

**立法會**  
**Legislative Council**

Ref : CB2/BC/8/13

LC Paper No. CB(2)539/14-15  
(These minutes have been seen  
by the Administration)

**Bills Committee on Sex Discrimination (Amendment) Bill 2014**

**Minutes of the second meeting**  
**held on Monday, 3 November 2014, at 10:00 am**  
**in Conference Room 3 of the Legislative Council Complex**

- Members present** : Dr Hon CHIANG Lai-wan, JP (Chairman)  
Hon LEE Cheuk-yan  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN  
Hon Cyd HO Sau-lan, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, 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 KWOK Wai-keung  
Dr Hon Helena WONG Pik-wan  
Dr Hon Elizabeth QUAT, JP  
Hon POON Siu-ping, BBS, MH  
Hon TANG Ka-piu, JP  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Member attending** : Hon James TO Kun-sun
- Members absent** : Hon LEUNG Che-cheung, BBS, MH, JP  
Hon Alice MAK Mei-kuen, JP  
Hon CHUNG Kwok-pan
- Public Officers attending** : Items I and II

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 Godfrey KAN Ka-fai  
Senior Assistant Solicitor General  
Department of Justice

Ms Daphne SIU Man-suen  
Assistant Law Officer (Civil) (Advisory) (Acting)  
Department of Justice

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

Mr Michael YAU  
Assistant Secretary for Constitutional and Mainland Affairs

**Attendance by :** Item I  
**Invitation**

Amnesty International Hong Kong

Ms TSUI Ka-wing  
Campaigner

人手比例不符最低工資關注組

Mr WONG Kwai-sang

Hong Kong Women Workers' Association

Miss LEUNG Wei-ching  
Organizer

Hong Kong Jockey Club Workers General Union

Ms WU Sau-lan  
Chairman

Women's Affairs Committee, Hong Kong Confederation of Trade Unions

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Ms YU Mei-wan  
Chairperson

Hong Kong Women's Coalition on Equal Opportunities

Miss WONG Siu-woon  
Organizing Secretary

The Federation of Hong Kong and Kowloon Labour Unions

Miss LAW Yan-yee  
Officer

The Hong Kong Federation of Trade Unions Women Affairs Committee

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Ms TANG YU Li-hua  
Deputy Director

Liberal Party Youth Committee

Mr Dominic LEE  
Chairman

飲食業關注性別歧視條例大聯盟

Mr Dan CHAN

性別歧視條例關注組

Mr Harris YEUNG

Ban Gay Marriage Hong Kong

Mr Peter SHIU  
Convener

The Association for the Advancement of Feminism

Miss MAK Ka-lui  
Organizer

Item II

Mr Herman POON  
Chief Legal Counsel  
Equal Opportunities Commission

Dr Ferrick CHU  
Head, Policy & Research  
Equal Opportunities Commission

**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

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Action

**I. Meeting with deputations and the Administration**

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

2. The Bills Committee received views from 13 deputations attending the meeting, and noted that six other organizations/individuals which/who did not attend the meeting had provided submissions on the Sex Discrimination (Amendment) Bill 2014 ("the Bill").

3. The Bills Committee noted the following major views expressed by deputations -

- (a) deputations in general were supportive of the Bill;
- (b) while some deputations (including Hong Kong Women Workers' Association and Hong Kong Professional Tourist Guides General

Union) considered that 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, some deputations (including the Liberal Party Youth Committee, 飲食業關注性別歧視條例大聯盟, 性別歧視條例關注組, Ban Gay Marriage Hong Kong, the Chinese General Chamber of Commerce and Hong Kong Catering Industry Association) expressed reservations about the proposal as it might place too much burden on employers. Some other deputations (including Hong Kong Jockey Club Workers General Union, Women's Affairs Committee of the Hong Kong Confederation of Trade Unions and the Federation of Hong Kong & Kowloon Labour Unions) considered that employers should be required to formulate policies on the prevention of sexual harassment in the workplace and establish the relevant complaints handling systems;

- (c) some deputations considered that the Equal Opportunities Commission ("EOC") should step up public education on sexual harassment, issue guidelines to employers on prevention of sexual harassment in the workplace and improve its complaint handling mechanism; and
- (d) some deputations considered that the Administration should introduce new provisions in the Bill to expand the scope of protection against sexual harassment on other areas, such as sexual harassment between tenants, patients or students from different institutions.

