

立法會
Legislative Council

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by the Administration)

Bills Committee on Sex Discrimination (Amendment) Bill 2014

**Minutes of the first meeting
held on Wednesday, 23 July 2014, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Dr Hon CHIANG Lai-wan, JP (Chairman)
Hon Cyd HO Sau-lan, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Gary FAN Kwok-wai
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, JP
Hon KWOK Wai-keung
Dr Hon Helena WONG Pik-wan
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu, JP
Hon CHUNG Kwok-pan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members absent** : Hon LEE Cheuk-yan
Hon Tommy CHEUNG Yu-yan, SBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Dr Hon Elizabeth QUAT, JP
- Public Officers attending** : Mr LAU Kong-wah, JP
Under Secretary for Constitutional and Mainland Affairs
- Mr CHEUNG Doi-ching
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr Michael YAU Lok-fung
Assistant Secretary for Constitutional and Mainland Affairs

Mr Manuel NG Man-chun
Senior Government Counsel (Acting)
Department of Justice

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (2) 3

Staff in attendance : Miss Mimi CHANG
Assistant Legal Adviser 11

Ms Wendy LO
Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

Action

I. Election of Chairman

Dr CHIANG Lai-wan was elected Chairman of the Bills Committee.

2. Members agreed that there was no need to elect a deputy chairman.

II. Meeting with the Administration

3. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Admin 4. The Bills Committee requested the Administration to provide supplementary information on -

- (a) the estimated number of employees working on ships and aircrafts registered in Hong Kong and those registered outside Hong Kong;
- (b) the respective numbers of passenger ships registered in and outside Hong Kong which had anchored at the Ocean Terminal in Tsim Sha Shui in the past year;

- (c) the estimated number of employees of the cross-border tourism industry, and detailed information on the protection rendered by the relevant legislation of the Mainland against sexual harassment;
- (d) the number of sexual harassment cases lodged with the Equal Opportunities Commission ("EOC") in the past few years and relevant details (e.g. amount of monetary compensation awarded, breakdown on cases settled by conciliation and those taken to the court);
- (e) explanation of the avenues of redress available to victims of sexual harassment which took place on a local ship or aircraft outside Hong Kong involving harassers who were overseas residents (or Mainlanders), and the civil proceedings involved;
- (f) response to some members' concern as to whether the Sex Discrimination (Amendment) Bill 2014 ("the Bill") should impose legal liability on the employer if it was proven that the employer had failed to take reasonably practicable steps to prevent sexual harassment by his/her customer against his/her employee in the workplace;
- (g) the number of indecent assault by customers against service providers reported to the Police; and
- (h) the policy considerations of using "local aircraft" in the Bill and "Hong Kong-controlled aircraft" in the Aviation Security Ordinance (Cap. 494).

Dates of the next two meetings

5. Members agreed to receive public views at the next meeting and to meet with representatives of EOC at the meeting after the next. A general notice to invite views from the public would be posted on the Legislative Council's website.

6. The Clerk would schedule the next two meetings in consultation with the Chairman.

(Post-meeting note: With the concurrence of the Chairman, the second and third meetings were scheduled as follows-

- (a) 6 October 2014 (Monday) from 9:00 am to 11:00 am; and
- (b) 24 October 2014 (Friday) from 10:45 am to 12:45 pm.)

