

**Meeting of the Legislative Council Panel on Constitutional Affairs
19 April 2017**

**Work Progress and Strategic Focuses of the
Equal Opportunities Commission**

Purpose

This paper provides an update on the work progress of the Equal Opportunities Commission (EOC), its strategic focuses and key initiatives in 2017/18 and beyond.

Background

2. The EOC is a statutory body established in 1996 under the Sex Discrimination Ordinance (SDO) (Cap 480). The functions and powers vested in the EOC are set out in the existing four anti-discrimination ordinances of Hong Kong, namely SDO, Disability Discrimination Ordinance (DDO) (Cap 487), Family Status Discrimination Ordinance (FSDO) (Cap 527) and Race Discrimination Ordinance (RDO) (Cap 602). The missions of the EOC are to eliminate all forms of discrimination and to promote and mainstream the concepts of equal opportunities in the Hong Kong society. Its vision is to create a pluralistic and inclusive society where there is no barrier to equal opportunities.

Handling Enquiries and Complaints

3. One major function of the EOC is to enforce compliance with the anti-discrimination laws and provide access to redress for discrimination, by conducting investigation into complaints lodged under the anti-discrimination ordinances, encouraging and facilitating conciliation between parties, and undertaking self-initiated investigation.

4. In 2016, the EOC received a total of 15,629 enquiries from the public, 11.7% more than in 2015. Out of this figure, 9,719 were general enquiries, while 5,910 were on specific situations, scenarios or incidents that may become complaints. The majority of these were made through the EOC telephone hotline, followed by writing and face-to-face meetings.

5. For complaints, the EOC received 601 complaints in 2016, an increase of 18% over the figure in 2015. Together with the complaints carried over from the previous year, the EOC handled 818 complaints in 2016, 14.6% more than in 2015. Complaints lodged under the SDO and RDO both registered increase, whereas those under the DDO and FSDO showed decline. Notwithstanding so, complaints lodged under the DDO continued to take up the largest share, accounting for 320 cases or 39% of the total number of complaints handled. The majority of these (213 cases) were related to employment, with the disputes mainly over the ability of employees to perform the inherent requirements of a job, the accommodation

given by employers to employees and unjustifiable hardship to the employers. The second largest category of complaints were those lodged under the SDO, and were mainly related to pregnancy discrimination and sexual harassment. A breakdown on the number of complaints handled by the EOC in 2016 is included in **Annex A**.

6. The EOC has set a performance pledge of concluding 75% of the complaints within six months. In 2016, the EOC achieved 76%, with the average conclusion time being 139 days. Where appropriate, the EOC would help the parties concerned resolve the dispute through conciliation, which is totally voluntary. In 2016, the successful conciliation rate was 71%, as compared to 67% in 2015.

Self-initiated Investigation

7. The EOC also initiated investigations into incidents involving unlawful acts. These incidents were noticed by the Commission, or brought to the attention of the EOC by third parties or aggrieved individuals who do not wish to be involved in the investigation. In 2016, the EOC conducted investigations into 46 cases. These were mainly related to the provision of goods, services and facilities, and the provision of access to premises. In light of the investigation findings, the EOC wrote to the parties concerned, including Government departments, and urged them to undertake improvement measures, even though there might not be violation of the legislation.

Providing Legal Assistance

8. Where conciliation is unsuccessful, a complainant or aggrieved party may apply to the EOC for assistance in taking legal action on the complaint. The Legal and Complaints Committee of the EOC will consider the applications and decide on whether or not to grant assistance to the applicant. The forms of legal assistance may include legal advice, legal services relating to the gathering and assessment of further information or evidence, or representation in legal proceedings – by the EOC lawyers or lawyers in private practice engaged by the EOC.

9. In 2016, the EOC processed 39 applications and gave legal assistance for 16 cases. While the figure was lower than the 22 cases in 2015, it is important to note that the number of legally assisted case does vary each year, as the decision on granting legal assistance depends on a number of factors, including the complexity of the case and the strength of evidence to support a good prospect in court. Consideration will also be given on whether the case involves a question of principle, and whether any meaningful result can be achieved by way of legal proceedings.

