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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 20 March 2017**

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) ("DDO"), 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 consultation exercise¹. 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;

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

- (c) nationality, citizenship, Hong Kong residency or related status;
- (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.

5. On 29 March 2016, EOC submitted a report on DLR to the Administration for its consideration. The report contained a total of 73 recommendations, 27 of which were considered by EOC to be higher priority issues.

6. During the policy briefing cum meeting of the Panel on 25 January 2017, the Administration informed members that it had examined each of the high priority issues in DLR and noted that some issues were relatively complicated and sensitive. The Administration intended to conduct a more in-depth study and would initiate discussion with the Panel on some of the prioritized recommendations as proposed by EOC in due course.

Relevant issues raised by the Panel

7. The Panel discussed the progress of DLR with representatives of EOC and the Administration at its meeting on 16 March 2015. When the Panel received briefing by the incumbent Chairperson of EOC on an update of EOC's work on 20 June 2016, issues relating to DLR were also raised by members. The major concerns expressed by members are summarized in the following paragraphs.

Scope of Discrimination Law Review

8. 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). EOC advised that it saw merits in consolidating the existing discrimination laws into one single ordinance in order to rectify inconsistencies. However, EOC 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 Race Discrimination Ordinance

9. Some members considered that discrimination against new arrivals, tourists and students from the Mainland was prevalent in Hong Kong and urged EOC to give priority to tackling the issue. EOC advised that the existing RDO did not cover discrimination on the basis of nationality, citizenship and residency. Hence, DLR sought to examine, inter alia, whether the scope of RDO should be extended to cover discrimination on these grounds. EOC further advised that the issues involved could not be tackled simply by the anti-discrimination laws which only provided for civil claims to be made to seek remedies. EOC suggested that the Government should tackle the problem by inter-departmental efforts and through cooperation of different sectors of society.

10. Some members considered that as Mainlanders and new arrivals from the Mainland did not constitute a racial group in Hong Kong, it would be fundamentally wrong to propose amending RDO to cover those people. EOC advised that discrimination on the basis of nationality and citizenship was covered by the International Convention on the Elimination of All Forms of Racial Discrimination. 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. At the Panel meeting on 20 June 2016, EOC informed members that in its report on DLR, EOC had recommended that the Government should conduct public consultation and introduce protection from discrimination on the grounds of nationality and citizenship under RDO.

Review of Sex Discrimination Ordinance

11. Some members 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. It was suggested that SDO should be amended to clearly provide for the applicability of the relevant provisions in SDO to men as well. EOC advised that while SDO afforded equal protection to male and female, EOC received more complaints involving female victims than male victims. In fact, any aggrieved men could lodge relevant complaints with EOC to seek redress under SDO. Some members 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. They considered that these people should also be protected under SDO.

12. 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.

13. Some members 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"

14. Noting that DLR would cover, among others, whether protection under the relevant discrimination laws should be extended to cover de-facto relationships ("事實婚姻關係"), some members enquired whether the definition of "de-facto relationships" covered "same-sex cohabitation relationship", "same-sex marriage" and "civil union for same-sex partners".

15. EOC 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, EOC 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

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.

the grounds of sexual orientation and gender identity³. Some members considered that the term "事實婚姻關係" should be revised as "事實關係" to avoid giving the impression that the relevant proposals included legalization of same-sex marriage.

Scope of Disability Discrimination Ordinance

16. Some members expressed concern that any changes to the definition of "disability" under DDO might affect the provision of services to some chronically ill patients. Some other members, however, considered that the definition of "disability" for the Disability Allowance was outdated and had excluded people with injuries not falling within the specified types. They requested EOC to propose suitable changes to the definition. EOC advised that there were discrepancies in the definition between DDO and those adopted in overseas jurisdictions, e.g. whether the definition should be refined to require substantial and/or longer term impairments similar to the relevant legislation in the United Kingdom.

17. Some members suggested that a duty to make reasonable accommodation for persons with disabilities should be introduced and requested EOC to cover the issue in DLR. They also urged the Administration to be more proactive in following up EOC's "Study on Equal Learning Opportunities for Students with Disabilities under the Integrated Education System" and reminded the Administration and EOC that the "Design Manual - Barrier Free Access 2008" and the "Hong Kong Rehabilitation Programme Plan" had not been updated or further developed since 2008. EOC advised that introducing a duty to make reasonable accommodation for persons with disabilities was important and it would continue to pursue this. EOC also pledged to strive to make constructive recommendations to the Government to seek improvements to integrated education and to enhance protection of persons with disabilities.

Discrimination against pregnant employees and breastfeeding mothers

18. Concerns were raised about the discrimination experienced by pregnant employees and the unfavourable treatment of breastfeeding mothers in the workplace. EOC advised that the findings of the "Study on Pregnancy Discrimination and Negative Perceptions Faced by Pregnant Women and Working Mothers in Small and Medium Enterprises ('SMEs')" released in May

³ The EOC Report on Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status was released in January 2016. EOC recommended that the Government should consider launching a public consultation exercise with a view to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status.

2016 showed that unfavourable treatment of pregnant employees and working mothers was occurring in the Hong Kong SME workplace. Based on the findings, EOC had made a number of recommendations for action by the Government and other key stakeholders. EOC had been advocating for stronger policies and infrastructure, including friendly workplace policies and provision of breastfeeding facilities in both public places and commercial premises, to enable mothers to breastfeed their child.

Recent development

19. The Administration will brief the Panel on its initial assessment of the recommendations in DLR submitted by EOC at the next meeting on 20 March 2017.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
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**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
CA Panel	16.3.2015 (Item IV)	Agenda Minutes
	20.7.2015 (Item III)	Agenda Minutes
	20.6.2016 (Item III)	Agenda Minutes
	25.1.2017 (Item V)	Agenda