葉國謙	Hon IP Kwok-him	反對 NO
14	詹培忠	Hon Chim Pui-chung	反對 NO	44	劉千石	Hon LAU Chin-shek	贊成 YES
15	馮檢基	Hon Frederick FUNG	反對 NO	45	劉漢銓	Hon LAU Hon-chuen	反對 NO
16	何敏嘉	Hon Michael HO	贊成 YES	46	羅祥國	Dr Hon LAW Cheung-kwok	反對 NO
17	黃震遐	Dr Hon HUANG Chen-ya	贊成 YES	47	羅致光	Hon LAW Chi-kwong	贊成 YES
18	劉慧卿	Hon Emily LAU	贊成 YES	48	李啓明	Hon LEE Kai-ming	反對 NO
19	李永達	Hon LEE Wing-tat	贊成 YES	49	梁耀忠	Hon LEUNG Yiu-chung	贊成 YES
20	李家祥	Hon Eric LI	反對 NO	50	廖成利	Hon LIU Sing-lee	反對 NO
21	李華明	Hon Fred LI	贊成 YES	51	羅叔清	Hon LO Suk-ching	反對 NO
22	唐英年	Hon Henry TANG	反對 NO	52	莫應帆	Hon MOK Ying-fan	反對 NO
23	涂謹申	Hon James TO	贊成 YES	53	吳嘉儀	Hon Margaret NG	贊成 YES
24				54	顧錦全	Hon NGAN Kam-cheun	反對 NO
25	黃宜弘	Dr Hon Philip WONG	反對 NO	55	覃仲僊	Hon SIN Chung-kai	贊成 YES
26	楊森	Dr Hon YEUNG Sum		56	曾健成	Hon TSANG Kin-shing	
27	楊孝華	Hon Howard YOUNG	反對 NO	57	謝永齡	Dr Hon John TSE Wing-ling	贊成 YES
28	黃偉賢	Hon Zachary WONG	贊成 YES	58	黃錢其濂	Hon Mrs Elizabeth WONG	
29	陸恭蕙	Hon Christine LOH	贊成 YES	59	任善寧	Hon YUM Sin-ling	贊成 YES
30	田北俊	Hon James TIEN	反對 NO				

秘書 CLERK: _____

投票 VOTE : 17
 日期 DATE : 12/06/97
 時間 TIME : 00:20:40

動議 MOTION : SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE - CLAUSES 4, 5 AND 6 STAND PART
 OF THE BILL
 (1996 年性別及殘疾歧視 (雜項規定) 條例草案)
 - 全議委員會審議階段 - 第 4、5 及 6 條納入條例草案

提議 PROPOSED : MISS CHRISTINE LOH
 陸恭蕙議員

和議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 56
 贊成 YES : 25
 反對 NO : 30
 棄權 ABSTAIN : 1

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE
1	1	李鵬飛	反對 NO	31	31	李卓人	贊成 YES
2	2	周梁淑怡	反對 NO	32	32	陳鑑林	反對 NO
3	3	李柱銘	贊成 YES	33	33	陳榮燦	反對 NO
4	4	李國寶	反對 NO	34	34	陳婉嫻	棄權 ABSTAIN
5	5	倪少傑	反對 NO	35	35	鄭家富	贊成 YES
6	6	司徒華	贊成 YES	36	36	鄭明訓	反對 NO
7	7	劉皇發	反對 NO	37	37	鄭耀業	反對 NO
8	8	何承天	反對 NO	38	38	張炳良	贊成 YES
9	9	夏德理	反對 NO	39	39	張漢忠	反對 NO
10	10	劉健儀	反對 NO	40	40	蔡根培	反對 NO
11	11	梁智鴻	贊成 YES	41	41	朱幼麟	反對 NO
12	12	陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13	13	張文光	贊成 YES	43	43	葉國謙	反對 NO
14	14	詹培忠	反對 NO	44	44	劉千石	贊成 YES
15	15	傅檢基	反對 NO	45	45	劉漢銓	反對 NO
16	16	何敏嘉	贊成 YES	46	46	羅祥國	反對 NO
17	17	黃貫淵	贊成 YES	47	47	羅致光	贊成 YES
18	18	劉慧卿	贊成 YES	48	48	李啓明	反對 NO
19	19	李永達	贊成 YES	49	49	梁耀忠	贊成 YES
20	20	李家祥	反對 NO	50	50	廖成利	反對 NO
21	21	李華明	贊成 YES	51	51	羅叔清	反對 NO
22	22	唐英年	反對 NO	52	52	莫應帆	反對 NO
23	23	涂謹申	贊成 YES	53	53	吳嘉儀	贊成 YES
24	24			54	54	顧錦全	反對 NO
25	25	黃宜弘	反對 NO	55	55	覃仲僊	贊成 YES
26	26	楊森	贊成 YES	56	56	曾健成	贊成 YES
27	27	楊李華	反對 NO	57	57	謝永齡	贊成 YES
28	28	黃偉賢	贊成 YES	58	58	黃錢其濤	贊成 YES
29	29	陸恭蕙	贊成 YES	59	59	任善寧	贊成 YES
30	30	田北俊	反對 NO				

秘書 CLERK

投票日期時間 : VOTE : 18
 DATE : 12/06/97
 TIME : 00:24:54

動議 MOTION : SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE AMENDMENTS - CLAUSE 7 AS
 AMENDED STAND PART OF THE BILL
 (1996年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 經修正的第7條納入條例草案

提議 PROPOSED : MISS CHRISTINE LOH
 陸恭蕙議員

和議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 56
 贊成 YES : 31
 反對 NO : 25
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

座位 SEAT CARD	咭號 議員	MEMBERS	投票 VOTE	座位 SEAT CARD	咭號 議員	MEMBERS	投票 VOTE
1	1	李鵬飛	反對 NO	31	31	李卓人	贊成 YES
2	2	周梁淑怡	反對 NO	32	32	陳鑑林	反對 NO
3	3	李柱銘	贊成 YES	33	33	陳榮燦	反對 NO
4	4	李國寶	反對 NO	34	34	陳婉嫻	贊成 YES
5	5	倪少傑	反對 NO	35	35	鄭家富	贊成 YES
6	6	司徒華	贊成 YES	36	36	鄭明訓	反對 NO
7	7	劉曼發	反對 NO	37	37	鄭耀棠	反對 NO
8	8	何承天	反對 NO	38	38	張炳良	贊成 YES
9	9	夏佳理	反對 NO	39	39	張漢忠	贊成 YES
10	10	劉健儀	反對 NO	40	40	蔡根培	反對 NO
11	11	梁智鴻	贊成 YES	41	41	朱幼麟	反對 NO
12	12	陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13	13	張文光	贊成 YES	43	43	葉國謙	反對 NO
14	14	詹培忠	反對 NO	44	44	劉千石	贊成 YES
15	15	馮檢基	贊成 YES	45	45	劉漢銓	反對 NO
16	16	何敏嘉	贊成 YES	46	46	羅祥國	贊成 YES
17	17	黃貫遐	贊成 YES	47	47	羅致光	贊成 YES
18	18	劉慧卿	贊成 YES	48	48	李啓明	贊成 YES
19	19	李永達	贊成 YES	49	49	梁耀忠	贊成 YES
20	20	李家祥	反對 NO	50	50	廖成利	贊成 YES
21	21	李華明	贊成 YES	51	51	羅叔濟	反對 NO
22	22	唐英年	反對 NO	52	52	莫應帆	贊成 YES
23	23	涂謹申	贊成 YES	53	53	吳嘉儀	贊成 YES
24	24			54	54	顧錦全	反對 NO
25	25	黃宜弘	反對 NO	55	55	覃仲僊	贊成 YES
26	26	楊森	贊成 YES	56	56	曾健成	贊成 YES
27	27	楊孝華	反對 NO	57	57	謝永齡	贊成 YES
28	28	黃偉賢	贊成 YES	58	58	黃鏡琪	贊成 YES
29	29	陸恭蕙	贊成 YES	59	59	任善寧	贊成 YES
30	30	田北俊	反對 NO				

秘書 CLERK

投票日期時間
 VOTE : 19
 DATE : 12/06/97
 TIME : 00:27:38

動議 MOTION : SEX AND DISABILITY DISCRIMINATION (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE - CLAUSES 8, 9, 22 AND 23 STAND PART OF THE BILL
 (1996年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 第8、9、22及23條納入條例草案

建議 PROPOSED : MISS CHRISTINE LOH
 陸恭蕙議員

附議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 56
 贊成 YES : 30
 反對 NO : 26
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

座位 喺號	議員	MEMBERS	投票	VOTE	座位 喺號	議員	MEMBERS	投票	VOTE
1	李鵬飛	Hon Allen LEE	反對	NO	31	李卓人	Hon LEE Cheuk-yan	贊成	YES
2	周梁淑怡	Hon. Mrs Selina CHOW	反對	NO	32	陳維林	Hon CHAN Kam-lam	反對	NO
3	李柱銘	Hon Martin LEE	贊成	YES	33	陳榮燦	Hon CHAN Wing-chan	反對	NO
4	李國寶	Dr Hon David LI	反對	NO	34	陳婉嫻	Hon CHAN Yuen-han	贊成	YES
5	倪少傑	Hon NGAI Shiu-kit	反對	NO	35	鄭家富	Hon Andrew CHENG Kar-foo	贊成	YES
6	司徒華	Hon SZEHO Wah	贊成	YES	36	鄭明訓	Hon Paul CHENG	反對	NO
7	劉皇發	Hon LAU Wong-fat	反對	NO	37	鄭耀業	Hon CHENG Yiu-tong	反對	NO
8	何承天	Hon Edward HO	反對	NO	38	張炳良	Hon CHEUNG Bing-leung	贊成	YES
9	夏佳理	Hon Ronald ARCULLI	反對	NO	39	張漢忠	Hon CHEUNG Hon-chung	反對	NO
10	劉健儀	Hon Mrs Miriam LAU	反對	NO	40	蔡煥培	Hon CHOY Kan-pui	反對	NO
11	梁智鴻	Dr Hon LEONG Chee-tung	贊成	YES	41	朱幼麟	Hon David CHU Yu-lin	反對	NO
12	陳偉業	Hon Albert CHAN	贊成	YES	42	何俊仁	Hon HO Chun-yan	贊成	YES
13	張文光	Hon CHEUNG Man-kwong	贊成	YES	43	葉國謙	Hon IP Kwok-him	反對	NO
14	詹培忠	Hon Chim Pui-chung	反對	NO	44	劉千石	Hon LAU Chin-shek	贊成	YES
15	馮檢基	Hon Frederick FUNG	贊成	YES	45	劉漢銓	Hon LAU Hon-chuen	反對	NO
16	何敏嘉	Hon Michael HO	贊成	YES	46	羅祥國	Dr Hon LAW Cheung-kwok	贊成	YES
17	黃震遐	Dr Hon HONG Chai-ya	贊成	YES	47	羅致光	Hon LAW Chi-kwong	贊成	YES
18	劉慧卿	Hon Emily LAU	贊成	YES	48	李啓明	Hon LEE Kai-ming	反對	NO
19	李永達	Hon LEE Wing-tat	贊成	YES	49	梁耀忠	Hon LEUNG Yiu-chung	贊成	YES
20	李家祥	Hon Eric LI	反對	NO	50	廖成利	Hon LIU Sing-lee	贊成	YES
21	李華明	Hon Fred LI	贊成	YES	51	羅叔清	Hon LO Suk-ching	反對	NO
22	唐英年	Hon Henry TANG	反對	NO	52	莫應帆	Hon MOK Ying-fan	贊成	YES
23	余耀申	Hon James TO	贊成	YES	53	吳靄儀	Hon Margaret NG	贊成	YES
24					54	顧錦全	Hon NGAN Kam-cheun	反對	NO
25	黃宜弘	Dr Hon Philip WONG	反對	NO	55	覃仲備	Hon SIN Chung-kai	贊成	YES
26	楊森	Dr Hon YEUNG Sum	贊成	YES	56	曾健成	Hon TSANG Kin-shing		
27	楊孝華	Hon Howard YOUNG	反對	NO	57	謝永齡	Dr Hon John TSE Wing-ling	贊成	YES
28	黃偉賢	Hon Barnaby WONG	贊成	YES	58	黃錢其濂	Hon Mrs Elizabeth WONG		
29	陸恭蕙	Hon Christine LOH	贊成	YES	59	任善寧	Hon YUM Sin-ling	贊成	YES
30	田北俊	Hon James TIEN	反對	NO					

秘書 CLERK

投票日期時間
 VOTE : 20
 DATE : 12/06/97
 TIME : 00:33:50

動議 MOTION : SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE - CLAUSE 11 STAND PART OF THE BILL
 (1996年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 第11條納入條例草案

提議 PROPOSED : MISS CHRISTINE LOH
 陸恭蕙議員

和議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 56
 贊成 YES : 26
 反對 NO : 30
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS

座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE
1		李鵬飛	反對 NO	31	31	李卓人	贊成 YES
2		周梁淑怡	反對 NO	32	32	陳鑑林	反對 NO
3	3	李柱銘	贊成 YES	33	33	陳榮燻	反對 NO
4	4	李國寶	贊成 YES	34	34	陳炳燦	反對 NO
5	5	倪少傑	反對 NO	35	35	鄭家富	贊成 YES
6	6	司徒華	贊成 YES	36	36	鄭明訓	反對 NO
7	7	劉皇發	反對 NO	37	37	鄭耀棠	反對 NO
8	8	何承天	反對 NO	38	38	張炳良	贊成 YES
9	9	夏佳理	反對 NO	39	39	張漢忠	反對 NO
10	10	劉健儀	反對 NO	40	40	蔡根培	反對 NO
11	11	梁智鴻	贊成 YES	41	41	朱幼麟	反對 NO
12	12	陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13	13	張文光	贊成 YES	43	43	葉國謙	反對 NO
14	14	詹培忠	反對 NO	44	44	劉千石	贊成 YES
15	15	馮檢基	反對 NO	45	45	劉漢銓	反對 NO
16	16	何敏嘉	贊成 YES	46	46	羅祥國	反對 NO
17	17	黃鳳瀾	贊成 YES	47	47	羅致光	贊成 YES
18	18	劉慧卿	贊成 YES	48	48	李啓明	反對 NO
19	19	李永達	贊成 YES	49	49	梁耀忠	贊成 YES
20	20	李家祥	反對 NO	50	50	廖成利	反對 NO
21	21	李華明	贊成 YES	51	51	羅叔清	反對 NO
22	22	唐英年	反對 NO	52	52	莫應帆	反對 NO
23	23	涂謹申	贊成 YES	53	53	吳靄儀	贊成 YES
24	24			54	54	羅錦全	反對 NO
25	25	黃宜弘	反對 NO	55	55	單仲偕	贊成 YES
26	26	楊森	贊成 YES	56	56	曾健成	贊成 YES
27	27	楊孝華	反對 NO	57	57	謝永齡	贊成 YES
28	28	黃偉賢	贊成 YES	58	58	黃錢其濤	贊成 YES
29	29	陸恭蕙	贊成 YES	59	59	任善寧	贊成 YES
30	30	田北俊	反對 NO				

秘書 CLERK

投票 VOTE : 21
 日期 DATE : 12/06/97
 時間 TIME : 01:56:51

動議 MOTION :

提議 PROPOSED :

和議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 56
 贊成 YES : 55
 反對 NO : 0
 棄權 ABSTAIN : 1

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS

座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE
1	1	李鵬飛	贊成 YES	31	31	李卓人	贊成 YES
2	2	周梁淑怡	贊成 YES	32	32	陳鑑林	贊成 YES
3	3	李柱銘	贊成 YES	33	33	陳榮燦	贊成 YES
4	4	李國寶	贊成 YES	34	34	陳婉嫻	贊成 YES
5	5	倪少傑	贊成 YES	35	35	鄭家富	贊成 YES
6	6	司徒華	贊成 YES	36	36	鄭明訓	贊成 YES
7	7	劉遵義	贊成 YES	37	37	鄭耀棠	贊成 YES
8	8	何承天	贊成 YES	38	38	張炳良	贊成 YES
9	9	夏佳理	贊成 YES	39	39	張漢忠	贊成 YES
10	10	劉健儀	贊成 YES	40	40	蔡根培	贊成 YES
11	11	梁智鴻	贊成 YES	41	41	朱幼麟	贊成 YES
12	12	陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13	13	張文光	贊成 YES	43	43	葉國謙	贊成 YES
14	14	詹培忠	贊成 YES	44	44	劉千石	贊成 YES
15	15	馮檢基	贊成 YES	45	45	劉漢銓	贊成 YES
16	16	何敏嘉	贊成 YES	46	46	羅祥國	贊成 YES
17	17	黃震遐	贊成 YES	47	47	羅致光	贊成 YES
18	18	劉慧卿	贊成 YES	48	48	李啓明	贊成 YES
19	19	李永達	棄權 ABSTAIN	49	49	梁耀忠	贊成 YES
20	20	李家祥	贊成 YES	50	50	廖成利	贊成 YES
21	21	李華明	贊成 YES	51	51	羅叔清	贊成 YES
22	22	唐英年	贊成 YES	52	52	莫應帆	贊成 YES
23	23	涂謹申	贊成 YES	53	53	吳嘉儀	贊成 YES
24	24			54	54	顧錦全	贊成 YES
25	25	黃宜弘	贊成 YES	55	55	覃仲僱	贊成 YES
26	26	楊森	贊成 YES	56	56	曾健成	贊成 YES
27	27	楊孝華	贊成 YES	57	57	謝永齡	贊成 YES
28	28	黃偉賢	贊成 YES	58	58	黃錢其濠	贊成 YES
29	29	陸恭蕙	贊成 YES	59	59	任善寧	贊成 YES
30	30	田北俊	贊成 YES				

秘書 CLERK

投票 VOTE : 22
 日期 DATE : 12/06/97
 時間 TIME : 01:58:58

動議 MOTION : SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE - CLAUSE 12 STAND PART OF THE
 BILL
 (1996年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 第12條納入條例草案

提議 PROPOSED : MISS CHRISTINE LOH
 陸恭蕙議員

和議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 56
 贊成 YES : 23
 反對 NO : 33
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS

座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE
1		李國飛	反對 NO	31	31	李卓人	贊成 YES
2		周梁淑怡	反對 NO	32	32	陳鑑林	反對 NO
3		李柱銘	贊成 YES	33	33	陳榮燦	反對 NO
4		李國寶	反對 NO	34	34	陳婉嫻	反對 NO
5		倪少傑	反對 NO	35	35	鄭家富	贊成 YES
6		司徒華	贊成 YES	36	36	鄭明訓	反對 NO
7		劉慧強	反對 NO	37	37	鄭耀棠	反對 NO
8		何承天	反對 NO	38	38	張炳良	贊成 YES
9		夏佳理	反對 NO	39	39	張漢忠	反對 NO
10		劉健儀	反對 NO	40	40	蔡根培	反對 NO
11		梁智鴻	反對 NO	41	41	朱幼麟	反對 NO
12		陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13		張文光	贊成 YES	43	43	葉國謙	反對 NO
14		詹培忠	反對 NO	44	44	劉千石	贊成 YES
15		傅檢基	反對 NO	45	45	劉漢銓	反對 NO
16		何敏嘉	贊成 YES	46	46	羅祥國	反對 NO
17		黃麗淵	贊成 YES	47	47	羅致光	贊成 YES
18		劉慧卿	贊成 YES	48	48	李啓明	反對 NO
19		李永達	贊成 YES	49	49	梁耀忠	贊成 YES
20		李家祥	反對 NO	50	50	廖成利	反對 NO
21		李華明	贊成 YES	51	51	羅叔清	反對 NO
22		唐英年	反對 NO	52	52	莫理帆	反對 NO
23		涂謹申	贊成 YES	53	53	吳靄儀	反對 NO
24				54	54	顧錦全	反對 NO
25		黃宜弘	反對 NO	55	55	單仲偕	贊成 YES
26		楊森	贊成 YES	56	56	曾健成	反對 NO
27		楊孝華	反對 NO	57	57	謝永齡	贊成 YES
28		黃偉賢	贊成 YES	58	58	黃錢其蕙	反對 NO
29		陸恭蕙	贊成 YES	59	59	任善寧	贊成 YES
30		田北俊	反對 NO				

秘書 CLERK

投票 VOTE : 23
 日期 DATE : 12/06/97
 時間 TIME : 02:07:13

議 MOTION · SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE AMENDMENTS - CLAUSE 16
 (1996年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 第16條

提議 PROPOSED : MISS CHRISTINE LOH
 陸恭蕙議員

議 SECONDED :

票總和 VOTE TOTALS :-
 總和 TOTAL : 56
 贊成 YES : 31
 反對 NO : 25
 棄權 ABSTAIN : 0

別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS

座位 AT CARD	古號 議員	MEMBERS	投票 VOTE	座位 SEAT CARD	古號 議員	MEMBERS	投票 VOTE
1	李鵬飛	Hon Allen LEE	反對 NO	31	李卓人	Hon LEE Cheuk-yan	贊成 YES
2	周梁淑怡	Hon Mrs Selina CHOW	反對 NO	32	陳鑑林	Hon CHAN Kam-lam	反對 NO
3	李柱銘	Hon Martin LEE	贊成 YES	33	陳榮燦	Hon CHAN Wing-chan	反對 NO
4	李國寶	Dr Hon David LI	贊成 YES	34	陳婉嫻	Hon CHAN Yuen-han	贊成 YES
5	倪少傑	Hon NGAI Shiu-kit	反對 NO	35	鄭家富	Hon Andrew CHENG Kar-foo	贊成 YES
6	司徒華	Hon SZE TO Wah	贊成 YES	36	鄭明訓	Hon Paul CHENG	反對 NO
7	劉遵義	Hon LAU Wong-fat	反對 NO	37	鄭耀棠	Hon CHENG Yiu-tong	反對 NO
8	何承天	Hon Edward HO	反對 NO	38	張炳良	Hon CHEUNG Bing-leung	贊成 YES
9	夏佳理	Hon Ronald ARCULLI	反對 NO	39	張漢忠	Hon CHEUNG Hon-chung	反對 NO
10	劉健儀	Hon Mrs Miriam LAU	反對 NO	40	蔡根培	Hon CHOY Kan-pui	反對 NO
11	梁智鴻	Dr Hon LEONG Che-hung	贊成 YES	41	朱幼麟	Hon David CHU Yu-lin	反對 NO
12	陳偉業	Hon Albert CHAN	贊成 YES	42	何俊仁	Hon Ho Chun-yan	贊成 YES
13	張文光	Hon CHEUNG Man-kwong	贊成 YES	43	葉國謙	Hon IP Kwok-him	反對 NO
14	詹培忠	Hon Chim Pui-chung	反對 NO	44	劉千石	Hon LAU Chin-shek	贊成 YES
15	馮檢基	Hon Frederick FUNG	贊成 YES	45	劉漢銓	Hon LAU Hon-chuen	反對 NO
16	何敏嘉	Hon Michael HO	贊成 YES	46	羅祥國	Dr Hon LAW Cheung-kwok	贊成 YES
17	黃貫運	Dr Hon HUANG Chen-ya	贊成 YES	47	羅致光	Hon LAW Chi-kwong	贊成 YES
18	劉慧卿	Hon Emily LAU	贊成 YES	48	李啓明	Hon LEE Kai-ming	反對 NO
19	李永達	Hon LEE Wing-tat	贊成 YES	49	梁耀忠	Hon LEUNG Yiu-chung	贊成 YES
20	李家祥	Hon Eric LI	反對 NO	50	廖成利	Hon LIU Sing-lee	贊成 YES
21	李華明	Hon Fred LI	贊成 YES	51	羅叔清	Hon LO Suk-ching	反對 NO
22	唐英年	Hon Henry TANG	反對 NO	52	莫應帆	Hon MOK Ying-fan	贊成 YES
23	涂謹申	Hon James TO	贊成 YES	53	吳嘉儀	Hon Margaret NG	贊成 YES
24				54	顧錦全	Hon NGAN Kam-cheun	反對 NO
25	黃宜弘	Dr Hon Philip WONG	反對 NO	55	單仲偕	Hon SIN Chung-kai	贊成 YES
26	楊森	Dr Hon YEUNG Sum	贊成 YES	56	曾健成	Hon TSANG Kin-shing	贊成 YES
27	楊孝華	Hon Howard YOUNG	反對 NO	57	謝永齡	Dr Hon John TSE Wing-ling	贊成 YES
28	黃偉賢	Hon Zachary WONG	贊成 YES	58	黃鏡其	Hon Mrs Elizabeth WONG	贊成 YES
29	陸恭蕙	Hon Christine LOH	贊成 YES	59	任善寧	Hon YUM Sin-ling	贊成 YES
30	田北俊	Hon James TIEN	反對 NO				

秘書 CLERK.

