

**For discussion
on 20 March 2017**

Legislative Council Panel on Constitutional Affairs

**An initial assessment of the recommendations in the Discrimination
Law Review submitted by the Equal Opportunities Commission**

Purpose

This paper informs Members of the Government's initial assessment of the recommendations in the submissions on the Discrimination Law Review (DLR) by the Equal Opportunities Commission (EOC).

Background

2. Set up in 1996, the EOC is tasked with implementing the four anti-discrimination Ordinances (i.e., the Sex Discrimination Ordinance (SDO) (Cap. 480), the Disability Discrimination Ordinance (DDO) (Cap. 487), the Family Status Discrimination Ordinance (FSDO) (Cap. 527) and the Race Discrimination Ordinance (RDO) (Cap. 602)). One of the EOC's functions is to keep under review the working of the four Ordinances and, either when required by the Chief Executive (CE) or as the EOC thinks it necessary, draw up and submit to the CE proposals for amending the Ordinances. In performance of this statutory function, in March 2013, the EOC launched the DLR to review comprehensively all four existing anti-discrimination Ordinances. As part of the DLR, the EOC conducted a public consultation exercise from 8 July to 31 October 2014, and received over 125 000 written submissions (288 responses from organisations and 124 753 responses from individuals). In March 2016, the EOC made its submissions to the Government on the DLR (<http://www.eoc.org.hk/eoc/graphicsfolder/inforcenter/dlr/default.aspx>).

Consideration

3. We note that the submissions covered a wide range of issues and contained a total of 73 recommendations, including 27 which were considered by the EOC to be of higher priority. As stated in the Policy Agenda of the 2017 Policy Address, we will initiate discussion with the

Legislative Council on those recommendations under the DLR that are considered by the EOC as priority items.

4. We note that the submissions contained some relatively complex and sensitive issues, on which the public have expressed strong and divergent views. We also note that the EOC has suggested further consultation, research and education on some of the issues. Among the recommendations that are of higher priority, we intend to focus on those that are relatively less complex or controversial at this juncture, with a view to taking forward necessary legislative amendments in a step-by-step manner.

5. Accordingly, we have identified nine recommendations that we consider to be capable of driving consensus among stakeholders and society, and may be taken forward at this juncture, as follows –

- (a) to introduce express provisions in FSDO (or SDO) prohibiting direct and indirect discrimination on grounds of breastfeeding, and to include expressing milk in the definition of breastfeeding

The recommendation proposes provisions to be added to FSDO to expressly prohibit direct and indirect discrimination on grounds of breastfeeding in areas including: employment; education; provision of goods, services or facilities; disposal or management of premises; eligibility to vote for and to be elected or appointed to advisory bodies; participation in clubs; and activities of the Government, and to include expressing milk in the definition of breastfeeding. Currently there is no express reference to breastfeeding in FSDO, but complaints regarding discrimination on the grounds of breastfeeding are currently handled by the EOC under FSDO, and 17 such complaints had been lodged with the EOC in the past. Examples of such complaints include a woman being asked to stop breastfeeding or move elsewhere at a local library/restaurant. So far, no case on discrimination on grounds of breastfeeding has been taken to court in Hong Kong.

Supporting and promoting breastfeeding is under the policy purview of the Food and Health Bureau (FHB). The Committee on Promotion of Breastfeeding set up under the FHB has formulated a three-year work plan to encourage the

adoption of breastfeeding friendly workplace policies and enhance relevant publicity and education, etc. The FHB is also stepping up its policy of encouraging the business sectors to establish breastfeeding friendly workplace (including the provision of lactation breaks and facilities for storage of breastmilk in workplace) on a voluntary basis. A recent update on the Government's work to promote breastfeeding is at **Annex A** for reference.

- (b) to amend provisions in the RDO that prohibit direct discrimination on the ground of race of a "near relative" by replacing the definition of "near relative" by a definition of an "associate" which is wider in scope, and to include protection from direct discrimination by perception or imputation that a person is of a particular racial group

These recommendations seek to widen the scope of protection from direct discrimination and harassment currently provided under RDO. The EOC has received enquiries regarding situations of possible race discrimination by association. For example, an enquiry was made about possible race discrimination by association against a Chinese woman because her work related to promoting equality for ethnic minorities. RDO currently only prohibits discrimination on the ground of race of "near relatives", and the EOC proposes to extend the coverage to other "associates" such as friends, carers and work colleagues. This would align with protection under DDO.