Strategic Plan 2016-19

10. Beyond legal compliance, the EOC has also been striving to build a strong evidence base of discrimination through research studies, engage in policy analysis and advocacy,

review the effectiveness of the law and conduct public education and promotional programmes. In order to fulfil its mandate effectively and to maximise the impact of its work, the EOC has devised a Strategic Plan for 2016-19 after thorough discussion and consultation with the EOC Board. The Strategic Plan was developed at a historic juncture of the EOC, which celebrated its 20th anniversary in 2016. It served to address the latest trends of discrimination in the society, and lay out the directions and areas of focus for the EOC in the coming years, providing guidance for the formulation of work programmes. Such focused and targeted approach allows the EOC to drive change and improvement, particularly in eradicating the entrenched systemic discrimination, and deliver high-impact work, despite its limited budget.

11. Under the Strategic Plan 2016-19, there are five strategic goals, each setting out the priority areas for actions by the EOC. These are:

- (a) Driving legislative improvement – pursue with the Government on the recommendations under the Discrimination Law Review (DLR);
- (b) Advancing rights of ethnic minorities (EMs) – advocate the equal educational and employment opportunities of EMs and their access to services;
- (c) Promoting the rights of persons with disabilities (PWDs) – advocate equal educational and employment opportunities and access to public services for PWDs;
- (d) Addressing prevalent discrimination and harassment issues and promoting diversity and inclusion – foster safe environment free from discrimination and harassment; and
- (e) Striving for organisational excellence – deliver better services for the community.

The paragraphs below set out in details the initiatives of the EOC under each strategic goal and priority work area.

Strategic Goal 1: Driving legislative improvement

12. Following the submission of its law reform recommendations under the DLR to the Government in March 2016, the EOC subsequently provided further information and held discussions with the Government on the recommendations. The importance of taking forward the 27 high priority recommendations at an early date was reiterated during and after the discussions.

13. At the meeting of the Legislative Council Panel on Constitutional Affairs on 20 March 2017, the Government presented its initial assessment of the EOC's recommendations, and indicated that nine recommendations by the EOC might be taken forward. In this respect, the EOC looks forward to discussing with the Government its assessment and the timeline for taking forward the recommendations, including the other high priority areas identified by the EOC. The EOC believes that all these proposed reforms, such as introducing a distinct duty to make reasonable accommodation for PWDs in all fields, prohibiting race discrimination in the exercise of Government functions and powers under the RDO, and prohibiting public authorities from discriminating in the performance of their functions and powers under the

anti-discrimination laws, are crucial for filling the gaps in the existing anti-discrimination legislation, and ensuring comprehensive, enforceable equality rights for individuals. The Government should aim to implement the reforms and set a clear time-frame for the legislative process.

Strategic Goal 2: Advancing rights of ethnic minorities (EMs)

Education

14. The EOC strengthened its efforts to advance the equal opportunities of EMs with the establishment of a dedicated Ethnic Minority Unit (EM Unit) in 2015. While no recurrent funding has been provided by the Government to cover the Unit's programme costs, various initiatives have been implemented in the past two years. In terms of education, the EM Unit has been monitoring the implementation of policies and measures by the Government to support the learning of Chinese by non-Chinese speaking students, including the "Chinese Language Curriculum Second Language Learning Framework" ("Learning Framework"), by relaying the concerns of stakeholders, including school principals and parents, to the Education Bureau (EDB). To promote fair school admission and inclusive learning environment, the EM Unit published a guidance booklet "Promotion of Racial Integration and Prevention of Racial Discrimination in Schools", and arranged briefings for school personnel in 2016.

15. In 2017/18, the EM Unit will continue to liaise with the EDB and relevant stakeholders on the learning support for non-Chinese speaking students. With the "Learning Framework" having been implemented since the 2014-2015 school year, the EOC believes it is time for the Government to provide periodic progress reports on the implementation, and will work with the Government on reviewing the measure. In addition, the EM Unit will develop an Easy Guide on Implementing Inclusive School Policies and line up training sessions for school personnel, parents and students.

