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Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 22 June 2018**

Discrimination Legislation (Miscellaneous Amendments) Bill

Purpose

This paper summarizes the previous discussion of the Panel on Constitutional Affairs ("the Panel") on the Government's initial assessment of the recommendations in the report on the Discrimination Law Review ("DLR") 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) ("FSDO"), 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.

Discrimination Law Review

3. In March 2013, EOC launched DLR to review comprehensively the four anti-discrimination Ordinances. In March 2016, EOC submitted a report on DLR to the Administration. The report contained a total of 73 recommendations, including 27 recommendations which were considered by EOC to be of higher priority.¹

¹ According to EOC, the 27 recommendations of higher priority could be divided into two parts, with 22 recommendation belonging to Part I and five belonging to Part II. The 22 recommendations in Part I were "generally easier to implement and less complex in application", whereas those in Part II would require "further consultation and research" by the Government. However, the issues in both Parts I and II were "of equal importance and should be promptly tackled by the Government".

4. At the meeting on 20 March 2017, the Administration consulted members on nine prioritized recommendations (see **Appendix I**) that the Administration considered to be capable of forging consensus among stakeholders and the society. Members of the Panel were generally supportive of the nine prioritized recommendations. In the 2017 Policy Address, it was announced that the Administration would submit the legislative amendment proposals for implementing the nine prioritized recommendations in the form of a composite bill to the Legislative Council ("LegCo") in the 2017-2018 legislative session.

Panel's discussion

The nine prioritized recommendations under the Discrimination Law Review

Proposal to prohibit direct and indirect discrimination on grounds of breastfeeding

5. Some members expressed concern that it might not be clear to members of the public as to what kinds of behaviour constituted "indirect discrimination" on grounds of breastfeeding. In order to avoid unnecessary controversy, it was suggested that the Administration might consider taking forward the proposal to prohibit only direct discrimination on grounds of breastfeeding first. The Administration briefed members of the notion of "indirect discrimination" under the existing anti-discrimination Ordinances. The Administration undertook that it would promote understanding of the meaning of indirect discrimination in the future. Some other members enquired whether the proposal would impose a requirement on owners of private premises to provide baby care rooms. The Administration explained that the proposal was not intended to introduce substantive changes to FSDO, which did not require the owner of private premises to provide baby care rooms.

6. Members further enquired about the progress of the Government's work in promoting the "breastfeeding friendly workplace" policy. The Administration advised that on-going efforts were made to promote support for breastfeeding in different sectors of the community through the work of the Committee on Promotion of Breastfeeding. At present, most government bureaux and departments had put in place the breastfeeding friendly measures to facilitate employees to continue breastfeeding after returning to work.

7. Some members considered that to better facilitate female employees to breastfeed their new born infants, the duration of the statutory maternity leave period should be extended. Some members further suggested that the

Administration should consider introducing provisions to FSDO to protect women from being harassed in relation to breastfeeding. The Administration agreed to consider the suggestion.

Proposal to amend RDO to 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 was wider in scope

8. Members noted that the scope of coverage of the proposed definition of an "associate" included five categories of persons², which would be wider than the definition of a "near relative". Some members expressed concern whether the wider scope of the definition of an "associate" might result in abuse. The Administration advised that the proposal only aimed to align RDO with DDO in protection, and there was no evidence of abuse arising from the wider scope of protection in light of the implementation experience of DDO.

Other recommendations under the Discrimination Law Review

9. Some members expressed grave concern as to how the Administration would follow up on the rest of EOC's recommendations other than the nine prioritized recommendations. These members queried why the Administration did not take forward the following recommendations which, in their view, were not controversial or complex:

- (a) to amend DDO by introducing a distinct duty to make reasonable accommodation for persons with disabilities in all relevant fields (DLR recommendation 1);
- (b) to amend section 10 of DDO by adding being accompanied by an assistance animal as a category of protection from discrimination (DLR recommendation 2);
- (c) to amend RDO by providing that it is unlawful for the Government to discriminate in performing its functions or exercising its powers (DLR recommendation 6);

² The proposed definition of an "associate" included:

- (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.

- (d) to repeal the provisions regarding vocational training and education in relation to modifying or making different arrangements for medium of instruction under sections 20(2) and 26(2) of RDO (DLR recommendations 9 and 10); and
- (e) to amend the four anti-discrimination Ordinances to include a provision that they apply to all public authorities (DLR recommendation 20).

10. Hon CHAN Chi-chuen enquired what actions the Administration would take to follow up on the recommendation that the Government should 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 (DLR recommendation 26). Dr Hon CHENG Chung-tai also enquired why the recommendations relating to protection from discrimination on grounds of nationality, citizenship and residency status (DLR recommendations 24 and 25) were not covered in the current round of discussion.

11. The Administration explained that among the recommendations that were of higher priority, the Administration intended to focus on those that were relatively less complex or controversial, with a view to taking forward necessary legislative amendments in a step-by-step manner. The Administration further explained that the recommendations in paragraph 9 (a)-(e) above would likely have impact across multiple domains and policy areas. Some members requested the Administration to provide a timetable for implementation of the rest of the recommendations made by EOC, particularly the 27 ones considered by EOC to be of higher priority. The Administration advised that it would conduct further study and would revert as early as practicable.

Recent development

12. The Administration will consult the Panel on the Discrimination Legislation (Miscellaneous Amendments) Bill at the next meeting on 22 June 2018.

Relevant papers

13. A list of relevant papers which are available on LegCo's website is in **Appendix II**.

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Legislative Council Secretariat
15 June 2018

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

Recommendation	
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.
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: <ul style="list-style-type: none"> (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.
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.
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.
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.

Recommendation	
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.
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.
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.
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.

CMAB
March 2017

**Relevant documents on
Discrimination Legislation (Miscellaneous Amendments) Bill**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	16.3.2015 (Item IV)	Agenda Minutes
	20.7.2015 (Item III)	Agenda Minutes
	20.6.2016 (Item III)	Agenda Minutes
	20.3.2017 (Item IV)	Agenda Minutes

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