

立法會
Legislative Council

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by the Administration)

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**Bills Committee on
Discrimination Legislation (Miscellaneous Amendments) Bill 2018**

**Minutes of meeting
held on Monday, 14 January 2019, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Alice MAK Mei-kuen, BBS, JP (Chairman)
Dr Hon Elizabeth QUAT, BBS, JP (Deputy Chairman)
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Claudia MO
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, BBS
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon KWOK Wai-keung, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, SBS, JP
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Holden CHOW Ho-ding
Hon SHIU Ka-chun
Hon YUNG Hoi-yan
Hon CHAN Chun-ying, JP
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon LUK Chung-hung, JP
Dr Hon CHENG Chung-tai

**Members
absent** : Hon Paul TSE Wai-chun, JP
Hon Kenneth LEUNG
Hon Dennis KWOK Wing-hang
Hon AU Nok-hin

**Public Officers
attending** : Item II

Mr Andy CHAN Shui-fu, JP
Under Secretary for Constitutional and Mainland Affairs

Ms Judy CHUNG Sui-kei
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr Jason HUNG Ho-wan
Assistant Secretary for Constitutional and Mainland
Affairs (Acting)

Ms Teresa CHAN
Principal Assistant Secretary for Education
(Education Commission and Planning)

Dr Rita HO
Principal Medical and Health Officer (Family Health Service)
Department of Health

Miss Queenie WU Chung-yi
Senior Government Counsel (Acting)
Department of Justice

Miss Wendy HO Yuen-ting
Government Counsel
Department of Justice

**Clerk in
attendance** : Miss Josephine SO
Chief Council Secretary (2) 2

**Staff in
attendance** : Mr Kelvin LEE
Senior Assistant Legal Adviser 3

Ms Wendy LO
Senior Council Secretary (2) 2

Miss Cally LAI
Legislative Assistant (2) 2

Action

I. Election of Chairman

Election of Chairman

Mr Tommy CHEUNG, the member who had the highest precedence in Council among members of the Bills Committee present, presided over the election of the Chairman. Mr CHEUNG invited nominations for the chairmanship of the Bills Committee.

2. Two valid nominations were made for the Chairmanship of the Bills Committee:

- (a) Miss Alice MAK was nominated by Dr CHIANG Lai-wan and the nomination was seconded by Mr WONG Ting-kwong. Miss MAK accepted the nomination; and
- (b) Mr Dennis KWOK was nominated by Mr Charles MOK and the nomination was seconded by Mr CHAN Chi-chuen. Mr MOK said that Mr KWOK could not attend the meeting but he had secured Mr KWOK's acceptance of the nomination before the meeting.

3. A vote was conducted by secret ballot and the result was that 15 members voted for Miss Alice MAK and seven members voted for Mr Dennis KWOK. Ms Alice MAK was elected as the Chairman of the Bills Committee.

Election of Deputy Chairman

4. Two valid nominations were made for the Deputy Chairmanship of the Bills Committee:

- (a) Mr Dennis KWOK was nominated by Mr Alvin YEUNG and the nomination was seconded by Mr HUI Chi-fung. Mr Alvin YEUNG said that he had secured Mr KWOK's acceptance of the nomination before the meeting; and
- (b) Dr Elizabeth QUAT was nominated by Mr CHEUNG Kwok-kwan and the nomination was seconded by Mr LUK Chung-hung.

Action

5. A vote was conducted by secret ballot and the result was that six members voted for Mr Dennis KWOK and 16 members voted for Dr Elizabeth QUAT. Dr Elizabeth QUAT was elected as the Deputy Chairman of the Bills Committee.

II. Meeting with the Administration

(The Bill, Legislative Council Brief issued by the Constitutional and Mainland Affairs Bureau on 28 November 2018, LC Paper Nos. LS28/18-19 and CB(2)578/18-19(02) to (04))

6. The Bills Committee deliberated (index of proceedings attached at **Annex A**).

Follow-up actions required of the Administration

7. The Administration was requested to provide written response to issues raised by members as set out in **Annex B**.

(Post-meeting note: The Administration's consolidated response to issues raised at this meeting and also those issues raised in the two letters respectively dated 22 January 2019 from Mr HUI Chi-fung (LC Paper No. CB(2)699/18-19(01)) and dated 7 January 2019 from the Legal Adviser to the Bills Committee (LC Paper No. CB(2)578/18-19(03)) was issued to members vide LC Paper No. CB(2)866/18-19 on 25 February 2019.)