16. According to the study on "The Status of Ethnic Minorities in Hong Kong 1997 – 2014" commissioned by The Zubin Foundation, the drop-out rates before Form 5 for EM students with special educational needs (SEN) (57%) far exceeded that of the whole SEN population (5%). In this respect, the EOC has recommended, under its submission to the Legislative Council Subcommittee on the Rights of Ethnic Minorities in November and December 2016, the Government to set up a dedicated unit to look into the educational issues facing non-Chinese-speaking students with SEN in a comprehensive and holistic manner. The Commission will continue to follow up the matter with the Government.

Employment

17. In striving to improve the employment opportunities of EMs, the EM Unit has been working with organisations in both public and private sectors on various fronts. To assist job-seeking by EMs, the Unit has been following up with the Labour Department on strengthening its support services, particularly interpretation services, for EM job seekers, by

providing advice on its staff guidelines and conducting training sessions for staff at all the job centres. In an effort to widen the employment choices of EMs, the EM Unit has approached employers in the airline, public transport, residential care and health care industries, as well as the information technology sector, to open up job positions for EMs, and linked up these employers with the EM community through career briefing for EM youth and meeting on the development of a job-matching platform. To intensify job-based training, the EM Unit has also been working with the EDB, Social Welfare Department (SWD), Employees Retraining Board (ERB), NGOs and tertiary institutions to facilitate the development of Chinese workplace courses for helping EMs meet the basic Chinese needs in the mainstream workplace.

18. In 2017/18, the EM Unit will continue to act as a bridge between potential employers and EMs, opening up further career prospects and opportunities for EMs. To support the recruitment of EMs, the EM Unit will work with the enterprises concerned on developing language support and accommodation measures for EMs. The Unit will also work with the Vocational Training Council and ERB to expand the English course options for EMs, and liaise with the Construction Industry Council and Occupational Safety & Health Council to promote industrial safety practices to EMs.

Provision of Goods, Services and Facilities

19. Based on the findings of the “Study on Discrimination against Ethnic Minorities in the Provision of Goods, Services and Facilities, and Disposal and Management of Premises” released by the EOC in September 2016, it is common for EMs to encounter discrimination when they are obtaining goods and services, especially when they are looking for accommodation and using financial services. To address this, the EM Unit has organised workshops for banking staff and estate agents through The Hong Kong Association of Banks, The Hong Kong Institute of Bankers and the Estate Agents Authority to enhance staff’s cultural sensitivity and their understanding of the RDO. In addition, the EOC has rendered support to the Hong Kong Monetary Authority and The Hong Kong Association of Banks on the translation of information leaflets relating to banking and financial services into seven ethnic minority languages. In 2017/18, the EM Unit will continue to offer training to the above parties, including staff of Government departments and public bodies, and work with the organisations on formulating and/or reviewing their guidelines and procedures for providing services to EMs.

20. Since language and cultural barriers to accessing public services are also major concerns of the EM community, the Unit has met the Housing Department, Labour Department, SWD and Working Family and Student Financial Assistance Agency in 2016 to discuss strengthening their language support for EM service users. Upon the Unit’s recommendations, different Government departments have undertaken enhancement measures, such as formulating or reviewing their guidelines and procedures, especially in providing language support and interpretation services, and intensifying staff training on the RDO and cultural sensitivity.

21. In March 2017, the EOC launched a brand new integrated campaign EMbRACE. Targeting the wider population, the campaign features a dedicated Facebook page, videos, talks and other activities to promote the message of racial inclusion. In addition to reaching out to local schools, the EM Unit will engage the business, social service and other sectors in organising related programmes so as to maximise the reach and impact of the campaign.

22. Without recurrent funding for the programme costs of the EM Unit, the Unit could only tap into the EOC's resources to cover the project/programme expense on promoting equal opportunities for EMs. The EOC has submitted a one-off funding request for \$4.5 million to the Constitutional and Mainland Affairs Bureau for continuing and advancing the work of the Unit in the coming two years and is still awaiting the Bureau's approval. Nevertheless, in the long run, it is vital for the Government to provide recurrent funding for the EM Unit's programme cost so that long-term commitment can be made for projects and territory-wide public education exercises to enhance racial acceptance, support and respect, and for the EOC's work in this area to be effective.