Currently, discrimination by perception or imputation is not prohibited under RDO, while express protection from such discrimination is afforded by DDO. Between April 2006 and May 2016, the EOC received 32 complaints involving allegations of discrimination against associates of persons with disabilities (mostly related to provision of goods, services or facilities), such as withholding/terminating an offer of employment because the complainant's parent had mental illness, and 17 complaints involving allegations of discrimination on the ground of imputed disability (mostly related to employment), such as dismissal because the complainant might be at risk of a stroke. The EOC considers that there are a number of situations where persons perceived to be of a particular race may be treated less

favourably. For example, persons perceived to be of a certain ethnic origin (even if they are not) may be less favourably treated.

- (c) to expand the scope of protection from sexual, disability and racial harassment, such as between persons in a common workplace (e.g. consignment workers and volunteers) and between tenants/sub-tenants occupying the same premises

The recommendations would widen the scope of protection from harassment in the SDO, DDO and RDO, including harassment between persons in a common workplace, between service providers and service users, between tenants/sub-tenants occupying the same premises, and between the management of clubs and members or prospective members. While the EOC does not maintain detailed statistics of numbers and breakdown of enquiries or complaints related to these types of harassment, it has received a complaint from a person who worked on consignment in a large retail shop and alleged sexual harassment by employees of the retail shop. The EOC's study on sexual harassment of flight attendants in 2014 indicated that 12% of the respondents (53 people) had also experienced racial harassment and 2% (8 people) had experienced disability harassment by colleagues or customers. Furthermore, we note from the EOC's report that it has on several occasions received complaints of tenants being sexually harassed by other tenants in the same premises.

- (d) to repeal provisions which require proof of intention to discriminate in order to obtain damages for indirect discrimination under SDO, FSDO and RDO

The recommendation helps to align the four anti-discrimination Ordinances in respect of the awarding of damages for indirect discrimination. Currently, awarding damages for indirect discrimination under SDO, FSDO and RDO requires proof that the respondent intended to discriminate against the plaintiff, but there is no such requirement under DDO.

6. The aforementioned recommendations generated a generally balanced view from responding organisations in the EOC's public consultation. Opposition from individuals were however quite strong (details at **Annex B**). According to the EOC's submissions, a large proportion of responses from individuals was expressed through variations of a seemingly pro forma response. The EOC noted that there were a variety of views expressed from diverse groups of stakeholders, sometimes with divergent standpoints. The EOC has also released a separate report on responses to the public consultation which provides factual summaries of the 125 041 responses (288 from organisations and 124 753 from individuals) received by the EOC during the public consultation (<http://www.eoc.org.hk/eoc/graphicsfolder/inforcenter/dlr/default.aspx>).

7. The Government will continue to carefully study the content of the submissions and consider how to follow up on the recommendations, while maintaining communication with the EOC.

Advice sought

8. Members are invited to give views on our initial assessment of the nine prioritised recommendations, after which we will further consider how best to take forward the recommendations.

Constitutional and Mainland Affairs Bureau
March 2017

Press Releases

Government strives to promote support for breastfeeding among different sectors of the community and the general public

The Government has all along endeavoured to promote and support breastfeeding. Multi-pronged strategies are adopted to promote breastfeeding which include strengthening support to breastfeeding in medical institutions and the community, encouraging adoption of breastfeeding friendly workplaces, and promoting breastfeeding friendly premises. The aim is to promote breastfeeding as the norm for baby care widely accepted by the community. Thereby, members of the public will then turn their support into action and create a breastfeeding friendly environment which will boost the rate and sustainability of breastfeeding.

The Under Secretary for Food and Health, Professor Sophia Chan, today (December 6) chaired the Committee on Promotion of Breastfeeding meeting to review the progress and effectiveness of various measures for promoting and supporting breastfeeding and to discuss the ways to further enhance those measures.

Professor Chan said, "The Committee has formulated a three-year workplan. Apart from implementing various supportive initiatives on breastfeeding through the Department of Health (DH) and the Hospital Authority (HA), the action plans to encourage adoption of breastfeeding friendly workplace policy, promote breastfeeding friendly premises, enhance publicity and education on breastfeeding have been taken with the collaboration of the Government, and relevant parties and sectors of the community. Through the efforts in the past two years, it is encouraging to see that some of these measures have achieved satisfactory results."