投票日期時間
 VOTE : 24
 DATE : 12/06/97
 TIME : 02:08:56

動議 MOTION · SEX AND DISABILITY DISCRIMINATION (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE AMENDMENTS - CLAUSE 16 AS AMENDED STAND PART OF THE BILL
 (1996年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 經修正的第16條納入條例草案

提議 PROPOSED MISS CHRISTINE LOH
 陸恭蕙議員

和議 SECONDED ·

投票總和 VOTE TOTALS :-
 總和 TOTAL : 56
 贊成 YES : 31
 反對 NO : 25
 棄權 ABSTAIN : 0

個別結果如下

座位 SEAT	暗號 ARC	議員 MEMBER	投票 VOTE	座位 SEAT	暗號 CARD	議員 MEMBERS	投票 VOTE
1		李鵬飛	反對 NO	31	31	李卓人	贊成 YES
2		周梁淑怡	反對 NO	32	32	陳鑑林	反對 NO
3		李柱銘	贊成 YES	33	33	陳榮燦	反對 NO
4		李國寶	贊成 YES	34	34	陳毓綱	贊成 YES
5		倪少傑	反對 NO	35	35	鄭家富	贊成 YES
6		司徒華	贊成 YES	36	36	鄭明訓	反對 NO
7		劉慧強	反對 NO	37	37	鄭耀英	反對 NO
8		何承天	反對 NO	38	38	張炳良	贊成 YES
9		夏佳理	反對 NO	39	39	張漢忠	反對 NO
10		劉健儀	反對 NO	40	40	蔡根培	反對 NO
11		梁智鴻	贊成 YES	41	41	朱幼麟	反對 NO
12		陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13		張文光	贊成 YES	43	43	葉國謙	反對 NO
14		詹培忠	反對 NO	44	44	劉千石	贊成 YES
15		馮檢基	贊成 YES	45	45	劉漢銓	反對 NO
16		何敏嘉	贊成 YES	46	46	羅祥國	贊成 YES
17		黃麗遐	贊成 YES	47	47	羅致光	贊成 YES
18		劉慧卿	贊成 YES	48	48	李啓明	反對 NO
19		李永達	贊成 YES	49	49	梁耀忠	贊成 YES
20		李家祥	反對 NO	50	50	廖成利	贊成 YES
21		李華明	贊成 YES	51	51	羅叔清	反對 NO
22		唐英年	反對 NO	52	52	莫應帆	贊成 YES
23		涂謹申	贊成 YES	53	53	吳靄儀	贊成 YES
24				54	54	顏錦全	反對 NO
25		黃宜弘	反對 NO	55	55	單仲偕	贊成 YES
26		楊森	贊成 YES	56	56	曾健成	贊成 YES
27		楊孝華	反對 NO	57	57	謝永齡	贊成 YES
28		黃偉賢	贊成 YES	58	58	黃錢其濤	贊成 YES
29		陸恭蕙	贊成 YES	59	59	任善寧	贊成 YES
30		田北俊	反對 NO				

秘書 12/6/97

投票 VOTE : 25
 日期 DATE : 12/06/97
 時間 TIME : 02:14:10

動議 MOTION : SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE - CLAUSE 20 STAND PART OF THE
 BILL

(1996年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 第20條納入條例草案

提議 PROPOSED : MISS CHRISTINE LOH

和議 SECONDED : 陸恭蕙議員

投票總和 VOTE TOTALS :-
 總和 TOTAL : 56
 贊成 YES : 31
 反對 NO : 25
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE
1	1	李鵬飛	反對 NO	31	31	李卓人	贊成 YES
2	2	周梁淑怡	反對 NO	32	32	陳藍林	反對 NO
3	3	李柱銘	贊成 YES	33	33	陳榮燦	反對 NO
4	4	李國寶	贊成 YES	34	34	陳維綱	贊成 YES
5	5	倪少傑	反對 NO	35	35	鄭家富	贊成 YES
6	6	司徒華	贊成 YES	36	36	鄭明訓	反對 NO
7	7	劉皇發	反對 NO	37	37	鄭耀業	反對 NO
8	8	何承天	反對 NO	38	38	張炳良	贊成 YES
9	9	夏佳理	反對 NO	39	39	張漢忠	反對 NO
10	10	劉健儀	反對 NO	40	40	蔡根培	反對 NO
11	11	梁智鴻	贊成 YES	41	41	朱幼麟	反對 NO
12	12	陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13	13	張文光	贊成 YES	43	43	葉國謙	反對 NO
14	14	詹培忠	反對 NO	44	44	劉千石	贊成 YES
15	15	馮檢基	贊成 YES	45	45	劉漢銓	反對 NO
16	16	何敏嘉	贊成 YES	46	46	羅祥國	贊成 YES
17	17	黃廣運	贊成 YES	47	47	羅致光	贊成 YES
18	18	劉慧卿	贊成 YES	48	48	李啟明	反對 NO
19	19	李永達	贊成 YES	49	49	梁耀忠	贊成 YES
20	20	李家祥	反對 NO	50	50	廖成利	贊成 YES
21	21	李華明	贊成 YES	51	51	羅叔清	反對 NO
22	22	唐英年	反對 NO	52	52	莫應帆	贊成 YES
23	23	涂謹申	贊成 YES	53	53	吳靄儀	贊成 YES
24	24			54	54	顧錦全	反對 NO
25	25	黃宜弘	反對 NO	55	55	單仲偕	贊成 YES
26	26	楊森	贊成 YES	56	56	曾健成	贊成 YES
27	27	楊孝華	反對 NO	57	57	謝永齡	贊成 YES
28	28	黃偉賢	贊成 YES	58	58	黃鏡基	贊成 YES
29	29	陸恭蕙	贊成 YES	59	59	任善寧	贊成 YES
30	30	田北俊	反對 NO				

秘書 CLERK: _____

投票日期時間
 VOTE : 26
 DATE : 12/06/97
 TIME : 02:18:15

動議 MOTION : SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE AMENDMENTS - CLAUSE 21
 (1996 年性別及殘疾歧視 (雜項規定) 條例草案)
 - 全體委員會審議階段 - 第 21 條

提議 PROPOSED : MISS CHRISTINE LOH
 陸恭蕙議員

和議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 56
 贊成 YES : 30
 反對 NO : 26
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS

座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE
1	1	李鵬飛	反對 NO	31	31	李卓人	贊成 YES
2	2	周梁淑怡	反對 NO	32	32	陳鑑林	反對 NO
3	3	李柱銘	贊成 YES	33	33	陳榮燦	反對 NO
4	4	李國寶	贊成 YES	34	34	陳毓綱	反對 NO
5	5	倪少傑	反對 NO	35	35	鄭家富	贊成 YES
6	6	司徒華	贊成 YES	36	36	鄭明訓	反對 NO
7	7	劉學發	反對 NO	37	37	鄭耀棠	反對 NO
8	8	何承天	反對 NO	38	38	張炳良	贊成 YES
9	9	夏佳理	反對 NO	39	39	張漢忠	反對 NO
10	10	劉健儀	反對 NO	40	40	蔡根培	反對 NO
11	11	梁智鴻	贊成 YES	41	41	朱幼麟	反對 NO
12	12	陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13	13	張文光	贊成 YES	43	43	葉國謙	反對 NO
14	14	詹培忠	反對 NO	44	44	劉千石	贊成 YES
15	15	馮檢基	贊成 YES	45	45	劉漢銓	反對 NO
16	16	何敏嘉	贊成 YES	46	46	羅祥國	贊成 YES
17	17	黃鳳瀾	贊成 YES	47	47	羅致光	贊成 YES
18	18	劉慧卿	贊成 YES	48	48	李啓明	反對 NO
19	19	李永達	贊成 YES	49	49	梁耀忠	贊成 YES
20	20	李家祥	反對 NO	50	50	廖成利	贊成 YES
21	21	李華明	贊成 YES	51	51	羅叔清	反對 NO
22	22	唐英年	反對 NO	52	52	莫應帆	贊成 YES
23	23	涂謹申	贊成 YES	53	53	吳靄儀	贊成 YES
24	24			54	54	顧錦全	反對 NO
25	25	黃宜弘	反對 NO	55	55	單仲偕	贊成 YES
26	26	楊森	贊成 YES	56	56	曾健成	贊成 YES
27	27	楊孝華	反對 NO	57	57	謝永齡	贊成 YES
28	28	黃偉賢	贊成 YES	58	58	黃鏡其	贊成 YES
29	29	陸恭蕙	贊成 YES	59	59	任善寧	贊成 YES
30	30	田北俊	反對 NO				

秘書 CLERK

投票 VOTE : 27
 日期 DATE : 12/06/97
 時間 TIME : 02:23:27

力議 MOTION : SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE AMENDMENTS - CLAUSE 24
 (1996 年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 第 24 條

提議 PROPOSED : MISS CHRISTINE LOH
 陸恭蕙議員

口議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 55
 贊成 YES : 25
 反對 NO : 30
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

座位	咭號	議員	MEMBERS	投票	VOTE	座位	咭號	議員	MEMBERS	投票	VOTE
SEAT	CARD					SEAT	CARD				
1	1	李鵬飛	Hon Allen LEE	反對	NO	31	31	李卓人	Hon LEE Cheuk-yan	贊成	YES
2	2	周梁淑怡	Hon Mrs Selina CHOW	反對	NO	32	32	陳藍林	Hon CHAN Kam-lam	反對	NO
3	3	李柱銘	Hon Martin LEE	贊成	YES	33	33	陳榮燦	Hon CHAN Wing-chan	反對	NO
4	4	李國寶	Dr Hon David LI	反對	NO	34	34	陳毓嫻	Hon CHAN Yuen-han	贊成	YES
5	5	倪少傑	Hon NGAI Shiu-kit	反對	NO	35	35	鄭家富	Hon Andrew CHENG Kar-foo	贊成	YES
6	6	司徒華	Hon SZETO Wah	贊成	YES	36	36	鄭明訓	Hon Paul CHENG	反對	NO
7	7	劉皇發	Hon LAU Wong-fat	反對	NO	37	37	鄭耀業	Hon CHENG Yiu-tong	反對	NO
8	8	何承天	Hon Edward HO	反對	NO	38	38	張炳良	Hon CHEUNG Bing-leung	贊成	YES
9	9	夏佳理	Hon Ronald ARCULLI	反對	NO	39	39	張漢忠	Hon CHEUNG Hon-chung	反對	NO
10	10	劉健儀	Hon Mrs Miriam LAU	反對	NO	40	40	蔡根培	Hon CHOY Kan-pui	反對	NO
11	11	梁智鴻	Dr Hon LEONG Che-hung	贊成	YES	41	41	朱幼麟	Hon David CHU Yu-lin	反對	NO
12	12	陳偉業	Hon Albert CHAN	贊成	YES	42	42	何俊仁	Hon HO Chun-yan	贊成	YES
13	13	張文光	Hon CHEUNG Man-kwong	贊成	YES	43	43	葉國謙	Hon IP Kwok-him	反對	NO
14	14	詹培忠	Hon Chim Pui-chung			44	44	劉千石	Hon LAU Chin-shek	贊成	YES
15	15	馮檢基	Hon Frederick FUNG	反對	NO	45	45	劉漢銓	Hon LAU Hon-chuen	反對	NO
16	16	何敏嘉	Hon Michael HO	贊成	YES	46	46	羅祥國	Dr Hon LAW Cheung-kwok	反對	NO
17	17	黃貫雲	Dr Hon HUANG Chen-ya	贊成	YES	47	47	羅致光	Hon LAW Chi-kwong	贊成	YES
18	18	劉慧卿	Hon Emily LAU	贊成	YES	48	48	李啟明	Hon LEE Kai-ming	反對	NO
19	19	李永達	Hon LEE Wing-tat	贊成	YES	49	49	梁耀忠	Hon LEUNG Yiu-chung	贊成	YES
20	20	李家祥	Hon Eric LI	反對	NO	50	50	廖成利	Hon LIU Sing-lee	反對	NO
21	21	李華明	Hon Fred LI	贊成	YES	51	51	羅叔清	Hon LO Suk-ching	反對	NO
22	22	唐英年	Hon Henry TANG	反對	NO	52	52	莫應帆	Hon MOK Ying-fan	反對	NO
23	23	涂謹申	Hon James TO	贊成	YES	53	53	吳靄儀	Hon Margaret NG	贊成	YES
24	24					54	54	顧錦全	Hon NGAN Kam-cheun	反對	NO
25	25	黃宜弘	Dr Hon Philip WONG	反對	NO	55	55	單仲偕	Hon SIN Chung-kai	贊成	YES
26	26	楊森	Dr Hon YEUNG Sum	贊成	YES	56	56	曾健成	Hon TSANG Kin-shing		
27	27	楊孝華	Hon Howard YOUNG	反對	NO	57	57	謝永齡	Dr Hon John TSE Wing-ling	贊成	YES
28	28	黃偉賢	Hon Zachary WONG	贊成	YES	58	58	黃鏡其	Hon Mrs Elizabeth WONG		
29	29	陸恭蕙	Hon Christine LOH	贊成	YES	59	59	任善寧	Hon YUM Sin-ling	反對	NO
30	30	田北俊	Hon James TIEN	反對	NO						

秘書 CLERK: _____

投票日期
投票時間
VOTE : 28
DATE : 12/06/97
TIME : 02:32:01

動議 MOTION : SEX AND DISABILITY DISCRIMINATION
(MISCELLANEOUS PROVISIONS) BILL 1996
- COMMITTEE STAGE - CLAUSE 37 STAND PART OF THE
BILL
(1996年性別及殘疾歧視(雜項規定)條例草案)
- 全體委員會審議階段 - 第37條納入條例草案

提議 PROPOSED : MISS CHRISTINE LOH
陸恭蕙議員

和議 SECONDED :

投票總和 VOTE TOTALS :-
總和 TOTAL : 55
贊成 YES : 30
反對 NO : 25
棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

座位 SEAT	號碼 CARD	議員 MEMBERS	投票 MEMBERS	VOTE	座位 SEAT	號碼 CARD	議員 MEMBERS	投票 MEMBERS	VOTE		
1	1	李鵬飛	Hon Allen LEE	反對	NO	31	31	李卓人	Hon LEE Cheuk-yan	贊成	YES
2	2	周梁淑怡	Hon Mrs Selina CHOW	反對	NO	32	32	陳鑑林	Hon CHAN Kam-lam	反對	NO
3	3	李柱銘	Hon Martin LEE	贊成	YES	33	33	陳榮燦	Hon CHAN Wing-chan	反對	NO
4	4	李國寶	Dr Hon David LI	反對	NO	34	34	陳婉嫻	Hon CHAN Yuen-han	贊成	YES
5	5	倪少傑	Hon NGAI Shiu-kit	反對	NO	35	35	鄭家富	Hon Andrew CHENG Kar-foo	贊成	YES
6	6	司徒華	Hon SZETO Wah	贊成	YES	36	36	鄭明訓	Hon Paul CHENG	反對	NO
7	7	劉皇發	Hon LAU Wong-fat	反對	NO	37	37	鄭耀棠	Hon CHENG Yiu-tong	反對	NO
8	8	何承天	Hon Edward HO	反對	NO	38	38	張炳良	Hon CHEUNG Bing-leung	贊成	YES
9	9	夏佳理	Hon Ronald ARCULLI	反對	NO	39	39	張漢忠	Hon CHEUNG Hon-chung	反對	NO
10	10	劉健儀	Hon Mrs Miriam LAU	反對	NO	40	40	蔡楓培	Hon CHOY Kan-pui	反對	NO
11	11	梁智鴻	Dr Hon LEONG Che-hung	贊成	YES	41	41	朱幼麟	Hon David CHU Yu-lin	反對	NO
12	12	陳偉業	Hon Albert CHAN	贊成	YES	42	42	何俊仁	Hon HO Chun-yan	贊成	YES
13	13	張文光	Hon CHEUNG Man-kwong	贊成	YES	43	43	葉國謙	Hon IP Kwok-him	反對	NO
14	14	詹培忠	Hon Chim Pui-chung	贊成	YES	44	44	劉千石	Hon LAU Chin-shek	贊成	YES
15	15	馮檢基	Hon Frederick FUNG	贊成	YES	45	45	劉漢銓	Hon LAU Hon-chuen	反對	NO
16	16	何敏嘉	Hon Michael HO	贊成	YES	46	46	羅祥國	Dr Hon LAW Cheung-kwok	贊成	YES
17	17	黃震遐	Dr Hon HUANG Chen-ya	贊成	YES	47	47	羅致光	Hon LAW Chi-kwong	贊成	YES
18	18	劉慧卿	Hon Emily LAU	贊成	YES	48	48	李啓明	Hon LEE Kai-ming	反對	NO
19	19	李永達	Hon LEE Wing-tat	贊成	YES	49	49	梁耀忠	Hon LEUNG Yiu-chung	贊成	YES
20	20	李家祥	Hon Eric LI	反對	NO	50	50	廖成利	Hon LIU Sing-lee	贊成	YES
21	21	李華明	Hon Fred LI	贊成	YES	51	51	羅叔清	Hon LO Suk-ching	反對	NO
22	22	唐英年	Hon Henry TANG	反對	NO	52	52	莫應帆	Hon MOK Ying-fan	贊成	YES
23	23	涂謹申	Hon James TO	贊成	YES	53	53	吳靄儀	Hon Margaret NG	贊成	YES
24	24					54	54	顧錦全	Hon NGAN Kam-cheun	反對	NO
25	25	黃宜弘	Dr Hon Philip WONG	反對	NO	55	55	單仲偕	Hon SIN Chung-kai	贊成	YES
26	26	楊森	Dr Hon YEUNG Sum	贊成	YES	56	56	曾健成	Hon TSANG Kin-shing		
27	27	楊孝華	Hon Howard YOUNG	反對	NO	57	57	謝永齡	Dr Hon John TSE Wing-ling	贊成	YES
28	28	黃偉賢	Hon Zachary WONG	贊成	YES	58	58	黃錢其濂	Hon Mrs Elizabeth WONG		
29	29	陸恭蕙	Hon Christine LOH	贊成	YES	59	59	任善寧	Hon YUM Sin-ling	贊成	YES
30	30	田北俊	Hon James TIEN	反對	NO						

秘書 CLERK: _____

投票 VOTE : 29
 日期 DATE : 12/06/97
 時間 TIME : 02:35:26

動議 MOTION : SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE AMENDMENTS - CLAUSE 38
 (1996 年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 第 38 條

提議 PROPOSED : MISS CHRISTINE LOH
 陸恭蕙議員

和議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 54
 贊成 YES : 29
 反對 NO : 25
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE
1	1	李國飛 Hon Allen LEE	反對 NO	31	31	李卓人 Hon LEE Cheuk-yan	贊成 YES
2	2	周梁淑怡 Hon Mrs Selina CHOW	反對 NO	32	32	陳鑑林 Hon CHAN Kam-lam	反對 NO
3	3	李柱銘 Hon Martin LEE	贊成 YES	33	33	陳榮燦 Hon CHAN Wing-chan	反對 NO
4	4	李國寶 Dr Hon David LI	反對 NO	34	34	陳毓嫻 Hon CHAN Yuen-han	反對 NO
5	5	倪少傑 Hon NGAI Shiu-kit	反對 NO	35	35	鄭家富 Hon Andrew CHENG Kar-foo	贊成 YES
6	6	司徒華 Hon SZETO Wah	贊成 YES	36	36	鄭明訓 Hon Paul CHENG	反對 NO
7	7	劉皇發 Hon LAU Wong-fat	反對 NO	37	37	鄭耀業 Hon CHENG Yiu-tong	反對 NO
8	8	何承天 Hon Edward HO	反對 NO	38	38	張炳良 Hon CHEUNG Bing-leung	贊成 YES
9	9	夏佳理 Hon Ronald ARCULLI	反對 NO	39	39	張漢忠 Hon CHEUNG Hon-chung	反對 NO
10	10	劉健儀 Hon Mrs Miriam LAU	反對 NO	40	40	蔡根培 Hon CHOY Kan-pui	反對 NO
11	11	梁智鴻 Dr Hon LEONG Che-hung	贊成 YES	41	41	朱幼麟 Hon David CHU Yu-lin	反對 NO
12	12	陳偉業 Hon Albert CHAN	贊成 YES	42	42	何俊仁 Hon HO Chun-yan	贊成 YES
13	13	張文光 Hon CHEUNG Man-kwong	贊成 YES	43	43	葉國謙 Hon IP Kwok-him	反對 NO
14	14	詹培忠 Hon Chim Pui-chung	贊成 YES	44	44	劉千石 Hon LAU Chin-shek	贊成 YES
15	15	馮檢基 Hon Frederick FUNG	贊成 YES	45	45	劉漢銓 Hon LAU Hon-chuen	反對 NO
16	16	何敏嘉 Hon Michael HO	贊成 YES	46	46	羅祥國 Dr Hon LAW Cheung-kwok	贊成 YES
17	17	黃震遐 Dr Hon HUANG Chen-ya	贊成 YES	47	47	羅致光 Hon LAW Chi-kwong	贊成 YES
18	18	劉慧卿 Hon Emily LAU	贊成 YES	48	48	李啓明 Hon LEE Kai-ming	反對 NO
19	19	李永達 Hon LEE Wing-tat	贊成 YES	49	49	梁耀忠 Hon LEUNG Yiu-chung	贊成 YES
20	20	李家祥 Hon Eric LI	反對 NO	50	50	廖成利 Hon LIU Sing-lee	贊成 YES
21	21	李華明 Hon Fred LI	贊成 YES	51	51	羅叔清 Hon LO Suk-ching	反對 NO
22	22	唐英年 Hon Henry TANG	反對 NO	52	52	莫應帆 Hon MOK Ying-fan	贊成 YES
23	23	涂謹申 Hon James TO	贊成 YES	53	53	吳嘉儀 Hon Margaret NG	贊成 YES
24	24			54	54	顧錦全 Hon NGAN Kam-cheun	反對 NO
25	25	黃宜弘 Dr Hon Philip WONG	反對 NO	55	55	覃仲僊 Hon SIN Chung-kai	贊成 YES
26	26	楊森 Dr Hon YEUNG Sum	贊成 YES	56	56	曾健成 Hon TSANG Kin-shing	贊成 YES
27	27	楊孝華 Hon Howard YOUNG	反對 NO	57	57	謝永齡 Dr Hon John TSE Wing-ling	贊成 YES
28	28	黃偉賢 Hon Zachary WONG	贊成 YES	58	58	黃錢其濂 Hon Mrs Elizabeth WONG	贊成 YES
29	29	陸恭蕙 Hon Christine LOH	贊成 YES	59	59	任善寧 Hon YUM Sin-ling	贊成 YES
30	30	田北俊 Hon James TIEN	反對 NO				

秘書 CLERK.

投票日期時間
 VOTE : 30
 DATE : 12/06/97
 TIME : 02:41:18

動議 MOTION SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE AMENDMENTS - NEW CLAUSE 16A
 (1996年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 新訂的第16A條

提議 PROPOSED : MISS CHRISTINE LOH
 陸恭蕙議員

和議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 55
 贊成 YES : 33
 反對 NO : 22
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS

座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE
1	1	李鵬飛	反對 NO	31	31	李卓人	贊成 YES
2	2	周梁淑怡	反對 NO	32	32	陳維林	反對 NO
3	3	李柱銘	贊成 YES	33	33	陳榮燾	贊成 YES
4	4	李國寶	贊成 YES	34	34	陳婉嫻	贊成 YES
5	5	倪少傑	反對 NO	35	35	鄭家富	贊成 YES
6	6	司徒華	贊成 YES	36	36	鄭明訓	反對 NO
7	7	劉皇發	反對 NO	37	37	鄭耀業	贊成 YES
8	8	何承天	反對 NO	38	38	張炳良	贊成 YES
9	9	夏佳理	反對 NO	39	39	張漢忠	反對 NO
10	10	劉健儀	反對 NO	40	40	蔡根培	反對 NO
11	11	梁雪鴻	贊成 YES	41	41	朱幼麟	反對 NO
12	12	陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13	13	張文光	贊成 YES	43	43	葉國謙	反對 NO
14	14	詹培忠	贊成 YES	44	44	劉千石	贊成 YES
15	15	馮檢基	贊成 YES	45	45	劉漢銓	反對 NO
16	16	何啟嘉	贊成 YES	46	46	羅祥國	贊成 YES
17	17	黃貫邇	贊成 YES	47	47	羅致光	贊成 YES
18	18	劉慧卿	贊成 YES	48	48	李啓明	反對 NO
19	19	李永達	贊成 YES	49	49	梁耀忠	贊成 YES
20	20	李家祥	反對 NO	50	50	廖成利	贊成 YES
21	21	李華明	贊成 YES	51	51	羅叔清	反對 NO
22	22	唐英年	反對 NO	52	52	莫應帆	贊成 YES
23	23	涂謹申	贊成 YES	53	53	吳靄儀	贊成 YES
24	24			54	54	顧錦全	反對 NO
25	25	黃宜弘	反對 NO	55	55	覃仲備	贊成 YES
26	26	楊森	贊成 YES	56	56	曾健成	贊成 YES
27	27	楊孝華	反對 NO	57	57	謝永齡	贊成 YES
28	28	黃偉賢	贊成 YES	58	58	黃鏡其	贊成 YES
29	29	陸恭蕙	贊成 YES	59	59	任善寧	贊成 YES
30	30	田北俊	反對 NO				

秘書 CLERK

票期 VOTE : 31
 時間 DATE : 12/06/97
 時間 TIME : 02:47:26

議 MOTION : SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE AMENDMENTS - NEW CLAUSE 16B
 (1996 年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 新訂的第 16B 條

議 PROPOSED : MISS CHRISTINE LOH
 陸恭蕙議員

議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 54
 贊成 YES : 27
 反對 NO : 27
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

座位 SEAT	號碼 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	號碼 CARD	議員 MEMBERS	投票 VOTE
1	1	李國飛 Hon Allen LEE	反對 NO	31	31	李卓人 Hon LEE Cheuk-yan	贊成 YES
2	2	周梁淑怡 Hon Mrs Selina CHOW	反對 NO	32	32	陳鑑林 Hon CHAN Kam-liam	反對 NO
3	3	李柱銘 Hon Martin LEE	贊成 YES	33	33	陳榮燦 Hon CHAN Wing-chan	反對 NO
4	4	李國寶 Dr Hon David LI	贊成 YES	34	34	陳婉嫻 Hon CHAN Yuen-han	贊成 YES
5	5	倪少傑 Hon NGAI Shiu-kit	反對 NO	35	35	鄭家富 Hon Andrew CHENG Kar-foo	贊成 YES
6	6	司徒華 Hon SEETO Wah	贊成 YES	36	36	鄭明訓 Hon Paul CHENG	
7	7	劉皇發 Hon LAU Wong-fat	反對 NO	37	37	鄭耀棠 Hon CHENG Yiu-tong	反對 NO
8	8	何承天 Hon Edward HO	反對 NO	38	38	張炳良 Hon CHEUNG Bing-leung	贊成 YES
9	9	夏佳理 Hon Ronald ARDULLI	反對 NO	39	39	張漢忠 Hon CHEUNG Hon-chung	反對 NO
10	10	劉健儀 Hon Mrs Miriam LAU	反對 NO	40	40	蔡根培 Hon CHOY Kan-pui	反對 NO
11	11	梁智鴻 Dr Hon LEONG Che-hung	贊成 YES	41	41	朱幼麟 Hon David CHU Yu-lin	反對 NO
12	12	陳偉業 Hon Albert CHAN	贊成 YES	42	42	何俊仁 Hon HO Chun-yan	贊成 YES
13	13	張文光 Hon CHEUNG Man-kwong	贊成 YES	43	43	葉國謙 Hon IP Kwok-him	反對 NO
14	14	詹培忠 Hon Chim Pui-chung		44	44	劉千石 Hon LAU Chin-shek	贊成 YES
15	15	馮檢基 Hon Frederick FUNG	反對 NO	45	45	劉漢銓 Hon LAU Hon-chuen	反對 NO
16	16	何敏嘉 Hon Michael HO	贊成 YES	46	46	羅祥國 Dr Hon LAW Cheung-kwok	反對 NO
17	17	黃寶澗 Dr Hon HUANG Shen-ya	贊成 YES	47	47	羅致光 Hon LAW Chi-kwong	贊成 YES
18	18	劉慧卿 Hon Emily LAU	贊成 YES	48	48	李啓明 Hon LEE Kai-ming	反對 NO
19	19	李永達 Hon LEE Wing-tat	贊成 YES	49	49	梁耀忠 Hon LEUNG Yiu-chung	贊成 YES
20	20	李家祥 Hon Eric LI	反對 NO	50	50	廖成利 Hon LIU Sing-lee	反對 NO
21	21	李華明 Hon Fred LI	贊成 YES	51	51	羅叔清 Hon LO Suk-ching	反對 NO
22	22	唐英年 Hon Henry TANG	反對 NO	52	52	莫應帆 Hon MOK Ying-fan	反對 NO
23	23	涂謹申 Hon James TO	贊成 YES	53	53	吳靄儀 Hon Margaret NG	贊成 YES
24	24			54	54	顧錦全 Hon NGAN Kam-cheun	反對 NO
25	25	黃宜弘 Dr Hon Philip WONG	反對 NO	55	55	覃仲備 Hon SIN Chung-kai	贊成 YES
26	26	楊森 Dr Hon YEUNG Sum	贊成 YES	56	56	曾健成 Hon TSANG Kin-shing	
27	27	楊孝華 Hon Howard YOUNG	反對 NO	57	57	謝永齡 Dr Hon John TSE Wing-ling	贊成 YES
28	28	黃偉賢 Hon Zachary WONG	贊成 YES	58	58	黃鏡琪 Hon Mrs Elizabeth WONG	
29	29	陸恭蕙 Hon Christine LOH	贊成 YES	59	59	任善寧 Hon YUM Sin-ling	贊成 YES
30	30	田北俊 Hon James TIEN	反對 NO				