III. Any other business

Date of next meeting and invitation for public views

8. The Bills Committee agreed to hold the next meeting on Monday, 25 February 2019, at 2:30 pm to meet with the Administration and deputations. Members noted that the Bills Committee would post a notice on the Legislative Council website and issue invitation letters to the 18 District Councils.

9. There being no other business, the meeting ended at 6:11 pm.

**Proceedings of the meeting of the Bills Committee on
Discrimination Legislation (Miscellaneous Amendments) Bill 2018
on Monday, 14 January 2019, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action Required
000232 - 001228	Mr Tommy CHEUNG Dr CHIANG Lai-wan Ms Alice MAK Mr WONG Ting-kwong Mr Charles Peter MOK Mr CHAN Chi-chuen	Election of Chairman	
001229 - 001937	Chairman Mr Alvin YEUNG Mr HUI Chi-fung Mr CHEUNG Kwok-kwan Mr LUK Chung-hung Dr Elizabeth QUAT	Election of Deputy Chairman	
001938 - 002911	Chairman Admin	The Administration's briefing on the Discrimination Legislation (Miscellaneous Amendments) Bill 2018 ("the Bill").	
002912 - 003445	Chairman Dr CHENG Chung-tai Admin	<p>In relation to clause 7 of the Bill which proposed to introduce a new section 8A to the Sex Discrimination Ordinance (Cap. 480) ("SDO") relating to discrimination on the ground of breastfeeding, members noted the proposed definition of "breastfeeding" under the proposed section 8A(2)(a): a woman was breastfeeding if she (i) was engaged in the act of breastfeeding her child or expressing breast milk to feed her child; or (ii) was a person who fed her child with her breast milk. Dr CHENG Chung-tai's view that the scope of protection for breastfeeding women against discrimination should not be limited to "mother" who fed their own children with their breast milk. His suggestion that the Administration should review the proposed definition of "breastfeeding" and consider expanding the scope of protection to cover "breastfeeding women in general".</p> <p>The Administration's advice that:</p> <p>(a) taking into account that breastfeeding mothers were women and breastfeeding was a gender-specific condition analogous to the protected characteristic of pregnancy under section 8 of SDO, the proposed new</p>	

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		<p>section 8A to SDO sought to render direct and indirect discrimination against a woman on the ground of breastfeeding unlawful. This prohibition would apply to prescribed fields governed by SDO, such as employment, education, the provision of goods, services or facilities, disposal or management of premises, and activities of the Government;</p> <p>(b) in order to afford comprehensive protection, the proposed definition of "breastfeeding" would not only cover the act of breastfeeding, but also the expression of milk and the status of being a mother who fed her child with her breast milk; and</p> <p>(c) it was the Administration's policy intent that a woman who chose to discharge her responsibility as a mother by way of feeding her child with her breast milk should be protected. This was conducive to creating a more enabling environment for them to continue their full and equal social and economic participation, including staying in or rejoining the workforce while breastfeeding.</p>	
003446 - 004111	Chairman Mr HUI Chi-fung Admin	<p>While expressing support for the prohibition of discrimination on the ground of breastfeeding, Mr HUI Chi-fung suggested that the Administration should consider expanding the scope of protection under SDO to cover acts of harassment, vilification and offensive behaviour towards breastfeeding women, by drawing reference to legislation in overseas jurisdictions or existing provisions in the Disability Discrimination Ordinance (Cap. 487) ("DDO") as well as the Race Discrimination Ordinance (Cap. 602) ("RDO") which provided protection from harassment in prescribed areas. He asked whether the Administration had consulted the Department of Health ("DH") in coming up with the current proposed scope of protection for breastfeeding women under SDO.</p> <p>The Administration's advice that:</p> <p>(a) currently, acts of harassment, vilification and offensive behaviour towards women</p>	