III. Any other business

7. There being no other business, the meeting ended at 10:38 am.

Council Business Division 2
Legislative Council Secretariat
28 August 2014

**Proceedings of the first meeting of the
Bills Committee on Sex Discrimination (Amendment) Bill 2014
on Wednesday, 23 July 2014, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000210 - 000955	Mr Gary FAN Mr Christopher CHUNG Dr Kenneth CHAN	Election of Chairman	
000956 - 001456	Chairman Administration	Opening remarks Briefing by the Administration on the Sex Discrimination (Amendment) Bill 2014 ("the Bill"). The Bill seeks to amend the Sex Discrimination Ordinance (Cap. 480) ("SDO") to render unlawful any sexual harassment against providers or prospective providers of goods, facilities, or services; and to apply the provisions relating to sexual harassment occurring in offering to provide, seeking to provide or providing goods, facilities or services to sexual harassment of this kind occurring on local ships or aircraft outside Hong Kong.	
001457 - 002021	Chairman Ms Cyd HO Administration	Ms Cyd HO's view that the relevant provisions of the Bill (e.g. clause 3 which proposed to amend section 40 of SDO by adding "(1A) It is unlawful for a person to sexually harass <u>a woman</u> in the course of ...") should be revised in a way to avoid being gender specific. While she noted that by virtue of section 2(8) of SDO, "A provision of Part 3 or 4 framed with reference to sexual harassment of women shall be treated as applying equally to the treatment of men...", this might not be adequate taking into account the latest developments in other jurisdictions. She cited the example of Australia where, in addition to the two genders (male and female), a gender "X" was provided in the law representing the transgender and intersex people so that they were also entitled to legal protection. Moreover, as the Bill would also cover acts committed on a Hong Kong registered ship or aircraft while outside Hong Kong, the person who committed sexual harassment (or the victim) might be one recognized as a gender "X", and would therefore fall outside the coverage of the Bill. Ms HO specifically proposed that the proposed new section 40(1A) should be worded along this line e.g. <i>it is unlawful for a person to sexually harass another person in the course of ... to cater for</i>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>situations involving persons of different gender identities.</p> <p>The Administration explained that the Bill covered sexual harassment of both men and women. The Administration's response that there was no legal recognition of a third gender in Hong Kong. At present, only the two genders (male and female) were recognized under Hong Kong law. Nevertheless, the Administration noted that the Discrimination Law Review ("DLR") currently conducted by the Equal Opportunities Commission ("EOC") included examining whether gender neutral language should be used for certain provisions of SDO, and EOC had issued a consultation document to invite views from the public.</p> <p>In response to Ms HO's further enquiry on the scope of coverage of the Bill, the Administration explained that the Bill sought to render unlawful any sexual harassment against providers or prospective providers of goods, facilities or services occurring on local ships or aircraft when they were within or outside Hong Kong, regardless of the nationality of the victim/harasser.</p>	
002022 - 002829	Chairman Dr Helena WONG Administration	<p>Dr Helena WONG said that the Democratic Party and women associations were supportive of the current legislative proposal. At her request, the Administration agreed to provide the estimated number of employees working on ships or aircrafts registered in Hong Kong and those working on ships/aircrafts registered outside Hong Kong.</p> <p>Dr WONG's enquiry as to whether Hong Kong people working on ships or aircrafts registered outside Hong Kong would also be protected by the proposed amendment. The Administration's explanation that these Hong Kong employees would be protected if the ships or aircrafts were within the Hong Kong territory. The Administration added that sexual harassment of service providers by customers occurring within the Hong Kong territory would be rendered unlawful regardless of the nationality of the victim or the harasser.</p>	Admin (para 4 of minutes)

<p>002830 - 003641</p>	<p>Chairman Mr KWOK Wai-keung Assistant Legal Adviser Dr Helena WONG Administration Ms Cyd HO</p>	<p>Mr KWOK Wai-keung's question relating to the drafting approach of SDO, e.g. references to the treatment of women applied equally to the treatment of men.</p> <p>The Assistant Legal Adviser explained that the drafting approach of the other three anti-discrimination ordinances was different from that of SDO in that the former three all used gender neutral wording in their provisions. Nevertheless, it should be noted that section 2(8) of SDO stipulated that "A provision of Part 3 or 4 framed with reference to sexual harassment of women shall be treated as applying equally to the treatment of men..."</p> <p>Noting that only two cases of sexual harassment by customers against service providers were received by EOC from November 2012 to May 2013, Mr KWOK was concerned that the small number might not reflect the full picture. He requested the Administration to also provide the number of reported indecent assaults by customers against service providers for members' reference.</p> <p>In response to Mr KWOK's further enquiry, the Administration explained that under the Bill, a victim of sexual harassment which took place on a local ship while sailing in the open sea, or on a local aircraft flying in the international airspace governed by no jurisdictions, or in another jurisdiction, could lodge a complaint with EOC after returning to Hong Kong and act in accordance with the law.</p>	<p>Admin (para 4 of minutes)</p>
<p>003642 - 004004</p>	<p>Chairman Mr POON Siu-ping Administration</p>	<p>Mr POON Siu-ping also enquired about the scope of protection of the Bill, using the example of a non-local gambling ship with Hong Kong people working on it. The Administration's explanation that -</p> <p>(a) in that example, sexual harassment occurred on the ship and within Hong Kong territory would be covered by the Bill; and</p> <p>(b) sexual harassment which occurred on the ship after it had left Hong Kong would not be covered by the Bill. However, the harassment could be dealt with in accordance with the relevant legislation of the jurisdiction where the ship was registered.</p>	