秘書 CLERK: _____

投票日期時間
 VOTE : 32
 DATE : 12/06/97
 TIME : 02:51:39

動議 MOTION : SEX AND DISABILITY DISCRIMINATION
 (MISCELLANEOUS PROVISIONS) BILL 1996
 - COMMITTEE STAGE AMENDMENTS - NEW CLAUSE 33A
 (1996 年性別及殘疾歧視(雜項規定)條例草案)
 - 全體委員會審議階段 - 新訂的第 33A 條

提議 PROPOSED : MISS CHRISTINE LOH
 陸恭蕙議員

和議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 54
 贊成 YES : 31
 反對 NO : 23
 棄權 ABSTAIN : 0

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

座位 咭號 SEAT CARD	議員 MEMBERS	投票 VOTE	座位 咭號 SEAT CARD	議員 MEMBERS	投票 VOTE
1	李鵬飛	反對 NO	31	李卓人	贊成 YES
2	周梁淑怡	反對 NO	32	陳鑑林	反對 NO
3	李柱銘	贊成 YES	33	陳榮燦	反對 NO
4	李國寶	贊成 YES	34	陳炳燭	贊成 YES
5	倪少傑	反對 NO	35	鄭家富	贊成 YES
6	司徒華	贊成 YES	36	鄭明訓	贊成 YES
7	劉皇發	反對 NO	37	鄭耀業	反對 NO
8	何承天	反對 NO	38	張炳良	贊成 YES
9	夏佳理	反對 NO	39	張漢忠	反對 NO
10	劉健儀	反對 NO	40	蔡根培	反對 NO
11	梁智鴻	贊成 YES	41	朱幼麟	反對 NO
12	陳偉業	贊成 YES	42	何俊仁	贊成 YES
13	張文光	贊成 YES	43	葉國謙	反對 NO
14	詹培忠	贊成 YES	44	劉千石	贊成 YES
15	馮檢基	贊成 YES	45	劉漢銓	反對 NO
16	何敏嘉	贊成 YES	46	羅祥國	贊成 YES
17	黃貫遐	贊成 YES	47	羅致光	贊成 YES
18	劉慧卿	贊成 YES	48	李啟明	反對 NO
19	李永達	贊成 YES	49	梁耀忠	贊成 YES
20	李家祥	反對 NO	50	廖成利	贊成 YES
21	李壽明	贊成 YES	51	羅叔清	反對 NO
22	唐英年	反對 NO	52	莫應帆	贊成 YES
23	涂謹申	贊成 YES	53	吳靄儀	贊成 YES
24			54	顧錦全	反對 NO
25	黃宜弘	反對 NO	55	覃仲權	贊成 YES
26	楊森	贊成 YES	56	曾健成	贊成 YES
27	楊孝華	反對 NO	57	謝永齡	贊成 YES
28	黃偉賢	贊成 YES	58	黃錢其濠	贊成 YES
29	陸恭蕙	贊成 YES	59	任善寧	贊成 YES
30	田北俊	反對 NO			

秘書 CLERK: _____

VOTE: 33
DATE: 12/06/97
TIME: 03:00:14

MOTION: SEX AND DISABILITY DISCRIMINATION
(MISCELLANEOUS PROVISIONS) BILL 1996 - THIRD
READING
(1996 年性別及殘疾歧視 (雜項規定) 條例草案)
- 三讀

PROPOSED:
SECONDED: MISS CHRISTINE LOH
陸恭蕙議員

VOTE TOTALS:-

TOTAL : 54
YES : 31
NO : 23
ABSTAIN : 0

THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

SEAT	CARD	MEMBERS	VOTE	SEAT	CARD	MEMBERS	VOTE
1	1	Hon Allen LEE	NO	31	31	Hon LEE Cheuk-yan	YES
2	2	Hon Mrs Selina CHOW	NO	32	32	Hon CHAN Kan-lan	NO
3	3	Hon Martin LEE	YES	33	33	Hon CHAN Wing-chan	NO
4	4	Dr Hon David LI	YES	34	34	Hon CHAN Yuen-han	YES
5	5	Hon NGAI Shiu-kit	NO	35	35	Hon Andrew CHENG Kar-foo	YES
6	6	Hon SIETO Wah	YES	36	36	Hon Paul CHENG	
7	7	Hon LAU Wong-fat	NO	37	37	Hon CHENG Yiu-tong	NO
8	8	Hon Edward HO	NO	38	38	Hon CHEUNG Bing-leung	YES
9	9	Hon Ronald ARCULLI	NO	39	39	Hon CHEUNG Hon-chung	NO
10	10	Hon Mrs Miriam LAU	NO	40	40	Hon CHOY Kan-pui	NO
11	11	Dr Hon LEONG Che-hung	YES	41	41	Hon David CHU Yu-lin	NO
12	12	Hon Albert CHAN	YES	42	42	Hon HO Chun-yan	YES
13	13	Hon CHEUNG Man-kuong	YES	43	43	Hon IP Kwok-hin	NO
14	14	Hon Chim Pui-chung		44	44	Hon LAU Chin-shek	YES
15	15	Hon Frederick FUNG	YES	45	45	Hon LAU Hon-chuen	NO
16	16	Hon Michael HO	YES	46	46	Dr Hon LAW Cheung-kuok	YES
17	17	Dr Hon HUANG Chen-ya	YES	47	47	Hon LAW Chi-kuong	YES
18	18	Hon Emily LAU	YES	48	48	Hon LEE Kai-ming	NO
19	19	Hon LEE Wing-tat	YES	49	49	Hon LEUNG Yiu-chung	YES
20	20	Hon Eric LI	NO	50	50	Hon LIU Sing-lee	YES
21	21	Hon Fred LI	YES	51	51	Hon LO Suk-ching	NO
22	22	Hon Henry TANG	NO	52	52	Hon MOK Ying-fan	YES
23	23	Hon James TO	YES	53	53	Hon Margaret NG	YES
24	24			54	54	Hon NGAN Kan-cheun	NO
25	25	Dr Hon Philip WONG	NO	55	55	Hon SIN Chung-kai	YES
26	26	Dr Hon YEUNG Sum	YES	56	56	Hon TSANG Kin-shing	
27	27	Hon Howard YOUNG	NO	57	57	Dr Hon John TSE Wing-ling	YES
28	28	Hon Iachary WONG	YES	58	58	Hon Mrs Elizabeth WONG	
29	29	Hon Christine LOH	YES	59	59	Hon YUM Sin-ling	YES
30	30	Hon James TIEN	NO				

Ref.: CB2/BC/55/95

**Paper for the House Committee Meeting
on 13 June 1997**

**Report of the Bills Committee on
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill,
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and
Family Status Discrimination Bill**

Purpose

Further to LegCo Paper No. CB(2)2440/96-97, this paper reports on the deliberations of the Bills Committee on the **Equal Opportunities (Family Responsibility, Sexuality & Age) Bill, Equal Opportunities (Race) Bill and Family Status Discrimination Bill.**

Background

Equal Opportunities (Family Responsibility, Sexuality & Age) Bill
Equal Opportunities (Race) Bill

2. Both the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill and the Equal Opportunities (Race) Bill are Member's Bills introduced by Hon LAU Chin-shek and Hon Mrs Elizabeth WONG CHIEN Chi-lien respectively.

3. In the 1993-94 legislative session, Ms Anna WU introduced the Equal Opportunities Bill (EOB) containing 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. In response to the introduction of the Sex Discrimination Bill and Disability Discrimination Bill by the Administration, 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 voted down by the Council in 1995.

- 2 -

4. Both Member's Bills reproduce, with several technical changes, Ms WU's 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 on the EOB.

Family Status Discrimination Bill

5. The Administration issued a consultation document on the study of discrimination on the ground of family status in early 1996. The proposed legislation by the Administration to outlaw discrimination on the ground of family status is a direct result of this consultation exercise.

The Bills Committee

At the House Committee meeting on 30 September 1996, a bills committee was formed to study the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, Equal Opportunities (Race) Bill and Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996. Subsequently, at the House Committee meeting on 25 April 1997, it was agreed that this Bills Committee should also study the Family Status Discrimination Bill.

Dr Hon LEONG Che-hung was elected Chairman of the Bills Committee. A membership list of the Bills Committee is at **Appendix I**.

The Bills Committee has held thirteen meetings, including eleven with the Administration. The Bills Committee has also met deputations during its meetings.

Views of deputations

A total of 28 organizations/individuals have given views on the four bills under study by the Bills Committee. A list of the deputations/written submissions is at **Appendix II**. Most of these organizations/individuals presented views to the Bills Committee on the equal opportunities bills in 1995. Previously, their views are diversified with some for and some against the bills.

Deliberations of the Bills Committee

General

As in the case of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996, the Bills Committee cannot reach consensus on the other

three equal opportunities bills under study. Some Members share the views of the Administration given in paragraph 11 below and support the step-by-step approach. Others consider that anti-discrimination legislation is the more effective way to protect the interests of those being discriminated, even though they might be the minorities. Public education should only play a complementary role to publicize and promote the legislation. The approach of the Administration's consultation exercise and the resultant statistics are also questionable.

11. The Administration does not support the two Members' Bills. Although the Administration is firmly committed to the principle that all are entitled to equal opportunities and considers that all kinds of discrimination are wrong, it maintains the view that public education is more appropriate than legislative approach. Moreover, 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 expression. Before taking that step, it is important that the issues - and their implications - are clearly understood. The Administration emphasizes an incremental approach.

12. 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 the areas of family status, sexuality, age and race. 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.

13. In response to views of the Bills Committee, the Administration and deputations, both Hon LAU Chin-shek and Hon Mrs Elizabeth WONG agree to propose some amendments to their Bills. They will also make parallel amendments to their Bills as a consequence of the voting results of the amendments introduced by the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 on 11 June 1997. The Administration is seriously considering making parallel amendments to the Family Status Discrimination Bill. If the Administration decides not to, Miss LOH will introduce the parallel amendments.

Equal Opportunities (Family Responsibility, Sexuality & Age) Bill

14. This Bill is to render unlawful discrimination on the grounds of family responsibility or family status, sexuality and age in various areas and to make provision for remedies for such discrimination.

15. After the introduction of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and Equal Opportunities (Race) Bill, the Attorney General's Chambers advised that the "consequential amendments" provisions in clauses 103 and 55 of the respective bills are neither consequential to the bills in question nor relevant to their long titles. As such, they offend the prohibition on intermixing of subject-matters in clause XXV(3) of the Royal Instructions.

16. After examining the arguments of the Members-in-charge of these two bills and the Administration, the President of the Legislative Council came to the view that both clauses are not properly related to the rest of the respective bills.

17. Despite his ruling that the two bills offend clause XXV(3) of the Royal Instructions through the inclusion in the bills of the two clauses mentioned above, the President was reluctant to order that the two bills not be proceeded with, both bills having been referred to the House Committee and being studied by a bills committee. If the two bills received Second Reading in Council and were committed to the Committee of the whole Council, he would direct the two clauses in question not to be called so that they would not stand part of the two respective bills. If the two bills received Third Reading, they would be passed without the two clauses and the resultant ordinances would not offend clauses XXV(3) of the Royal Instructions.

Discrimination on the ground of family responsibility or family status

18. Under Mr LAU's 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 dependent, 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.

19. Part II of this Bill overlaps, in substance, the subject matter of the Family Status Discrimination Bill. They both cover family status discrimination in areas of activities, including employment, education, the provision of goods, facilities, services and premises. There are two main differences. Firstly, the scope of family status defined under this Bill as stated in paragraph 18 above is wider than that defined under the Family Status Discrimination Bill. (Paragraph 32 below refers.) Secondly, this Bill proposes to empower the District Court to hear cases brought under the Bill while the

Administration proposes to empower the EOC to oversee the implementation of the Family Status Discrimination Bill.

20. Hon LAU Chin-shek has finally decided to delete this part of his Bill.

Discrimination on the ground of sexuality

21. "Sexuality" is defined to mean heterosexuality, homosexuality (including lesbianism) and bisexuality.

22. The Administration conducted a study and public consultation exercise on this issue in 1995/96 and announced its findings in June 1996. 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. In this connection, the Administration has helped homosexual support groups to secure funds to enhance the services they provide. Additionally, the Administration published a pamphlet that sought to address common misunderstandings about the sexual minorities and to gain greater acceptance of their right to equal opportunities and a booklet to promote a better understanding of the issues within the community. All these efforts will continue.

23. In view of strong public opposition to anti-discrimination legislation in this area and that its introduction at the present time would be premature, the Administration cannot support the provisions in Part III of the Bill.

Discrimination on the ground of age

24. The Administration 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.

25. The Administration considers it premature to introduce any age discrimination legislation at the present time. The more prudent approach to deal with this issue is through a programme of publicity, public education and self-regulation. The Administration has launched the publicity programme. It has also drafted a set of non-statutory guidelines for employers to facilitate the self-regulation process. The Administration will review the necessity for a legislative approach in the light of the outcome of the public education exercise and self-regulation efforts.

26. The Administration has also completed an analysis of the likely impact of Part IV of the Bill, focusing mainly on Government policies and practices. The analysis clearly indicates that, in addition to the field of employment, the Bill would have far-reaching implications on the community and would lead to considerable problems in a wide-range of areas. It is likely that other private sector activities would also be adversely affected by the Bill.

27. Some Members of the Bills Committee disagree with the Administration's arguments. They consider that many, particularly women, cannot find a job because they are discriminated against on the ground of age. The issues unrelated to employment pointed out by the Administration are indeed the areas of discrimination that need to be rectified.

Equal Opportunities (Race) Bill

28. To address the question of racial discrimination, the Administration 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. The Administration considers that it should await the outcome of the consultation exercise before proceeding further with the legislative proposal.

29. The Administration's principal concern on the Bill is the impact on immigration law and policy. The Bill includes no exemptions - corresponding to those in sections 11 and 12 of the Hong Kong 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. Exemptions on these and other provisions in Part IIIA of the Immigration Ordinance in respect of Vietnamese migrants are necessary. The Administration is also concerned about the impact of the Bill on job applicants and employees from overseas, and the importation of labour scheme. Another concern is about the education of overseas children in Hong Kong.

30. In response to some of the Administration's concerns, Mrs WONG has proposed a number of CSAs. The significant one is to redefine "race" in the Bill by deleting "nationality and national origin". The definition as amended now includes "colour, descent or ethnic origin".

31. The "consequential amendments" provisions in clause 55 of the Bill will be similarly dealt with as for clause 103 of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill. (Paragraphs 15-17 refer.)

Family Status Discrimination Bill

32. In view of the overwhelming support for legislation against discrimination on the ground of family status as reflected in the 1996 consultation exercise, but given the strong public objections to legal recognition for the "de-facto spouse relationship" as a form of family status, the Government proposes to define "family status" as the status of having responsibility for the care of an immediate family member. An immediate family member must be related to the person concerned by blood, marriage, adoption or affinity. This proposed definition will cover, inter alia, relationships between husband and wife, parent and child as well as near relatives. The Bill is modelled on the SDO.

33. Hon LAU Chin-shek has attempted twice to amend the definition of "family status" in the public bill by broadening it along the lines of the definition in his bill. Both versions have been ruled out by the President of the Legislative Council.

Committee stage amendments (CSAs)

34. The CSAs to the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and Family Status Discrimination Bill proposed by Hon LAU Chin-shek are at Appendices III and IV respectively. The CSAs to the Equal Opportunities (Race) Bill proposed by Mrs Elizabeth WONG are at Appendix V.

Recommendation

35. The Bills Committee recommends that the Second Reading debates of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, Equal Opportunities (Race) Bill and Family Status Discrimination Bill be resumed at the LegCo sitting on 23 June 1997.

Advice sought

36. Members are invited to support the recommendation of the Bills Committee at paragraph 35 above.

Legislative Council Secretariat

12 June 1997

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill,
Equal Opportunities (Race) Bill,
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and
Family Status Discrimination Bill**

Membership list

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-yee, 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 NGAN Kam-chuen

(Total : 15 members)

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill,
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and
Family Status Discrimination Bill**

**List of deputations/written submissions
(Position as at 12.6.97)**

1. The British Chamber of Commerce in Hong Kong
2. Employers' Federation of Hong Kong
3. Federation of Hong Kong Industries
4. Hong Kong General Chamber of Commerce
5. The Hong Kong Association of Banks
6. Hong Kong Women's Coalition on Equal Opportunities (formerly known as Coalition of Women's Organisations)
7. Hong Kong Association of Business and Professional Women
8. Hong Kong Federation of Women
9. Hong Kong Council of Social Service
10. Movement Against Discrimination (MAD)
11. Committee on Disability Discrimination Ordinance (formerly known as the Task Group on Anti-Discrimination Legislation for Disabled Persons)
12. Mr Timothy CHEUNG
13. Mr Robin Adams
14. Hong Kong Women Professionals and Entrepreneurs Association

15. Shatin Women ' s Association
16. Heung Yee Kuk New Territories
17. Hong Kong Outlying Island Women ' s Association
18. Cheung Chau Island Women ' s Association
19. Yuen Long Women ' s Association Limited
20. Tsuen Wan Kwai Ching District Women ' s Association
21. New Territories Association of Societies Women ' s Centre
22. Tuen Mun District Women ' s Association Limited
23. Sai Kung Women ' s Association Limited
24. Hong Kong Women Development Association
25. Hong Kong Tin Shui Wai Women Association
26. North District Women ' s Association
27. Association of Retailers & Tourism Services
28. The Hong Kong Federation of Insurers

EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY, SEXUALITY
AND AGE) BILL

COMMITTEE STAGE

Amendments to be moved by Hon. LAU Chin-shek

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 1 | By deleting the clause and substituting -

"1. Short title and commencement
(1) This Ordinance may be cited as the Equal Opportunities (Sexuality and Age) Ordinance.
(2) Section 90 shall come into operation upon the enactment of this Ordinance.
(3) The Governor 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 (other than section 90) and such a day, or the later or last of such different days, shall be a day no later than 1 January 1998.
(4) Subject to subsection (3), this Ordinance (other than section 90) shall come into operation on 1 January 1998." |
| 2(a) | By deleting "family responsibility or family status, sexuality, or age" and substituting "sexuality or age". |
| 2 | (a) In paragraph (c), by adding "and" at the end.
(b) In paragraph (d), by deleting the semicolon and substituting a fullstop.
(c) By deleting paragraphs (e) and (f). |
| 3(1) | By deleting the definition of "charitable benefits". |
| 3(1) | In the Chinese text, in the definition of "合約工作者", by deleting "進行工作的任何人" and substituting "而替該另一人工作的人". |
| 3(1) | By deleting the definitions of "educational authority" and of "educational institution" and substituting - |

““educational establishment” (教育機構) has the same meaning as in Section 2 of the Sex Discrimination Ordinance (Cap. 480).”

- 3(1) By deleting the definition of “employment” and substituting -
 ““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;”.
- 3(1) By adding the following after the definition of “principal”-
 ““pupil” (見習大律師), “pupillage” (見習職位), “tenancy” (租賃)
 and “tenant” (承租人) have the meanings commonly
 associated with their use in the context of a set of barristers’
 chambers;”.
- 3(1) By deleting the definitions of “family responsibility or family status” and of
 “relative”.
- 3(1) In the definition of “voluntary body”, by deleting paragraph (b) and
 substituting -
 “(b) a body whose recurrent expenditure is funded wholly or in part by
 the Government; or”.
- 4 By deleting the clause and substituting-
 “4. Act done for 2 or more reasons
 If -
 (a) an act is done for 2 or more reasons; and
 (b) one of the reasons is the sexuality or age 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).”.
- 5 By deleting “Crown” and substituting “Government”.
- 6 By deleting the clause.
- 7(3) By deleting the subclause.
- Part II By deleting the Part.

27

By deleting subclauses (2) to (4) and substituting -

“(2) For the purposes of this Ordinance, a person (“the discriminator”) discriminates against another person (“the aggrieved person”) on the ground of that person’s sexuality if the discriminator applies to the aggrieved person a requirement or condition which the discriminator applies or would apply equally to a person who is not of the same sexuality as the aggrieved person but -

- (a) which is such that the proportion of persons of the same sexuality as the aggrieved person who can comply with it is considerably smaller than the proportion of persons who are not of the same sexuality who can comply with it;
- (b) which the discriminator cannot show to be justifiable irrespective of the sexuality of the person to whom it is applied; and
- (c) which is to the aggrieved person’s detriment because he or she cannot comply with it.”.

35

By deleting “educational authority” wherever it appears and substituting “educational establishment”.

38(3)

By deleting the subclause and substituting -

“(3) Nothing in this section applies to or in respect of -

- (a) the provision of accommodation in premises if -
 - (i) the person who provides or proposes to provide the accommodation or a near relative of that person (“the relevant occupier”) resides, and intends to continue to reside, on those premises;
 - (ii) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier’s household; and
 - (iii) the premises are small premises; or
 - (b) accommodation provided by a religious body.
- (4) Premises shall be treated for the purposes of subsection (3) as small premises if -
- (a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any

members of his or her household reside in the accommodation occupied by him;

- (b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his or her household.

(5) The Governor in Council may, by notice in the Gazette, amend subsection (4)(b) by substituting another number for the number appearing in that subsection.”.

New

By adding -

“42A. Barristers

(1) It is unlawful for a barrister or a barrister’s clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person on the ground of the person’s sexuality -

- (a) in the arrangements which are made for the purposes of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which the pupillage or tenancy is offered; or
- (c) by refusing, or deliberately omitting, to offer the pupillage or tenancy to the person.

(2) It is unlawful for a barrister or barrister’s clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person’s sexuality -

- (a) in respect of any terms applicable to the person as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience which are afforded or denied to the person;
- (c) in the benefits, facilities or services which are afforded or denied to the person; or
- (d) by terminating the person’s pupillage or by subjecting the person to any pressure to leave the chambers or any other detriment.

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

42

In the Chinese text, by deleting “學室”

44(1)

and (2)

By deleting “educational institution” wherever it appears and substituting “educational establishment”.

New By adding -

"53A. Insurance

Nothing in this Part renders it unlawful for a person to discriminate against a person who is of a particular sexuality on the ground of the person's sexuality with respect to the terms on which an annuity, a life assurance policy, a policy of insurance against accident or any other policy of insurance is offered to or may be obtained by the person of that sexuality if that discrimination-

- (a) is based upon actuarial or statistical data from a source on which it is reasonable to rely or, if there are no such data, on such other data as may be available; and
- (b) is reasonable having regard to the data referred to in paragraph (a), if any, and any other relevant factors."

54 By deleting subclauses (2) to (4) and substituting -

"(2) For the purposes of this Ordinance, a person ("the discriminator") discriminates against another person ("the aggrieved person") on the ground of that person's age if the discriminator applies to the aggrieved person a requirement or condition which the discriminator applies or would apply equally to a person who is not of that age but -

- (a) which is such that the proportion of persons of the same age as the aggrieved person who can comply with it is considerably smaller than the proportion of persons who are not of that age who can comply with it;
- (b) which the discriminator cannot show to be justifiable irrespective of the age of the person to whom it is applied; and
- (c) which is to the aggrieved person's detriment because he or she cannot comply with it."

- 62 (a) In subclauses (1) to (3), by deleting "educational authority" wherever it appears and substituting "educational establishment".
- (b) In subclause (4), by deleting "educational institution" wherever it appears and substituting "educational establishment".
- (c) In the Chinese text, in subclause (4) by adding "訂定" after "該計劃"

65(3) By deleting the subclause and substituting -

- "(3) Nothing in this section applies to or in respect of -
- (a) the provision of accommodation in premises if -

- (i) the person who provides or proposes to provide the accommodation or a near relative of that person ("the relevant occupier") resides, and intends to continue to reside, on those premises;
 - (ii) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier's household; and
 - (iii) the premises are small premises;
- (b) accommodation provided by a religious body;
 - (c) accommodation provided by a charitable or other voluntary body solely for persons of a particular age;
 - (d) the provision of bona fide benefits, including concessions, to a person by reason of his or her age.
- (4) Premises shall be treated for the purposes of subsection (3) as small premises if -
- (a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any members of his or her household reside in the accommodation occupied by him;
 - (b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his or her household.
- (5) The Governor in Council may, by notice in the Gazette, amend subsection (4)(b) by substituting another number for the number appearing in that subsection."

71 In the Chinese text, by deleting "皇室".

New By adding -

"71A. Barristers

- (1) It is unlawful for a barrister or a barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person on the ground of the person's age -

- (a) in the arrangements which are made for the purposes of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which the pupillage or tenancy is offered; or
- (c) by refusing, or deliberately omitting, to offer the pupillage or tenancy to the person.

