

政制及內地事務局
政府總部

香港添馬添美道2號
政府總部東翼



CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU
GOVERNMENT SECRETARIAT

EAST WING
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE, TAMAR
HONG KONG

本局檔號 OUR REF. : CMAB/CR 1/34/92
來函檔號 YOUR REF. : CB2/PL/CA
電話號碼 TEL NO. : 2810 3520
圖文傳真 FAXLINE : 2840 0657

27 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
Issues raised at the meeting on 22 June 2018**

The responses of the HKSAR Government to issues on the definition of “associate” in the proposed amendment to the Race Discrimination Ordinance (Cap. 602) (RDO) and whether there are any relevant Mainland laws which protect customers and service providers from sex, racial and disability harassment in public transport under the agenda item “Discrimination Legislation (Miscellaneous Amendments) Bill” at the meeting on 22 June 2018 are at **Annex** please.

Yours sincerely,

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

(Miss Ellen CHOW)

for Secretary for Constitutional and Mainland Affairs

Panel on Constitutional Affairs

**Written response to issues raised under agenda item III
“Discrimination Legislation (Miscellaneous Amendments) Bill”
at the meeting on 22 June 2018**

At the meeting on 22 June 2018, the LegCo Panel on Constitutional Affairs requested the Government to provide supplementary information on the definition of “associate” in the proposed amendment to the Race Discrimination Ordinance (Cap. 602) (RDO) and whether there are any relevant Mainland laws which protect customers and service providers from sex, racial and disability harassment in public transport. The response of the HKSAR Government is set out below.

Definition of associate

2. According to the current RDO, it is unlawful to discriminate on the ground of race in prescribed areas, such as 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. It is also unlawful to harass another person on the ground of race (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.

3. The Equal Opportunities Commission (EOC) recommends that the Government should amend the RDO by repealing the provisions prohibiting direct discrimination and harassment by association with a “near relative”, and replacing them with provisions prohibiting direct discrimination and harassment by association with an “associate” (i.e. Recommendation 7). This recommendation aims to extend the scope of protection from direct discrimination and harassment under the RDO from a person’s “near relative” to his/her “associate”, which includes a spouse of the person, another person who is living with the person on a genuine domestic basis, a relative of the person, a carer of the person; and another person who is in a business, sporting or recreational relationship with the person, so as to align with the Disability Discrimination Ordinance (Cap. 487).

4. In determining whether a claimant is the “associate” of another person, e.g. whether they are “living on a genuine domestic basis”, the Court would consider the actual circumstances of each case having regard to the text and purpose of the Ordinance, and interpret the relevant provisions by applying

their literal and ordinary meaning, e.g. whether they are living under the same roof, to ascertain whether the claimant is protected by the provisions. The gender and sexual orientation of the claimant are not relevant considerations. By the same token, the Court will consider and examine whether the claimant is in a business, sporting or recreational relationship with another person with reference to the ordinary meaning of the provisions and the text and purpose of the Ordinance. In this connection, depending on the actual circumstances, the relevant provisions may also protect service providers serving in non-governmental organisations from direct discrimination or harassment on the ground that they are associated with ethnic minorities in their business dealings in the prescribed areas, such as 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.

Legal protection against harassment within Mainland jurisdiction

5. Having consulted the Department of Justice (DoJ), we understand that different laws and regulations in the Mainland currently afford protection to individuals against harassment and offensive behaviours, including those taking place on public transport. Under Article 38 of the Constitution of the People's Republic of China (PRC), the personal dignity of PRC citizens is inviolable, and insult, libel, false accusation or false incrimination directed against citizens by any means is prohibited. The legitimate rights and interests of foreigners in the PRC are also protected. Moreover, depending on the circumstances of the case concerned, an aggrieved person is also protected by provisions in the Law of the PRC on Protection of Women's Rights and Interests (Revised), the Law of the PRC on the Protection of Disabled Persons, the Law of the PRC on Penalties for Administration of Public Security or the PRC Criminal Law, which safeguard the legitimate rights of women, disabled persons and individuals respectively, including protection from indecent or insulting acts, and prohibition of incitement of ethnic hatred and discrimination etc. Local laws and regulations may also apply depending on location and circumstances. Generally speaking, the aggrieved person may bring a civil suit to a people's court according to laws (e.g. the General Principles of the Civil Law of the PRC and the General Rules of the Civil Law of the PRC). If the acts concerned constitute an offence, the relevant departments may then impose administrative punishments or pursue criminal charges in accordance with laws (e.g. the Law of the PRC on Penalties for Administration of Public Security or the PRC Criminal Law).

**Constitutional and Mainland Affairs Bureau
July 2018**