004005 - 004819	Chairman Mr CHAN Chi-chuen Administration	<p>Mr CHAN Chi-chuen's enquiry on how sexual harassment involving a person (e.g. a passenger on board a local aircraft) whose gender was shown as "X" in the passport held by that person would be handled.</p> <p>The Administration's reiteration that at present, only the two genders (male and female) were recognized under Hong Kong legislation. The applicability of the proposed amendment to the case referred to by Mr CHAN might be uncertain.</p> <p>Mr CHAN requested the Administration to re-consider Ms HO's suggestion that the proposed amendment should be worded along this line e.g. <i>it is unlawful for a person to sexually harass another person in the course of ...</i> to cater for situations involving persons of different gender identities. The Administration's explanation that the drafting of the proposed amendment should be consistent with the drafting approach of the existing provisions of SDO including "Interpretation".</p> <p>Responding to Mr CHAN, the Administration clarified that sexual harassment under SDO was to be dealt with by civil proceedings, whereas indecent assault was an offence under the Crimes Ordinance (Cap. 200). The Administration advised that a victim of sexual harassment might lodge a complaint with EOC which would endeavour to settle the case by conciliation or might seek redress by instituting civil proceedings. The victim could also report to the Police. Depending on the seriousness of the conduct involved, the Police might institute prosecution where appropriate.</p>	
004820 - 005257	Chairman Mr CHUNG Kwok-pan Administration	<p>Mr CHUNG Kwok-pan's enquiry on how an air hostess sexually harassed by a foreign passenger on a local aircraft outside Hong Kong might seek redress under the proposed amendment.</p> <p>The Administration explained that -</p> <p>(a) after the plane had landed, the victim might lodge a complaint with the enforcement agency concerned in the relevant jurisdiction, which would be handled in accordance with the relevant legislation of the jurisdiction. Alternatively, she might lodge a complaint with EOC after returning to Hong Kong; and</p>	

		(b) the victim might also institute civil proceedings in the District Court in Hong Kong. Hong Kong courts could request assistance from overseas courts in areas such as taking of evidence in respect of cases brought under section 76 of SDO.	
005258 - 010003	Chairman Dr Helena WONG Administration	<p>Dr Helena WONG's views that representatives of EOC and deputations should be invited to give views on the Bill.</p> <p>Dr WONG's expression of concern on whether sexual harassment of service providers by customers that occurred on Hong Kong registered vehicles (e.g. coaches) travelling on the Mainland was covered by the Bill.</p> <p>The Administration explained that as sexual harassment that occurred on land-based transport would either be covered by SDO if it took place in Hong Kong, or by the relevant legislation of the Mainland if it took place on the Mainland, there would be no issue of jurisdictional vacuum. Therefore, the Bill did not propose to amend SDO to explicitly extend coverage to Hong Kong registered land-based transport means operating outside Hong Kong. The Administration undertook to provide information on the relevant Mainland legislation and the estimated number of employees of the cross-border tourism industry (e.g. tour guides).</p>	Admin (para 4 of minutes)
010004 - 010737	Chairman Ms Cyd HO Administration	At the request of Ms Cyd HO, the Administration undertook to explain in writing the considerations of using "local aircraft" in the Bill and "Hong Kong-controlled aircraft" in the Aviation Security Ordinance (Cap. 494).	Admin (para 4 of minutes)
010738 - 011749	Chairman Mr CHAN Chi-chuen Administration	<p>The Administration's reiteration of the scope of protection of the Bill.</p> <p>At the request of Mr CHAN Chi-chuen, the Administration agreed to provide number of cases of sexual harassment received by EOC and relevant details (e.g. amount of monetary compensation awarded, breakdown on cases settled by conciliation and those taken to the court).</p>	Admin (para 4 of minutes)
011750 - 012706	Chairman Mr Paul TSE Administration	<p>Mr Paul TSE expressed major concern about the legal liability on employers under the Bill.</p> <p>The Administration advised that in the light of the relevant overseas legislation (e.g. the United</p>	