(2) It is unlawful for a barrister or barrister's clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person's age -

- (a) in respect of any terms applicable to the person as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person;
- (c) in the benefits, facilities or services which are afforded or denied to the person; or
- (d) by terminating the person's pupillage or by subjecting the person to any pressure to leave the chambers or any other detriment.

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

New By adding -

"77A. Further exceptions for statutory authority

- (1) Nothing in this Part affects the operation of a provision specified in the Schedule .
- (2) Nothing in this Part renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of a provision specified in the Schedule .
- (3) The Governor in Council may, by notice in the Gazette, amend the Schedule.
- (4) A notice under subsection (3) shall be subject to the approval of the Legislative Council."

83(7) By deleting the subclause.

84 and 85 By deleting the clauses and substituting -

"84. Charities

- (1) Nothing in this Ordinance shall -
 - (a) be construed as affecting a provision to which this subsection applies; or

(b) render unlawful an act which is done in order to give effect to such a provision.

(2) Subsection (1) applies to a provision for conferring benefits on persons of a particular sexuality or age (disregarding any benefits to other persons which are exceptional or are relatively insignificant), being a provision which is contained in a charitable instrument.

(3) In applying this section, account shall be taken of section 88 of the Inland Revenue Ordinance (Cap. 112).

(4) In this section -

“charitable instrument” (慈善文書) means an enactment or other instrument so far as it relates to charitable purposes;
 “charitable purposes” (慈善目的) means purposes which are exclusively charitable according to any enactment or rule of law.

85. Voluntary bodies

(1) Nothing in this Ordinance shall be construed as rendering unlawful -

- (a) the restriction of membership of a voluntary body to persons of a particular sexuality or age (disregarding any minor exceptions) where such restriction is reasonable having regard to the main object of the body; or
- (b) the provision of benefits, facilities or services to members of a voluntary body where the membership is so restricted,

even though membership of the body is open to the public, or to a section of the public.

(2) Nothing in this Ordinance shall -

- (a) be construed as affecting a provision to which this subsection applies; or
- (b) render unlawful an act which is done in order to give effect to such a provision.

(3) Subsection (2) applies to a provision for conferring benefits on persons of a particular age or sexuality (disregarding any benefits to other persons which are exceptional or relatively insignificant), being a provision which constitutes the main object of a voluntary body.”

88 By deleting the clause.

91, 92 and 94 By deleting the clauses and substituting -

“91. Claims under this Ordinance

(1) A claim by any person (“the claimant”) that another person (“the respondent”) -

- (a) has committed an act against the claimant which is unlawful by virtue of Part III or IV, or section 82;
- (b) is by virtue of section 99, 100 or 101 to be treated as having committed such an act against the claimant; or
- (c) has committed an act which is unlawful by virtue of section 49 or 83,

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 33 or 60 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, would be obtainable in the High Court.

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

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and order that the respondent shall not repeat or continue such unlawful conduct or act;
- (b) order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent shall employ or re-employ the claimant;
- (d) order that the respondent shall promote the claimant;
- (e) order that the respondent pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;
- (f) order that the respondent shall pay to the claimant punitive or exemplary damages; or
- (g) make an order declaring void in whole or part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.

(5) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.

(6) For avoidance of doubt, it is hereby declared that damages in respect of an unlawful act against the claimant may include compensation for injury to feelings whether or not they include compensation under any other head."

100 By adding -
“(5) For the avoidance of doubt, it is hereby declared that this section shall not apply for the purposes of any criminal proceedings.”.

New By adding -
“SCHEDULE [s. 77

PROVISIONS SPECIFIED FOR PURPOSES OF SECTION 77A

1. Section 31R(1)(b) of the Employment Ordinance (Cap. 57).
2. Employees' Compensation Ordinance (Cap. 282).
3. Pneumoconiosis (Compensation) Ordinance (Cap. 360).
4. Occupational Deafness (Compensation) Ordinance (Cap. 469).”.

Long title By deleting “family responsibility or family status, sexuality, or age” and substituting “sexuality or of age”.

FAMILY STATUS DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by Hon. LAU Chin-tek

<u>Clause</u>	<u>Amendment Proposed</u>
8	By deleting subclauses (3), (7) and (9).
New	By adding - "30A. Requests for information If, because of another provision of Part III or IV, it would be unlawful, in particular circumstances, for a person to discriminate against another person, in doing a particular act, it is unlawful for the first-mentioned person to request or require that other person to provide, in connection with or for the purposes of the doing of the act, information (whether by completing a form or otherwise) that persons who do not have family status would not, in circumstances that are the same or not materially different, be requested or required to provide."
50(2)(b)(iii)	By adding "30A," before "31, 32 or 33".
55(1)(c)	By adding "50A," before "31, 32 or 33".
60	(a) In the heading, by adding "30A," before "31, 32 and 33". (b) By adding "30A," before "31, 32 or 33" where it appears twice.

EQUAL OPPORTUNITIES (RACE) BILL

COMMITTEE STAGE

Amendments to be moved by Hon. Mrs. Elizabeth WONG CHIEN Chi-lien'

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 1 | <p>By deleting the clause and substituting -</p> <p>"1. Short title and commencement</p> <p>(1) This Ordinance may be cited as the Equal Opportunities (Race) Ordinance.</p> <p>(2) Section 42 shall come into operation upon the enactment of this Ordinance.</p> <p>(3) This Governor may, by notice in the Gazette, appoint-</p> <p style="padding-left: 2em;">(a) a day; or</p> <p style="padding-left: 2em;">(b) different days in respect of different provisions, for the coming into operation of this Ordinance (other than section 42) and such a day, or the later or last of such different days, shall be a day no later than 1 January 1998."</p> <p>(4) Subject to subsection (3), this Ordinance (other than section 42) shall come into operation on 1 January 1998."</p> |
| 2(a) | By deleting "colour, nationality, and national or" and substituting "colour and" |
| 3(1) | By deleting the definition of "charitable benefits". |
| 3(1) | <p>By deleting the definitions of "educational authority" and of "educational institution" and substituting -</p> <p style="padding-left: 2em;">""educational establishment" (教育機構) has the same meaning as in the Sex Discrimination Ordinance (Cap. 480);"</p> |
| 3(1) | In the Chinese text, in the definition of "合約工作者", by deleting "而為該人進行工作的任何人" and substituting "而替該另一人工作的人". |
| 3(1) | <p>By deleting the definition of "employment" and substituting -</p> <p style="padding-left: 2em;">""employment" (僱用) means employment under -</p> <p style="padding-left: 4em;">(a) a contract of service or of apprenticeship; or</p> <p style="padding-left: 4em;">(b) a contract personally to execute any work or labour</p> <p style="padding-left: 2em;">and related expressions shall be construed accordingly;".</p> |

- 3(1) By adding the following after the definition of "principal" -
"pupil" (見習大律師), "pupillage" (見習職位), "tenancy" (租賃) and "tenant" (承租人) have the meanings commonly associated with their use in the context of a set of barristers' chambers;".
- 3(1) In the definition of "race", by deleting "ethnic or national origin, or nationality" and substituting "or ethnic origin".
- 3(1) In the definition of "voluntary body", by deleting paragraph (b) and substituting -
"(b) a body whose recurrent expenditure is funded wholly or in part by the Government; or".
- 4 By deleting the clause and substituting-
"4. Act done for 2 or more reasons
If an act is done for 2 or more reasons and one of the reasons is the race 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 of the person's race."
- 6 By deleting the clause.
- 7(3) By deleting the subclause.
- 8(2) to (4) By deleting the subclauses and substituting -
"(2) For the purposes of this Ordinance, a person ("the discriminator") discriminates against another person ("the aggrieved person") on the ground of that person's race if the discriminator applies to the aggrieved person a requirement or condition which the discriminator applies or would apply equally to a person not of the same race as the aggrieved person but -
(a) which is such that the proportion of persons of the same race as the aggrieved person who can comply with it is considerably smaller than the proportion of persons not of that race who can comply with it;
(b) which the discriminator cannot show to be justifiable irrespective of the race of the person to whom it is applied; and
(c) which is to the aggrieved person's detriment because he or she cannot comply with it."

- 16
- (a) By deleting "educational authority" wherever it appears and substituting "educational establishment".
 - (b) In subsection (3), by deleting "educational institution" and substituting "educational establishment".
 - (c) In subsection (3), by deleting "on the ground of national origin or nationality,".

19(3) By deleting the subclause and substituting -

"(3) Nothing in this section applies to or in respect of -

- (a) the provision of accommodation in premises if -
 - (i) the person who provides or proposes to provide the accommodation or a near relative of that person ("the relevant occupier") resides, and intends to continue to reside, on those premises;
 - (ii) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier's household; and
 - (iii) the premises are small premises;
- (b) accommodation provided by a religious body; or
- (c) accommodation provided by a charitable or other voluntary body solely for persons of a particular race;

(4) Premises shall be treated for the purposes of subsection (3) as small premises if -

- (a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any members of his or her household reside in the accommodation occupied by him;
- (b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his or her household.

(5) The Governor in Council may, by notice in the Gazette, amend subsection (4)(b) by substituting another number for the number appearing in that subsection."

New

By adding -

"23A. Barristers

(1) It is unlawful for a barrister or a barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person on the ground of the person's race -

- (a) in the arrangements which are made for the purposes of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which the pupillage or tenancy is offered; or
- (c) by refusing, or deliberately omitting, to offer the pupillage or tenancy to the person.

(2) It is unlawful for a barrister or barrister's clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person's race -

- (a) in respect of any terms applicable to the person as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person;
- (c) in the benefits, facilities or services which are afforded or denied to the person; or
- (d) by terminating the person's pupillage or by subjecting the person to any pressure to leave the chambers or any other detriment.

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

33(7)

By deleting the subclause.

36 and 37

By deleting the clauses and substituting -

"36. Charities

(1) Nothing in this Ordinance shall -

- (a) be construed as affecting a provision to which this subsection applies; or
- (b) render unlawful an act which is done in order to give effect to such a provision.

(2) Subsection (1) applies to a provision for conferring benefits on persons of a particular race (disregarding any benefits to other persons which are exceptional or are relatively insignificant), being a provision which is contained in a charitable instrument.

(3) In applying this section, account shall be taken of section 88 of the Inland Revenue Ordinance (Cap. 112).

(4) In this section -

"charitable instrument" (慈善文書) means an enactment or other instrument so far as it relates to charitable purposes;

"charitable purposes" (慈善目的) means purposes which are exclusively charitable according to any enactment or rule of law.

37. Voluntary bodies

(1) Nothing in this Ordinance shall be construed as rendering unlawful -

- (a) the restriction of membership of a voluntary body to persons of a particular race (disregarding any minor exceptions) where such restriction is reasonable having regard to the main object of the body; or
- (b) the provision of benefits, facilities or services to members of a voluntary body where the membership is so restricted,

even though membership of the body is open to the public, or to a section of the public.

(2) Nothing in this Ordinance shall -

- (a) be construed as affecting a provision to which this subsection applies; or
- (b) render unlawful an act which is done in order to give effect to such a provision.

(3) Subsection (2) applies to a provision for conferring benefits on persons of a particular race (disregarding any benefits to other persons which are exceptional or relatively insignificant), being a provision which constitutes the main object of a voluntary body."

40

(a) By deleting "educational authority" and substituting "educational establishment".

(b) By deleting paragraphs (a) to (c) and substituting -

- "(a) the Primary One Admission System, Secondary School Places Allocation System, Junior Secondary Education Assessment System, or Secondary Six Admission Procedure;
- (b) any scheme, system or programme that replaces in whole or in part a scheme or system mentioned in paragraph (a); or
- (c) any provision of a law, being a provision relating to the admission of students."

New

By adding -

"41A. Immigration law and policy

(1) As regards persons not having the right to enter and remain in Hong Kong, this Ordinance does not affect -

- (a) any immigration legislation governing entry into, stay in and departure from Hong Kong;
- (b) any government policy for the time being in force providing for the application of any such legislation; or
- (c) any act done by a person if it was necessary to do it in order to comply with such legislation or such a policy.

(2) In this section, "legislation" (法例) means legislation that can be amended by an Ordinance."

43, 44
and 46

By deleting the clauses and substituting -

"43. Claims under this Ordinance

(1) A claim by any person ("the claimant") that another person ("the respondent") -

- (a) has committed an act against the claimant which is unlawful by virtue of Part II, or section 32;
- (b) has committed an act which is unlawful by virtue of section 30 or 33; or
- (c) is by virtue of section 51, 52 or 53 to be treated as having committed such an act,

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 14 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, would be obtainable in the High Court.

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

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

- (f) order that the respondent shall pay to the claimant punitive or exemplary damages; or
- (g) make an order declaring void in whole or part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.

(5) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.

(6) For avoidance of doubt, it is hereby declared that damages in respect of an unlawful act against the claimant may include compensation for injury to feelings whether or not they include compensation under any other head.”.

52 By adding -

“(5) For the avoidance of doubt, it is hereby declared that this section shall not apply for the purposes of any criminal proceedings.”.

long title By deleting “nationality, national or”.

The Legislative Council

LegCo Paper No. CB(3)1210/96-97

Ref : CB(3)/B/HA/4

Tel : 2869 9498

Date : 17 June 1997

From : Clerk to the Legislative Council

To : Members of the Legislative Council

Sitting Commencing on 23 June 1997

Committee Stage Amendment

Family Status Discrimination Bill

The Second Reading debate on the above Bill will be resumed at the sitting on 23 June 1997. Subject to the Bill receiving a Second Reading, the following amendments will be moved during the Committee stage:

By
Secretary for Home Affairs
Mr LAU Chin-shek
Miss Christine LOH

Amendments by
Appendix I
Appendix II
Appendix III

(Miss Betty MA)
for Clerk to the Legislative Council

Encl.

立法局

立法局 CB(3)1210/96-97 號文件

檔號： CB(3)/B/HA/4
電話： 2869 9498
日期： 一九九七年六月十七日
由： 立法局秘書
致： 立法局各議員

一九九七年六月二十三日開始的
立法局會議

全體委員會審議階段修正案

《家庭崗位歧視條例草案》

本局將於一九九七年六月二十三日會議席上恢復二讀辯論上述條例草案。倘該項條例草案獲予以二讀，將於委員會審議階段就該項條例草案動議下列修正案：

提出修正案者

政務司
劉千石議員
陸恭蕙議員

修正案載於

附錄 I
附錄 II
附錄 III

立法局秘書
(馬淑霞代行)

連附件

FAMILY STATUS DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Home Affairs

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 2 | (a) In subclause (1) by deleting the definition of "estate agent" and substituting -
"estate agent" (地產代理) has the same meaning as in the Estate Agents Ordinance (48 of 1997);"

(b) In subclause (5) (b) (i) by adding "and" at the end. |
| 4 | By deleting the heading and substituting "Act done for 2 or more reasons". |
| 8 | -By deleting subclause (5). |
| 16 | (a) In subclause (2) (b) by adding "or continue to do" after "do".

(b) In subclause (3) by adding "is" after "principal" where it first appears. |

FAMILY STATUS DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Home Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
21(4)	In the definition of "處置" by deleting "經" and substituting "構成".
Schedule 1	In item 1, by deleting "評" and substituting "畢業生".

家庭崗位歧視條例草案

委員會審議階段

由政務司動議的修正案

條次

建議修正案

21(4)

在“處置”的定義中，刪去“經”而代以“構成”。

附表1

在第1項中，刪去“訂”而代以“畢業生”

FAMILY STATUS DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Hon. LAU Chin-shek

Clause

Amendment Proposed

8 By deleting subclauses (3), (7) and (9).

~~New~~ By adding -

"30A. Requests for information

If, because of another provision of Part III or IV, it would be unlawful, in particular circumstances, for a person to discriminate against another person, in doing a particular act, it is unlawful for the first-mentioned person to request or require that other person to provide, in connection with or for the purposes of the doing of the act, information (whether by completing a form or otherwise) that persons who do not have family status would not, in circumstances that are the same or not materially different, be requested or required to provide."

50(2)(b) By deleting "sections 31" and substituting "section
(iii) 30A, 31".

ClauseAmendment Proposed

55(1)χc) By adding "30A," after "section".

- (a) In the heading, by adding "30A," after "sections".
- (b) In subclauses (1) and (4)(a), by adding "30A," after "section".

委員會審議階段

由劉千石議員動議的修正案

條次

建議修正案

8 刪去第(3)、(7)及(9)款。

新條文 加入 —

“30A. 要求提供資料

如因為第III或IV部的另一條文，使任何人在某些特定情況下就作出某一作為而歧視另一人會屬違法，則該首述的人若要求或規定該另一人在與該作為的作出有關連的情況下或為該作為的作出的目的而提供的資料(不論藉填寫表格或其他方式)，但在相同或並無重大分別的情況下非具有家庭崗位的人是不會被要求或規定提供該等資料的，即屬違法。”。

50(2)(b) 在“第”之後加入“30A、”。

(iii)

55(1)(c) 在“第”之後加入“30A、”。

60 (a) 在標題中，在“第”之後加入“30A、”。

(b) 在第(1)及(4)(a)款中，在“第”之後加入“30A、”

FAMILY STATUS DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Hon. Christine LOH Kung-wai

Clause

Amendment Proposed

54

(a) by repealing subsection (4) and substituting -

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

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and order that the respondent shall not repeat or continue such unlawful conduct or act;
- (b) order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent shall employ or re-employ the claimant;
- (d) order that the respondent shall promote the claimant;
- (e) order that the respondent pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;
- (f) order that the respondent shall pay to the claimant punitive or exemplary damages; or
- (g) make an order declaring void in whole or part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.

(4) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.”.

(b) by repealing subsections (7) and (8).

64

By adding -

“(2A) For the purposes of determining the period under subsection (1) within which proceedings may be brought, where an act to which the claim relates was the subject of a complaint lodged under section 62(1), then the period that elapsed between the date when the complaint was lodged and the date when conciliation under section 62 was concluded, as certified in writing by the Commission, shall be disregarded.”.

家庭崗位歧視條例草案
委員會審議階段
由陸恭蕙議員動議的修正案

條次

建議修正案

54

- (a) 廢除第(4)款而代以——
“(3A)在不限制第(3)款所賦予的權力的一般性的原則下，法庭可——
(a) 作出答辯人有從事或作違反本條例的任何行為或作為的宣告，並命令答辯人不得重覆或繼續該違法行為或作為；
(b) 命令答辯人須作出任何合理的作為或一連串的行為以舒緩申索人所蒙受的損失或損害；
(c) 命令答辯人須僱用或重新僱用申索人；
(d) 命令答辯人須擢升申索人；
(e) 命令答辯人須向申索人支付用以補償申索人由於答辯人的行為或作為所蒙受的損失或損害的損害賠償；
(f) 命令答辯人須向申索人支付懲罰性或懲戒性的損害賠償；或
(g) 作出命令宣告任何違反本條例的合約或協議從一開始或從該命令指明的其他日期開始全部或部分無效。
(4)不論有何其他法律，地方法院憑藉本款具有司法管轄權去聆聽及裁定根據第(1)款提出的任何法律程序及具有一切必要或合宜的權力以提供、發出或作出本條例提述的補救、強制令或命令。”。
- (b) 廢除第(7)及(8)款。

64

- 加入——
“(2A)就決定根據第(1)款可提起法律程序的限期而言，凡該申索所關乎的作為是一項根據第 62(1)條提出的申訴的標的，則不得將提出該申訴之日與根據第 62 條調解完結之日的相隔時間(經由委員會以書面證明)計算在內。”。

3090

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

本署編號 OUR REF HAB/CR/1/2/34 Pt 12
來函編號 YOUR REF
電話 TEL NO 2835 1383
傳真號碼 FAXLINE 2591 6002

18 June 1997

The Hon Andrew Wong Wang-fat, OBE, JP
President
Legislative Council
Legislative Council Building
8 Jackson Road, Hong Kong

Dear Sir,

Family Status Discrimination Bill

I refer to the Committee Stage Amendments proposed to be moved by the Honourable Lau Chin-shek to the Family Status Discrimination Bill (the Bill). The Bill is scheduled for resumption of Second Reading at the Legislative Council sitting which starts on 23 June 1997.

Mr. Lau proposes, inter alia, to introduce a new section 30A into the Bill. Consequent upon this addition, he also proposes to amend clauses 50, 55 and 60 of the Bill

This new section 30A adopts virtually verbatim the wording of section 42(1) of the Disability Discrimination Ordinance (Cap. 487). In the Bill, as in Cap. 487, it is placed in a Part which is entitled "Other Unlawful Acts". The effect of the proposed new section 30A would seem to be to render it unlawful for a person to require another person to provide information if (a) persons who do not have "family status" within the meaning of the Bill would not be required to provide such information in the same or similar circumstances and (b) the information is sought in connection with, or for the purposes of, the doing of an act which would be unlawfully discriminatory under the Bill

"Family status" is defined by the Bill to mean, in relation to a person, the status of having responsibility for the care of "an immediate family member", while "immediate family member" in relation to a person means someone who is related to the person "by blood, marriage, adoption or affinity". The Bill renders discrimination on the ground of family status unlawful in specified areas of activity similar to those covered by the Sex Discrimination Ordinance, including employment, education, provision of goods, facilities and services and Government activities

The inclusion of this additional species of "unlawful act" amongst the others prescribed by the Bill must inevitably add to some extent to the burdens which fall on the Equal Opportunities Commission (EOC) by virtue of the other provisions of the Bill.

Under the Bill, the EOC is charged with a statutory duty to work towards the elimination of all kinds of discrimination falling within the ambit of the Bill (see clause 44) and is empowered (and in certain instances under a duty) to conduct formal investigations for any purpose connected with the carrying out of any of its functions (see clause 48). The other Committee Stage Amendments to clauses 50, 55 and 60 which are made necessary by the addition of new section 30A empower the Commission to (a) require the furnishing of information and the attendance of persons for the purpose of such a formal investigation into a contravention of section 30A (amendment to clause 50(2)(b)(iii)), (b) issue enforcement notices in respect of a contravention where, as a result of the investigation, it is satisfied a contravention has occurred (amendment to clause 55(1)(c)) and (c) apply to the District Court for an injunction to restrain the contravention (amendment to clause 60 (4)(a)). Indeed, proceedings in respect of such a contravention shall be brought only by the Commission (amendment to clause 60(1)).

It follows that some increase in the volume of work which will fall on the EOC is unavoidable if the proposed amendments are accepted. The Administration therefore takes the view that the proposed amendments have a "charging effect" within the meaning of clause XXIV(2) of the Royal Instructions. This is in line with the approach adopted by the President in his ruling on 18 December 1996 on an amendment put forward by the Honourable Cheung Bing-leung in respect of the Commissioner of Administrative Complaints (Amendment) Bill 1996. The Administration submits that that is the correct approach to follow in the present instance.

As there is an addition of a further category of unlawful act to those already covered by the Bill and in particular that the EOC is charged specifically to bring proceedings in respect of such an unlawful act, it follows that additional funds have to be voted to enable the EOC to discharge its statutory functions and exercise its statutory powers. In our view, an additional disposal of revenue, over and above that which would arise by virtue of the provisions already contained in the Bill, is bound to occur.

We should be grateful for your ruling on this matter at your earliest convenience

Yours faithfully,

(/NG Hon-wah)
for Secretary for Home Affairs

c.c. Chairman and all Members of the Bills Committee on the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, Equal Opportunities (Race) Bill, Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and the Family Status Discrimination Bill

LEGISLATIVE COUNCIL BRIEF

EQUAL OPPORTUNITIES: DISCRIMINATION ON THE GROUND OF RACE

INTRODUCTION

This paper informs Members of the outcome of a consultation exercise on discrimination on the ground of race and the Government's future course of action to enhance equal opportunities for all races.

BACKGROUND

2. In 1996, in response to calls from the community to adopt further measures to address discrimination, we conducted studies on the issues of discrimination on the grounds of family status, sexual orientation and age. We also undertook to conduct another study on discrimination on the ground of race. The purpose of the study was to assist the Government in assessing whether racial discrimination existed in Hong Kong and if so, its nature and extent and the measures to address the problem.

3. We informed the United Nations Committee on the Elimination of Racial Discrimination ("CERD") of our intention to conduct a public consultation exercise on the subject. In March 1996, in its Concluding Observation on the United Kingdom's 13th report in respect of Hong Kong under the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"), the Committee viewed the study "as a constructive means of determining the extent of problems in the area of racial discrimination Where discrimination is found to exist, the study could serve as an important basis for development of solutions".

4. In the meantime, Hon Mrs Elizabeth Wong introduced in July 1996 the Equal Opportunities (Race) Bill 1996 to outlaw racial discrimination.

5. We published the consultative document on 19 February 1997 and invited the public to put forward their views by 30 April 1997. About 53,000 copies of the documents (about 39,000 in Chinese and 14,000 in English) were distributed to foreign consulates, various groups and

individuals. When the consultation period ended, we received a total of 238 submissions, which have been included in the compendium at Annex A.

Outcome of the consultation exercise

6. The main purpose of the consultation is to assess whether or not legislation should be enacted to outlaw racial discrimination. A statistical summary of the submissions on this point is at Annex B.

7. The view is expressed in 197 (83%) of the submissions that legislation is unnecessary or undesirable, at least at this stage. This is also the general drift of the opinions expressed by four District Boards, a committee of one District Board, and the Labour Advisory Board. The 197 submissions consist of 100 substantive submissions and 97 pre-printed forms (containing 728 signatures). The groups which are against legislation are mainly the trade associations, women's groups and district organisations.

8. The reasons advanced in the 197 submissions include the following -

- (a) racial discrimination is not a significant problem in Hong Kong. This is borne out by the views of the Consuls General recorded in the consultative document. Some of the issues discussed in the consultative document (e.g. colloquial expressions referring to members of certain races and the less favourable economic conditions enjoyed by members of some races) are not due to racial discrimination, but merely reflect cultural differences or factors unrelated to race;
- (b) the enactment of legislation might mislead the world into thinking that racial discrimination is a serious problem in Hong Kong;
- (c) legislation might result in vexatious litigation and disputes, accentuate the racial differences in the community and, as a result, engender resentment by the majority against the ethnic minorities,

- (d) the fact that acute racial problems exist in some countries with anti-discrimination legislation casts doubt on the effectiveness of such legislation; and
- (e) some employers consider that the effects of the existing anti-discrimination legislation, i.e. the Sex Discrimination Ordinance and Disability Discrimination Ordinance, should be fully assessed before any further legislation of this nature is introduced.

9. On the other hand, 19 (8%) of the 238 submissions advocate legislation to outlaw racial discrimination. These include eight submissions from social service organisations, human rights groups and women's groups.