Strategic Goal 3: Promoting the rights of persons with disabilities (PWDs)

Education

23. The equal rights of PWDs to education were reaffirmed in 2016 in the judicial review in *Law Chi Yuen v. Secretary for Education* HCAL 91/2011. The Court ruled that the Secretary for Education's decision on not allowing the applicant's school to join the EDB's Native-speaking English Teacher Scheme amounted to direct discrimination against the applicant prohibited under section 6(a) of the DDO on the basis of his intellectual disability. The EOC intervened in the case as *amicus curiae*, and made submissions on the legal issues involved. Meanwhile, the EOC has been closely monitoring the support measures to students with SEN and disabilities by the Government, and will continue to promote awareness of the integrated education policy and the importance of an inclusive school environment.

24. On the tertiary education for PWDs, the EOC has been working with the tertiary institutions on the support for students with SEN and disabilities under the Network for Promoting Equal Opportunities in Local Tertiary Education Institutes, which provides a platform for introducing and sharing inclusive practices and measures in the campuses.

Employment

25. The employment of PWDs remains a key concern of the EOC. Efforts have been made on various fronts to improve the situation, including training and seminars for employers and PR/publicity initiatives such as radio promotion. The EOC has also reached out to potential employers, including those in the airline and facility management sectors, to explore the possibility of providing internships for PWDs. Acting as a bridge, the EOC will connect the employers with NGOs providing employment services for PWDs, with a view to lining up internship and eventually employment for the PWDs.

Access to Public Services

26. In upholding the rights of PWDs, the EOC undertook two major initiatives in 2016. The first was publishing a guidebook entitled “Autism: A Guide for Law Enforcement Officers Communicating with Persons with Autism Spectrum Disorders” (the “Guide”) in November 2016. The Guide was developed in the light of a wrongful arrest of a person with autism for homicide by the police. It aims at providing reference and enhancing the sensitivity of police and other law enforcement officers in handling persons with autism spectrum disorders, by giving clear and practical information on how to identify and interview persons with autistic conditions with a view to facilitating more effective and accurate communication.

27. Another initiative concerned the sexual assault case at the private residential care home for persons with disabilities (RCHDs), Bridge of Rehabilitation. In response to the incident, the EOC held a forum for social service organisations in Hong Kong in November 2016 with the assistance of Hong Kong Council of Social Service to promote the prevention of sexual harassment. The EOC also provided assistance to relevant organisations in establishing anti-sexual harassment policies and handling complaints. In December 2016, the EOC held another talk for parents, carers and social workers of persons with intellectual disabilities, to educate them on the rights of PWDs and the ways to prevent sexual harassment. Working in collaboration with the SWD, the EOC conducted a seminar for operators and house managers of private RCHDs, and will be providing training for the frontline staff of private RCHDs in 2017 to help them understand their role in the prevention of harassment.

28. The EOC has also been making strenuous efforts to tackle the discrimination faced by persons with mental illness. In July 2016, the EOC released the findings of the “Study on the Challenges Encountered in the Siting of Integrated Community Centres for Mental Wellness and other Social Welfare Facilities in Hong Kong”. The study showed that the challenges faced by the Integrated Community Centres for Mental Wellness (ICCMWs) is another example of the “Not in My Backyard” syndrome, fuelled by public misunderstanding of persons with mental illness and mental health facilities, and intensified by the less than perfect public consultation process. To address the issue, a meeting with the District Council Chairpersons and Vice-Chairpersons was conducted in September 2016 to explain the study findings and raise the importance of accepting persons with mental illness. The EOC is planning to conduct another study in 2017 to identify an effective approach in the siting of ICCMWs and other mental health facilities. Furthermore, the EOC will continue to make use of other public avenues to remove the stigma and discrimination associated with mental illness.

Strategic Goal 4: Addressing prevalent discrimination and harassment issues and promoting diversity and inclusion

29. In prioritising its work areas, the EOC has taken into account the latest and emerging trends of discrimination, and the issues facing different groups of people. The EOC is particularly concerned about the prevalent discriminatory issues in the workplace, which prevent people from participating equally in the economy, and leading dignified and fulfilling lives. The EOC believes that it is important to promote a diverse and inclusive culture, and foster a friendly environment safe from discrimination and harassment. This is vital for Hong Kong's continuous development – not only in terms of recruiting and retaining global talents, but also upholding its reputation and standing as Asia's world city.

