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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 14 February 2018**

**Briefing by the Chairperson of the Equal Opportunities Commission on the
work of the Equal Opportunities Commission**

Purpose

This paper gives a brief account of the major issues raised by members when the Panel on Constitutional Affairs ("the Panel") received briefings on the work of the Equal Opportunities Commission ("EOC") by its Chairpersons.

Background

2. Established under the Sex Discrimination Ordinance ("SDO") (Cap. 480) on 20 May 1996, EOC is a statutory body responsible for the implementation of SDO, the Disability Discrimination Ordinance ("DDO") (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527) and the Race Discrimination Ordinance ("RDO") (Cap. 602). EOC comprises the Chairperson and up to 16 members. The authority of appointment of the Chairperson and members rests with the Chief Executive who shall determine the remuneration and the terms and conditions of appointment of the Chairperson. Under section 63 of SDO, the Chairperson shall be appointed on a full-time basis whereas other members of EOC may be appointed on a full-time or part-time basis.

3. The post of the Chairperson of EOC, which has the executive responsibility for the overall operation and management of EOC, is pitched at the rank equivalent to Point 8 on the Directorate Pay Scale of the Civil Service. EOC used to have a post of Chief Executive Officer ("CEO") which was pitched at the rank equivalent to Point 3 of the Directorate Pay Scale, but the post was deleted in July 2000. The responsibility of the CEO post was then shared between the Chairperson and the Director (Planning and Administration) of EOC.

4. In Chapter 3 of Report No. 52 of the Director of Audit tabled at the Legislative Council ("LegCo") on 22 April 2009, the Audit Commission has recommended that the Secretary for Constitutional and Mainland Affairs should expedite action to take forward the proposal of separation of the posts of the Chairperson and CEO of EOC which was recommended both in the report of the

Independent Panel of Inquiry on the Incidents Relating to EOC as well as the reports of two internal reviews conducted by EOC. The Administration subsequently decided that the post of CEO at the level of Point 3 of the Directorate Pay Scale should be reinstated to oversee the administrative and operational matters, and to strengthen the governance of EOC. The post of CEO was filled in December 2015 and renamed as Chief Operations Officer ("COO").

5. On 18 March 2016, the Government announced the appointment of Prof Alfred CHAN Cheung-ming as the new Chairperson of EOC for a term of three years commencing on 11 April 2016 to succeed Dr York CHOW Yat-ngok, the former EOC Chairperson.

Relevant issues raised by the Panel

6. It has been the practice for the Chairpersons of EOC to brief the Panel on EOC's work on a regular basis. Prof Alfred CHAN Cheung-ming last briefed the Panel on the work of EOC at the meeting on 19 April 2017.

Discrimination Law Review

7. In March 2013, EOC launched the Discrimination Law Review ("DLR") to review comprehensively the four existing anti-discrimination Ordinances. As part of DLR, EOC conducted a public consultation exercise from 8 July to 31 October 2014. When the Panel received a briefing by Dr York CHOW Yat-ngok, the former EOC Chairperson, some members expressed the view that discrimination against new arrivals from the Mainland was prevalent in Hong Kong and urged EOC to give priority to tackling the issue. Dr York CHOW Yat-ngok advised that DLR sought to examine, inter alia, whether the scope of RDO should be broadened to cover discrimination on the basis of nationality, citizenship and residency status. Some members considered that it would be fundamentally wrong to propose amending RDO to cover Mainlanders and new arrivals as they did not constitute a racial group in Hong Kong under RDO. 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.

8. In March 2016, EOC submitted its report to the Government on DLR containing a total of 73 recommendations. It was recommended, among others, that the Government should conduct a public consultation exercise and then introduce protection from discrimination on grounds of nationality, citizenship and residency status in Hong Kong under RDO.

9. At the meeting on 20 March 2017, the Administration briefed the Panel on its initial assessment of the recommendations made by EOC. The

Administration informed the Panel that some of the recommendations, including the aforementioned ones, were relatively more complex and controversial, and the public had expressed strong and divergent views on them. The Administration needed more time to carefully consider those recommendations.

