

立法會
Legislative Council

LC Paper No. CB(2)1907/18-19
(These minutes have been seen
by the Administration)

Ref : CB2/BC/2/18

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

**Minutes of meeting
held on Monday, 25 February 2019, at 2:30 pm
in Conference Room 2 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 CHAN Chi-chuen
Hon Kenneth LEUNG
Hon KWOK Wai-keung, JP
Hon Dennis KWOK Wing-hang
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
Hon Alvin YEUNG
Hon CHU Hoi-dick
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
Hon AU Nok-hin

Member attending : Hon SHIU Ka-fai

Members absent : Hon Paul TSE Wai-chun, JP
Hon Charles Peter MOK, JP
Dr Hon CHIANG Lai-wan, SBS, JP
Hon Holden CHOW Ho-ding

Public Officers attending : Item I

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

Miss Celine KWOK Sin-ling
Assistant Secretary for Constitutional and Mainland Affairs

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

Miss Wendy HO Yuen-ting
Government Counsel
Department of Justice

Attendance by invitation : Item I

Individual

Mr CHONG Yiu-kwong

Community March

Ms WU Sui-shan
Community Organizer, Yau Ma Tei South

Individual

Miss YAU Tze-wei

Society for Community Organization

Mr Richard TSOI Yiu-cheong
Community Organizer

Individual

Dr Calvin KWOK

Democratic Alliance for the Betterment and Progress
of Hong Kong

Mrs PUSHKARNA Neena
Ethnic Minorities Committee Member

Individual

Mr BATCHA Mohammad Sikkander

Individual

Mr DING Wesley Shanley

Civic Party

Mr Warren TAM Ka-chun
District Developer

The Federation of Hong Kong and Kowloon Labour Unions

Ms LEE Sau-king
Women Affairs Committee Officer

Individual

Mr LUK Wai-yip

The Hong Kong Society for the Blind

Ms CHENG Mi-bing
Director (Rehabilitation Services)

Liberal Party

Mr Jonathan LEUNG
Member

The Hong Kong Federation of Trade Unions Women
Affairs Committee

Ms CHIANG Chiu-lin
Member

Equal Opportunities Commission

Mr READING Peter
Legal Counsel

Hong Kong Ample Love Society

Ms Pearl TSANG
Chairman

Hong Kong Unison

Ms Phyllis CHEUNG Fung-mei
Executive Director

Society for Cultural Integration

Miss TAM Yuen-yee
Campaign Officer

Voices of Diversity

Mr ANDREWS Alterin Jeffrey
Convener

Individual

Miss RAHMAN Lamia Sreya

Individual

Miss ASLAM Rabia

Individual

Miss SHRESTHA Bidhya

Individual

Miss ASLAM Umme Habiba

Liberal Party Youth Committee

Mr Kenneth WONG
Executive Member

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. Meeting with deputations and the Administration

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

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

2. The Bills Committee received views from 24 deputations/individuals attending the meeting (see **Annex A**), and noted two written submissions from other deputations/individuals which/who did not attend the meeting (LC Paper Nos. CB(2)875/18-19(04) and CB(2)824/18-19(03)).

Follow-up actions required of the Administration

Admin

3. The Administration was requested to provide a written response to issues raised by members and major views and concerns expressed by deputations (see **Annex B**).

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)1033/18-19(01) on 22 March 2019.)

Action

II. Any other business

Date of the next two meetings

4. Members agreed to schedule the next two meetings of the Bills Committee on the following dates:
 - (a) 26 March 2019 (Tuesday), from 4:30 pm to 6:30 pm; and
 - (b) 7 May 2019 (Tuesday), from 4:30 pm to 6:30 pm.
5. There being no other business, the meeting ended at 4:37 pm.