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		<p>were handled by various legal means. SDO prohibited sexual harassment towards women (including breastfeeding women) such that a breastfeeding woman might make a claim if any person engaged in unwelcome conduct of a sexual nature in relation to her, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the breastfeeding woman would be offended, humiliated or intimidated; or where such conduct of a sexual nature created a hostile or intimidating environment for the breastfeeding woman in any of the prescribed areas covered by SDO;</p> <p>(b) legal sanctions might also be imposed on a person who harassed, vilified or offended a breastfeeding woman under the criminal law. Depending on the circumstances of the case, a person who harassed, vilified or offended a breastfeeding woman in a public place might 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; and</p> <p>(c) while the Constitutional and Mainland Affairs Bureau ("CMAB") would formulate the Government's overall position on the proposed expansion of the scope of protection under the four anti-discrimination ordinances to cover harassment behavior against breastfeeding women, DH would continue to promote and support breastfeeding through various means. In formulating the Government's position on this matter, CMAB would take into account all relevant factors including read-across implications of such a proposal on the four anti-discrimination ordinances.</p>	
004112 - 004306	Chairman Mr Alvin YEUNG Admin	In response to Mr Alvin YEUNG's enquiry, the Administration advised that a person employed (i.e. an employee) to deliver goods ordered by a third party was covered by the definition of "workplace participant" in the proposed new section 23A to SDO, section	

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		<p>22A to DDO and section 24A to RDO and hence, would be protected from sexual, racial and disability harassment while working in a common workplace, irrespective of how long the person had stayed in that common workplace.</p> <p>Mr Alvin YEUNG's expression of support for the proposed prohibition of sexual, racial and disability harassment in a common workplace.</p>	
004307 - 004812	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen's views that:</p> <p>(a) in relation to the operation of the proposed new section 8A(2) to SDO, it was difficult for a member of the public to tell whether a breastfeeding woman was a mother breastfeeding her child. The Administration should review whether the legislative intent of the proposed new section 8A was to protect breastfeeding women in general or only breastfeeding mothers; and</p> <p>(b) the scope of protection under SDO should be expanded to cover acts of harassment, vilification and offensive behaviour towards breastfeeding women.</p> <p>Mr CHAN expressed support for the proposal to replace the references to "near relative" in certain provisions of RDO with references to "associate" so that it would be unlawful to discriminate against or harass a person on the ground of the race of an associate of the person, in alignment with the protection currently afforded under DDO to a person who was discriminated against on the ground of the disability of the person's "associate". An "associate", in relation to a person, would be defined in RDO as including (a) a spouse of the person, (b) another person who was 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 was in a business, sporting or recreational relationship with the person.</p> <p>The Administration's advice that so far there had not been any precedent case of discrimination/harassment on the ground of the race/disability of a person's "associate".</p>	

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		<p>The Administration had consulted the Department of Justice and come to a view that in determining whether a claimant was an "associate" of another person, e.g. whether they were "living on a genuine domestic basis", the Court would consider the actual circumstances of each case having regard to the text and purpose of RDO/DDO, and interpret the relevant provisions by applying their literal and ordinary meaning, e.g. whether they were living under the same roof, to ascertain whether the claimant was protected by the provisions. The gender and sexual orientation of the claimant was not a relevant consideration.</p>	
004813 - 005434	Chairman Deputy Chairman Admin	<p>The Deputy Chairman's views that: (a) the scope of protection for breastfeeding women against discrimination should not be limited to women who fed their own children with their breast milk; and (b) the Administration should consider expanding the scope of protection under SDO to cover acts of harassment, vilification and offensive behaviour towards breastfeeding women.</p> <p>In response to the Deputy Chairman's enquiry, the Administration took note of the suggestion to provide protection for breastfeeding women from harassment and advised that discriminatory acts against a woman on the ground of her breastfeeding committed via the Internet would be subject to the regulatory control under SDO.</p>	
005435 - 005943	Chairman Mr POON Siu-ping Admin	<p>Mr POON Siu-ping's enquiries and the Administration's responses on: (a) the work carried out by DH in promoting and supporting breastfeeding in workplace; (b) the statutory function of the Equal Opportunities Commission ("EOC") in implementing the four anti-discrimination ordinances; and (c) the existing protection under SDO against sexual harassment in relation to provision of goods, services and facilities.</p>	
005944 - 010544	Chairman Mrs Regina IP Admin	<p>Mrs Regina IP's expression of disappointment that only eight recommendations of priority put forward by EOC in its Submissions to the Government on the Discrimination Law Review ("DLR") were taken forward in this legislative exercise. Her views that the</p>	