Sexual harassment

30. Among the various discriminatory issues, sexual harassment remains rife in various sectors. Since 2012, the EOC has been implementing an Anti-Sexual Harassment Campaign. Supported by evidence from the EOC surveys and studies, the campaign features a series of seminars and workshops for both the management and frontline staff of the sectors, and guidelines on the formulation of policies and measures for preventing sexual harassment. The campaign was targeted initially at the education and business sectors, and then later the sports and social service sectors. In addition, ongoing training is provided for organisations in the health sector, as well as public and private entities. In 2016, the EOC training team conducted over 250 training sessions for over 10,500 members of Government departments, public bodies, NGOs, law firms, airlines, banks, hotels, retailers, property management companies, insurance companies and manufacturing companies. Training is also developed for the ethnic minorities, including the foreign domestic workers.

Discrimination on the grounds of sexual orientation, gender identity and intersex status

31. Another attention area is discrimination on the grounds of sexual orientation, gender identity and intersex status. In January 2016, the EOC published the findings of the Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status, commissioned to the Gender Research Centre (GRC) of the Hong Kong Institute of Asia-Pacific Studies at The Chinese University of Hong Kong. The study confirmed that LGBTI (lesbian, gay, bisexual, transgender and intersex) people in Hong Kong experience significant discrimination in all aspects of their public life, such as in employment, education and the provision of services. Furthermore, it showed that public opinion had visibly shifted in favour of the passing of legislation to protect LGBTI persons from discrimination, with over 55% of the general public and over 90% of the young population (18 to 24 year olds) agreeing to the introduction of legislation. Based on the findings, the EOC recommended the Government to embark on public consultation on the introduction of legislation. The consultation focus should be on the scope and content of the legislation, rather than whether there should be legislation.

32. After more than a year since the publication of the study, the EOC reiterated the urgency and importance of legislation, by issuing a joint statement with the GRC in March 2017. The statement was supported by 75 organisations and individuals from a wide range of

sectors, including multinational financial institutions, one of the largest global technology companies, renowned local retailer, the biggest international chamber of commerce in Hong Kong, local and international law firms and legal organisations, as well as non-governmental organisations, religious groups and academics working on LGBTI issues. With the strong evidence and support, the EOC hopes that the Government would embark on the consultation soon.

33. Meanwhile, the EOC notes that the Government has listed in the 2017 Policy Agenda a series of measures for enhancing knowledge and inclusion of sexual minorities. The Secretary for Justice also mentioned recently that the consultation document relating to the review of the gender recognition issues of transsexual persons, including the legislation and incidental administrative measures, will be completed before 1 July 2017. The EOC looks forward to the release of the report, and working collaboratively with the Government on promoting inclusion for the LGBTI communities.

Family status discrimination

34. Among the complaints received and handled by the EOC, the number of complaints lodged under the FSDO remains the lowest. To examine the knowledge and prevalence of family status discrimination in the Hong Kong workplace and raise awareness of the issue, the EOC has embarked on a research study in February 2017, which will last for 15 months. Based on the findings, the EOC will develop recommendations for the Government on possible policies for tackling family status discrimination.

Strategic Goal 5: Striving for organisational excellence

Building capacity and enhancing efficiency

35. For 20 years, the EOC has been providing channels of redress for those suffering from discrimination, and giving guidance and expert information on the anti-discrimination laws and equality issues to the general public. To meet the public's ever higher expectations and demands in changing times, the EOC must continue to seek for improvement in its services, and build further capacity and capability. To this end, the EOC will develop a service charter, which will spell out the service standards and confines of the EOC's services to the public. The EOC is also in the process of reviewing its operational procedures, including the complaint-handling protocols, with a view to streamlining procedures and enhancing efficiency.

36. To review its service efficiency, the EOC maintains a set of performance standards. The EOC will continue to monitor its performance closely, taking into feedback from the public and stakeholders. Also, the Strategic Plan 2016-19 has included the expected results and performance indicators for each of the strategic goals, such that the EOC can measure the delivered results accordingly.