Admin 4. The Administration was requested to provide the following information in writing -

- (a) written response to the major concerns expressed by the deputations and the written submissions on the Bill;
- (b) written response to Mr CHAN Chi-chuen's enquiry on how sexual harassment complaints lodged by a foreigner whose gender was shown as "X" in the passport held by that person would be handled and their legal rights be protected under the proposed legislative amendment; and
- (c) the existing administrative measures adopted by the Security Bureau in handling immigration clearance of a person who was recognized as a gender "X" in the passport.

*(Post-meeting note: The Administration's information paper was circulated via LC Paper No. CB(2)273/14-15 on 13 November 2014.)*

## **II. Meeting with the Equal Opportunities Commission and the Administration**

- EOC
5. The Bills Committee requested EOC to provide in writing the reasons for not granting legal assistance to 24 sexual harassment cases among the 40 applications received by the Commission from January 2009 to August 2014 and the relevant breakdown (e.g. beyond the 12-month time bar or unsubstantiated).

*(Post-meeting note: The EOC's information paper was circulated via LC Paper No. CB(2)251/14-15 on 11 November 2014.)*

### Legislative timetable

6. The Bills Committee completed the clause-by-clause examination of the Bill. The Bills Committee raised no objection to the Administration's proposed resumption of the Second Reading debate on the Bill at the Council meeting of 3 December 2014. Members noted that the deadline for giving notice to move Committee stage amendments to the Bill was 24 November 2014.

7. Members noted that the Chairman would report the deliberations of the Bills Committee to the House Committee at its meeting on 21 November 2014.

## **III. Any other business**

8. There being no other business, the meeting ended at 12:34 pm.

Council Business Division 2  
Legislative Council Secretariat  
31 December 2014

**Proceedings of the second meeting of the  
Bills Committee on Sex Discrimination (Amendment) Bill 2014  
on Monday, 3 November 2014, at 10:00 am  
in Conference Room 3 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
<i>Agenda item I - Meeting with deputations and the Administration</i>			
000647 - 001048	Chairman	Opening remarks	
001049 - 001324	Chairman Amnesty International Hong Kong	Presentation of views [LC Paper No. CB(2)227/14-15(01)]	
001325 - 001641	Chairman 人手比例不符最低工 資關注組	Presentation of views	
001642 - 001955	Chairman Hong Kong Women Workers' Association	Presentation of views [LC Paper No. CB(2)227/14-15(03)]	
001956 - 002127	Chairman Hong Kong Jockey Club Workers General Union	Presentation of views [LC Paper No. CB(2)92/14-15(01)]	
002128 - 002520	Chairman Women's Affairs Committee, Hong Kong Confederation of Trade Unions	Presentation of views	
002521 - 002836	Chairman Hong Kong Women's Coalition on Equal Opportunities	Presentation of views	
002837 - 003058	Chairman The Federation of Hong Kong and Kowloon Labour Unions	Presentation of views [LC Paper No. CB(2)92/14-15(02)]	
003059 - 003421	Chairman The Hong Kong Federation of Trade Unions Women Affairs Committee	Presentation of views [LC Paper No. CB(2)227/14-15(04)]	