Council Business Division 2
Legislative Council Secretariat
9 September 2019

**Proceedings of meeting of the Bills Committee on
Discrimination Legislation (Miscellaneous Amendments) Bill 2018
on Monday, 25 February 2019, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000553 - 000952	Chairman Mr HUI Chi-fung	The Chairman's opening remarks	
000953 - 001221	Chairman Mr CHONG Yiu-kwong	Presentation of views (LC Paper No. CB(2)824/18-19(01))	
001222 - 001528	Chairman Community March	Presentation of views	
001529 - 001836	Chairman Miss YAU Tze-wei	Presentation of views	
001837 - 002145	Chairman Society for Community Organization	Presentation of views	
002146 - 002451	Chairman Dr Calvin KWOK	Presentation of views	
002452 - 002729	Chairman Democratic Alliance for the Betterment and Progress of Hong Kong	Presentation of views (LC Paper No. CB(2)875/18-19(01))	
002730 - 003040	Chairman Mr BATCHA Mohammad Sikkander	Presentation of views	
003041 - 003326	Chairman Mr DING Wesley Shanley	Presentation of views	
003327 - 003630	Chairman Civic Party	Presentation of views (LC Paper No. CB(2)875/18-19(02))	
003631 - 003934	Chairman The Federation of Hong Kong and Kowloon Labour Unions	Presentation of views (LC Paper No. CB(2)875/18-19(03))	
003935 - 004242	Chairman Mr LUK Wai-yip	Presentation of views (LC Paper No. CB(2)824/18-19(02))	

Time marker	Speaker	Subject(s)	Action Required
004243 - 004528	Chairman The Hong Kong Society for the Blind	Presentation of views (LC Paper No. CB(2)824/18-19(02))	
004529 - 004759	Chairman Liberal Party	Presentation of views	
004800 - 005019	Chairman The Hong Kong Federation of Trade Unions Women Affairs Committee	Presentation of views (LC Paper No. CB(2)859/18-19(01))	
005020 - 005320	Chairman Equal Opportunities Commission ("EOC")	Presentation of views (LC Paper No. CB(2)859/18-19(02))	
005321 - 005619	Chairman Hong Kong Ample Love Society	Presentation of views	
005620 - 005936	Chairman Hong Kong Unison	Presentation of views (LC Paper No. CB(2)824/18-19(04))	
005937 - 010239	Chairman Society for Cultural Integration	Presentation of views	
010240 - 010521	Chairman Voices of Diversity	Presentation of views (LC Paper No. CB(2)905/18-19(01))	
010522 - 010806	Chairman Miss RAHMAN Lamia Sreya	Presentation of views (LC Paper No. CB(2)905/18-19(02))	
010807 - 011116	Chairman Miss ASLAM Rabia	Presentation of views (LC Paper No. CB(2)905/18-19(03))	
011117 - 011338	Chairman Miss SHRESTHA Bidhya	Presentation of views (LC Paper No. CB(2)905/18-19(04))	
011339 - 011652	Chairman Miss ASLAM Umme Habiba	Presentation of views	
011653 - 011950	Chairman Liberal Party Youth Committee	Presentation of views	

Time marker	Speaker	Subject(s)	Action Required
011951 - 013403	Chairman Admin	<p>The Administration's responses to deputations' views as follows:</p> <p>(a) clause 7 of the Discrimination Legislation (Miscellaneous Amendments) Bill 2018 ("the Bill") proposed to introduce a new section 8A to the Sex Discrimination Ordinance (Cap. 480) ("SDO"), rendering direct and indirect discrimination against a woman on the ground that she was breastfeeding unlawful. The proposed amendment would not impose an obligation on employers or service providers to make reasonable accommodation for employees or service users who breastfed. It would not constitute indirect discrimination as long as the employer or service provider concerned could prove that it was, among other things, justifiable for the same requirement to be applied to all employees or service users. The court would take into account relevant factors in determining whether indirect discrimination against a breastfeeding female employee in a workplace was substantiated;</p> <p>(b) regarding the suggestion that the Race Discrimination Ordinance (Cap. 602) ("RDO") should be amended to outlaw racial discrimination by the Government in performing its functions and exercising its powers, it should be noted that although RDO contained no specific provision on discrimination by the Government in performing its functions and exercising its powers, the Government was subject to the Hong Kong Bill of Rights Ordinance (Cap. 383), whereby the Government could not apply distinction to the recognition of individual rights;</p> <p>(c) the proposed definition of "workplace participant" as set out in Part 5 of the Bill included employer, employee, contract worker and principal, commission agent and principal, as well as partner in a firm, all of which were workplace relationship already covered under the existing anti-discrimination ordinances. Acts of harassment between these "workplace participants" were prohibited under the Bill. Whether "interns" or "unpaid trainees" were</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>covered in Part 5 of the Bill depended on whether the intern/trainee concerned was qualified as an "employee" under "employment" (i.e. whether a contract of service or apprenticeship, or a contract personally to execute any work or labour, had been made), and it could not be determined solely on the basis of whether the person received payment. Compared with the categories of persons covered in the proposed definition of "workplace participant", the scope and the concrete concepts of "volunteer" were less certain and express inclusion of such persons required further consideration;</p> <p>(d) the Administration noted concerns expressed that some of the 19 recommendations of priority in EOC's Submissions to the Government on the Discrimination Law Review ("DLR") had not been addressed in the Bill. These included issues requiring further research, consultation and education as categorized in EOC's DLR. The Administration would continue to study the remaining recommendations of priority and maintain communication with EOC in this regard. Upon completing the legislative exercise in respect 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 on these issues within the current term of the Government;</p> <p>(e) as announced in the Chief Executive's 2018 Policy Address, the Administration planned to improve the Administrative Guidelines on Promotion of Racial Equality ("Administrative Guidelines") and make it applicable to all government bureaux and departments as well as relevant public authorities providing services to ethnic minorities ("EMs"); and</p> <p>(f) regarding the difficulties encountered by persons with visual impairment in securing employment and using public services as pointed out by some deputations at the meeting, the Administration would relay the concerns to relevant bureaux and departments for consideration.</p>	