Enhancing communications and public education

37. The EOC has been making use of various communication channels to inform employers, service providers, stakeholders in different sectors and the general public about their rights and obligations under the anti-discrimination laws. Each year, a range of promotions are launched to promote the messages of equal opportunities and the work of the EOC. Leveraging on the 20th anniversary of the EOC, an integrated campaign was organised in 2016 to engage the stakeholders and general public. In 2017/18, the EOC will strengthen its promotions to the younger generation. As well as leveraging on the social media, educational and mentorship programmes will be launched to engage the young people, and instil in them the concepts of diversity, inclusion and equal opportunities.

Cost Control and Management

38. In striving to fulfil the above strategic goals, one major challenge of the EOC is maintaining the healthy financial position of the Commission. The EOC is primarily funded by the Government. For the past few financial years, the level of subvention from the Government lied in the range of \$105-\$107 million. As mentioned in the paper submitted to this Panel in June 2016 (LC Paper No. CB(2)1738/15-16(03)), the Government's subvention, as based on \$22 per sq. ft. gross for the office rental, was inadequate to cover the increase in rental through the years, which already increased to \$44.5 per sq. ft. gross in 2016. Furthermore, the provision for legal fees, at \$0.46 million per year, was based on the level of funding in 1996, although the EOC incurred an average of about \$1million per year in the past three years. As a result, the EOC had to tap into its reserve for meeting the rental and the legal fees, which is most undesirable.

39. The current lease of the EOC's office premise will expire in December 2017. Without additional funding, the Commission will not be able to meet the rental of its office upon the renewal of the lease, as the market rate of the existing office premise has already increased to \$48 per sq. ft. gross. In fact, it is projected that the EOC will have a structural deficit, with the Commission's reserve totally depleted by 2018/19. In view of this and after consultation with the EOC Board, the EOC has decided to relocate to an office premise of lower rent in Wong Chuk Hang, Aberdeen. The EOC reckons that moving its office further away from the core business district will inevitably cause inconvenience to some members of the public. Yet the EOC has no other option given the rise in rental and the lack of additional funding. The EOC will put in place proper relocation and communication arrangements, to ensure that services to the public will not be affected.

40. In identifying the office premise, the EOC has enlisted the professional support of three surveying companies, and carefully considered over 20 potential suitable sites. For each site, the accessibility, public transportation network, and friendliness to PWDs have been carefully assessed, besides taking into account the space efficiency rates. To cover part of the removal cost, the Government has included a one-off funding in the proposed subvention for the EOC in 2017/18, for setting up the new office and reinstating the existing office, while the remaining amount will be covered by the EOC's reserve. With lower rental, it is believed

that the EOC will be able to turn around its deficit situation and restore healthy financial position in the long run. Still the EOC hopes that the Government will seriously consider its request for a permanent office, as a long-term solution for dealing with the fluctuations in market rental.

Conclusion

41. Looking ahead, the Strategic Plan 2016-19 outlines the EOC's strategic goals and work areas in the coming years, and the expected outcomes. Acting in accordance with its statutory powers, the EOC will continue to protect the rights of everyone to equality through legal enforcement actions, using its litigation powers strategically by assisting and intervening in cases as appropriate to clarify and uphold the laws, and pressing for enhancement to the legislative framework. To help individuals and organisations comply with the legal requirements and promote greater understanding of the discrimination issues and the concepts of equality, the EOC will undertake research, public education and promotional programmes, working in partnership with the Government and stakeholders of different sectors. Notwithstanding the challenges arising from fiscal deficits and budget cuts, the EOC is committed to achieving improvement in performance, and creating even greater impact on the equality landscape of Hong Kong in the years ahead.

Equal Opportunities Commission
April 2017

Number of Complaints Handled by the EOC in 2016

| Ordinance | SDO | DDO | FSDO | RDO | Total |
|--------------------------------------|------------|------------|-------------|------------|--------------|
| Employment field | 233 | 213 | 17 | 9 | 472 |
| Non-employment field | 21 | 73 | 2 | 204 | 300 |
| <i>Sub-total</i> | 254 | 286 | 19 | 213 | 772 |
| Self-initiated investigations | 8 | 34 | 0 | 4 | 46 |
| Total | 262 | 320 | 19 | 217 | 818 |