		<p>Kingdom) and the concern expressed by employers, it was not proposed that an employer would be liable for the acts of a customer who had sexually harassed his/her employee in the workplace. Moreover, there was no direct contractual relationship between the employer and the customer.</p> <p>Mr TSE disagreed that there was no contractual relationship between the employer and the customer, and requested the Administration to reconsider the issue and give its views at the next meeting.</p>	<p>Admin (para 4 of minutes)</p>
012707 - 013514	<p>Chairman Mr TANG Ka-piu Administration</p>	<p>Mr TANG Ka-piu expressed particular concern that employees of the tourism industry (such as tour guides who needed to collect service tips in their work) might have a higher risk of falling victim to sexual harassment. He requested the Administration to solicit views of employees of the industry on the Bill. He considered that local tour guides should also be protected under the Bill when they were working outside Hong Kong.</p> <p>The Administration's advice that it had consulted relevant stakeholders, including representatives from flight attendants associations, trade unions and workers' associations, on the legislative proposal and welcome further views in this regard.</p>	
013515 - 014043	<p>Chairman Mr KWOK Wai-keung Administration</p>	<p>Mr KWOK Wai-keung's enquiry on the assistance rendered by EOC in handling sexual harassment and the Administration's reply.</p>	
014044 - 014627	<p>Chairman Mr TANG Ka-piu Administration</p>	<p>Mr TANG Ka-piu's expression of support for the Bill.</p> <p>At the request of Mr TANG, the Administration undertook to provide the respective numbers of passenger ships registered in and outside Hong Kong which had anchored at the Ocean Terminal in Tsim Sha Shui in the past year.</p>	<p>Admin (para 4 of minutes)</p>
014628 - 015324	<p>Chairman Dr Helena WONG Administration</p>	<p>Dr Helena WONG's request for the Administration's clarification on the scope of coverage of section 39 of SDO.</p> <p>The Administration's explanation of the avenues of redress available to victims of sexual harassment which took place on a local ship or aircraft outside Hong Kong involving harassers who were overseas residents (or Mainlanders), as</p>	

		well as the civil proceedings involved. The Administration undertook to provide the requisite information in writing.	Admin (para 4 of minutes)
015325 - 015834	Chairman Mr CHAN Chi-chuen Administration	Mr CHAN Chi-chuen's view that the issue of employers' legal liability brought up by Mr Paul TSE warranted further discussion.	
015835 - 020450	Chairman Mr Paul TSE Administration Dr Helena WONG	<p>Extension of the meeting</p> <p>Mr Paul TSE and Dr Helena WONG pointed out that section 46 of SDO had stipulated the liability of employers, if it was established in a substantiated sexual harassment case that the harasser's employer did not take reasonably practicable steps to prevent sexual harassment in the workplace. Dr WONG suggested inviting representatives of Department of Justice to explain the issue of vicarious liability under SDO at a future meeting.</p> <p>Mr Paul TSE's view that there was still room for expanding the scope of protection from sexual harassment under SDO. The Administration's response that it had decided to take forward the current amendment first given it had the general support of stakeholders concerned. The Administration would consider the way forward in the light of the outcome of the current DLR launched by EOC.</p>	
020451 - 020905	Chairman Mr CHAN Chi-chuen Dr Helena WONG Mr Gary FAN	<p>Dr Helena WONG's suggestion of the deputations to be invited.</p> <p>Closing remarks</p> <p>Date of next meeting</p>	