Time marker	Speaker	Subject(s)	Action Required
013404 - 013836	Chairman Mr HUI Chi-fung Admin	Mr HUI Chi-fung's enquiry as to whether the Administration would consider outlawing harassment on the ground of breastfeeding in the prescribed areas (including employment, education and the provision of goods, services or facilities) as currently covered under SDO. The Administration's advice that it would consider members' views in this regard.	
013837 - 014438	Chairman Ms Claudia MO Mrs Regina IP Admin	<p>Ms Claudia MO's expression of concern whether EMs were racially discriminated by frontline civil servants when the former applied for public services. She queried whether this was the reason why the Administration did not take forward in the current legislative exercise EOC's recommendation of amending RDO to outlaw racial discrimination by the Government in performing its functions and exercising its powers. Her view that the Administration should accord priority to this recommendation in the next legislative exercise.</p> <p>The Administration's advice that at present, 23 government departments/public authorities had adopted the Administrative Guidelines. Feedback in respect of the major public services for EMs did not reflect a large number of complaints against relevant government departments. The Government would continue to promote racial equality and ensure equal access to public services. Regarding those recommendations of priority in EOC's Submissions to the Government on DLR that had not been included in the Bill (e.g. amending RDO to outlaw discrimination by the Government in performing its functions and exercising its powers), the Constitutional and Mainland Affairs Bureau would continue to follow up as appropriate.</p> <p>Mrs Regina IP's suggestion that the Administration might consider introducing a defence of "public interest" or "good faith" in RDO if government actions were to be covered under RDO.</p>	
014439 - 014813	Chairman Mrs Regina IP Admin	Mrs Regina IP's expression of concern about the Administration's progress of taking forward the remaining 19 recommendations of higher priority put forward by EOC in its Submissions to the	

Time marker	Speaker	Subject(s)	Action Required
		<p>Government on DLR. Her view that protection from discrimination on the ground of citizenship and residency status should be provided in RDO to address discrimination against new immigrants and tourists from the Mainland China. Mrs IP's query as to whether it would constitute a discriminatory act on the ground of "national or ethnic origin" if someone called a new immigrant or a tourist from the Mainland China "Sheen-na" (支那).</p> <p>The Administration's advice that it depended on the facts of individual cases. The Administration considered that issues relating to discrimination on the ground of citizenship and residency status required careful deliberation. It would maintain communication with EOC in this regard.</p>	
014814 - 015233	Chairman Mr POON Siu-ping Admin	<p>Mr POON Siu-ping's enquiries and the Administration's response on (a) lactation breaks set out in the "Employer's Guide to Establishing Breastfeeding Friendly Workplace" issued by the Department of Health; and (b) the Administration's plan to follow up on the rest of EOC's recommendations other than the 27 prioritized recommendations.</p> <p>Mr POON's question on whether consideration would be given to expressly including "intern"/"unpaid trainee" and "volunteer" in the proposed definition of "workplace participant" by making reference to the laws of overseas jurisdictions.</p> <p>The Administration's advice that:</p> <p>(a) subject to the circumstances of each case, existing anti-discrimination legislation already protected volunteers against unlawful acts of discrimination or harassment in prescribed areas (e.g. provision of services to customers by a volunteer); and</p> <p>(b) due consideration had to be given to the applicability of provisions relevant to "vicarious liability" under the existing anti-discrimination ordinances, in considering whether "intern"/"unpaid trainee" and "volunteer" were to be included in the definition of "workplace participant".</p>	