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		<p>existing definition of "race" under RDO, which did not include discrimination on the ground of citizenship and residency status, was too narrow. The Administration should consider expanding the definition of "race" under RDO with a view to addressing discrimination against new immigrants and tourists.</p> <p>The Administration's advice that regarding the DLR recommendations considered by EOC to be of higher priority, the Government intended to focus on those that were relatively less complex and controversial at this juncture, with a view to taking forward necessary legislative amendments in a step-by-step manner. While the Bill sought to amend SDO, DDO, RDO and the Family Status Discrimination Ordinance (Cap. 527) to take forward eight prioritized recommendations, the Administration would continue to study the remaining 19 recommendations of priority as well as issues and suggestions raised by members requiring further research, consultation and education as catergorized in DLR. Upon completing the legislative exercise of the Bill, the Administration would promptly begin its work at the next stage, with the aim of informing the public of its decisions on the way forward within the current term of the Government.</p> <p>In response to Mrs IP's concern about the protection against racial vilification, the Administration advised that currently, acts of racial vilification were handled by various legal means. The Administration would monitor the situation of racial vilification, and review areas for improvement.</p>	
010545 - 011117	Chairman Ms Claudia MO Admin	<p>Ms Claudia MO's views that (a) the scope of protection under the proposed new section 8A to SDO should be expanded to cover breastfeeding women in general; and (b) RDO should be amended to outlaw racial discrimination by the Government in performing its functions and exercising its powers.</p> <p>The Administration reiterated that it would continue to study and follow up as appropriate the remaining 19 recommendations of priority</p>	

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		in EOC's submissions to the Government on DLR.	
011118 - 011528	Chairman Ms YUNG Hoi-yan Admin	Ms YUNG Hoi-yan's view that the Administration should draw reference to similar legislation in overseas jurisdictions, and consider expanding the scope of protection under the proposed new section 8A to SDO to cover breastfeeding women in general.	
011529 - 012038	Chairman Admin	<p>The Chairman's enquiries and the Administration's advice on:</p> <p>(a) measures taken by DH to promote and support breastfeeding, e.g. issuing "Employer's Guide to Establishing Breastfeeding Friendly Workplace" recommending employers to (i) allow lactating staff to have lactation breaks for expression of breast milk for at least one year after childbirth and that the lactation breaks should be counted as "paid hours", (ii) provide appropriate and private space for milk expression and (iii) provide refrigerating facilities for safe storage of expressed breast milk; and</p> <p>(b) factors that would be taken into consideration by the court in determining whether direct and indirect discrimination on the ground of breastfeeding at a workplace was substantiated.</p> <p>The Administration's further advice that it would invite EOC to promulgate guidelines from the perspectives of operation and implementation to facilitate stakeholders in abiding by the relevant provisions prohibiting direct and indirect discrimination on the ground of breastfeeding.</p>	
012039 - 012413	Chairman Mr KWOK Wai-keung Admin	Mr KWOK Wai-keung's view that the scope of protection of the proposed new section 8A to SDO should be expanded to cover breastfeeding women in general.	
012414 - 012953	Chairman Dr CHENG Chung-tai Admin	Dr CHENG Chung-tai's enquiries on whether the Administration would (a) consider expanding the ambit of EOC so that it would become an independent human rights institution handling human rights work; and (b) review EOC's manpower and resources	

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		<p>required for handling additional workload arising from the implementation of the legislative proposals in the Bill.</p> <p>The Administration's response that EOC had been effectively performing its function in implementing the four anti-discrimination ordinances. The Administration would keep in view the need of allocating additional resources to EOC for discharging its duties.</p> <p>In response to Dr CHENG's enquiry, the Administration advised that for the sake of consistency, the proposed definition of "carer" in RDO (which included "the Director of Social Welfare") had mirrored the definition of the same term under DDO.</p>	
012954 - 013630	Chairman Mr CHAN Chi-chuen Admin	<p>In response to Mr CHAN Chi-chuen's enquiries, the Administration explained the reasons for not taking forward in the current legislative amendment exercise recommendation 18 of DLR which related to the proposal of providing protection from sexual, disability and racial harassment between tenants and/or sub-tenants occupying the same premises. The Administration's advice that non-government organizations providing services to ethnic minorities might fall within the definition of "associate" in the proposed section 2(1) of RDO (i.e. another person who was in a business, sporting or recreational relationship with the person) and thus be protected from discrimination/harassment under RDO. The Legal Adviser to the Bills Committee supplemented that "business relationship" covered business dealings in prescribed areas, including provision of services.</p> <p>The Administration was requested to advise in writing whether proceedings against any persons on grounds of protection from sexual, disability and racial harassment/discrimination between persons working in a common workplace under SDO, DDO and RDO fell within the scope of matters pertaining to the contractual or other legal relationships of a civil nature among the bodies or individuals particularized in Article 7(5) of the Co-operation Arrangement between the Mainland and the Hong Kong Special</p>	<p>Admin (item (b) of Annex B refers)</p>