10. Some members expressed dissatisfaction that the Administration had only identified nine recommendations that might be taken forward at this juncture for discussion by the Panel on 20 March 2017. These members considered that some of the remaining recommendations were also not controversial or complex, such as to amend DDO by adding "being accompanied by an assistance animal" as a category of protection from discrimination and to amend the four anti-discrimination Ordinances to include a provision that they applied to all public authorities. These members also urged the Administration to conduct comprehensive research and public consultation on the issues of discrimination and the related issue of possible legal recognition of heterosexual and homosexual cohabitation relationships in Hong Kong, including existing cohabitation relationships and same sex marriages from overseas as recommended by EOC. The Administration was requested to provide a timetable for taking forward the 73 recommendations, particularly the 27 recommendations considered by EOC to be of higher priority.

Outlawing discrimination on the ground of sexual orientation and gender identity

11. Some members considered that the Administration had not been proactive in eliminating discrimination on the ground of sexual orientation and gender identity and urged EOC to engage in active discussion with all relevant stakeholders on how the rights of transgender persons could be protected. They also requested EOC to step up efforts in eliminating some people's misunderstanding that enactment of the legislation against discrimination on grounds of sexual orientation and gender identity would lead to "reverse discrimination".

12. Some members considered that granting marriage rights to transgender persons would have far-reaching implications on the marriage systems and views of different stakeholders other than sexual minority groups should be consulted before EOC formed stances on the issue. Dr York CHOW Yat-ngok, the former Chairperson of 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.

13. EOC launched the Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status and published the Study Report in January 2016. At its meeting on 15 February 2016, the

Panel received a briefing by Dr York CHOW Yat-ngok on the recommendations of the Study Report. He advised that the study commissioned by EOC indicated that the Hong Kong society and the general public were more supportive of legislating against discrimination on the grounds of sexual orientation and gender identity than before. In particular, there was a significant increase of public support for legislating against discrimination on such grounds in the past 10 years from 28.7% to 55.7%. 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. Some members urged the Administration to introduce legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status, taking into account the findings of the EOC Study Report. Some other members, however, considered that it was equally important to safeguard the freedom of parental choice of children's religious and moral education under Article 18(3) and (4) of the International Covenant on Civil and Political Rights, as well as the freedom of religious belief under Article 32 of the Basic Law. They considered that legislating against discrimination on the ground of sexual orientation might result in "reverse discrimination".

14. At the same Panel meeting, the Chairperson of the former Advisory Group on Eliminating Discrimination against Sexual Minorities ("the Advisory Group"), Professor Fanny CHEUNG Miu-ching, was also invited to brief members on the Report of the Advisory Group. One of the recommendations was that an in-depth study on the experience of legislative and non-legislative measures in other jurisdictions should be conducted and issues to be covered should include the implications of legislation on the freedom of religion. The Administration acknowledged that more and more people in Hong Kong had expressed support for enacting anti-discrimination legislation to protect sexual minorities in recent years. The Administration advised that it would study both the Advisory Group's report and the Study Report of EOC, and would map out the way forward in consultation with different stakeholders.

15. At the Panel meeting on 15 May 2017¹, the Administration advised that as recommended by the Advisory Group, it was conducting a further study on the experience of other jurisdictions in tackling such discrimination through

¹ The Panel discussed the progress of work of the Government in tackling discrimination on grounds of sexual orientation and gender identity with the Administration on 15 May 2017. Members noted that apart from the abovementioned study on the experience of other jurisdictions, the Administration had been actively taking forward the Advisory Group's other recommendations which included:

- providing training resources for personnel in specific fields;
- enhancing publicity campaign;
- reviewing support services provided to the sexual minorities by different organizations; and
- drawing up a charter of non-discrimination of sexual minorities.

legislative and non-legislative measures. The study was expected to be completed by the end of 2017. The Administration would examine the findings of the study and draw up a plan for its next stage of work.

Integrated education for students with special education needs

16. Some members expressed concern about the inadequacy of support for students with special education needs ("SEN") and urged EOC to adopt a tougher stance in pressing the Administration to strengthen the support measures for those students. Dr York CHOW Yat-ngok, the former Chairperson of EOC, advised that EOC had put in much effort in this area and was pleased to note that the Administration had stepped up support measures for students with SEN and parents. He undertook that EOC would continue to monitor the implementation and effectiveness of the support measures.