Time marker	Speaker(s)	Subject(s)	Action required
003422 - 003638	Chairman Liberal Party Youth Committee	Presentation of views	
003639 - 003823	Chairman 飲食業關注性別歧視條例 大聯盟	Presentation of views	
003824 - 004029	Chairman 性別歧視條例關注組	Presentation of views	
004030 - 004325	Chairman Ban Gay Marriage Hong Kong	Presentation of views	
004326 - 004725	Chairman The Association for the Advancement of Feminism	Presentation of views [LC Paper No. CB(2)227/14-15(02)]	
004726 - 005422	Chairman Mr CHAN Chi-chuen Administration	<p>Mr CHAN Chi-chuen enquired whether the sexual harassment provisions were equally applicable to a third gender person under the Sex Discrimination Ordinance (Cap. 480) ("SDO") by virtue of section 7(1) of the Interpretation and General Clauses Ordinance (Cap. 1), which stipulated that "Words and expressions importing the masculine gender include the feminine and neuter genders". The Administration explained that the provisions of Cap. 1 would apply save where contrary intention appeared from the context of any ordinances. The new section 40(1A) should be read with section 2(8) of SDO and, accordingly, section 40(1A) covered both men and women. In the circumstances, a contrary intention appeared in this context and section 7(1) of Cap. 1 was not applicable to section 40(1A) pursuant to section 2(1) of Cap. 1.</p> <p>The Administration advised 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.</p>	
005423 - 010200	Chairman Dr Helena WONG Administration	Dr Helena WONG expressed concern whether the Sex Discrimination (Amendment) Bill 2014 ("the Bill") covered protection against sexual	



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	Ms Cyd HO The Association for the Advancement of Feminism	harassment of members of the public by Government employees in the course of their performance of official duties. The Administration confirmed that the provisions of SDO were binding on the Government by virtue of section 3 of SDO.	
010201 - 010454	Chairman Mr KWOK Wai-keung Administration	Mr KWOK Wai-keung expressed support for the early enactment of the Bill and suggested that guidelines on prevention of sexual harassment should be issued for employers' reference upon the passage of the Bill.  The Administration advised that the question of employer's liability for harassment of employees by customers was included in the DLR public consultation.	
010455 - 010752	Chairman Mr POON Siu-ping Liberal Party Youth Committee Administration	Mr POON Siu-ping sought the views of deputations on how the complaint handling mechanism of EOC should be enhanced and the response of Liberal Party Youth Committee.	
010753 - 011209	Chairman Mr Gary FAN Administration	Mr Gary FAN's enquiry and the Administration's response on the use of gender neutral references in the proposed amendment under the Bill.	
011210 - 011658	Chairman Mr LEE Cheuk-yan Hong Kong Women's Coalition on Equal Opportunities Ban Gay Marriage Hong Kong	The views of Hong Kong Women's Coalition on Equal Opportunities and Ban Gay Marriage Hong Kong in response to the enquiry of Mr LEE Cheuk-yan about employers' responsibility to provide a working environment free of sexual harassment.	
011659 - 011928	Chairman Dr Helena WONG Administration	Dr Helena WONG's enquiry and the Administration's response that internal guidelines were drawn up by the Police on whether certain acts of police officers against demonstrators might constitute sexual harassment.	
011929 - 012532	Chairman Mr CHAN Chi-chuen Ms Cyd HO Dr Elizabeth QUAT Administration	Mr CHAN Chi-chuen's and Ms Cyd HO's further enquiries on employers' liability in cases where employees were being sexually harassed by customers in their workplace. The Administration's reiteration that EOC was expected to submit relevant recommendations to the Government in the latter half of 2015. The	

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		Administration would consider how to follow up upon receipt of the recommendations.	
<i>Agenda item II - Meeting with the Equal Opportunities Commission and the Administration</i>			
012913 - 013856	Chairman EOC	Briefing by EOC on its views on the Bill as detailed in its letter [LC Paper No. CB(2)92/14-15(06)].	
013857 - 014321	Chairman Mr LEE Cheuk-yan EOC Administration	Mr LEE Cheuk-yan's view that employers should have the responsibility to take reasonable steps to prevent sexual harassment by customers to employees in the workplace. EOC gave views on how to enhance employers' awareness of their responsibility in this regard.	
014322 - 014827	Chairman Mr TANG Ka-piu EOC	Mr TANG Ka-piu's enquiry and EOC's response on the number of sexual harassment cases against service providers by customers received by EOC from January 2009 to August 2014.  Mr TANG's enquiry and the EOC's response on how employees of the tourism industry (e.g. tour guides) could be better protected from sexual harassment by customers while working outside Hong Kong.	
014828 - 015254	Chairman Ms Cyd HO EOC	At the request of Ms Cyd HO, EOC undertook to provide in writing the reasons for not granting legal assistance to 24 sexual harassment cases among the 40 applications received from January 2009 to August 2014 and the relevant breakdown.	<b>Admin</b> (para 5 of minutes)
015255 - 015639	Chairman Mr CHAN Chi-chuen EOC	Mr CHAN Chi-chuen's enquiry and EOC's advice on the use of gender neutral references in the Bill.  Mr CHAN sought the views of EOC on the legal protection of a gender "X" person under the Bill. EOC's response that EOC had not received any sexual harassment case involving a gender "X" person so far. Nevertheless, EOC would deal with sexual harassment complaints lodged by gender "X" persons under section 40 of SDO in the same way as it did with complaints by other men or women.	
015640 - 020109	Chairman Dr Helena WONG EOC	Dr Helena WONG's enquiry and EOC's response on how EOC had followed up recent concern on Police officers' alleged commitment of sexual	