10. The views of the proponents of legislation can be summarised as follows -

- (a) even though Hong Kong is a racially homogeneous society (96% of the residents being Chinese), this does not mean that racial discrimination is not a significant issue. In addition to overt acts of racial discrimination, subtle racial discrimination can also disturb the harmony and stability of a society;
- (b) discriminatory attitudes (notably against Vietnamese migrants and new arrivals) are prevalent. Some Government policies are (the respondents alleged) racially discriminatory. (These include the policy that 50% of the members of a household must have lived in Hong Kong for seven years or more in order to be allocated public housing, the treatment of Vietnamese migrants and the two-week rule concerning foreign domestic helpers.) In any case, even if only one person were discriminated against, that person he should be protected;
- (c) legislation can produce quick results in addressing discrimination. It can prevent aggravation of the problem. It would also be an educational tool to cultivate a proper attitude towards the ethnic minorities; and
- (d) the Government is obliged under the International Covenant on Civil and Political Rights and the International Convention

on the Elimination of All Forms of Racial Discrimination to prohibit and eliminate racial discrimination.

11. Nearly all 238 submissions support non-legislative measures against racial discrimination. Proposals include public education to address discriminatory attitudes and to promote equal opportunities for all regardless of race. There are also suggestions that more should be done, for example, to help new arrivals and foreign workers integrate into the community.

Administration's view

12. Even though ours is a racially homogeneous society, racially discriminatory attitudes probably do exist. There is, however, no evidence that discriminatory acts are prevalent. The feedback from the Consuls General and the relatively small number of submissions in response to the consultation exercise (compared with the about 10,000 submissions received in response to the consultation exercises on family status and sexuality) lend support to the view, expressed in the majority of the submissions, that racial discrimination is not an issue of concern in Hong Kong.

13. Legislation cannot outlaw discriminatory attitudes; it can only outlaw discriminatory acts. Nearly all the instances mentioned by respondents as 'evidence' of discrimination concern Government policies (paragraph 10 (b) above). Those policies are justified on public interest grounds unrelated to race, having regard to the circumstances of our community. If they were racially discriminatory and not justified, most of them could have been challenged in court and would have been rendered unlawful by the Bills of Rights Ordinance; there is no need for new legislation to outlaw them.

14. We are mindful that the BORO does not apply to relations between private persons, groups or organisations. We are also mindful of the concern expressed by the CERD, in its Concluding Observation issued on 20 March 1997 on the United Kingdom's 14th report under ICERD, that specific legislation against racial discrimination is not yet available in all the Dependent Territories and Crown Dependencies. However, it is significant that, while recommending that certain Dependent Territories give further consideration to the adoption of specific legislation prohibiting racial discrimination, the CERD did not mention Hong Kong.

15 It is not clear why the CERD did not include Hong Kong in the list of territories where specific legislation is recommended. One possible explanation is that the Committee having endorsed the consultation exercise as a basis for developing solutions (paragraph 3 above), thought it should not pre-empt the outcome of the exercise.

16 Having balanced the outcome of the consultation exercise against the CERD's comments, we believe that it would not be opportune at present to introduce legislation to outlaw racial discrimination between private persons, groups or organisations. As discriminatory acts are not prevalent, the benefits from such legislation would be limited. On the other hand, the introduction of such legislation against the view of the majority respondents might be counter-productive for the reasons mentioned in paragraph 8(c) above. It would also call into question the Government's sincerity in conducting the consultation if legislation were enacted so soon after the vast majority of respondents have expressed opinions against it.

Proposals

17 In the circumstances, we propose not to introduce or support, at the present stage, any draft legislation to address racial discrimination. However, we shall revisit the subject in a year's time.

18 We propose the following non-legislative measures to address the issue -

- (a) enhanced public education efforts to promote equal opportunities with increased emphasis on racial equality;
- (b) in view of the concerns voiced about new arrivals and foreign workers, we shall consider making discriminatory attitudes or acts against these groups a target of our public education programme. We shall also consider what more can and should be done to make members of these groups more aware of their rights and responsibilities and to help them integrate into our community; and
- (c) to address the misconception that the Government policies mentioned in paragraph 11(b) above are racially discriminatory, we shall keep the policies in question under

regular review and to take more proactive steps to explain to the public why they are necessary.

FINANCIAL AND STAFFING IMPLICATIONS

19. The cost of the enhanced public education efforts proposed in paragraph 18 above will be absorbed by the global allocation of Home Affairs Branch.

PUBLIC CONSULTATION

20. Our proposal to adopt non-legislative measures to enhance equal opportunities in the area of race is a direct result of consultations with the general public, District Boards and other parties during the ten-week public consultation from February to April 1997.

PUBLICITY

21. We shall issue a press release on 18 June 1997, announcing the outcome of the consultation exercise and our decision to address the problem by non-legislative measures. We shall also report our decision to the Panel on Home Affairs on 20 June 1997 and publish a compendium of submissions (Annex A).

ENQUIRIES

22. For enquiries on this brief, please contact Mr Ng Hon-wah, Acting Deputy Secretary for Home Affairs, at 2835 1383.

18 June 1997
Home Affairs Branch
File Reference : HAB/CR/1/34/56 IV

Consultation on Discrimination on the Ground of Race

Summary of Submissions

	<u>For Legislation</u>	<u>Against Legislation</u>	<u>Not Clear</u>
<u>Groups</u>			
Substantive	8	22 ^[1]	13
Pre-printed form	0 (0)	10 (641) ^[2]	0 (0)
<u>Individuals</u>			
Substantive	11	78 ^[3]	9 ^[4]
Pre-printed form:	0	87	0
<i>Total number of Submissions = 238</i>	<u>19</u>	<u>197</u>	<u>22</u>
<u>Record of Discussions</u>	0	6 ^[5]	0

Notes

1. Includes one submission from a District Board.
2. Pre-printed signature campaign forms coming in the same lot are treated as one submission, with figures in bracket indicating total number of signatures.
3. Includes 20 “confidential” submissions.
4. Includes one “confidential” submission.
5. Includes four District Boards, one committee of District Board, and the Labour Advisory Board.



本署檔號 Our Ref..
來函檔號 Your Ref

EMB CR 2/1/3231/95

電話 Telephone: 2810 2018
傳真 Faxline: 2868 5916

21 June, 1997

To : All Members of the Legislative Council

Equal Opportunities (Family Responsibility,
Sexuality and Age) Bill

On 3 and 17 March 1997 I wrote to you regarding the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill sponsored by the Hon Lau Chin-shek. In those letters I referred to our on-going programme of public education, publicity and self-regulation and our belief that these measures are the most appropriate way to deal with the issue of discrimination in employment on the ground of age.

2. I wish to reiterate that the Administration will review the effectiveness of those measures early next year. If they prove to be far from satisfactory, we will seriously consider the need for legislation. In short, the Administration does not rule out the possibility to legislate

3. On this occasion I should like to bring to your attention some of the likely adverse consequences arising from those sections of the Bill which deal with age discrimination in areas other than employment, as well as the likely effect of the Bill on the provision of training and promotion opportunities in the private sector.

3101

Private Sector Employment Practices

- Clause 55 of the Bill will render it unlawful for employers not to offer training or promotion opportunities to their employees even if those employees shall be leaving or retiring soon.

Access to goods, services and facilities

Clause 64 of the Bill would render it unlawful for a bank to take age into account when making a credit decision. For example, a bank could not decline to provide a person aged 70 with a 15-year mortgage loan on the ground that the person was too old to service the loan.

Small House Policy

- Clause 66 of the Bill will render unlawful the present policy that only male indigenous villagers aged 18 or above may submit applications for small houses.

Sport

- Rules issued by international governing bodies for various sports frequently prohibit persons over a certain age from officiating as referees or umpires. Clause 68 would make this unlawful, and would put local sports associations in a very invidious position when organising internationally sanctioned events.

Immigration

- Clause 71 would render unlawful the current immigration policy that generally only parents over the age of 50 are allowed to join their sons or daughters in Hong Kong for family reunion purposes, as well as the general prohibition on children aged 21 or above being allowed to join their parents as dependants.

Housing

- Clause 71 would also render unlawful the current housing clearance policy, whereby cleared eligible singletons aged 50 or above are rehoused in public rental housing whereas those below the age of 50 go to interim housing.

Provision of medical services

- Clause 71 would also appear to make unlawful the age restrictions that are sometimes imposed to ensure that the specific health needs of different age groups are catered for in an appropriate and cost-effective way, e.g. the provision of priority discs to the elderly at General Out-Patient Clinics; advanced booking arrangements for elderly chronic patients; and the provision of Student Health Services and the School Dental Care Service.

Conclusion

4. There are good reasons why age is taken into consideration in these policies. I do not believe it is in the best interest of the community for them to be overturned. Nor does the answer lie with the use of Clause 90 or the new Clause 77A to be moved under a CSA. Clause 90 is clearly designed to provide only temporary exemptions, whereas Clause 77A is only applicable to the operation of statutory provisions, which is definitely insufficient in addressing the need for exemptions for numerous other non-statutory activities, such as administrative ones and others in the private sector.

5. I should also stress that the enforcement of this bill will be seriously handicapped by the lack of a mediation and enquiry mechanism for both the claimants and defendants to settle their disputes as the Equal Opportunities Commission will not be involved. Aggrieved parties will have to lodge their claims with the District Court, implying the need for claimants to go through lengthy and costly procedures. The Bill therefore would not be effective in helping the aggrieved persons.

6 I urge you once again to 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

[leg-mem]

The Legislative Council

LegCo Paper No. CB(3)1288/96-97

Ref : CB(3)/B/P2/LCS2

Tel : 2869 9498

Date : 24 June 1997

From : Clerk to the Legislative Council

To : Members of the Legislative Council

Sitting Commencing on 23 June 1997

Committee Stage Amendment

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

Further to LegCo Paper No. CB(3) 1206/96-97 of 17 June 1997, Members are invited to note that the President has given leave for Mr LAU Chin-shek to revise his proposed amendments.

2. A full set of Mr LAU's revised amendments to the Bill is attached.

(Miss Betty MA)
for Clerk to the Legislative Council

Encl.

3105

立法局

立法局 CB(3)1288/96-97 號文件

檔號*: CB(3)/B/P2/LCS2
電話: 2869 9498
日期: 一九九七年六月二十四日
由: 立法局秘書
致: 立法局各議員

一九九七年六月二十三日開始的
立法局會議

全體委員會審議階段修正案

《平等機會（家庭責任、性傾向及年齡）條例草案》

繼於一九九七年六月十七日發出的立法局 CB(3)1206/96-97 號文件，現請各位議員注意，主席已批准劉千石議員修改其擬議修正案。

2. 現隨函附上劉千石議員對該條例草案動議的修正案所作出的全部修改。

立法局秘書
(馬淑霞代行)

連附件

3106

EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY,
SEXUALITY AND AGE) BILL

COMMITTEE STAGE

Amendments to be moved by the Hon. LAU Chin-shek

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting "family responsibility or family status, sexuality, or age" and substituting "sexuality or age".
1	By deleting the clause and substituting - "1. Short title and commencement (1) This Ordinance may be cited as the Equal Opportunities (Sexuality and Age) Ordinance. (2) Section 90 shall come into operation on the day the Ordinance is published in the Gazette. (3) The Governor 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 (other than section 90) and such a day, or the later or last of such different days, shall be a day no later than 1 January 1998. (4) Subject to subsection (3), this Ordinance (other than section 90) shall come into operation on 1 January 1998."

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 2 | <p>(a) In paragraph (a), by deleting "family responsibility or family status, sexuality, or age" and substituting "sexuality or age".</p> <p>(b) In paragraph (b), by deleting "educatioal institutions" and substituting "educational establishments".</p> <p>(c) In paragraph (c), by adding "and" at the end.</p> <p>(d) In paragraph (d), by deleting the semicolon and substituting a full stop.</p> <p>(e) By deleting paragraphs (e) and (f).</p> |
| 3(1) | <p>(a) By deleting the definition of "charitable benefits".</p> <p>(b) In the definition of "合約工作者", by deleting "進行工作的任何人" and substituting "而替該另一人工作的人".</p> <p>(c) By deleting the definitions of "educational authority" and "educational institution" and substituting -
 "educational establishment" (教育機構) has the
 same meaning as in section 2 of the Sex
 Discrimination Ordinance (Cap. 480);".</p> <p>(d) By deleting the definition of "employment" and substituting -
 "employment" (僱用) means employment under -</p> |

Clause

Amendment Proposed

- (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;".
- (e) By deleting the definition of "family responsibility or family status".
 - (f) In the definition of "voluntary body", by deleting paragraph (b) and substituting -
 - "(b) a body whose recurrent expenditure is funded wholly or in part by the Government; or".
 - (g) By adding -
 - "pupil" (見習大律師), "pupillage" (見習職位), "tenancy" (租賃) and "tenant" (承租人) have the meanings commonly associated with their use in the context of a set of barristers' chambers;".

By deleting the clause and substituting -

"4. Act done for 2 or more reasons

If -

- (a) an act is done for 2 or more reasons; and
- (b) one of the reasons is the sexuality or age of a person (whether or not it is

Clause

Amendment Proposed

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).".

5 (a) In the heading, by deleting "**Crown**" and substituting
"**Government**".

(b) By deleting "Crown" and substituting "Government".

6 By deleting the clause.

7 By deleting subclause (3).

Part II By deleting the Part.

27 By deleting subclauses (2), (3) and (4) and substituting -

"(2) For the purposes of this Ordinance, a person
("the discriminator") discriminates against another
person ("the aggrieved person") on the ground of that
person's sexuality if the discriminator applies to the
aggrieved person a requirement or condition which the
discriminator applies or would apply equally to a
person who is not of the same sexuality as the aggrieved
person but -

(a) which is such that the proportion of
persons of the same sexuality as the
aggrieved person who can comply with it
is considerably smaller than the

Clause

Amendment Proposed

proportion of persons who are not of the same sexuality who can comply with it;

(b) which the discriminator cannot show to be justifiable irrespective of the sexuality of the person to whom it is applied; and

(c) which is to the aggrieved person's detriment because he or she cannot comply with it."

35 By deleting "educational authority" wherever it appears and substituting "educational establishment".

38 By deleting subclause (3) and substituting -

"(3) Nothing in this section applies to or in respect of -

(a) the provision of accommodation in premises if -

(i) the person who provides or proposes to provide the accommodation or a near relative of that person ("the relevant occupier") resides, and intends to continue to reside, on those premises;

(ii) there is on the premises, in addition to the accommodation occupied by the relevant occupier,

ClauseAmendment Proposed

accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier's household; and

(iii) the premises are small premises; or

(b) accommodation provided by a religious body.

(4) Premises shall be treated for the purposes of subsection (3) as small premises if -

(a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any members of his or her household reside in the accommodation occupied by him or her;

(b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in

ClauseAmendment Proposed

addition to the relevant occupier and any members of his or her household.

(5) The Governor in Council may, by notice in the Gazette, amend subsection (4) (b) by substituting another number for the number appearing in that subsection."

42 By deleting "皇室".

New By adding -

"42A. Barristers

(1) It is unlawful for a barrister or a barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person on the ground of the person's sexuality -

- (a) in the arrangements which are made for the purposes of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which the pupillage or tenancy is offered; or
- (c) by refusing, or deliberately omitting, to offer the pupillage or tenancy to the person.

(2) It is unlawful for a barrister or a barrister's clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person's sexuality -

- (a) in respect of any terms applicable to the person as a pupil or tenant;

ClauseAmendment Proposed

- (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person;
- (c) in the benefits, facilities or services which are afforded or denied to the person; or
- (d) by terminating the person's pupillage or by subjecting the person to any pressure to leave the chambers or any other detriment.

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

44 By deleting "educational institution" wherever it appears and substituting "educational establishment".

New By adding -

"53A. Insurance

Nothing in this Part renders it unlawful for a person to discriminate against a person who is of a particular sexuality on the ground of the person's sexuality with respect to the terms on which an annuity, a life assurance policy, a policy of insurance against accident or any other policy of insurance is offered to or may be obtained by the person of that sexuality if that discrimination -

- (a) is based upon actuarial or statistical data from a source on which it is

ClauseAmendment Proposed

reasonable to rely on, if there are no such data, on such other data as may be available; and

- (b) is reasonable having regard to the data referred to in paragraph (a), if any, and any other relevant factors."

54 By deleting subclauses (2), (3) and (4) and substituting -

"(2) For the purposes of this Ordinance, a person ("the discriminator") discriminates against another person ("the aggrieved person") on the ground of that person's age if the discriminator applies to the aggrieved person a requirement or condition which the discriminator applies or would apply equally to a person who is not of the same age but -

- (a) which is such that the proportion of persons of the same age as the aggrieved person who can comply with it is considerably smaller than the proportion of persons who are not of the same age who can comply with it;
- (b) which the discriminator cannot show to be justifiable irrespective of the age of the person to whom it is applied; and
- (c) which is to the aggrieved person's detriment because he or she cannot comply with it."

62 (a) In subclauses (1), (2) and (3), by deleting "educational authority" wherever it appears and substituting "educational establishment".

ClauseAmendment Proposed

(b) In subclause (4), by deleting "educational institution" where it twice appears and substituting "educational establishment".

(c) In subclause (4) by adding "訂定" after "該計劃".

65 By deleting subclause (3) and substituting -

"(3) Nothing in this section applies to or in respect of -

(a) the provision of accommodation in premises if -

(1) the person who provides or proposes to provide the accommodation or a near relative of that person ("the relevant occupier") resides, and intends to continue to reside, on those premises;

(ii) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not

Clause

Amendment Proposed

- members of the relevant occupier's household; and
- (111) the premises are small premises;
- (b) accommodation provided by a religious body;
- (c) accommodation provided by a charitable or other voluntary body solely for persons of a particular age; or
- (d) the provision of bona fide benefits, including concessions, to a person by reason of his or her age.
- (4) Premises shall be treated for the purposes of subsection (3) as small premises if -
- (a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any members of his or her household reside in the accommodation occupied by him or her;
- (b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in

ClauseAmendment Proposed

addition to the relevant occupier and any members of his or her household.

(5) The Governor in Council may, by notice in the Gazette, amend subsection (4) (b) by substituting another number for the number appearing in that subsection."

71 By deleting "皇室".

New By adding -

"71A. Barristers

(1) It is unlawful for a barrister or a barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person on the ground of the person's age -

- (a) in the arrangements which are made for the purposes of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which the pupillage or tenancy is offered; or
- (c) by refusing, or deliberately omitting, to offer the pupillage or tenancy to the person.

(2) It is unlawful for a barrister or a barrister's clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person's age -

- (a) in respect of any terms applicable to the person as a pupil or tenant; **3118**

ClauseAmendment Proposed

- (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person;
- (c) in the benefits, facilities or services which are afforded or denied to the person; or
- (d) by terminating the person's pupillage or by subjecting the person to any pressure to leave the chambers or any other detriment.

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

New

By adding -

"77A. Further exceptions for statutory authority

- (1) Nothing in this Part affects the operation of a provision specified in the Schedule.
- (2) Nothing in this Part renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of a provision specified in the Schedule.
- (3) The Governor in Council may, by notice in the Gazette, amend the Schedule.
- (4) A notice under subsection (3) shall be subject to the approval of the Legislative Council."

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 83 | <p>(a) In subclause (5,, by deleting "94" and substituting "91".</p> <p>(b) By deleting subclause (7).</p> |
| 84 | <p>By deleting the clause and substituting -</p> <p>"84. Charities</p> <p>(1) Nothing in this Ordinance shall -</p> <p style="padding-left: 40px;">(a) be construed as affecting a provision to which this subsection applies; or</p> <p style="padding-left: 40px;">(b) render unlawful an act which is done in order to give effect to such a provision.</p> <p>(2) Subsection (1) applies to a provision for conferring benefits on persons of a particular sexuality or age (disregarding any benefits to other persons which are exceptional or are relatively insignificant), being a provision which is contained in a charitable instrument.</p> <p>(3) In applying this section, account shall be taken of section 88 of the Inland Revenue Ordinance (Cap. 112).</p> <p>(4) In this section -</p> <p style="padding-left: 40px;">"charitable instrument" (慈善文書) means an enactment or other instrument so far as it relates to charitable purposes;</p> <p style="padding-left: 40px;">"charitable purposes" (慈善目的) means purposes which are exclusively charitable according to any enactment or rule of law."</p> |
| 85 | <p>By deleting the clause and substituting -</p> |

Clause

Amendment Proposed

"85. **Voluntary bodies**

(1) Nothing in this Ordinance shall be construed as rendering unlawful -

(a) the restriction of membership of a voluntary body to persons of a particular sexuality or age (disregarding any minor exceptions) where such restriction is reasonable having regard to the main object of the body; or

(b) the provision of benefits, facilities or services to members of a voluntary body where the membership is so restricted,

even though membership of the body is open to the public, or to a section of the public.

(2) Nothing in this Ordinance shall -

(a) be construed as affecting a provision to which this subsection applies; or

(b) render unlawful an act which is done in order to give effect to such a provision.

(3) Subsection (2) applies to a provision for conferring benefits on persons of a particular sexuality or age (disregarding any benefits to other persons which are exceptional or relatively insignificant), being a provision which constitutes the main object of a voluntary body."

<u>Clause</u>	<u>Amendment Proposed</u>
87	By deleting "educational institution" wherever it appears and substituting "educational establishment".
88	By deleting the clause.
91	<p>By deleting the clause and substituting -</p> <p>"91. Claims under this Ordinance</p> <p>(1) A claim by any person ("the claimant") that another person ("the respondent") -</p> <p style="padding-left: 40px;">(a) has committed an act against the claimant which is unlawful by virtue of Part III or IV, or section 82;</p> <p style="padding-left: 40px;">(b) has committed an act which is unlawful by virtue of section 49 or 83; or</p> <p style="padding-left: 40px;">(c) is by virtue of section 99, 100 or 101 to be treated as having committed such an act against the claimant,</p> <p>may be made the subject of civil proceedings in like manner as any other claim in tort.</p> <p>(2) Subsection (1) shall not apply to a claim under section 33 or 60 of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any enactment.</p> <p>(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, would be obtainable in the High Court.</p> <p>(4) Without limiting the generality of the power conferred by subsection (3), the District Court may -</p>

ClauseAmendment Proposed

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and order that the respondent shall not repeat or continue such unlawful conduct or act;
- (b) order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent shall employ or re-employ the claimant;
- (d) order that the respondent shall promote the claimant;
- (e) order that the respondent pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;
- (f) order that the respondent shall pay to the claimant punitive or exemplary damages; or
- (g) make an order declaring void in whole or in part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.

(5) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings

Clause

Amendment Proposed

under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.

(6) For the avoidance of doubt, it is hereby declared that damages in respect of an unlawful act against the claimant may include compensation for injury to feelings whether or not they include compensation under any other head."

92 By deleting the clause.

94 By deleting the clause.

100 By adding -

"(5) For the avoidance of doubt, it is hereby declared that this section shall not apply for the purposes of any criminal proceedings."

New By adding -

"SCHEDULE [s. 77A]

PROVISIONS SPECIFIED FOR PURPOSES OF SECTION 77A

1. Section 31R(1)(b) of the Employment Ordinance (Cap. 57).
2. Employees' Compensation Ordinance (Cap. 282).
3. Pneumoconiosis (Compensation) Ordinance (Cap. 360).

Clause

Amendment Proposed

4. Occupational Deafness (Compensation)
Ordinance (Cap. 469).".

103

(a) By deleting "**Consequential Amendments**" and "**Hong Kong Bill of Rights Ordinance**" before the clause.

(b) By deleting the clause.