Equal opportunities for ethnic minorities

17. Some members requested EOC to step up efforts to safeguard ethnic minority ("EM") students' right to enjoy equal opportunities in receiving education and to tackle the difficulties they encountered in learning Chinese as a second language. Prof Alfred CHAN Cheung-ming advised that the EM Unit of EOC had been monitoring the implementation of the "Chinese Language Curriculum Second Language Learning Framework" by the Government and the enhanced support for non-Chinese speaking students. EOC was actively exploring with the Education Bureau and other departments on ways of enhancing the career prospects of EM, including the new Qualification Framework (in Chinese competence), which might be a viable alternative for the EM school leavers.

18. Pointing out that there were about 420 000 EM people in Hong Kong making up about 6% of the Hong Kong population, some members expressed concern about the importance of attaining social inclusion of EM. Prof Alfred CHAN Cheung-ming stressed that EOC was committed to promoting social inclusion of EMs in Hong Kong, and its EM Unit was set up to promote equal opportunities in education and employment for EM through a three-pronged approach of Policy Advocacy, Training and Outreach.

Anti-sexual harassment campaign

19. Some members expressed support for the anti-sexual harassment campaign targeted at the education and business sectors to be launched by EOC. They considered that EOC should draw up guidelines under SDO and DDO on the handling of sexual harassment at school. EOC should also issue guidelines to the medical sector and the disciplinary services on the prevention of sexual harassment at health care institutions and during removal of protestors in clearance operations, etc.

20. Dr York CHOW Yat-ngok, the former Chairperson of EOC, advised that EOC had launched an anti-sexual harassment campaign in schools in collaboration with the Education Bureau in the second half of 2013. These initiatives included developing a Framework for Sexual Harassment Policies in Schools, organizing seminars and five large scale forums on the subject. EOC would continue to provide training for secondary schools and tertiary institutions on the prevention of sexual harassment and would conduct surveys to assess the effectiveness of the work in this area. Members urged EOC to expedite the preparation of the Code of Practice on Education to facilitate schools' handling of complaints relating to sexual harassment.

21. Dr York CHOW Yat-ngok advised that EOC had carried out various initiatives to promote anti-sexual harassment. He considered that it was most important to help organizations formulate and put in place anti-sexual harassment policies. In this connection, EOC had developed the Framework for Corporate Policy on Sexual Harassment for companies in Hong Kong for their reference.

22. At the Panel meeting on 19 April 2017, some members expressed the view that the problem of sexual harassment remained serious. Prof Alfred CHAN Cheung-ming advised that in 2016, EOC training team conducted over 250 training sessions for over 10 500 staff members of government departments, public bodies, non-government organizations, airlines, banks and schools, etc. EOC had formulated guidelines and provided education courses on the prevention of sexual harassment to the staff, residents and residents' parents of hostels for mentally handicapped persons and care homes for disabled persons.

Age discrimination

23. Some members urged EOC to conduct an in-depth study on age discrimination in employment in order to assess the prevalence of the problem. Dr York CHOW Yat-ngok advised that EOC would commission an "Exploratory Study on Age Discrimination in Employment" and submit a report to the Administration upon completion of the study.

Funding support from the Government

24. When the Panel received a briefing by Prof Alfred CHAN Cheung-ming on 20 June 2016, some members noted with concern that the projected amount of legal fees for 2016-2017 was \$1.75 million against a provision of only \$0.46 million by the Government. Besides, to cover the increase in office rent (about \$5.22 million per annum), EOC had to tap into its reserve to cover the expenditure. Noting that EOC had reinstated the post of COO on the

recommendation of the Director of Audit, these members also considered it inappropriate for the Administration to withhold the subvention of \$2.96 million for the post of COO in 2016-2017. They urged the Administration to increase allocation of resources to EOC to ensure that EOC had adequate funding to cover its recurrent expenditure and to maintain smooth operation. The Panel requested the Administration to take note of members' concern regarding the resources constraint of EOC and increase funding provision to EOC as appropriate.