The Government has adopted the following major initiatives to support and promote breastfeeding policy with a view to implementing the workplan drawn up by the Committee:

- The Government attaches great importance in providing appropriate support to lactating mothers when they return to work. The Food and Health Bureau (FHB) proactively encourages government bureaux and departments (B/Ds) to implement the "breastfeeding friendly workplace" policy by putting in place the breastfeeding friendly measures so as to facilitate employees to continue breastfeeding after returning to work. So far, more than 75 B/Ds have already implemented the relevant policy. In May 2015, FHB issued letters to more than 450 non-governmental organisations (NGOs) and private enterprises to promote and encourage them to implement measures of breastfeeding friendly workplaces.
- The Government also actively promotes "breastfeeding friendly premises" in public places in order to promote community support towards breastfeeding and create a friendly environment towards lactating mother. For instance, the Government has been proactively promoting the provision of baby care facilities in government offices and public places. The "Advisory Guidelines on Baby care Facilities" were developed as early as August 2008 to provide reference to government departments and public sectors. As at June

2016, a total of 271 baby care rooms are set up in government premises. Furthermore, the Government issued the "Practice Note on the Provision of Baby care Rooms in Commercial Buildings" in February 2009 to encourage and facilitate the provision of baby care rooms in private commercial premises. The response of property developers to this measure was positive. For instance, baby care rooms have been provided in shopping malls and the Urban Renewal Authority has taken reference to the Practice Note and made the provision of baby care rooms a mandatory tendering requirement for all medium-to-large shopping malls. As a result of the promotional efforts of the Government in the past years, baby care and breastfeeding facilities have been made available in many large department stores and hotels. To further increase the number of breastfeeding friendly premises, the DH had formulated the "Guide to Establishing Breastfeeding Friendly Premises" in May 2015 for reference by public premises interested in promoting breastfeeding friendly environment. In June 2016, FHB issued letters to more than 470 private enterprises and organisations to encourage them to implement "breastfeeding friendly premises" policy in public places owned or managed by them. The DH has organised a number of briefings on the relevant policy. The briefings were attended by representatives from 66 organisations and enterprises. DH's staff were also sent to organisations interested in implementing the relevant policy to assist their staff to receive appropriate training.

- To further enhance the support from various sectors of the community on breastfeeding, the FHB, the DH and the Hong Kong Committee for the United Nations Children's Fund (UNICEF HK) have jointly launched a promotion campaign entitled "Say Yes to Breastfeeding" since July 2015. The campaign aims to encourage private organisations to implement a breastfeeding friendly policy in workplace and encourage public places, big and small, to introduce breastfeeding friendly initiatives. In addition, they collaborated in May this year to launch the promotion campaign "Breastfeeding Friendly Mall" to encourage shopping malls to implement breastfeeding friendly policy supporting lactating mothers to breastfeed anywhere anytime. The Government also encourages public transport facilities to adopt breastfeeding friendly premises policy. Positive responses were received. The responsible government department has been closely liaising with the operators.
- The DH and the UNICEF HK have also collaborated with the Hong Kong Catering Industry Association to introduce and promote "breastfeeding friendly premises" measures to the catering industry. As at October 2016, more than 80 restaurants had implemented "breastfeeding friendly premises" measures.
- To echo the Baby Friendly Hospital (BFH) Initiative, a worldwide programme of the World Health Organization and UNICEF, the HA has been implementing the initiative in its eight public hospitals with maternity wards and encouraging them to become BFH in phases. The Queen Elizabeth Hospital was accredited internationally as Hong Kong's first BFH in May 2016. The objective of the BFI Initiative is to remove elements obstructing breastfeeding in medical institutions, including hospitals, clinics and mother and baby centres, and to support more mothers to sustain breastfeeding through the provision of services and guidance. In June 2016, three

Maternal and Child Health Centres (MCHC), namely, Sai Ying Pun MCHC, Kowloon City MCHC and Yaumatei MCHC, under the purview of DH have implemented a pilot scheme of Baby-Friendly MCHC Accreditation. The target is to complete the accreditation within three years.

"The breastfeeding rate in Hong Kong over the past 20 years has been on the rise. The breastfeeding rate on hospital discharge has increased from 24 per cent in 1992 to 89 per cent in 2015. The result of a DH's telephone survey conducted last year revealed that nearly 80 per cent of the respondents found it acceptable to have lactating mother breastfeeding near them in public places. About 90 per cent of the respondents agreed that a public venue should implement breastfeeding friendly measures. Nearly 90 per cent of the respondents agreed on implementing these measures in workplace. The results revealed that the community is becoming more acceptable and supportive to breastfeeding though there is still room for improvement in boosting the supportive atmosphere for breastfeeding anytime and anywhere. This shows that more promotion work by the Government is required. The Committee will continue to monitor the implementation of the measures under the workplan and review their effectiveness; explore initiatives to promote breastfeeding more effectively; step up co-operation with different organisations and sectors in the community to actively solicit acceptance, respect and support to lactating mothers by different sectors as well as the general public. Then, Hong Kong will become a city genuinely respect and support breastfeeding," said Professor Chan.