平等機會(家庭責任、性傾向及年齡)條例草案

委員會審議階段

由劉千石議員動議的修正案

條次

建議修正案

詳題

刪去“家庭責任或家庭崗位、性傾向或年齡”而代以“性傾向或年齡”。

1

刪去該條而代以 —

“1. 簡稱及生效日期

(1) 本條例可引稱為〈平等機會(性傾向及年齡)條例〉。

(2) 第90條自本條例在憲報刊登的日期起實施。

(3) 本條例(除第90條外)由總督以憲報公告 —

(a) 指定的日期起；或

(b) 就不同條文指定的不同日期起，

實施，而該日期或該等不同日期中的較後或最後日期須不遲於1998年1月1日。

(4) 除第(3)款另有規定外，本條例(除第90條外)自1998年1月1日起實施。”。

2

(a) 在(a)段中，刪去“家庭責任或家庭崗位、性傾向或年齡”而代以“性傾向或年齡”。

(b) 在(b)段中，刪去“educational institutions”而代以“educational establishments”。

- (c) 在(c)段中，在末處加入“及”。
- (d) 在(d)段中，刪去分號而代以句號。
- (e) 刪去(e)及(f)段。

3(1)

- (a) 刪去“慈善利益”的定義。
- (b) 在“合約工作者”的定義中，刪去“進行工作的任何人”而代以“而替該另一人工作的人”。
- (c) 刪去“教育主管當局”及“教育機構”的定義而代以 —

““教育機構”(educational establishment)的涵義，與〈性別歧視條例〉(第480章)第2條中該詞的涵義相同；”。

- (d) 刪去“僱用”的定義而代以 —

““僱用”(employment)指根據以下合約的僱用 —

- (a) 服務合約或學徒合約；或
- (b) 親自執行任何工作或付出勞動力的合約，

而相關詞句均須據此解釋；”。

- (e) 刪去“家庭責任或家庭崗位”的定義。
- (f) 在“志願團體”的定義中，刪去(b)段而代以 —

“(b) 由政府全部或部分資助其經常性開支的團體；或”。

(g) 加入 —

“ “見習大律師” (pupil)、 “見習職位” (pupillage)、 “租賃” (tenancy)及 “承租人” (tenant)等詞的涵義，一如它們通常應用於與大律師事務所有關的事項時所具有的涵義；”

4 刪去該條而代以 —

“ 4. 為2個或以上的原因作出的作為

如 —

- (a) 某作為是為2個或2個以上的原因而作出的；及
- (b) 其中一個原因是某人的性傾向或年齡(不論該原因是否作出該作為的主要原因或一個重要原因)，

則就本條例而言，該作為即視為是為(b)段所指明的原因而作出的。”。

5 (a) 在標題中，刪去“官方”而代以“政府”。

(b) 刪去“官方”而代以“政府”。

6 刪去該條。

7 刪去第(3)款。

第II部 刪去該部。

27 刪去第(2)、(3)及(4)款而代以 —

“(2) 就本條例而言，任何人(“該歧視者”)如對另一人(“該受屈人士”)施加一項要求或條件，雖然他同樣地對或會對與該受屈人士有不同性傾向的人施加該項要求或條件，但——

- a) 與該受屈人士有相同性傾向的人能符合該項要求或條件的人數比例，遠較非該性傾向的人能符合該項要求或條件的人數比例為小；
- (b) 該歧視者不能顯示不論被施加該項要求或條件的人的性傾向為何，該項要求或條件是有理由支持的；及
- (c) 由於該受屈人士不能符合該項要求或條件，以致該項要求或條件是對該受屈人士不利的，

即屬基於該人的性傾向歧視該人。”。

35 刪去所有“教育主管當局”而代以“教育機構”。

38 刪去第(3)款而代以——

“(3) 本條對或就下述情況不適用——

- (a) 在處所提供居停地方而——
 - (i) 提供或建議提供居停地方的人士或其近親(“有關佔用人”)居住於並擬繼續居住於該處所；

(ii) 在有關處所內，除有關佔用人佔用的住宿地方外，還有該有關佔用人與居住於該處所但並非屬該有關佔用人家庭成員的人共用的住宿地方（不包括儲物地方或通道）；及

(iii) 有關處所屬小型處所；
或

(b) 任何宗教團體所提供的居停地方

(4) 就第(3)款而言，符合以下情況的處所被視為小型處所——

(a) 該處所構成在有關佔用人佔用的住宿地方以外的、供一個或以上家庭（根據獨立分開的出租協議或類似的協議）居住的居住地方，而在該處所內通常沒有供超過2個這類家庭居住的居住地方，而只有有關佔用人及其家庭成員居住於他所佔用的住宿地方；

(b) 該處所並非(a)段所指的處所，而在該處所內通常沒有供超過6人（有關佔用人及其家庭成員不計在內）居住的居住地方。

(5) 總督會同行政局可藉憲報公告修訂第(4)(b)款，以另一數目代替該款內的數目。”。

42 刪去“皇室”

新條文 加入 —

“42A. 大律師

(1) 任何大律師或大律師書記如就所提供的見習職位或租賃，在以下方面或藉以下做法基於該人的性傾向歧視任何人，即屬違法 —

- (a) 在為決定誰應獲提供該見習職位或租賃而作出的安排上；
- (b) 就該項提供而提出的條款上；或
- (c) 拒絕向該人提供或故意不向該人提供該見習職位或租賃。

(2) 任何大律師或大律師書記如在以下方面或藉以下做法，基於該人的性傾向歧視該名已在有關事務所任見習大律師或已是有關事務所的承租人的人，即屬違法 —

- (a) 在對該人作為見習大律師或承租人而適用的任何條款上；
- (b) 在向該人提供或不向該人提供訓練或獲取經驗的機會上；
- (c) 在向該人提供或不向該人提供利益、設施或服務上；或
- (d) 終止該人的見習職位，或使該人受到壓力而要離開該事務所或使該人遭受其他不利。

(3) 任何人如就發出、拒發或接受指示以委聘大律師一事，基於任何人的性傾向歧視該人，即屬違法。”

44 刪去所有“educational institution”而代以“educational establishment”

新條文 加入 —

“53A. 保險

任何人若對某一性傾向的人士，基於其性傾向而就向該性傾向的人士提出或就該性傾向的人士可獲得的年金、人壽保險單、意外保險單或任何其他保險單的條款方面加以歧視，而若該歧視 —

(a) 是基於可合理依賴的來源的精算或統計資料，或假若沒有該種資料，則基於可獲得的其他資料；及

(b) 在考慮(a)段所提述的資料(若有的話)及任何其他有關資料後屬於合理，

則本部並不令該歧視違法。”。

54 刪去第(2)、(3)及(4)款而代以 —

“(2) 就本條例而言，任何人(“該歧視者”)如對另一人(“該受屈人士”)施加一項要求或條件，雖然他同樣地對或會對與該受屈人士不同年齡的人施加該項要求或條件，但 —

- (a) 與該受屈人士相同年齡的人能符合該項要求或條件的人數比例，遠較其他年齡的人能符合該項要求或條件的人數比例為小；
- (b) 該歧視者不能顯示不論被施加該項要求或條件的人的年齡為何，該項要求或條件是有理由支持的；及
- (c) 由於該受屈人士不能符合該項要求或條件，以致該項要求或條件是對該受屈人士不利的，

即屬基於該人的年齡歧視該人 ”、

- 62 (a) 在第(1)、(2)及(3)款中，刪去所有“教育主管當局”而代以“教育機構”。
- (b) 在第(4)款中，刪去兩度出現的“educational institution”而代以“educational establishment”。
- (c) 在第(4)款中，在“該計劃”之後加入“訂定”。

65 刪去第(3)款而代以 —

“ (3) 本條對或就下述情況不適用 —

(a) 在處所提供居停地方而 —

- (i) 提供或建議提供居停地方的人士或其近親 (“有關佔用人”) 居住於並擬繼續居住於該處所；

- (ii) 在有關處所內，除有關佔用人佔用的住宿地方外，還有該有關佔用人與居住於該處所但並非屬該有關佔用人家庭成員的人共用的住宿地方（不包括儲物地方或通道）；及
- (iii) 有關處所屬小型處所；
- (b) 任何宗教團體所提供的居停地方；
- (c) 任何慈善或其他志願團體專為某一年齡的人士提供的居停地方；或
- (d) 由於任何人的年齡向其提供包括優惠的真誠利益。

(4) 就第(3)款而言，符合以下情況的處所被視為小型處所 —

- (a) 該處所構成在有關佔用人佔用的住宿地方以外的、供一個或以上家庭（根據獨立分開的出租協議或類似的協議）居住的居住地方，而在該處所內通常沒有供超過2個這類家庭居住的居住地方，而只有有關佔用人及其家庭成員居住於他所佔用的住宿地方；
- (b) 該處所並非(a)段所指的處所，而在該處所內通常沒有供超過6人（有關佔用人及其家庭成員不計在內）居住的居住地方，

(5) 總幹會同行政局可藉憲報公告修訂第(4)(b)款，以另一數目代替該款內的數目。”

71 刪上“皇室”

新條文 加入 —

71A. 大律師

(1) 任何大律師或大律師書記如就所提供的見習職位或租賃，在以下方面或藉以下做法基於該人的年齡歧視任何人，即屬違法 —

- (a) 在為決定誰應獲提供該見習職位或租賃而作出的安排上；
- (b) 就該項提供而提出的條款上；或
- (c) 拒絕向該人提供或故意不向該人提供該見習職位或租賃，

(2) 任何大律師或大律師書記如在以下方面或藉以下做法，基於該人的年齡歧視該名已在有關事務所任見習大律師或已是有關事務所的承租人的人，即屬違法 —

- (a) 在對該人作為見習大律師或承租人而適用的任何條款上；
- (b) 在向該人提供或不向該人提供訓練或獲取經驗的機會上；
- (c) 在向該人提供或不向該人提供利益、設施或服務上；或

- (d) 終止該人的見習職位，或使該人受到壓力而要離開該事務所或使該人遭受其他不利。

(3) 任何人如就發出、拒發或接受指示以委聘大律師一事，基於任何人的年齡歧視該人，即屬違法。”。

新條文 加入 —

“77A. 有關法定權限的進一步例外情況

(1) 本部不影響附表指明條文的實施。

(2) 任何人如為遵守附表指明條文的規定而有需要作出任何作為，則本部並不將該作為定為違法。

(3) 總督會同行政局可藉憲報公告修訂附表。

(4) 根據第(3)款作出的公告須經立法局批准。”。

83 (a) 在第(5)款中，刪去“94”而代以“91”。

(b) 刪去第(7)款。

84 刪去該條而代以 —

“84. 慈善

(1) 本條例並不 —

(a) 解釋為影響本款所適用的條文；
或

(b) 將任何為使該等條文得以施行而作出的作為定為違法。

(2) 如載於一份慈善文書中的條文規定只向某一性傾向或年齡的人授予利益(在例外情況下向另一性傾向或年齡的人授予的利益或向另一性傾向或年齡的人授予的相對而言屬微不足道利益的利益不算在內)，第(1)款適用於該條文

(3) 在施行本條時，須考慮《稅務條例》(第112章)第88條

(4) 在本條中 —

“慈善文書”(charitable instrument)指與慈善目的有關的成文法則或其他文書；

“慈善目的”(charitable purposes)指按照任何成文法則或法律規則完全屬慈善性質的目的。”。

85

刪去該條而代以 —

“85. 志願團體

(1) 即使本條所適用的任何志願團體的成員資格是開放予公眾人士或部分公眾人士的，本條例不得解釋為將以下做法定為違法 —

- (a) 該團體的成員資格只限開放予某一性傾向及年齡的人(微不足道的例外情況不算在內)，而此限制在顧及該團體的主要宗旨屬合理；
或
- (b) 在該團體的成員資格受如此限制的情況下，向其成員提供利益、設施或服務。

(2) 本條例並不 —

(a) 解釋為影響本款所適用的條文；
或

(b) 將任何為使該等條文得以施行而作出的作為定為違法、

(3) 如只向某一性傾向或年齡的人授予利益的條文(在例外情況下向另一性傾向或年齡的人授予的利益或向另一性傾向或年齡的人授予的相對而言屬微不足道利益不算在內)構成志願團體的主要宗旨，第(2)款適用於該條文

87 刪去所有“education institution”而代以“education establishment”。

88 刪去該條。

91 刪去該條而代以 —

“91. 根據本條例提出的申索

(1) 任何人(“申索人”)指另一人(“答辯人”) —

(a) 曾作出針對該申索人的，並憑藉第Ⅲ或Ⅳ部，或第82條而屬違法的歧視作為；

(b) 曾作出憑藉第49或83條而屬違法的作為；或

(c) 憑藉第99、100或101條而須視為曾作出針對該申索人的該等歧視作為，

而提出的申索，可作為民事程序的標的，方式一如其他侵權申索。

(2) 如就某項作為可根據任何成文法則提出上訴或上訴性質的法律程序，則第(1)款不適用於根據第33或60條就該作為而提出的申索

(3) 根據第(1)款提出的法律程序，須在地方法院提出，但可就該等法律程序給予的補救，與高等法院可在本款以外給予的補救相同

(4) 在不限制第(3)款所賦予的權力的一般性的原則下，地方法院可——

- (a) 作出答辯人有從事或作出違反本條例的任何行為或任何作為的宣告，並命令答辯人不得重覆或繼續該違法行為或作為；
- (b) 命令答辯人作出任何合理的作為或一連串的行為以舒緩申索人所蒙受的損失或損害；
- (c) 命令答辯人僱用或重新僱用申索人；
- (d) 命令答辯人擢升申索人；
- (e) 命令答辯人向申索人支付用以補償申索人由於答辯人的行為或作為所蒙受的損失或損害的損害賠償；
- (f) 命令答辯人向申索人支付懲罰性或懲戒性的損害賠償；或
- (g) 作出命令宣告任何違反本條例的合約或協議從一開始或從該命令指明的其他日期開始全部或部分無效。

(5) 不論有何其他法律，地方法院憑藉本款具有司法管轄權聆訊及裁定根據第(1)款提出的任何法律程序，及具有一切必要或合宜的權力，以提供、發出或作出本條例提述的任何補救、強制令或命令。

(6) 為免生疑問，現聲明：就違法歧視作為而判給的損害賠償，不論是否包括其他項目的補償，均可包括對感情損害的補償。”。

92 刪去該條。

94 刪去該條。

100 加入 —

“ (5) 為免生疑問，現聲明：本條不就刑事程序而適用。”。

新條文 加入 —

“附表 (第77A條)

就第77A條指明的條文

1. <僱傭條例> (第57章)第31R(1)(b)條。
2. <僱員補償條例> (第282章)。
3. <肺塵埃沉着病(補償)條例> (第360章)。
4. <職業性失聰(補償)條例> (第469章)。”。

103 (a) 刪去該條之前的“相應修訂”及“<香港人權法案條例>”。

(b) 刪去該條。

The Legislative Council

LegCo Paper No. CB(3)1287/96-97

Ref : CB(3)/B/P2/EW1

Tel : 2869 9498

Date : 24 June 1997

From : Clerk to the Legislative Council

To : Members of the Legislative Council

Sitting Commencing on 23 June 1997

Committee Stage Amendment

Equal Opportunities (Race) Bill

Further to LegCo Paper No. CB(3) 1197/96-97 of 17 June 1997, Members are invited to note that the President has given leave for Mrs Elizabeth WONG to revise her proposed amendments.

2. A full set of Mrs WONG's revised amendments to the Bill is attached.

(Miss Betty MA)
for Clerk to the Legislative Council

Encl.

立法局

立法局 CB(3)1287/96-97 號文件

檔號： CB(3)/B/P2/EW1
電話： 2869 9498
日期： 一九九七年六月二十四日
由： 立法局秘書
致： 立法局各議員

一九九七年六月二十三日開始的
立法局會議

全體委員會審議階段修正案

《平等機會（種族）條例草案》

繼於一九九七年六月十七日發出的立法局 CB(3)1197/96-97 號文件，現請各位議員注意，主席已批准黃錢其濂議員修改其擬議修正案。

2. 現隨函附上黃錢其濂議員對該條例草案動議的修正案所作出的全部修改。

立法局秘書
(馬淑霞代行)

連附件

EQUAL OPPORTUNITIES (RACE) BILL

COMMITTEE STAGE

Amendments to be moved by the Hon. Mrs. WONG
CHIEN Chi-lien, Elizabeth, CBE, ISO, JP

Clause

Amendment Proposed

Long
title

By deleting "nationality, national or".

1

By deleting the clause and substituting -

"1. Short title and commencement

(1) This Ordinance may be cited as the Equal Opportunities (Race) Ordinance.

(2) Section 42 shall come into operation on the day the Ordinance is published in the Gazette.

(3) The Governor 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 (other than section 42) and such a day, or the later or last of such different days, shall be a day no later than 1 January 1998.

(4) Subject to subsection (3), this Ordinance (other than section 42) shall come into operation on 1 January 1998."

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 2 | <p>(a) In paragraph (a), by deleting "colour, nationality, and national or" and substituting "colour and".</p> <p>(b) In paragraph (b), by deleting "institutions" and substituting "establishments".</p> |
| 3(1) | <p>(a) By deleting the definition of "charitable benefits".</p> <p>(b) In the definition of "合約工作者", by deleting "而為該人進行工作的任何人" and substituting "而替該另一人工作的人".</p> <p>(c) By deleting the definitions of "educational authority" and "educational institution" and substituting -
 "educational establishment" (教育機構) has the same meaning as in section 2 of the Sex Discrimination Ordinance (Cap. 480);".</p> <p>(d) By deleting the definition of "employment" and substituting -
 "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;".</p> <p>(e) In the definition of "race", by deleting "ethnic or national origin, or nationality" and substituting "or ethnic origin".</p> <p>(f) In the definition of "voluntary body", by deleting paragraph (b) and substituting -
 "(b) a body whose recurrent expenditure is funded wholly or in part by the Government; or".</p> |

Clause

Amendment Proposed

(g) By adding -

““pupil” (見習大律師), “pupillage” (見習職位),
“tenancy” (租賃) and “tenant” (承租人) have
the meanings commonly associated with their
use in the context of a set of barristers’
chambers;”.

4 By deleting the clause and substituting -

“4. Act done for 2 or more reasons

If -

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

(b) one of the reasons is the race of a
person (whether or not it is the
dominant or a substantial reason for
doing the act),

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

6 By deleting the clause.

7 By deleting subclause (3).

8 By deleting subclauses (2), (3) and (4) and substituting -

“(2) For the purposes of this Ordinance, a person
(“the discriminator”) discriminates against another
person (“the aggrieved person”) on the ground of that
person’s race if the discriminator applies to the
aggrieved person a requirement or condition which the

ClauseAmendment Proposed

discriminator applies or would apply equally to a person who is not of the same race as the aggrieved person but -

- (a) which is such that the proportion of persons of the same race as the aggrieved person who can comply with it is considerably smaller than the proportion of persons who are not of the same race who can comply with it;
- (b) which the discriminator cannot show to be justifiable irrespective of the race of the person to whom it is applied; and
- (c) which is to the aggrieved person's detriment because he or she cannot comply with it."

- 16 (a) By deleting "educational authority" wherever it appears and substituting "educational establishment".
- (b) In subclause (3) -
- (i) by deleting "on the ground of national origin or nationality,";
 - (ii) by deleting "educational institution" and substituting "educational establishment".

- 19 By deleting subclause (3) and substituting -
- "(3) Nothing in this section applies to or in respect of -
- (a) the provision of accommodation in premises if -

Clause

Amendment Proposed

- (1) the person who provides or proposes to provide the accommodation or a near relative of that person ("the relevant occupier") resides, and intends to continue to reside, on those premises;
 - (ii) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier's household; and
 - (iii) the premises are small premises;
 - (b) accommodation provided by a religious body; or
 - (c) accommodation provided by a charitable or other voluntary body solely for persons of a particular race.
- (4) Premises shall be treated for the purposes of subsection (3) as small premises if -

Clause

Amendment Proposed

- (a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any members of his or her household reside in the accommodation occupied by him or her;
- (b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his or her household.

(5) The Governor in Council may, by notice in the Gazette, amend subsection (4) (b) by substituting another number for the number appearing in that subsection."

New

By adding -

"23A. Barristers

(1) It is unlawful for a barrister or a barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person on the ground of the person's race -

Clause

Amendment Proposed

- (a) in the arrangements which are made for the purposes of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which the pupillage or tenancy is offered; or
- (c) by refusing, or deliberately omitting, to offer the pupillage or tenancy to the person.

(2) It is unlawful for a barrister or a barrister's clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person's race -

- (a) in respect of any terms applicable to the person as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person;
- (c) in the benefits, facilities or services which are afforded or denied to the person; or
- (d) by terminating the person's pupillage or by subjecting the person to any pressure to leave the chambers or any other detriment.

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

<u>Clause</u>	<u>Amendment Proposed</u>
33	<p>(a) In subclause (5), by deleting "46" and substituting "43".</p> <p>(b) By deleting subclause (7).</p>
36	<p>By deleting the clause and substituting -</p> <p style="padding-left: 40px;">"36. Charities</p> <p style="padding-left: 80px;">(1) Nothing in this Ordinance shall -</p> <p style="padding-left: 120px;">(a) be construed as affecting a provision to which this subsection applies; or</p> <p style="padding-left: 120px;">(b) render unlawful an act which is done in order to give effect to such a provision.</p> <p style="padding-left: 80px;">(2) Subsection (1) applies to a provision for conferring benefits on persons of a particular race (disregarding any benefits to other persons which are exceptional or are relatively insignificant), being a provision which is contained in a charitable instrument.</p> <p style="padding-left: 80px;">(3) In applying this section, account shall be taken of section 88 of the Inland Revenue Ordinance (Cap. 112).</p> <p style="padding-left: 80px;">(4) In this section -</p> <p style="padding-left: 120px;">"charitable instrument" (慈善文書) means an enactment or other instrument so far as it relates to charitable purposes;</p> <p style="padding-left: 120px;">"charitable purposes" (慈善目的) means purposes which are exclusively charitable according to any enactment or rule of law."</p>
37	<p>By deleting the clause and substituting -</p>

Clause

Amendment Proposed

"37. Voluntary bodies

(1) Nothing in this Ordinance shall be construed as rendering unlawful -

(a) the restriction of membership of a voluntary body to persons of a particular race (disregarding any minor exceptions) where such restriction is reasonable having regard to the main object of the body; or

(b) the provision of benefits, facilities or services to members of a voluntary body where the membership is so restricted,

even though membership of the body is open to the public, or to a section of the public.

(2) Nothing in this Ordinance shall -

(a) be construed as affecting a provision to which this subsection applies; or

(b) render unlawful an act which is done in order to give effect to such a provision.

(3) Subsection (2) applies to a provision for conferring benefits on persons of a particular race (disregarding any benefits to other persons which are exceptional or relatively insignificant), being a provision which constitutes the main object of a voluntary body."

<u>Clause</u>	<u>Amendment Proposed</u>
39	By deleting "educational institution" where it twice appears and substituting "educational establishment".
40	<p>(a) By deleting "educational authority" and substituting "educational establishment".</p> <p>(b) By deleting paragraphs (a), (b) and (c) and substituting -</p> <p style="padding-left: 40px;">"(a) the Primary One Admission System, Secondary School Places Allocation System, Junior Secondary Education Assessment System, or Secondary Six Admission Procedure;</p> <p style="padding-left: 40px;">(b) any scheme, system or programme that replaces in whole or in part a scheme or system mentioned in paragraph (a); or</p> <p style="padding-left: 40px;">(c) any provision of a law, being a provision relating to the admission of students."</p>
New	<p>By adding -</p> <p style="padding-left: 40px;">"41A. Immigration law and policy</p> <p style="padding-left: 80px;">(1) As regards persons not having the right to enter and remain in Hong Kong, this Ordinance does not affect -</p> <p style="padding-left: 120px;">(a) any immigration legislation governing entry into, stay in and departure from Hong Kong;</p> <p style="padding-left: 120px;">(b) any government policy for the time being in force providing for the application of any such legislation; or</p>

ClauseAmendment Proposed

(c) any act done by a person if it was necessary to do it in order to comply with such legislation or such a policy.

(2) In this section, "legislation" (法例) means legislation that can be amended by an Ordinance."

43 By deleting the clause and substituting -

"43. Claims under this Ordinance

(1) A claim by any person ("the claimant") that another person ("the respondent") -

(a) has committed an act against the claimant which is unlawful by virtue of Part II, or section 32;

(b) has committed an act which is unlawful by virtue of section 30 or 33; or

(c) is by virtue of section 51, 52 or 53 to be treated as having committed such an act against the claimant,

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 14 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, would be obtainable in the High Court.

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

ClauseAmendment Proposed

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and order that the respondent shall not repeat or continue such unlawful conduct or act;
- (b) order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent shall employ or re-employ the claimant;
- (d) order that the respondent shall promote the claimant;
- (e) order that the respondent pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;
- (f) order that the respondent shall pay to the claimant punitive or exemplary damages; or
- (g) make an order declaring void in whole or in part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.

(5) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings

ClauseAmendment Proposed

under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.

(6) For the avoidance of doubt, it is hereby declared that damages in respect of an unlawful act against the claimant may include compensation for injury to feelings whether or not they include compensation under any other head."

44 By deleting the clause.

46 By deleting the clause.

52 By adding -

"(5) For the avoidance of doubt, it is hereby declared that this section shall not apply for the purposes of any criminal proceedings."

55 (a) By deleting "**Consequential Amendments**" and "**Hong Kong Bill of Rights Ordinance**" before the clause.

(b) By deleting the clause.