25. At the Panel meeting on 19 April 2017, members reiterated their concern about the adequacy of the Government's allocation of resources to EOC to cover its rental and operating expenditures arising from inflation. The Administration advised that there had been an increase in the annual subvention to EOC. In addition, in 2017-2018, the Administration had included a one-off funding support of \$9.5 million in the proposed subvention for EOC's proposed office relocation and fitting-out work. In response to an enquiry on whether the Administration had planned to provide a permanent office for EOC, the Administration advised that it would carefully consider the relevant proposals from EOC.

26. At the same meeting, the Panel passed a motion urging the Administration to strengthen its support for the work of EOC, and requesting expeditious provision of adequate financial resources for EOC's EM Unit. The Administration's response to the motion is in **Appendix I**.

Provision of legal assistance

27. Some members raised concern that in 2016, about 600 complaints were handled by EOC, of which 39 applied for legal assistance. Out of these 39 applications, legal assistance was granted only in 16 applications. Prof Alfred CHAN Cheung-ming explained that the EOC's approach in handling complaints was primarily conciliatory, though it was empowered to take legal action should conciliation efforts fail. About 70% to 80% of the complaints received by EOC could be settled by conciliation, and the number of applications which had been granted legal assistance by EOC stood at around 10 to 20 each year. Furthermore, EOC had commenced a review of its complaint-handling and legal assistance functions, taking into account the views and interest of stakeholders, to assess whether the current processes were the most efficient and effective in meeting EOC's objectives and mission, and to propose any changes within the statutory parameters.

Recent development

28. The incumbent Chairperson of EOC will brief the Panel on the work of EOC at the next meeting on 14 February 2018.

Relevant papers

29. A list of relevant papers which are available on the LegCo website is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
12 February 2018

Panel on Constitutional Affairs

Motion passed under agenda item V

**“Briefing by the Chairperson of the Equal Opportunities Commission”
at the meeting on 19 April 2017**

This Panel urges the Constitutional and Mainland Affairs Bureau to strengthen the provision of support for the work of the Equal Opportunities Commission (“EOC”), and requests that adequate financial resources be expeditiously provided for EOC’s Ethnic Minority Unit so as to rectify the unfair situation currently faced by ethnic minorities.

Response of the Constitutional and Mainland Affairs Bureau

Each year, the Government provides a subvention in the form of lump sum allocation to the Equal Opportunities Commission (EOC) for it to draw up its estimates of operating expenditures under the principles of prudent fiscal management and efficient and economical use of resources. The subvention covers expenditures on manpower and salaries, office accommodation expenses, and expenditures for implementing the anti-discrimination ordinances, etc. For the past five years, there has been an increase in annual subvention to the EOC after deducting the one-off provision. The total subvention for the EOC in 2017-18 is \$115.5 million, representing a net increase of about \$8.3 million (an increase of 7.7%) compared with the revised estimate of 2016-17. Furthermore, according to the information provided by the EOC, the estimated expenditure on publicity and public education (including manpower expenditure) for 2017-18 is \$23.86 million; about 25% of which (i.e. over \$5.9 million) is used for that on racial discrimination. The Government also provides non-recurrent funding to the EOC. For instance, the Government will provide in 2017-18 a one-off provision of \$9.5 million to support the EOC’s proposed expenditure on office relocation and fitting-out work.

2. Starting from 2014-15, the Government has been providing a funding of \$4.69 million each year to the EOC for enhancing publicity and education on

the Race Discrimination Ordinance. To this end, the EOC has set up an Ethnic Minorities Unit (the Unit) with 7 full-time staff. According to the information provided by the EOC, the major works of the Unit include:

- (a) On education for ethnic minorities, the EOC will continue to deliberate and gauge the views of stakeholders and education professionals on support measures for non-Chinese speaking students through focus group meetings. It will also relay issues identified to the Education Bureau and the Subcommittee on Rights of Ethnic Minorities of the Legislative Council and suggest follow-up actions. In addition, the EOC has published a guidance booklet titled “Promotion of Racial Integration and Prevention of Racial Discrimination in Schools” for schools and parents in order to promote fairness in admission of students and racial integration in schools. This booklet promotes the application of the RDO in school setting with particular emphasis on the language policy in admission of students and the building of an integrated learning environment. The Unit has distributed copies of the booklet to all primary schools, secondary schools and kindergartens in the territory, and has conducted briefing sessions for teachers and school administrators to ensure that they understand the content of the guidance booklet as well as the principles of application. In 2017-18, the Unit will enhance on-site training for schools and parents, and draw up a simple guide to further facilitate schools to formulate and implement policies and measures on equality and integration.

- (b) On employment of ethnic minorities, the EOC has all along been liaising with the Labour Department and the Employees Retraining Board and has put forward a series of recommendations in relation to employment support service and training. The Unit is following up on the implementation of the recommended measures and is planning to approach the Vocational Training Council, the Construction Industry Council and the Occupational Safety and Health Council to enhance support in the planning of courses for ethnic minority students and strengthen promotional efforts on occupational safety and labour protection. On the other hand, the EOC has been proactively promoting cultural diversity in the workplace for the commercial sector, encouraging local enterprises to employ ethnic minorities as an example to inspire small and medium enterprises to consider employing ethnic minorities as well. Last year, efforts were made by the Unit to liaise with employers (including airlines, bus

companies, homes for the elderly, etc.) who intended to start engaging or employing more ethnic minorities. The Unit conducted briefing sessions for these employers so that they could brief ethnic minority youths and career masters/mistresses of secondary schools on the career prospects of the posts and businesses concerned. The EOC will encourage more employers of different businesses to follow suit and is planning to establish referral and matching platforms in collaboration with non-government organisations serving ethnic minorities.

- (c) On access to services by ethnic minorities, the EOC has gathered case examples from non-government organisations on the difficulties encountered by ethnic minorities in accessing public services. It has also reflected to the Housing Department, Labour Department, Social Welfare Department (SWD) and Working Family and Student Financial Assistance Agency on language barriers faced by ethnic minorities as well as the lack of cultural sensitivity on the part of the departments/agencies in handling such cases, and in this connection held meetings with the departments/agencies concerned to deliberate on improvement initiatives. After intervention, the departments/agencies concerned have introduced various improvement measures, including drawing up or updating guidelines for making referrals for interpretation services, translating some of the application forms into ethnic minority languages as samples, enhancing staff training and employing more ethnic minorities. The Unit will continue to keep track of the progress and has since November last year held over 10 staff training sessions for these departments/agencies to enhance their awareness of non-discrimination and sensitivity to cultural diversity. The Unit will further approach other government departments and public organisations (such as the Hospital Authority and public bus companies, etc.) to encourage them to review their existing policies and initiatives, and strengthen the elements of respect for equal opportunities and cultural diversity. On the other hand, the EOC is concerned about the problems encountered by ethnic minorities in applying for banking services and renting flats. The EOC worked with the Hong Kong Institute of Bankers and Estate Agents Authority last year to organise training for banking practitioners and estate agents to enhance their awareness on non-discrimination. The Unit will continue its training efforts and is planning to further take forward promotion and education initiatives through different platforms (such as online platform).

3. The EOC is an independent statutory organization. We will continue to maintain communication and cooperation with the EOC. We also hope that the EOC can make prudent use of the resources to discharge its functions and duties effectively.

Constitutional and Mainland Affairs Bureau
May 2017

**Relevant documents on briefing by
the Chairperson of the Equal Opportunities Commission
on the work of the Equal Opportunities Commission**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	17.6.2013 (Item IV)	Agenda Minutes
	23.4.2014 (Item IV)	Agenda Minutes
	16.3.2015 (Item IV)	Agenda Minutes
	20.7.2015 (Item III)	Agenda Minutes
	15.2.2016 (Item IV)	Agenda Minutes
	20.6.2016 (Item III)	Agenda Minutes
	20.3.2017 (Item IV)	Agenda Minutes
	19.4.2017 (Item V)	Agenda Minutes
	15.5.2017 (Item V)	Agenda Minutes

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