

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

**Follow up on Bills Committee meeting on 3 November 2014**

This paper sets out the Administration's response to the issues raised at the meeting on 3 November 2014.

**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**

2. According to the Department of Justice, the Sex Discrimination Ordinance (SDO) (Cap. 480) is enacted on the premise that all persons are categorised into either men or women, and 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 is a man or a woman under Hong Kong law. It is open to a gender X person in Hong Kong to invoke the protection under section 40(1A) by making a claim under section 76. The Court will consider the facts, circumstances and evidence in each individual case (including the case of a person holding a passport showing gender as "X"), apply the law, and decide whether or not remedy should be granted to the claimant.

3. The Equal Opportunities Commission (EOC), an independent statutory body, is responsible for implementing the four anti-discrimination Ordinances including the SDO. The EOC has advised that, regarding handling potential complaints from gender X persons, the EOC's view is that protection from sexual harassment (under section 40 of the SDO) is available to everyone regardless of gender identity. The fact that a person is gender X (a gender identity not formally recognised under Hong Kong law) is not a material issue affecting protection. The EOC will deal with sexual harassment complaints lodged by gender X persons under section 40 of the SDO in the same way as it does with complaint by other men or women. The EOC would apply section 84 of the SDO and conduct investigation and endeavour to effect a settlement by conciliation. In cases where there is no settlement, the complainant may apply for legal assistance to take legal action.

**Existing administrative measures adopted in handling immigration clearance of a person who was recognised as a gender “X” in the passport**

4. Passengers holding travel documents bearing ‘X’ in the sex column will be processed according to the normal immigration clearance procedures of the Immigration Department.

**Response to the major concerns expressed by the deputations and the written submissions on the Bill**

5. We note that the vast majority of deputations welcomed the Bill.

6. Some deputations urged the Administration to introduce new provisions to expand the scope of protection against sexual harassment on other areas, such as sexual harassment between tenants, patients, or students from different institutions.

7. Some deputations were also concerned about employers’ liability in cases where employees were being sexually harassed by customers in their workplace. However, views were diverse on whether the employers should bear responsibility as well as the possible consequences.

8. We note that the aforementioned issues had already been included in the EOC’s Discrimination Law Review. We expect the EOC to consider all the views collected during its public consultation on the Discrimination Law Review thoroughly and carefully before making its recommendations on the way forward. We understand that the EOC has received a large number of submissions and might submit proposals to the Government in the latter half of 2015. Upon receiving the EOC’s proposals, the Administration will consider how to follow up.

9. Several deputations also urged the EOC to strengthen public education and training on sexual harassment, and to improve its complaint handling mechanism. We understand from the EOC that it has undertaken a number of promotional and educational measures for the prevention of sexual harassment, for example, publicity, seminars and talks targeting employers, employees and customers to help them understand their rights and responsibilities. Upon the passage of the Bill, the EOC will enhance its publicity and organise a series of territory-wide

promotional activities to educate the public on the new provisions. The EOC is also ready to handle potential complaints.

10. We hope the Bill will be passed as soon as possible in order to extend protection to the employees in the service industries.

**Constitutional and Mainland Affairs Bureau**  
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