平等機會(種族)條例草案

委員會審議階段

由黃鏡其議員動議的修正案

<u>條次</u>	<u>建議修正案</u>
詳題	刪去“國籍、民族或”。
1	刪去該條而代以 — “1. 簡稱及生效日期 (1) 本條例可引稱為〈平等機會(種族)條例〉。 (2) 第42條自本條例在憲報刊登的日期起實施。 (3) 本條例(除第42條外)由總督以憲報公告 — (a) 指定的日期起；或 (b) 就不同條文指定的不同日期起， 實施，而該日期或該等不同日期中的較後或最後日期須不遲於1998年1月1日。 (4) 除第(3)款另有規定外，本條例(除第42條外)自1998年1月1日起實施。”。
2	(a) 在(a)段中，刪去“膚色、國籍及民族或”而代以“膚色及”。 (b) 在(b)段中，刪去“institutions”而代以“establishments”。
3(1)	(a) 刪去“慈善利益”的定義。

b) 在“合約工作者”的定義中，刪去“而為該人進行工作的任何人”而代以“而替該另一人工作的人”。

(c) 刪去“教育主管當局”及“教育機構”的定義而代以 —

““教育機構”(educational establishment)的涵義，與《性別歧視條例》(第480章)第2條中該詞的涵義相同；”。

(d) 刪去“僱用”的定義而代以 —

““僱用”(employment)指根據以下合約的僱用 —

(a) 服務合約或學徒合約；或

(b) 親自執行任何工作或付出勞動力的合約，

而相關詞句均須據此解釋；”。

(e) 在“種族”的定義中，刪去“人種或民族始源，或國籍”而代以“或人種始源”。

(f) 在“志願團體”的定義中，刪去(b)段而代以 —

“(b) 由政府全部或部分資助其經常性開支的團體；或”。

(g) 加入 —

““見習大律師”(pupil)、“見習職位”(pupillage)、“租賃”(tenancy)及“承租人”(tenant)等詞的涵義，一如它們通常應用於與大律師事務所有關的事項時所具有的涵義；”。

； 刪去該條而代以 —

“4. 為2個或以上的原因作出的作為

如 —

- (a) 某作為是為2個或2個以上的原因而作出的；及
- (b) 其中一個原因是某人的種族(不論該原因是否作出該作為的主要原因或一個重要原因)，

則就本條例而言，該作為即視為是為(b)段所指明的原因而作出的。”。

6 刪去該條。

7 刪去第(3)款。

8 刪去第(2)、(3)及(4)款而代以 —

“ (2) -- 就本條例而言，任何人(“該歧視者”)如對另一人(“該受屈人士”)施加一項要求或條件，雖然他同樣地對或會對與該受屈人士不同種族的人施加該項要求或條件，但 —

- (a) 與該受屈人士有相同種族的人能符合該項要求或條件的人數比例，遠較非該種族的人能符合該項要求或條件的人數比例為小；
- (b) 該歧視者不能顯示不論被施加該項要求或條件的人的種族為何，該項要求或條件是有理由支持的；及

由於該受屈人士不能符合該項要求或條件，以致該項要求或條件是對該受屈人士不利的，

即屬基於該人的種族歧視該人。”。

16 (a) 刪去所有“教育主管當局”而代以“教育機構”。

(b) 在第(3)款中 —

(i) 刪去“基於民族始源或國籍而”；

(ii) 刪去“educational institution”而代以“educational establishment”。

19 刪去第(3)款而代以 —

“(3) 本條對或就下述情況不適用 —

(a) 在處所提供居停地方而 —

(i) 提供或建議提供居停地方的人士或其近親(“有關佔用人”)居住於並擬繼續居住於該處所；

(ii) 在有關處所內，除有關佔用人佔用的住宿地方外，還有該有關佔用人與居住於該處所但並非屬該有關佔用人家庭成員的人共用的住宿地方(不包括儲物地方或通道)；及

(iii) 有關處所屬小型處所；

(b) 任何宗教團體所提供的居停地方；或

(c) 任何慈善或其他志願團體專為某一種族的人士提供的居停地方。

(4) 就第(3)款而言，符合以下情況的處所被視為小型處所 —

(a) 該處所構成在有關佔用人佔用的住宿地方以外的、供一個或以上家庭(根據獨立分開的出租協議或類似的協議)居住的居住地方，而在該處所內通常沒有供超過2個這類家庭居住的居住地方，而只有有關佔用人及其家庭成員居住於他所佔用的住宿地方；

(b) 該處所並非(a)段所指的處所，而在該處所內通常沒有供超過6人(有關佔用人及其家庭成員不計在內)居住的居住地方。

(5) 總督會同行政局可藉憲報公告修訂第(4)(b)款，以另一數目代替該款內的數目。”。

新條文 加入 —

“23A. 大律師

(1) 任何大律師或大律師書記如就所提供的見習職位或租賃，在以下方面或藉以下做法基於該人的種族歧視任何人，即屬違法 —

- (a) 在為決定誰應獲提供該見習職位或租賃而作出的安排上；
- (b) 就該項提供而提出的條款上；或
- (c) 拒絕向該人提供或故意不向該人提供該見習職位或租賃。

(2) 任何大律師或大律師書記如在以下方面或藉以下做法，基於該人的種族歧視該名已在有關事務所任見習大律師或已是有關事務所的承租人的，即屬違法 —

- (a) 在對該人作為見習大律師或承租人而適用的任何條款上；
- (b) 在向該人提供或不向該人提供訓練或獲取經驗的機會上；
- (c) 在向該人提供或不向該人提供利益、設施或服務上；或
- (d) 終止該人的見習職位，或使該人受到壓力而要離開該事務所或使該人遭受其他不利。

(3) 任何人如就發出、拒發或接受指示以委聘大律師一事，基於任何人的種族歧視該人，即屬違法。”。

33 (a) 在第(5)款中，刪去“46”而代以“43”。

(b) 刪去第(7)款。

36 刪去該條而代以 —

“36. 慈善

(1) 本條例並不 —

建議修正案

- (a) 解釋為影響本款所適用的條文；
或
- (b) 將任何為使該等條文得以施行而作出的作為定為違法。

(2) 如載於一份慈善文書中的條文規定只向某一種族的人授予利益(在例外情況下向另一種族的人授予的利益或向另一種族的人授予的相對而言屬微不足道的利益不算在內)，第(1)款適用於該條文。

(3) 在施行本條時，須考慮《稅務條例》(第112章)第88條。

(4) 在本條中 —

“慈善文書”(charitable instrument)指與慈善目的有關的成文法則或其他文書；

“慈善目的”(charitable purposes)指按照任何成文法則或法律規則完全屬慈善性質的目的。”。

37

刪去該條而代以 —

“37. 志願團體

(1) 即使本條所適用的任何志願團體的成員資格是開放予公眾人士或部分公眾人士的，本條例不得解釋為將以下做法定為違法 —

- (a) 該團體的成員資格只限開放予某一種族的人(微不足道的例外情況不算在內)，而此限制在顧及該團體的主要宗旨屬合理；或
- (b) 在該團體的成員資格受如此限制的情況下，向其成員提供利益、設施或服務。

(2) 本條例並下 —

- (a) 解釋為影響本款所適用的條文；
或
- (b) 將任何為使該等條文得以施行而作出的作為定為違法。

(3) 如只向某一種族的人授予利益的條文(在例外情況下向另一種族的人授予的利益或向另一種族的人授予的相對而言屬微不足道的利益不算在內)構成志願團體的主要宗旨，第(2)款適用於該條文。”。

39 刪去兩度出現的“educational institution”而代以
“educational establishment”。

40 (a) 刪去“educational authority”而代以
“educational establishment”。

(b) 刪去(a)、(b)及(c)段而代以 —

- “ (a) 小一入學統籌辦法、中學學位分配辦法、
初中成績評核辦法、或中六收生程
序；
- (b) 在(a)段所述的任何代替該辦法的全部或
部分的安排、辦法或計劃；或
- (c) 任何關乎入學的法律條文。”。

新條文 加入 —

“ 41A. 入境法律及政策

(1) 就沒有進入香港或留在香港的權利的人
而言，本條例並不影響 —

- (a) 規限進入香港、在港逗留及離開
香港的任何入境法例；

- (b) 為任何該等法例的施行而在當時執行的任何政府政策；或
- (c) 任何人如為遵守該等法例或該等政策而有需要作出的任何作為。

(2) 在本條中，“法例”(legislation)指可藉條例修訂的法例。”。

43

刪去該條而代以 —

“43. 根據本條例提出的申索

(1) 任何人(“申索人”)指另一人(“答辯人”) —

- (a) 曾作出針對該申索人的，並憑藉第II部，或第32條而屬違法的歧視作為；
- (b) 曾作出憑藉第30或33條而屬違法的作為；或
- (c) 憑藉第51、52或53條而須視為曾作出針對該申索人的該等歧視作為，

而提出的申索，可作為民事程序的標的，方式一如其他侵權申索。

(2) 如就某項作為可根據任何成文法則提出上訴或上訴性質的法律程序，則第(1)款不適用於根據第14條就該作為而提出的申索。

(3) 根據第(1)款提出的法律程序，須在地方法院提出，但可就該等法律程序給予的補救，與高等法院可在本款以外給予的補救相同。

(4) 在下限制第(3)款所賦予的權力的一般性的原則下，地方法院可——

- (a) 作出答辯人有從事或作出違反本條例的任何行為或任何作為的宣告，並命令答辯人不得重覆或繼續該違法行為或作為；
- (b) 命令答辯人作出任何合理的作為或一連串的行為以舒緩申索人所蒙受的損失或損害；
- (c) 命令答辯人僱用或重新僱用申索人；
- (d) 命令答辯人擢升申索人；
- (e) 命令答辯人向申索人支付用以補償申索人由於答辯人的行為或作為所蒙受的損失或損害的損害賠償；
- (f) 命令答辯人向申索人支付懲罰性或懲戒性的損害賠償；或
- (g) 作出命令宣告任何違反本條例的合約或協議從一開始或從該命令指明的其他日期開始全部或部分無效。

(5) 不論有何其他法律，地方法院憑藉本款具有司法管轄權聆訊及裁定根據第(1)款提出的任何法律程序，及具有一切必要或合宜的權力，以提供、發出或作出本條例提述的任何補救、強制令或命令。

(6) 為免生疑問，現聲明：就違法歧視作為而判給的損害賠償，不論是否包括其他項目的補償，均可包括對感情損害的補償。”。

條次

建議修正案

44 刪去該條。

46 刪去該條。

52 加入 —

“ (5) 為免生疑問，現聲明：本條不就刑事程序而適用。 ”。

55 (a) 刪去該條之前的“相應修訂”及“〈香港人權法案條例〉”。

(b) 刪去該條。

票期問
VOTE : 5
DATE : 24/06/97
TIME : 10:18:34

議 MOTION : FAMILY STATUS DISCRIMINATION BILL
- COMMITTEE STAGE AMENDMENTS - CLAUSE 8
<家庭崗位歧視條例草案>
- 全體委員會審議階段 - 第 8 條

議 PROPOSED : MR LAU CHIN-SHEK
劉千石議員

議 SECONDED :

票總和 VOTE TOTALS :-
和 TOTAL : 51
或 YES : 24
對 NO : 24
權 ABSTAIN : 3

別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

位 咭號	員 員	MEMBERS	投票	VOTE	位 咭號	員 員	MEMBERS	投票	VOTE
SEAT CARD					SEAT CARD				
1	1 李鵬飛	Hon Allen LEE	反對	NO	31	31 李卓人	Hon LEE Cheuk-yan	贊成	YES
2	2 周梁淑怡	Hon Mrs Selina CHOW	反對	NO	32	32 陳鑑林	Hon CHAN Kam-lam	反對	NO
3	3 李柱銘	Hon Martin LEE	贊成	YES	33	33 陳榮燦	Hon CHAN Wing-chan	棄權	ABSTAIN
4	4 李國寶	Dr Hon David LI	贊成	YES	34	34 陳婉嫻	Hon CHAN Yuen-han	贊成	YES
5	5 倪少傑	Hon NGAI Shiu-kit	反對	NO	35	35 鄭家富	Hon Andrew CHENG Kar-foc	贊成	YES
6	6 司徒華	Hon SZETO Wah	贊成	YES	36	36 鄭明訓	Hon Paul CHENG	反對	NO
7	7 劉曼發	Hon LAU Wong-fat	反對	NO	37	37 鄭耀棠	Hon CHENG Yiu-tong	棄權	ABSTAIN
8	8 何承天	Hon Edward HO	反對	NO	38	38 張炳良	Hon CHEUNG Bing-leung	贊成	YES
9	9 夏佳理	Hon Ronald ARCULLI	反對	NO	39	39 張漢忠	Hon CHEUNG Hon-chung	贊成	YES
10	10 劉健儀	Hon Mrs Miriam LAU	反對	NO	40	40 蔡根培	Hon CHOY Kan-pui	反對	NO
11	11 梁智鴻	Dr Hon LEONG Che-hung	贊成	YES	41	41 朱幼麟	Hon David CHU Yu-lin	反對	NO
12	12 陳偉業	Hon Albert CHAN	贊成	YES	42	42 何俊仁	Hon HO Chun-yan	反對	NO
13	13 張文光	Hon CHEUNG Man-kwong	贊成	YES	43	43 葉國謙	Hon IP Kwok-him	反對	NO
14	14 詹培忠	Hon CHIM Pui-chung	反對	NO	44	44 劉千石	Hon LAU Chin-shek	贊成	YES
15	15 馮檢基	Hon Frederick FUNG	反對	NO	45	45 劉漢銓	Hon LAU Hon-chuen	反對	NO
16	16 何敏嘉	Hon Michael HO	贊成	YES	46	46 羅祥國	Dr Hon LAW Cheung-kwok	反對	NO
17	17 黃麗遐	Dr Hon HUANG Chen-ya	贊成	YES	47	47 羅致光	Hon LAW Chi-kwong	贊成	YES
18	18 劉慧卿	Hon Emily LAU	贊成	YES	48	48 李啓明	Hon LEE Kai-ming	棄權	ABSTAIN
19	19 李永達	Hon LEE Wing-tat	贊成	YES	49	49 梁耀忠	Hon LEUNG Yiu-chung	贊成	YES
20	20 李家祥	Hon Eric LI	反對	NO	50	50 廖成利	Hon LIU Sing-lee	反對	NO
21	21 李華明	Hon Fred LI	贊成	YES	51	51 羅叔清	Hon LO Suk-ching	反對	NO
22	22 唐英年	Hon Henry TANG	贊成	YES	52	52 莫應帆	Hon MOK Ying-fan	反對	NO
23	23 涂謹申	Hon James TO	贊成	YES	53	53 吳蔭儀	Hon Margaret NG	贊成	YES
24	24 黃宜弘	Dr Hon Philip WONG	反對	NO	54	54 顏錦全	Hon NGAN Kam-chuen	反對	NO
25	25 楊森	Dr Hon YEUNG Sun	贊成	YES	55	55 覃仲備	Hon SIN Chung-kai	贊成	YES
26	26 楊李華	Hon Edward YUNG	反對	NO	56	56 曾健成	Hon TSANG Yan-shing	贊成	YES
27	27 黃偉賢	Hon Barnaby WONG	贊成	YES	57	57 謝永齡	Dr Hon John TSE Wing-ling	贊成	YES
28	28 陸恭惠	Hon Christine LOH	贊成	YES	58	58 黃錢其濂	Hon Mrs Elizabeth WONG	贊成	YES
29	29 田北俊	Hon Christine LOH	贊成	YES	59	59 任善寧	Hon YIM Sin-ling	贊成	YES
30	30 田北俊	Hon James TIEN	反對	NO					

秘書

票期問 VOTE : 6
 DATE : 24/06/97
 TIME : 11:00:21

義 MOTION : FAMILY STATUS DISCRIMINATION BILL
 - COMMITTEE STAGE AMENDMENTS - CLAUSE 54
 (家庭崗位歧視條例草案)
 - 全體委員會審議階段 - 第 54 條

義 PROPOSED : MISS CHRISTINE LOH
 陸恭蕙議員

義 SECONDED .

異總和 VOTE TOTALS :-
 口 TOTAL : 52
 戊 YES : 32
 寸 NO : 19
 舊 ABSTAIN : 1

結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS

咭號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE
1	李鵬飛	反對 NO	31	31	李卓人	贊成 YES
2	周梁淑怡	反對 NO	32	32	陳鑑林	反對 NO
3	李柱銘	贊成 YES	33	33	陳榮燦	贊成 YES
4	李國寶	反對 NO	34	34	陳婉嫻	贊成 YES
5	倪少傑	贊成 YES	35	35	鄭家富	贊成 YES
6	司徒華	反對 NO	36	36	鄭明訓	反對 NO
7	劉皇發	贊成 YES	37	37	鄭耀棠	贊成 YES
8	何承天	反對 NO	38	38	張炳良	贊成 YES
9	夏佳理	反對 NO	39	39	張漢忠	贊成 YES
10	劉健儀	贊成 YES	40	40	蔡根培	反對 NO
11	梁智鴻	贊成 YES	41	41	朱幼麟	反對 NO
12	陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13	張文光	贊成 YES	43	43	葉國謙	反對 NO
14	詹培忠	贊成 YES	44	44	劉千石	贊成 YES
15	馮檢基	贊成 YES	45	45	劉漢銓	反對 NO
16	何敏嘉	贊成 YES	46	46	羅祥國	贊成 YES
17	黃麗淵	贊成 YES	47	47	羅致光	贊成 YES
18	劉慧卿	贊成 YES	48	48	李啓明	棄權 ABSTAIN
19	李永達	贊成 YES	49	49	梁耀忠	贊成 YES
20	李家祥	反對 NO	50	50	廖成利	贊成 YES
21	李華明	贊成 YES	51	51	羅叔清	反對 NO
22	唐英年	贊成 YES	52	52	莫應帆	贊成 YES
23	涂謹申	贊成 YES	53	53	吳靄儀	贊成 YES
24			54	54	顏錦全	反對 NO
25	黃宜弘	反對 NO	55	55	單仲偕	贊成 YES
26	楊森	贊成 YES	56	56	曾健成	贊成 YES
27	楊孝華	反對 NO	57	57	謝永齡	贊成 YES
28	黃偉賢	贊成 YES	58	58	黃鏡其	贊成 YES
29	陸恭蕙	贊成 YES	59	59	任善寧	贊成 YES
30	田北俊	反對 NO				

秘書 CLERK

票期 VOTE
 間 DATE 24/06/97
 TIME 11 06 47

議 MOTION FAMILY STATUS DISCRIMINATION BILL
 - COMMITTEE STAGE AMENDMENTS - CLAUSE 64
 (家庭崗位歧視條例草案)
 - 全體委員會審議階段 - 第 64 條

議 PROPOSED MISS CHRISTINE LOH
 陸恭蕙議員

議 SECONDED

票總和 VOTE TOTALS -
 和 TOTAL 52
 成 YES 31
 對 NO 19
 權 ABSTAIN 2

結果如下

位 咭號	議員	MEMBERS	投票	VOTE	位 咭號	議員	MEMBERS	投票	VOTE
1	李鵬飛	Hon Allen LEE	反對	NO	31	李卓人	Hon LEE Cheuk-yan	贊成	YES
2	周梁淑怡	Hon Mrs Selina CHOW	反對	NO	32	陳鑑林	Hon CHAN Kam-lam	反對	NO
3	李柱銘	Hon Martin LEE	贊成	YES	33	陳榮燦	Hon CHAN Wing-chan	贊成	YES
4	李國寶	Dr Hon David LI	贊成	YES	34	陳婉嫻	Hon CHAN Yuen-han	贊成	YES
5	倪少傑	Hon NGAI Shiu-kit	反對	NO	35	鄭家富	Hon Andrew CHENG Kar-foo	贊成	YES
6	司徒華	Hon SETO Wan	贊成	YES	36	鄭明訓	Hon Paul CHENG	反對	NO
7	劉皇發	Hon LAU Wong-fat	反對	NO	37	鄭耀棠	Hon CHENG Yiu-tong	棄權	ABSTAIN
8	何承天	Hon Edward HO	反對	NO	38	張炳良	Hon CHEUNG Bing-leung	贊成	YES
9	夏佳理	Hon Ronald ARCULLI	反對	NO	39	張漢忠	Hon CHEUNG Hon-chung	贊成	YES
10	劉健儀	Hon Mrs Miriam LAU	反對	NO	40	蔡根培	Hon CHOY Kan-pui	反對	NO
11	梁智鴻	Dr Hon LEONG Che-hung	贊成	YES	41	朱幼麟	Hon David CHU Yu-lin	反對	NO
12	陳偉業	Hon Albert CHAN	贊成	YES	42	何俊仁	Hon HO Chun-yan	贊成	YES
13	張文光	Hon CHEUNG Man-kwong	贊成	YES	43	葉國謙	Hon IP Kwok-him	反對	NO
14	詹培忠	Hon CHIM Pui-chung	贊成	YES	44	劉千石	Hon LAU Chin-shek	贊成	YES
15	馮檢基	Hon Frederick FUNG	贊成	YES	45	劉漢銓	Hon LAU Hon-chuen	反對	NO
16	何敏嘉	Hon Michael HO	贊成	YES	46	羅祥國	Dr Hon LAW Cheung-rwok	贊成	YES
17	黃震遐	Dr Hon HUANG Chen-ya	贊成	YES	47	羅致光	Hon LAW Chi-kwong	贊成	YES
18	劉雲卿	Hon Emily LAU	贊成	YES	48	李啟明	Hon LEE Tai-ming	棄權	ABSTAIN
19	李永達	Hon LEE Wing-tat	贊成	YES	49	梁耀忠	Hon LEUNG Yiu-chung	贊成	YES
20	李家祥	Hon Eric LI	反對	NO	50	廖成利	Hon LIU Sing-lee	贊成	YES
21	李華明	Hon Fred LI	贊成	YES	51	羅叔清	Hon LO Suk-ching	反對	NO
22	唐英年	Hon Henry TANG	贊成	YES	52	莫應帆	Hon MOK Ying-fan	贊成	YES
23	涂謹申	Hon James TO	贊成	YES	53	吳錫儀	Hon Margaret NG	贊成	YES
24					54	顏錦全	Hon NGAN Kam-chuen	反對	NO
25	黃宜弘	Dr Hon Philip WONG	反對	NO	55	單仲偕	Hon SIN Chung-kai	贊成	YES
26	楊森	Dr Hon YEUNG Sum	贊成	YES	56	曾健成	Hon TSANG Kin-shing	贊成	YES
27	楊孝華	Hon Howard YOUNG	反對	NO	57	謝永齡	Dr Hon John TSE Wing-ling	贊成	YES
28	黃偉賢	Hon Zachary WONG	贊成	YES	58	黃錢其濂	Hon Mrs Elizabeth WONG	贊成	YES
29	陸恭蕙	Hon Christine LOH	贊成	YES	59	任善寧	Hon YUM Sin-ling	贊成	YES
30	田北俊	Hon James TIEN	反對	NO					

投票 VOTE : 12
 日期 DATE : 27/06/97
 時間 TIME : 16:37:42

動議 MOTION : EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY,
 SEXUALITY AND AGE) BILL
 - COMMITTEE STAGE - TO AMEND CLAUSES 27, 35, 38, 42
 AND 44
 (平等機會(家庭責任、性傾向及年齡)條例草案)
 - 全體委員會審議階段 - 修正第 27、35、38、42 及 44 條

提議 PROPOSED : MR LAU CHIN-SHEK
 劉千石議員

和議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 48
 贊成 YES : 27
 反對 NO : 20
 棄權 ABSTAIN : 1

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS

座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE
1	1	李鵬飛	反對 NO	31	31	李卓人	贊成 YES
2	2	周梁淑怡	反對 NO	32	32	陳鑑林	反對 NO
3	3	李柱銘	贊成 YES	33	33	陳榮燦	反對 NO
4	4	李國寶	反對 NO	34	34	陳婉嫻	棄權 ABSTAIN
5	5	倪少傑	贊成 YES	35	35	鄭家富	贊成 YES
6	6	司徒華	贊成 YES	36	36	鄭明訓	贊成 YES
7	7	劉皇發	反對 NO	37	37	鄭耀棠	反對 NO
8	8	何承天	贊成 YES	38	38	張炳良	贊成 YES
9	9	夏佳理	贊成 YES	39	39	張漢忠	反對 NO
10	10	劉健儀	反對 NO	40	40	蔡根培	反對 NO
11	11	梁智鴻	贊成 YES	41	41	朱幼麟	反對 NO
12	12	陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13	13	張文光	贊成 YES	43	43	葉國謙	反對 NO
14	14	詹培忠	贊成 YES	44	44	劉千石	贊成 YES
15	15	馮檢基	反對 NO	45	45	劉漢銓	反對 NO
16	16	何敏嘉	贊成 YES	46	46	羅祥國	反對 NO
17	17	黃宜暉	贊成 YES	47	47	羅致光	贊成 YES
18	18	劉慧卿	贊成 YES	48	48	李啓明	反對 NO
19	19	李永達	贊成 YES	49	49	梁耀忠	贊成 YES
20	20	李家祥	反對 NO	50	50	廖成利	反對 NO
21	21	李華明	贊成 YES	51	51	羅叔清	反對 NO
22	22	唐英年	贊成 YES	52	52	莫應帆	反對 NO
23	23	涂謹申	贊成 YES	53	53	吳麗儀	贊成 YES
24	24			54	54	顧錦全	反對 NO
25	25	黃宜弘	贊成 YES	55	55	單仲偕	贊成 YES
26	26	楊森	贊成 YES	56	56	曾健成	贊成 YES
27	27	楊孝華	贊成 YES	57	57	謝永齡	贊成 YES
28	28	黃偉賢	贊成 YES	58	58	黃鏡琪	贊成 YES
29	29	陸恭蕙	贊成 YES	59	59	任善寧	贊成 YES
30	30	田北俊	贊成 YES				

秘書 CLERK:

投票 VOTE : 14
 日期 DATE : 27/06/97
 時間 TIME : 16:43:03

動議 MOTION : EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY, SEXUALITY AND AGE) BILL
 - COMMITTEE STAGE - CLAUSES 28 TO 34, 36, 37, 39, 40, 41, 43 AND 45 TO 53 STAND PART OF THE BILL
 (平等機會(家庭責任、性傾向及年齡)條例草案)
 - 全體委員會審議階段 - 第 28 至 34、36、37、39、40、41、43 及 45 至 53 條納入條例草案

是議 PROPOSED : MR LAU CHIN-SHEK
 劉千石議員

副議 SECONDED :

投票總和 VOTE TOTALS :-
 總和 TOTAL : 47
 贊成 YES : 26
 反對 NO : 20
 棄權 ABSTAIN : 1

個別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS

座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE	座位 SEAT	咭號 CARD	議員 MEMBERS	投票 VOTE
11	1	李鵬飛	反對 NO	31	31	李卓人	反對 NO
2	2	周梁淑怡	反對 NO	32	32	陳雲林	反對 NO
3	3	李柱銘	贊成 YES	33	33	陳榮燦	反對 NO
4	4	李國寶	贊成 YES	34	34	陳婉嫻	棄權 ABSTAIN
5	5	倪少傑	贊成 YES	35	35	鄭家富	贊成 YES
6	6	司徒華	贊成 YES	36	36	鄭明訓	贊成 YES
7	7	劉遵義	反對 NO	37	37	鄭耀棠	反對 NO
8	8	何承天	反對 NO	38	38	張炳良	贊成 YES
9	9	夏佳理	贊成 YES	39	39	張漢忠	反對 NO
10	10	劉健儀	反對 NO	40	40	蔡根培	反對 NO
11	11	梁智鴻	贊成 YES	41	41	朱幼麟	反對 NO
12	12	陳偉業	贊成 YES	42	42	何俊仁	贊成 YES
13	13	張文光	贊成 YES	43	43	葉國謙	反對 NO
14	14	詹培忠	贊成 YES	44	44	劉千石	贊成 YES
15	15	馮檢基	反對 NO	45	45	劉漢銓	反對 NO
16	16	何敏嘉	贊成 YES	46	46	羅祥國	反對 NO
17	17	黃貫鴻	贊成 YES	47	47	羅致光	贊成 YES
18	18	劉遵義	贊成 YES	48	48	李啓明	反對 NO
19	19	李永達	贊成 YES	49	49	梁耀忠	贊成 YES
20	20	李家祥	反對 NO	50	50	廖成利	反對 NO
21	21	李華明	贊成 YES	51	51	羅叔清	反對 NO
22	22	唐英年	贊成 YES	52	52	莫應帆	反對 NO
23	23	涂謹申	贊成 YES	53	53	吳靄儀	贊成 YES
24	24			54	54	顧錦全	反對 NO
25	25	黃宜弘	贊成 YES	55	55	單仲偕	贊成 YES
26	26	楊森	贊成 YES	56	56	曾健成	贊成 YES
27	27	楊學華	贊成 YES	57	57	謝永齡	贊成 YES
28	28	黃偉賢	贊成 YES	58	58	黃鏡其	贊成 YES
29	29	陸恭蕙	贊成 YES	59	59	任善寧	贊成 YES
30	30	田北俊	贊成 YES				

秘書 CLERK

投票 VOTE : 16
 日期 DATE : 27/06/97
 時間 TIME : 16:49:01

議 MOTION : EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY,
 SEXUALITY AND AGE) BILL
 - COMMITTEE STAGE - CLAUSES 62 AND 65 STAND PART
 OF THE BILL
 (平等機會(家庭責任、性傾向及年齡)條例草案)
 - 全體委員會審議階段 - 第 62 及 65 條納入條例草案

議 PROPOSED : MR LAU CHIN-SHEK
 劉千石議員

議 SECONDED :

票總和 VOTE TOTALS :-
 和 TOTAL : 46
 成 YES : 34
 對 NO : 8
 權 ABSTAIN : 4

別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS

位 咭號	MEMBERS	投票 VOTE	位 咭號	MEMBERS	投票 VOTE
SEAT CARD	議員		SEAT CARD	議員	
1	李國飛	反對 NO	31	李卓人	贊成 YES
2	周梁淑怡	Hon Mrs Selina CHOW	32	陳鑑林	棄權 ABSTAIN
3	李柱銘	Hon Martin LEE	33	陳榮燦	贊成 YES
4	李國寶	贊成 YES	34	陳婉嫻	贊成 YES
5	倪少傑	Dr Hon David LI	35	鄭家富	Hon CHAN Yuen-han
6	司徒華	Hon NGAI Shiu-kit	36	鄭明訓	Hon Andrew CHENG Kar-foo
7	劉皇發	Hon SZE TO Wah	37	鄭耀棠	Hon Paul CHENG
8	何承天	Hon LAU Wong-fat	38	張炳良	Hon CHENG Yiu-tong
9	夏佳理	Hon Edward HO	39	張漢忠	Hon CHEUNG Bing-leung
10	劉健儀	Hon Ronald ARCULLI	40	蔡根培	Hon CHEUNG Hon-chung
11	梁智鴻	Hon Mrs Miriam LAU	41	朱幼麟	Hon CHOY Kan-pui
12	陳偉業	Dr Hon LEONG Che-hung	42	何俊仁	Hon David CHU Yu-lin
13	張文光	Hon Albert CHAN	43	葉望謙	Hon HO Chun-yan
14	詹培忠	Hon CHEUNG Man-kwong	44	劉千石	Hon IP Kwok-him
15	馮檢基	Hon CHIM Pui-chung	45	劉漢銓	Hon LAU Chin-shek
16	何啟嘉	Hon Frederick FUNG	46	羅祥國	Hon LAU Hon-chuen
17	黃麗暹	Hon Michael HO	47	羅致光	Dr Hon LAW Cheung-kwok
18	劉慧卿	Dr Hon HUANG Chen-ya	48	李啟明	Hon LAW Chi-kwong
19	李永達	Hon Emily LAU	49	梁耀忠	Hon LEE Kai-ming
20	李家祥	Hon Lee Wing-tat	50	廖成利	Hon LEUNG Yiu-chung
21	李華明	Hon Eric LI	51	羅叔清	Hon LIU Sing-lee
22	唐英年	Hon Fred LI	52	莫應帆	Hon LO Suk-ching
23	徐匯申	Hon Henry TANG	53	吳錫儀	Hon MOK Ying-fan
24	黃宜弘	Hon James TO	54	顧錦全	Hon Margaret NG
25	楊森	Dr Hon Philip WONG	55	單仲偕	Hon NGAN Kam-chuen
26	楊孝華	Dr Hon YEUNG Sum	56	曾健成	Hon SIN Chung-kai
27	黃偉賢	Hon Howard YOUNG	57	謝永齡	Hon TSANG Kin-shing
28	陸恭蕙	Hon Zachary WONG	58	黃錢其濂	Dr Hon John TSE Wing-ling
29	田北俊	Hon Christine LOH	59	任善寧	Hon Mrs Elizabeth WONG
30		Hon James TIEN			Hon YUM Sin-ling

秘書

票期
日期
間
VOTE : 17
DATE : 27/06/97
TIME : 16:53:10

議
MOTION : EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY,
SEXUALITY AND AGE) BILL
- COMMITTEE STAGE - CLAUSES 55 TO 61 STAND PART OF
THE BILL
(平等機會(家庭責任、性傾向及年齡)條例草案)
- 全體委員會審議階段 - 第 55 至 61 條納入條例草案

議
PROPOSED : MR LAU CHIN-SHEK
劉千石議員

議
SECONDED :

票總和
和
贊成
反對
權
VOTE TOTALS :-
TOTAL : 50
YES : 34
NO : 12
ABSTAIN : 4

別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS.