The Committee on Promotion of Breastfeeding was set up by the FHB in April 2014 under the chairmanship of the Under Secretary for Food and Health. Members include representatives from relevant healthcare professionals, academia and representatives of the organisations that have participated in the promotion of breastfeeding. The Committee provides specific recommendations and supervision on strategies and action plans to further strengthen the promotion, protection and support for breastfeeding. Its objectives are to enhance the sustainability of breastfeeding and promote breastfeeding as a norm for baby care widely accepted by the general public.

Ends/Tuesday, December 6, 2016
Issued at HKT 21:41

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**Summary of nine recommendations in the EOC's submissions
prioritised by the Government**

Recommendation		Results of EOC's consultation
5	It is recommended that the Government introduce express provisions prohibiting direct and indirect discrimination on grounds of breastfeeding. These provisions could be included by an amendment to the Sex Discrimination Ordinance as a form of sex discrimination, a separate category of discrimination, or alternatively as an amendment to the Family Status Discrimination Ordinance. The definition of breastfeeding should also include expressing milk.	<u>35 organisations</u> 76% agreed 21% disagreed <u>24 490 individuals</u> 14% agreed 82% disagreed
7	It is recommended that the Government amend the Race Discrimination Ordinance provisions prohibiting direct discrimination and harassment by association by repealing the provisions regarding near relatives, and replacing it with a definition of an associate to include: (a) a spouse of the person; (b) another person who is living with the person on a genuine domestic basis; (c) a relative of the person; (d) a carer of the person; and (e) another person who is in a business, sporting or recreational relationship with the person.	<u>56 organisations</u> 50% agreed 48% disagreed <u>68 576 individuals</u> 1% agreed 99% disagreed
8	It is recommended that the Government amend the Race Discrimination Ordinance to include protection from direct discrimination and harassment by perception or imputation that a person is of a particular racial group.	<u>28 organisations</u> 61% agreed 35% disagreed <u>47 297 individuals</u> 1% agreed 99% disagreed
15	It is recommended that the Government amend the provisions of the Sex Discrimination Ordinance, Race Discrimination Ordinance and Disability Discrimination Ordinance to provide protection from sexual, racial and disability harassment to persons in a common workplace such as consignment workers and volunteers.	<u>44 organisations</u> 38% agreed 44% disagreed <u>61 268 individuals</u> 1% agreed 99% disagreed

	Recommendation	Results of EOC's consultation
16	It is recommended that the Government amend the provisions of Race Discrimination Ordinance and Disability Discrimination Ordinance to provide protection from racial and disability harassment of service providers by service users.	<u>38 organisations</u> 35% agreed 45% disagreed <u>61 664 individuals</u> 1% agreed 99% disagreed
17	It is recommended that the Government amend the provisions of the Race Discrimination Ordinance and Disability Discrimination Ordinance to provide protection from racial and disability harassment of service providers by service users, where such harassment takes place outside Hong Kong, but on Hong Kong registered aircraft and ships.	<u>36 organisations</u> 39% agreed 44% disagreed <u>60 894 individuals</u> 1% agreed 99% disagreed
18	It is recommended that the Government amend the Sex Discrimination Ordinance, Race Discrimination Ordinance and Disability Discrimination Ordinance to provide protection of tenants or sub-tenants from sexual, racial or disability harassment by another tenant or sub-tenant occupying the same premises.	<u>38 organisations</u> 35% agreed 45% disagreed <u>60 893 individuals</u> 1% agreed 99% disagreed
19	It is recommended that the Government amend the Sex Discrimination Ordinance, Race Discrimination Ordinance and Disability Discrimination Ordinance to provide protection from sexual, racial and disability harassment by management of clubs of members or prospective members.	<u>37 organisations</u> 38% agreed 46% disagreed <u>60 882 individuals</u> 1% agreed 99% disagreed
22	It is recommended that the Government repeal the provisions under the Sex Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance which require proof of intention to discriminate in order to award damages for indirect discrimination claims.	<u>29 organisations</u> 52% agreed 45% disagreed <u>53 720 individuals</u> 1% agreed 99% disagreed