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Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 16 March 2015**

Discrimination Law Review by Equal Opportunities Commission

Purpose

This paper summarizes the concerns expressed by members of the Panel on Constitutional Affairs ("the Panel") on the Discrimination Law Review ("DLR") conducted by the Equal Opportunities Commission ("EOC").

Background

2. Established under the Sex Discrimination Ordinance (Cap. 480) ("SDO") in 1996, EOC is a statutory body responsible for the implementation of SDO, the Disability Discrimination Ordinance (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527), and the Race Discrimination Ordinance (Cap. 602) ("RDO"). EOC has a statutory duty to review the functioning of the existing discrimination ordinances and where necessary, make recommendations for amendments.

3. On 8 July 2014, EOC published a Consultation Paper on DLR and announced the commencement of a three-month public consultation¹. According to the executive summary of the Consultation Paper, DLR is to review the four existing discrimination ordinances. Its purpose is to improve protection from discrimination and promote equality in Hong Kong.

4. According to EOC, the key issues covered by DLR include -

- (a) combining the discrimination laws into one law;
- (b) de facto relationships similar to marriage;
- (c) nationality, citizenship, Hong Kong residency or related status;

¹ The public consultation was subsequently extended to end on 31 October 2014.

- (d) a duty to provide reasonable accommodation for persons with disabilities;
- (e) situations where harassment is prohibited;
- (f) protection from race discrimination in Government functions;
- (g) duties on public bodies to promote equality;
- (h) powers and work of EOC; and
- (i) exceptions.

Relevant issues raised by the Panel

5. When the Panel received briefings by the incumbent Chairperson of EOC on updates of EOC's work on 17 June 2013 and 23 April 2014, issues relating to DLR were raised by members. The major concerns expressed by members are summarized in the following paragraphs.

Scope of DLR

6. Some members asked whether EOC would consider consolidating the four discrimination laws into a single ordinance and extending protection to cover discriminatory acts on new grounds (e.g. age and religion). The EOC Chairperson advised that EOC saw merits in consolidating the existing discrimination laws into one single ordinance in order to rectify inconsistencies. He considered that public views would need to be further sought on whether there should be addition of new grounds to enhance protection from relevant discrimination.

Review of RDO

7. Some members requested the EOC Chairperson to provide further information on EOC's plan to include in DLR whether the protection of RDO should be expanded to cover Mainlanders and new arrivals. The EOC Chairperson advised that EOC had completed an internal review of the discrimination laws and their implementation. Public consultation with key stakeholders and the general public on various key issues including the scope of protection of RDO was tentatively scheduled to commence in the third quarter of 2014. The EOC Chairperson, however, advised that RDO might not need to be amended as he noted that the problem of discrimination against Mainlanders had become less serious. Nevertheless, EOC should still make necessary preparations in case the need for legislation arose in the future.

8. Hon Gary FAN pointed out that according to the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"), racial discrimination referred to "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin". He queried the legal basis for amending RDO to cover Mainlanders and new arrivals. Hon Claudia MO also considered that as Mainlanders and new arrivals did not constitute a racial group in Hong Kong, it would be fundamentally wrong to propose amending RDO to cover those people.

9. Some other members, however, supported that DLR should cover the relevant issues as they considered that the discrimination experienced by Mainlanders in Hong Kong was a matter of concern. The Chief Legal Counsel of EOC advised that discrimination on the basis of nationality and citizenship was covered by ICERD. The race discrimination legislation in Australia also included provisions prohibiting discrimination against new migrants. EOC considered it appropriate to study whether or not RDO should be amended to cover them.

Review of SDO

10. Hon WONG Yuk-man considered that a comprehensive review of the provisions of SDO should be conducted as the ordinance had come into operation for more than a decade. He noted that while section 2(5) of SDO was applicable to women, section 2(8) stipulated that "A provision of Part 3 or 4 framed with reference to sexual harassment of women" was equally applicable to men. He considered that section 2(5) should be amended to clearly provide for the applicability of the relevant provisions in SDO to men as well. He also suggested that in the review of SDO, reference might be made to the relevant legislation in Australia where, in addition to the two genders (male and female), a gender "X" was provided representing the transgender and intersex people. He considered that these people should also be protected under SDO.

11. Members may wish to note that EOC has decided to include in DLR to examine whether gender neutral language should be used for certain provisions of SDO², and recommendations would be made upon completion of the review.

² Members may wish to note that a bills committee was formed in the 2013-2014 session to scrutinize the Sex Discrimination (Amendment) Bill 2014, which sought to expand the scope of protection against sexual harassment to cover customers harassing providers of goods, services, or facilities. In the course of scrutiny of the Bill, some members of the Bills Committee proposed using gender neutral references in the Bill to ensure that persons of different gender identities would also be protected under the Bill. EOC explained that while it was desirable to use gender neutral references in SDO, the use of gender neutral references solely for the proposed new subsection (1A) (which only concerned sexual harassment by customers of service providers) in the Bill would create inconsistency in the drafting approach of the provisions of SDO. EOC advised that DLR would examine whether gender neutral language should be used for certain provisions of SDO and recommendations would be made in due course.

12. Hon Cyd HO suggested that new provisions should be added to SDO to prohibit employers/the management concerned from taking punitive actions against their employees who had lodged complaints about sexual harassments in their workplace to EOC even though the complaints were not substantiated. The Administration advised that the suggestion would be considered.

Definition of "de-facto relationships"

13. Noting that DLR would cover, among others, whether protection under the relevant discrimination laws should be extended to cover de-facto relationships, Hon CHAN Chi-chuen asked whether the definition of "de-facto relationships" covered "same-sex cohabitation relationship", "same-sex marriage" and "civil union for same-sex partners".

14. The EOC Chairperson advised that in the context of family status discrimination and sex discrimination, "de-facto relationships" was meant to include cohabitation relationship between a man and a woman, but not same-sex cohabitation relationship as Hong Kong's existing marriage institution was based on monogamy between one male and one female. Nevertheless, he considered that Hong Kong should initiate discussion on issues like "same-sex marriage" and "civil unions" in the light of recent developments such as the legalization of same-sex marriage in some overseas jurisdictions. To facilitate the Administration's consideration of the way forward, EOC had commissioned a consultant to conduct a feasibility study on legislating against discrimination on the grounds of sexual orientation and gender identity.

Recent development

15. The Chairperson of EOC will brief the Panel on the progress of DLR at the next meeting on 16 March 2015.

Relevant papers

16. A list of relevant papers which are available on the Legislative Council's website is in the **Appendix**.

**Relevant documents on Discrimination Law Review
by Equal Opportunities Commission**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	17.6.2013 (Item III)	Agenda Minutes
	23.4.2014 (Item IV)	Agenda Minutes
House Committee	21.11.2014	Report of the Bills Committee on Sex Discrimination (Amendment) Bill 2014

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