位 號 AT CARD	員 MEMBERS	票 投票 VOTE	位 號 SEAT CARD	員 MEMBERS	票 投票 VOTE
1	李國飛 Hon Allen LEE	反對 NO	31	李卓人 Hon LEE Cheuk-yan	贊成 YES
2	周梁淑怡 Hon Mrs Selina CHOW		32	陳鑑林 Hon CHAN Kam-lam	
3	李柱銘 Hon Martin LEE	贊成 YES	33	陳榮燦 Hon CHAN Wing-chan	贊成 YES
4	李國寶 Dr Hon David LI		34	陳婉嫻 Hon CHAN Yuen-han	贊成 YES
5	倪少傑 Hon NGAI Shiu-kit	反對 NO	35	鄭家富 Hon Andrew CHENG Kar-foo	贊成 YES
6	司徒華 Hon SZETO Wah	贊成 YES	36	鄭明訓 Hon Paul CHENG	棄權 ABSTAIN
7	劉皇發 Hon LAU Wong-fat	反對 NO	37	鄭耀棠 Hon CHENG Yiu-tong	贊成 YES
8	何承天 Hon Edward HO		38	張炳良 Hon CHEUNG Bing-leung	贊成 YES
9	夏佳理 Hon Ronald ARCULLI		39	張漢忠 Hon CHEUNG Hon-chung	棄權 ABSTAIN
10	劉健儀 Hon Mrs Miriam LAU	反對 NO	40	蔡根培 Hon CHOY Kan-pui	反對 NO
11	梁智鴻 Dr Hon LEONG Che-hung	贊成 YES	41	朱幼麟 Hon David CHU Yu-lin	
12	陳偉業 Hon Albert CHAN	贊成 YES	42	何俊仁 Hon HO Chun-yan	贊成 YES
13	張文光 Hon CHEUNG Man-kwong	贊成 YES	43	葉國謙 Hon IP Kwok-him	棄權 ABSTAIN
14	詹培忠 Hon CHIM Pui-chung		44	劉千石 Hon LAU Chin-shek	贊成 YES
15	馮檢基 Hon Frederick FUNG	贊成 YES	45	劉漢銓 Hon LAU Hon-chuen	反對 NO
16	何敏嘉 Hon Michael HO	贊成 YES	46	羅祥國 Dr Hon LAW Cheung-kwok	贊成 YES
17	黃震濶 Dr Hon HUANG Chen-ya	贊成 YES	47	羅致光 Hon LAW Chi-kwong	贊成 YES
18	劉慧卿 Hon Emily LAU	贊成 YES	48	李啟明 Hon LEE Kai-ming	反對 NO
19	李永達 Hon LEE Wing-tat	贊成 YES	49	梁耀忠 Hon LEUNG Yiu-chung	贊成 YES
20	李家祥 Hon Eric LI	反對 NO	50	廖成利 Hon LIU Sing-lee	贊成 YES
21	李華明 Hon Fred LI	贊成 YES	51	羅叔清 Hon LO Suk-ching	反對 NO
22	唐英年 Hon Henry TANG	反對 NO	52	莫應帆 Hon MOK Ying-fan	贊成 YES
23	涂謹申 Hon James TO	贊成 YES	53	吳嘉儀 Hon Margaret NG	贊成 YES
24			54	顏錦全 Hon NGAN Kam-chuen	棄權 ABSTAIN
25	黃宜弘 Dr Hon Philip WONG	反對 NO	55	單仲偕 Hon SIN Chung-kai	贊成 YES
26	楊森 Dr Hon YEUNG Sum	贊成 YES	56	曾健成 Hon TSANG Kin-shing	贊成 YES
27	楊孝華 Hon Howard YOUNG	反對 NO	57	謝永齡 Dr Hon John TSE Wing-ling	贊成 YES
28	黃偉賢 Hon Zachary WONG	贊成 YES	58	黃錢其濠 Hon Mrs Elizabeth WONG	贊成 YES
29	陸恭蕙 Hon Christine LOH	贊成 YES	59	任善寧 Hon YUM Sin-ling	贊成 YES
30	田北俊 Hon James TIEN				

秘書 CLERK

投票日期時間 VOTE DATE TIME 18 27/06/97 16:55:43

議 MOTION

EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY SEXUALITY AND AGE) BILL
 - COMMITTEE STAGE - CLAUSES 63 64 67 TO 70 AND 72 TO 81
 STAND PART OF THE BILL
 (平等機會(家庭責任、性傾向及年齡)條例草案)
 - 全體委員會審議階段 - 第 63 64 67 至 70 及 72 至 81 條納入條例草案

議 PROPOSED

MR LAU CHIN-SHEK
 劉千石議員

議 SECONDED

票總和 VOTE TOTALS :-
 和 TOTAL : 49
 成 YES : 36
 對 NO : 9
 權 ABSTAIN : 4

別結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOW:

位 咭號	議員	MEMBERS	投票	VOTE	座位	咭號	議員	MEMBERS	投票	VOTE
T CARD					SEAT	CARD				
1	李鵬飛	Hon Eiler LEE	反對	NO	31	31	李卓人	Hon LEE Cheuk-yan	贊成	YES
-	周梁淑怡	Hon Mrs Selina CHOW			32	32	陳鑑林	Hon CHAN Kam-lam	棄權	ABSTAIN
-	李柱銘	Hon Martin LEE	贊成	YES	33	33	陳榮燦	Hon CHAN Wing-chan	贊成	YES
-	李國寶	Dr Hor David LI			34	34	陳婉嫻	Hon CHAN Yuen-han	贊成	YES
-	倪少傑	Hon NGAI Shiu-kit	反對	NO	35	35	鄭家富	Hon Andrew CHENG Kar-foo	贊成	YES
0	司徒華	Hon SZETO Wah	贊成	YES	36	36	鄭明訓	Hon Paul CHENG	出席	PRESENT
7	劉皇發	Hon LAU Wong-fat	反對	NO	37	37	鄭耀棠	Hon CHENG Yiu-tong	贊成	YES
8	何承天	Hon Edward HO			38	38	張炳良	Hon CHEUNG Bing-leung	贊成	YES
9	夏佳理	Hon Ronald ARCULLI			39	39	張漢忠	Hon CHEUNG Hon-chung	棄權	ABSTAIN
0	劉健儀	Hon Mrs Miriam LAU	反對	NO	40	40	蔡根培	Hon CHOY Kan-pui	贊成	YES
1	梁智鴻	Dr Hon LEONG Che-hung	贊成	YES	41	41	朱幼麟	Hon David CHU Yu-lin		
2	陳偉業	Hon Albert CHAN	贊成	YES	42	42	何俊仁	Hon HO Chun-yan	贊成	YES
3	張文光	Hon CHEUNG Man-kwong	贊成	YES	43	43	葉國謙	Hon IP Kwok-him	棄權	ABSTAIN
4	詹培忠	Hon CHIM Pui-chung			44	44	劉千石	Hon LAU Chin-shek	贊成	YES
-	馮檢基	Hon Frederick FUNG	贊成	YES	45	45	劉漢銓	Hon LAU Hon-chuen	反對	NO
0	何敏嘉	Hon Michael HO	贊成	YES	46	46	羅祥國	Dr Hon LAW Cheung-kwok	贊成	YES
7	黃麗遐	Dr Hon HUANG Chen-ya	贊成	YES	47	47	羅致光	Hon LAW Chi-kwong	贊成	YES
0	劉慧卿	Hon Emily LAU	贊成	YES	48	48	李啓明	Hon LEE Kai-ming	贊成	YES
9	李永達	Hon LEE Wing-tat	贊成	YES	49	49	梁耀忠	Hon LEUNG Yiu-chung	贊成	YES
1	李家祥	Hon Eric LI	反對	NO	50	50	廖成利	Hon LIU Sing-lee	贊成	YES
-	李華明	Hon Fred LI	贊成	YES	51	51	羅叔清	Hon LO Suk-ching	反對	NO
-	唐英年	Hon Henry TANG	反對	NO	52	52	莫應帆	Hon MOK Ying-fan	贊成	YES
3	徐耀申	Hon James TO	贊成	YES	53	53	吳錫儀	Hon Margaret NG	贊成	YES
4	24				54	54	顧錦全	Hon NGAN Kam-chuen	棄權	ABSTAIN
5	25				55	55	單仲偕	Hon SIN Chung-kai	贊成	YES
3	26	Dr Hon Philip WONG			56	56	曾健成	Hon TSANG Kin-shing	贊成	YES
7	27	Dr Hon YEUNG Sum	贊成	YES	57	57	謝永齡	Dr Hon John TSE Wing-ling	贊成	YES
7	28	Hon Howard YOUNG	反對	NO	58	58	黃錢其濂	Hon Mrs Elizabeth WONG	贊成	YES
7	29	Hon Zachary WONG	贊成	YES	59	59	任善寧	Hon YUM Sin-ling	贊成	YES
9	30	Hon Christine LOH	贊成	YES						
1	30	Hon James TIEN								

日期
VOTE
DATE 27 06/97
TIME 17 03 35

議 案
MOTION EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY SEXUALITY AND AGE) BILL
SECOND READING - NEW CLAUSE 42A, 53A, 71A, 77A & NEW SCHEDULE
(平等機會(家庭責任 性傾向及年齡)條例草案)
二讀 - 新訂的第42A 53A 71A 及 77A 以及新訂的附表

擬 議
PROPOSED MR LAU CHIN-SHEK
劉千石議員

議 決
SECONDED

票總和
VOTE TOTALS -
TOTAL 46
YES 31
NO 11
ABSTAIN 4

結果如下

座號	議員	MEMBERS	投票	票	座號	議員	MEMBERS	投票	票
1	李國飛		反對		31	李卓人		贊成	ES
2	周梁淑怡		贊成	ES	32	陳雲林		反對	NO
3	李柱銘		贊成	ES	33	陳榮燦		反對	NO
4	李國寶		贊成	ES	34	陳婉嫻		棄權	ABSTAIN
5	倪少傑		贊成	ES	35	鄭家富		贊成	YES
6	司徒華		贊成	ES	36	鄭明訓		贊成	ES
7	劉鑾發		反對	NO	37	鄭耀榮		反對	NO
8	何承天		贊成	ES	38	張炳良		贊成	YES
9	夏佳理		贊成	ES	39	張漢忠		棄權	ABSTAIN
10	劉健儀		反對	NO	40	蔡根培		棄權	ABSTAIN
11	梁智鴻		贊成	ES	41	朱幼麟		贊成	YES
12	陳偉業		贊成	ES	42	何俊仁		反對	NO
13	張文光		贊成	ES	43	葉國謙		贊成	ES
14	詹培忠		贊成	ES	44	劉千石		贊成	ES
15	馮檢基		贊成	ES	45	劉漢銓		反對	NO
16	何敏嘉		贊成	ES	46	羅祥國		贊成	ES
17	黃麗遐		贊成	ES	47	羅致光		贊成	ES
18	劉慧卿		贊成	ES	48	李啟明		棄權	ABSTAIN
19	李永達		贊成	ES	49	梁耀忠		贊成	YES
20	李家祥		贊成	ES	50	廖成利		贊成	YES
21	李華明		贊成	ES	51	羅叔清		反對	NO
22	雷英年		贊成	ES	52	莫應帆		贊成	ES
23	冷耀申		贊成	ES	53	吳嘉儀		贊成	ES
24	黃宜弘		贊成	ES	54	顏錦全		反對	NO
25	楊森		贊成	ES	55	單仲偕		贊成	ES
26	楊李華		反對	NO	56	曾健成		贊成	ES
27	黃偉賢		贊成	ES	57	謝永齡		贊成	ES
28	陸恭蕙		贊成	ES	58	黃鏡其		贊成	ES
29	田北俊		贊成	ES	59	任善寧		贊成	ES

出
時
間
VOTE
DATE
TIME

議 案
MOTION
EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY
SEXUALITY AND AGE) BILL
- COMMITTEE STAGE - CLAUSE 3 AS AMENDED
(平等機會(家庭責任 性傾向及年齡)條例草案)
全體委員會審議階段 - 經修正之第3條

議 案
PROPOSED
MR LAU CHIN-SHEK
劉千石議員

議 案
SECONDED

票總和 VOTE TOTALS -
口 TOTAL 46
反 YES 27
對 NO 17
准 ABSTAIN 2

結果如下

席號 -RC	議員	投票	座位 SEAT	席號 -RC	議員	投票
	李國飛	反對			李卓人	贊成
	周焯怡				陳藍林	反對
	李柱銘	贊成			陳榮燦	贊成
4	李國寶		34	34	陳婉嫻	棄權
	倪少傑		35	35	鄭家富	贊成
0	司徒華	贊成	36	36	鄭明訓	贊成
	劉皇毅				鄭耀業	反對
	何承天				張炳良	贊成
0	夏佳理				張漢忠	反對
	劉健儀	反對			蔡根培	贊成
	梁智鴻	贊成			朱幼麒	反對
	陳偉業	贊成			何俊仁	贊成
	張文光	贊成			葉國謙	反對
	曾培忠	反對			劉千石	贊成
	馮檢基	反對			劉漢銓	反對
	何敏嘉	贊成			羅祥國	反對
	黃麗遐	贊成			羅致光	贊成
	劉慧卿	贊成			李啟明	反對
	李永達	贊成			梁耀忠	贊成
	李家祥				廖成利	反對
	李華明	贊成			羅叔清	反對
	雷英年				莫應帆	反對
	涂謹申	贊成			吳錫儀	贊成
	黃宜弘				吳錫全	反對
	楊森	贊成			鍾仲傑	贊成
	楊孝賢	反對			曾健成	贊成
	黃偉賢	贊成			謝水齡	贊成
	陸恭懋	贊成			黃鏡基	贊成
	田北俊				任善寧	贊成

議 期 間
 VOTE DATE 27/06/97
 TIME 17:15:42

議 議 案
 MCTION EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY, SEXUALITY AND AGE) BILL
 - THIRD READING
 (平等機會(家庭責任 性傾向及年齡)條例草案)
 - 三讀

議 議 案
 PROPOSED MR LAU CHIN-SHEK
 劉千石議員

議 議 案
 SECONDED

票 總 和
 和 成 對 權
 VOTE TOTALS :-
 TOTAL : 56
 YES : 27
 NO : 29
 ABSTAIN : 0

別 結 果 如 下

議 員	MEMBERS	投 票	議 員	MEMBERS	投 票
李鵬飛	Hon A. J. LEE	反對 NO	李卓人	Hon LEE Cheuk-yan	贊成 YES
周梁淑怡	Hon Mrs. J. THOMAS	反對 NO	陳鑑林	Hon CHAN Kam-lam	反對 NO
李柱銘	Hon Martin LEE	贊成 YES	陳榮燦	Hon CHAN Wing-chan	反對 NO
李國寶	Dr Hon David LI	贊成 YES	陳婉嫻	Hon CHAN Yuen-han	贊成 YES
倪少傑	Hon NGAI Shiu-kit	反對 NO	鄭家富	Hon Andrew CHENG Kar-foo	贊成 YES
司徒華	Hon SZETO Wah	贊成 YES	鄭明訓	Hon Paul CHENG	反對 NO
劉遵義	Hon LAU Wong-fat	反對 NO	鄭耀榮	Hon CHENG Yiu-tong	反對 NO
何承天	Hon Edward HO	反對 NO	張炳良	Hon CHEUNG Bing-leung	贊成 YES
夏佳理	Hon Ronald ARCOLLI	反對 NO	張漢忠	Hon CHEUNG Hon-chung	反對 NO
劉健儀	Hon Mrs. Marian LAU	反對 NO	蔡根培	Hon CHOY Kan-pu	反對 NO
梁雪鴻	Dr Hon LEONG Chee-ting	贊成 YES	朱幼麟	Hon David CHU Yiu-ler	反對 NO
陳偉業	Hon Albert CHAN	贊成 YES	何俊仁	Hon HO Chun-yan	贊成 YES
張文光	Hon CHEUNG Wai-keung	贊成 YES	葉國謙	Hon IP Man-kin	反對 NO
曾培基	Hon CHAN Yiu-ming	反對 NO	劉千石	Hon LAU Chin-shek	贊成 YES
馮檢基	Hon FONG Kin-kei	反對 NO	劉漢銓	Hon LAL Hon-tsun	反對 NO
何敏嘉	Hon Ho Man-ka	贊成 YES	羅祥國	Dr Hon LAM Cheung-wo	反對 NO
黃麗遐	Dr Hon Liza LEE	贊成 YES	羅致光	Hon LAW Cheuk-keung	贊成 YES
劉碧卿	Hon Elizabeth LAU	贊成 YES	李啓明	Hon LEE Kai-ming	反對 NO
李永達	Hon LEE Wing-tat	贊成 YES	梁耀忠	Hon LEUNG Yiu-chung	贊成 YES
李家祥	Hon CLYDE LEE	反對 NO	廖成利	Hon LIU Sang-lee	反對 NO
李華明	Hon Fred LI	贊成 YES	羅叔清	Hon LO Suk-ching	反對 NO
唐英年	Hon Henry TANG	反對 NO	莫應帆	Hon MOR Yung-tan	反對 NO
徐耀申	Hon Albert TSE	贊成 YES	吳嘉儀	Hon Margaret NG	贊成 YES
黃宜弘	Hon WONG Yee-ying	反對 NO	顧錦全	Hon NGAN Kam-tsun	反對 NO
楊森	Hon YEUNG Sun	贊成 YES	單仲偕	Hon SI Chung-ka	贊成 YES
楊孝華	Hon YIP Hing-wah	反對 NO	曾健成	Hon TSANG Kin-sing	贊成 YES
黃偉賢	Hon WONG Wai-yan	贊成 YES	謝永齡	Dr Hon JOHN TSE Wing-ling	贊成 YES
陸恭蕙	Hon Mrs. ESTHER LU	贊成 YES	黃鏡其	Hon Mrs. Elizabeth WONG	贊成 YES
田北俊	Hon James TIEN	反對 NO	任善寧	Hon YIM Chung-ning	贊成 YES

票期 VOTE : 22
 問 DATE : 27/06/97
 TIME : 18:44:15

EQUAL OPPORTUNITIES (RACE) BILL

議 MOTION : - SECOND READING
 (平等機會(種族)條例草案)
 - 二讀

議 PROPOSED : MRS ELIZABETH
 WONG

議 SECONDED : 黃錢其濂議員

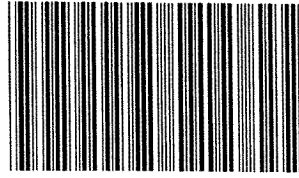
票總和 VOTE TOTALS :-
 印 TOTAL : 57
 戊 YES : 26
 封 NO : 31
 壺 ABSTAIN : 0

結果如下 THE INDIVIDUAL RESULTS WERE AS FOLLOWS:

卡號	議員	MEMBERS	投票	VOTE	座位	卡號	議員	MEMBERS	投票	VOTE
CARD					SEAT	CARD				
1	李鵬飛	Hon Allen LEE	反對	NO	31	31	李卓人	Hon LEE Cheuk-yan	贊成	YES
2	周梁淑怡	Hon Mrs Selina CHOW	反對	NO	32	32	陳鑑林	Hon CHAN Kam-lam	反對	NO
3	李柱銘	Hon Martin LEE	贊成	YES	33	33	陳榮燻	Hon CHAN Wing-chan	反對	NO
4	李國寶	Dr Hon David LI			34	34	陳婉嫻	Hon CHAN Yuen-han	反對	NO
5	倪少傑	Hon NGAI Shiu-kit	反對	NO	35	35	鄭家富	Hon Andrew CHENG Kar-foo	贊成	YES
6	司徒華	Hon SZETO Wah	贊成	YES	36	36	鄭明訓	Hon Paul CHENG	反對	NO
7	劉曼瑩	Hon LAU Wong-fat	反對	NO	37	37	鄭耀榮	Hon CHENG Yiu-tong	反對	NO
8	何承天	Hon Edward HO	反對	NO	38	38	張炳良	Hon CHEUNG Bing-leung	贊成	YES
9	夏佳理	Hon Ronald ARCULLI	反對	NO	39	39	張漢忠	Hon CHEUNG Hon-chung	反對	NO
10	劉健儀	Hon Mrs Miriam LAU	反對	NO	40	40	蔡根培	Hon CHOY Kan-pui	反對	NO
11	梁智鴻	Dr Hon LEONG Che-hung	反對	NO	41	41	朱幼麟	Hon David CHU Yu-lin	反對	NO
12	陳偉業	Hon Albert CHAN	贊成	YES	42	42	何俊仁	Hon HO Chun-yan	贊成	YES
13	張文光	Hon CHEUNG Man-kwong	贊成	YES	43	43	葉國謙	Hon IP Kwok-him	反對	NO
14	詹培忠	Hon CHIM Pui-chung	反對	NO	44	44	劉千石	Hon LAU Chin-shek	贊成	YES
15	馮檢基	Hon Frederick FUNG	反對	NO	45	45	劉漢銓	Hon LAU Hon-chuen	反對	NO
16	何敏嘉	Hon Michael HO	贊成	YES	46	46	羅祥國	Dr Hon LAW Cheung-kwok	反對	NO
17	黃鳳瀾	Dr Hon HUANG Chen-ya	贊成	YES	47	47	羅致光	Hon LAW Chi-kwong	贊成	YES
18	劉慧卿	Hon Emily LAU	贊成	YES	48	48	李啟明	Hon LEE Kai-ming	反對	NO
19	李永達	Hon LEE Wing-tat	贊成	YES	49	49	梁耀忠	Hon LEUNG Yiu-chung	贊成	YES
20	李家祥	Hon Eric LI	反對	NO	50	50	廖成利	Hon LIU Sing-lee	反對	NO
21	李華明	Hon Fred LI	贊成	YES	51	51	羅叔濟	Hon LO Suk-ching	反對	NO
22	唐英年	Hon Henry TANG	反對	NO	52	52	莫應帆	Hon MOK Ying-fan	反對	NO
23	涂謹申	Hon James TO	贊成	YES	53	53	吳嘉儀	Hon Margaret NG	贊成	YES
24					54	54	顧錦全	Hon NGAN Kam-chuen	反對	NO
25	黃宜弘	Dr Hon Philip WONG	反對	NO	55	55	單仲偕	Hon SIN Chung-kai	贊成	YES
26	楊森	Dr Hon YEUNG Sum	贊成	YES	56	56	曾健成	Hon TSANG Kin-shing	贊成	YES
27	楊孝華	Hon Howard YOUNG	反對	NO	57	57	謝永齡	Dr Hon John TSE Wing-ling	贊成	YES
28	黃偉賢	Hon Zachary WONG	贊成	YES	58	58	黃錢其濂	Hon Mrs Elizabeth WONG	贊成	YES
29	陸恭愷	Hon Christine LOH	贊成	YES	59	59	任善寧	Hon YUM Sin-ling	贊成	YES
30	田北俊	Hon James TIEN	反對	NO						

秘書

SECRET



X19134634