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>Administrative Region on the Establishment of the Port at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link for Implementing Co-location Arrangement, and thus were regarded as "reserved matters" under the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (Cap. 632) to which the laws of the Hong Kong Special Administrative Region would apply in the West Kowloon Station Mainland Port Area ("MPA") if, for example, a female Hong Kong resident working in MPA was discriminated by her colleagues on the ground of breastfeeding (if the proposed amendments under the Bill to broaden the legal protection for breastfeeding women were passed).</p>	
013631 - 014140	<p>Chairman Deputy Chairman Admin</p>	<p>The Deputy Chairman's enquiry and the Administration's response on the factors that would be taken into consideration by the court in determining whether indirect discrimination against a breastfeeding female employee in a workplace was substantiated. The Deputy Chairman's view that the Administration should enhance publicity and encourage employers to adopt "Breastfeeding Friendly Workplace" policy.</p>	
014141 - 014244	<p>Chairman Dr CHENG Chung-tai Admin</p>	<p>The Administration was requested to consider members' suggestion of reviewing the definition of breastfeeding and to address relevant issues raised on this aspect by the Legal Adviser to the Bills Committee in relation to the proposed new section 8A to SDO as set out in his letter dated 7 January 2019 to the Administration (LC Paper No. CB(2)578/18-19(03)).</p>	<p>Admin (item (a) of Annex B refers)</p>
014245 - 014513	<p>Chairman</p>	<p>Invitation for public views on the Bill. The Chairman's closing remarks.</p>	

**Bills Committee on
Discrimination Legislation (Miscellaneous Amendments) Bill 2018**

**List of follow-up actions arising from the discussion
at the meeting on 14 January 2019**

Clause 7 of the Bill proposes to introduce a new section 8A to the Sex Discrimination Ordinance (Cap. 480) on discrimination against breastfeeding. Under the proposed new section 8A(2)(a), a woman is breastfeeding if she (i) is engaged in the act of breastfeeding her child or expressing breast milk to feed her child; or (ii) is a person who feeds her child with her breast milk. Some members expressed concern on whether the legislative intent of the proposed new section 8A was to protect breastfeeding women in general or only breastfeeding mothers. There was a view that the amendment as such did not afford sufficient protection to breastfeeding women from being harassed or vilified. Some members suggested that the Administration should draw reference on similar legislation in Australia and the United Kingdom and consider expanding the scope of protection under the proposed new section 8A so as to also cover the acts of harassment, vilification and offensive behaviour towards breastfeeding women in general. The Administration was requested to consider members' suggestion of reviewing the definition of breastfeeding and to address relevant issues raised on this aspect by the Legal Adviser to the Bills Committee in relation to the proposed new section 8A as set out in his letter dated 7 January 2019 to the Administration (LC Paper No. CB(2)578/18-19(03)).

2. The Administration was also requested to advise in writing whether proceedings against any persons on grounds of protection from sexual, disability and racial harassment/discrimination between persons working in a common workplace under the Sex Discrimination Ordinance (Cap. 480), the Disability Discrimination Ordinance (Cap. 487) and the Race Discrimination Ordinance (Cap. 602) fell within the scope of matters pertaining to the contractual or other legal relationships of a civil nature among the bodies or individuals particularized in Article 7(5) of the Co-operation Arrangement between the Mainland and the Hong Kong Special Administrative Region on the Establishment of the Port at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link for Implementing Co-location Arrangement, and thus were regarded as "reserved matters" under the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (Cap 632) to which the laws of the Hong Kong Special Administrative Region would apply in the West Kowloon Station Mainland Port Area ("MPA") if, for example, a female Hong Kong resident working in MPA was discriminated by her colleagues on the ground of breastfeeding (if the proposed amendments under the Bill to broaden the legal protection for breastfeeding women were passed).