

政制及內地事務局
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10 July 2018

Ms Joanne MAK
Clerk to Panel
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road,
Central, Hong Kong

Dear Ms MAK,

**Panel on Constitutional Affairs
Motions passed at the meeting on 22 June 2018**

Thank you for your letter dated 25 June 2018. The responses of the HKSAR Government to the two motions under the agenda item “Discrimination Legislation (Miscellaneous Amendments) Bill” passed on 22 June 2018 are at **Annexes I to II** please.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Ellen Chow', written in a cursive style.

(Miss Ellen CHOW)

for Secretary for Constitutional and Mainland Affairs

Panel on Constitutional Affairs
Motion passed under agenda item III
“Discrimination Legislation (Miscellaneous Amendments) Bill”
at the meeting on 22 June 2018

This Panel urges the Government to expeditiously formulate a timetable for implementing the prioritised recommendations with respect to the Race Discrimination Ordinance ("RDO"); and study as soon as possible the inclusion of government functions and powers in the next phase of amendments to RDO, so as to address the inadequacies of the existing Ordinance and help promote racial equality.

Moved by: Hon Claudia MO

Response from the HKSAR Government

The Government has been committed to eliminating racial discrimination and promoting equal opportunities for ethnic minorities. The Race Discrimination Ordinance (Cap. 602) (RDO), which came into full operation in July 2009, purports to protect all people against discrimination, harassment and vilification on the ground of race. According to the RDO, it is unlawful to discriminate in prescribed areas, including employment; education; provision of goods, facilities, services and premises; election and appointment matters of public bodies; arrangements in relation to barristers and membership of clubs etc. It is also unlawful to racially harass another person (i.e. engaging in an unwelcome conduct, in circumstances in which a reasonable person would have anticipated that the other person would be offended, humiliated or intimidated by that conduct) in these areas.

2. Currently, the RDO binds the Government and specifically prohibits discriminatory acts and practices of the Government in all areas prescribed in the RDO, such as employment; education; the provision of goods, facilities or services; and the disposal or management of premises. Section 27 of the RDO renders it unlawful for any person who provides goods, facilities or services to discriminate against another person in the provision of such goods, facilities or services.

3. In the case of *Arjun Singh v Secretary for Justice* (DCEO 9/2011) decided in May 2016, the District Court held that the prohibition against discrimination in the provision of “services” in section 27 of the RDO includes the activity of the Police in responding to requests for assistance. The District Court could not find any evidence of racial profiling or institutional racism by the Police in that case. On the contrary, the evidence showed that the Police had responded to the plaintiff’s needs as appropriate in the circumstances. Although the District Court held that a person who alleges to have been subject to a racially motivated arrest would not be able to bring a civil claim under section 27 of the RDO, such person would have an effective remedy in the form of a public law challenge that the arrest contravenes the right to equality before the law guaranteed by Article 25 of the Basic Law and Articles 1 and 22 of the Hong Kong Bill of Rights, and may claim damages for trespass or false imprisonment in a civil action.

4. It should be emphasised that the Government has always been prohibited from practising racially discriminatory behaviours under the HKSAR’s legal framework. The Hong Kong Bill of Rights Ordinance prohibits the HKSAR Government and public authorities from practising discrimination on the ground of race. Avenues are also available to address complaints against the Government and public authorities through, for example, the Ombudsman, complaint channels within bureaux and departments, and the Legislative Council, etc.

5. Among the 27 prioritised recommendations in the Submissions to the Government on Discrimination Law Review by the Equal Opportunities Commission, we will first take forward eight recommendations which are less complex and controversial, out of which six are related to the RDO. We plan to introduce the Discrimination Legislation (Miscellaneous Amendments) Bill to the Legislative Council for scrutiny by end-2018.

Constitutional and Mainland Affairs Bureau
July 2018

Panel on Constitutional Affairs
Motion passed under agenda item III
“Discrimination Legislation (Miscellaneous Amendments) Bill”
at the meeting on 22 June 2018

This Panel requests the Government, in the course of amending the Sex Discrimination Ordinance, to cover the acts of harassment, vilification and offensive behavior towards breastfeeding in the Ordinance, as well as to classify such acts as unlawful, with a view to further encouraging breastfeeding.

Moved by: Hon HUI Chi-fung

Response from the HKSAR Government

The Government has all along endeavoured to protect, promote and support breastfeeding. Multi-pronged strategies are adopted to promote breastfeeding. In this connection, the Food and Health Bureau (FHB) set up the Committee on Promotion of Breastfeeding in 2014 under the chairmanship of the Under Secretary for Food and Health, with the objective of enhancing the sustainability of breastfeeding and promoting breastfeeding as the norm for baby care widely accepted by the general public. To provide support for lactating mothers and promote an inclusive culture for breastfeeding in the workplace, the FHB has issued recommendations on public health to individual government bureaux and departments, encouraging them to implement the Breastfeeding Friendly Workplace policy by putting in place measures to facilitate lactating staff to continue breastfeeding after returning to work. In addition, the Government has also been promoting Breastfeeding Friendly Premises in public places of the community, where breastfeeding mothers and their families feel welcomed and are supported to breastfeed anytime anywhere.

2. At present, acts of harassment, vilification and offensive behaviour towards breastfeeding women are handled by various legal means. The Sex Discrimination Ordinance (Cap. 480) (SDO) prohibits sexual harassment towards women (including breastfeeding women) in prescribed areas (such as employment; education; the provision of goods, services or facilities; and disposal of premises etc.). As such, a breastfeeding woman may make a claim under the SDO if any person engages in an unwelcome conduct of a sexual

nature in relation to her in circumstances in which a reasonable person, having regard to all circumstances, would have anticipated that the breastfeeding woman would be offended, humiliated or intimidated; or such conduct of a sexual nature creates a sexually hostile or intimidating work environment for the breastfeeding woman in any of the prescribed areas.

3. Besides, depending on the circumstances of the case, legal sanctions can also be imposed on a person who harasses, vilifies or offends a breastfeeding woman under the criminal law. For instance, a person taking clandestine photographs of a breastfeeding woman in public places may be liable to the offences of “loitering” under section 160 of the Crimes Ordinance (Cap. 200), “disorder in public places” under section 17B of the Public Order Ordinance (Cap. 245), or “outraging public decency” under the common law.

4. In short, by implementing the recommendation in the Equal Opportunities Commission’s Submissions to the Government on the Discrimination Law Review to introduce express provisions to prohibit direct and indirect discrimination on the ground of breastfeeding through amending the SDO, we expect to remove the uncertainty in the existing legislation and enhance public awareness of the rights of breastfeeding women. To ensure that the legislation is clear and accurate, we must be mindful of whether relevant amendments to be introduced will create difficulties in law enforcement and overlap with any other existing legislation which is applicable to the same factual circumstances in order to avoid misunderstanding and unnecessary litigations. Therefore, we have no plans to render the acts of harassment, vilification and offensive behaviour towards breastfeeding women unlawful in the SDO.

Constitutional and Mainland Affairs Bureau
July 2018