Time marker	Speaker	Subject(s)	Action Required
015234 - 015905	Chairman Dr Helena WONG Admin	<p>Extension of meeting for 15 minutes.</p> <p>Dr Helena WONG's views that:</p> <p>(a) the proposed definition of "workplace participant" in Part 5 of the Bill should cover "intern"/"unpaid trainee" and "volunteer";</p> <p>(b) the Administration should take forward as soon as possible 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; and</p> <p>(c) the Administration should consider how issues relating to harassment on the ground of breastfeeding (e.g. between a customer and another customer breastfeeding her child at a restaurant) should be dealt with.</p> <p>Dr WONG requested the Administration to revert in writing on:</p> <p>(a) whether it would consider strengthening the scope of protection under SDO to address the concerns over sexual harassment between students of different universities/institutions/educational establishments who were, for example, attending some activities at the same educational establishments and if yes, the timetable for taking forward the proposal; and</p> <p>(b) the Administration's plan and timetable for taking forward the remaining recommendations put forward by EOC in its Submissions to the Government on DLR, other than the eight recommendations of priority pursued under the Bill.</p>	<p>Admin (items 2(b) and 2(c) of Annex B refers)</p>
015906 - 020436	Chairman Mr CHAN Chi-chuen Admin	<p>In response to the concerns raised by members including Mr CHAN Chi-chuen, the Administration would provide supplementary information in writing on:</p> <p>(a) whether the definition of "workplace participant" in the proposed new section 23A to SDO, new section 22A to DDO and new section 24A to RDO covered volunteers,</p>	<p>Admin (item 2(a) of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>unpaid trainees, interns, free-lance/self-employed persons and outsourced service workers;</p> <p>(b) whether there was any class(es) of persons not covered by the said definition, and if any, providing illustrative examples on the class(es) of persons or persons; and</p> <p>(c) whether the expanded protection under the Bill from sexual, disability and racial harassment would be available in various scenarios referred to by Mr CHAN Chi-chuen where the harasser and the victim were working in a common workplace but did not have employment or employment-like relationship (e.g. harassment between personal assistants of different Members working in the Legislative Council Complex or between volunteers, students trainees/interns, self-employed persons of different Members).</p>	
020437 - 020911	Chairman Dr Fernando CHEUNG Admin	Dr Fernando CHEUNG's expression of disappointment that the Administration did not take forward in the current legislative amendment exercise the following EOC's recommendations: (a) amending RDO to outlaw racial discrimination by the Government in performing its functions and exercising its powers; and (b) amending DDO by introducing a distinct duty to make reasonable accommodation for persons with disabilities in all relevant fields (including employment; education; the provision of goods, services and facilities; and management of premises.)	
020912 - 021035	Chairman Dr Helena WONG Admin	The Chairman requested the Administration to provide a written response to the major views and concerns expressed by deputations at the meeting.	Admin (item 1 of Annex B refers)
021036 - 021055	Chairman	The Chairman's closing remarks. Date of next two meetings.	

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

**List of follow-up actions arising from the discussion
at the meeting on 25 February 2019**

The Administration was requested to provide a written response to the major views and concerns expressed by deputations at the meeting (including those issues addressed during the meeting in the Administration's verbal response).

2. The Administration was also requested to provide supplementary information on the following issues raised by members:

- (a) (i) whether the definition of "workplace participant" in the proposed new section 23A to the Sex Discrimination Ordinance (Cap. 480) ("SDO"), new section 22A to the Disability Discrimination Ordinance (Cap. 487) and new section 24A to the Race Discrimination Ordinance (Cap. 602) covered volunteers, unpaid trainees, interns, free-lance/self-employed persons and outsourced service workers; (ii) whether there was any class(es) of persons not covered by the said definition, and if any, providing illustrative examples on the class(es) of persons or persons; and (iii) whether the expanded protection under the Discrimination Legislation (Miscellaneous Amendments) Bill 2018 ("the Bill") from sexual, disability and racial harassment would be available in various scenarios referred to by some members where the harasser and the victim were working in a common workplace but did not have employment or employment-like relationship (e.g. harassment between personal assistants of different Members working in the Legislative Council Complex or between volunteers, students trainees/interns, self-employed persons of different Members);
- (b) whether the Administration would consider a member's suggestion to strengthen the scope of protection under SDO to address the concerns over sexual harassment between students of different universities/institutions/educational establishments who were, for example, attending some activities at the same educational establishments and if yes, the timetable for taking forward the proposal; and
- (c) the Administration's plan and timetable for taking forward the remaining recommendations put forward by the Equal Opportunities Commission in its Submissions to the Government on the Discrimination Law Review, other than the eight recommendations of priority pursued under the Bill.