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		harassment in their handling of demonstrators. EOC agreed to look at the implementation of the relevant internal guidelines by the Police Force.	
020110 - 020321	Chairman Mr POON Siu-ping EOC	In response to Mr POON Siu-ping's enquiry, EOC advised that the additional workload arising from the implementation of the legislative proposal would be absorbed by EOC by redeployment of internal resources where necessary.	
020322 - 020744	Chairman Mr CHAN Chi-chuen EOC	EOC explained that different terms of settlement (e.g. letter of apology, promulgation of employer's equal opportunities policies, re-employment of staff or financial settlement) could be reached under conciliation depending on the circumstances of the dispute. At the request of Mr CHAN Chi-chuen, EOC provided further information on the monetary compensation awarded for cases of successful conciliation from January 2009 to August 2004.	
020745 - 021156	Chairman Dr Helena WONG Administration EOC	Dr Helena WONG's enquiry and the Administration's explanation of the coverage of sexual harassment of service providers by customers that occurred on Hong Kong registered land-based transport means while operating outside Hong Kong under the Bill as detailed in the Administration's paper [LC Paper No. CB(2)2359/13-14(02)]. EOC's view that there might be difficulties to enforce Hong Kong legislation in jurisdictions outside Hong Kong.	
<i>Clause-by-clause examination of the Bill</i>			
021157 - 021456	Chairman Administration	<u>Clause 1 Short title</u> <u>Clause 2 Sex Discrimination Ordinance amended</u> <u>Clause 3 Section 40 amended (other sexual harassment)</u> <u>Clause 4 Section 41 amended (extent of Part 4)</u>	
021457 - 022034	Chairman Ms Cyd HO Administration	Ms Cyd HO considered that the Administration should undertake to review SDO and amend the relevant provisions by using gender neutral language upon the completion of DLR by EOC.	
022035 - 023018	Chairman Mr CHAN Chi-chuen Administration	Mr CHAN Chi-chuen enquired how sexual harassment complaints lodged by gender "X" persons would be handled and their legal rights be protected under the proposed legislative	

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		<p>amendment. The Administration advised that SDO was enacted on the premise that all persons were categorized into either men or women. The new section 40(1A), when read with the existing section 2(8), would protect all persons from sexual harassment in the specified circumstances irrespective of whether the victim was a man or woman under Hong Kong law.</p> <p>At the request of Mr CHAN, the Administration undertook to further explain its views on the matter in writing.</p>	<p><b>Admin</b> (para 4 of minutes)</p>
023019 - 023408	<p>Chairman Ms Cyd HO Dr Kenneth CHAN Dr Helena WONG Administration</p>	<p>At the request of Ms Cyd HO, the Administration undertook to provide in writing the existing administrative measures adopted by the Security Bureau in handling immigration clearance of a person who was recognized as a gender "X" in the passport. Dr Kenneth CHAN also considered that the Administration should examine the applicability of the proposed amendment to gender "X" persons.</p>	<p><b>Admin</b> (para 4 of minutes)</p>
023409 - 023510	<p>Chairman Administration</p>	<p>Legislative timetable</p> <p>Closing remarks</p>	