

立法會
Legislative Council

LC Paper No. CB(2)1926/18-19
(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 Tuesday, 26 March 2019, at 4:30 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 Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, BBS
Hon CHAN Chi-chuen
Hon KWOK Wai-keung, JP
Dr Hon Helena WONG Pik-wan
Hon POON Siu-ping, BBS, MH
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
Dr Hon CHENG Chung-tai
Hon AU Nok-hin

- Members absent** : Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Charles Peter MOK, JP
Hon Kenneth LEUNG
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon CHIANG Lai-wan, SBS, JP
Hon LUK Chung-hung, JP
- 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
- Clerk in attendance** : Ms Alice LEUNG
Chief Council Secretary (2) 6
- 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
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I. 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, CB(2)578/18-19(02) to (03), CB(2)699/18-19(01), CB(2)820/18-19(01), CB(2)866/18-19(01), CB(2)948/18-19(01) and CB(2)1033/18-19(01))

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

Follow-up actions required of the Administration

2. The Administration was requested to provide a written response to issues raised by members at the meeting as set out in **Annex B**.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)1327/18-19(01) on 30 April 2019.)

II. Any other business

3. There being no other business, the meeting ended at 6:28 pm.

Council Business Division 2
Legislative Council Secretariat
19 September 2019

**Proceedings of the meeting of the Bills Committee on
Discrimination Legislation (Miscellaneous Amendments) Bill 2018
on Tuesday, 26 March 2019, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action Required
001220 - 001312	Chairman	The Chairman's opening remarks.	
001313 - 002742	Chairman Admin	<p>The Administration's briefing on its response to issues raised at the meeting on 25 February 2019 (LC Paper No. CB(2)1033/18-19(01)).</p> <p>Regarding some members' suggestion that the scope of protection under the Sex Discrimination Ordinance (Cap. 480) ("SDO") should be expanded to cover harassment on the ground of breastfeeding through the Discrimination Legislation Miscellaneous Amendments) Bill 2018 ("the Bill"), the Administration's advice was that:</p> <p>(a) "discrimination" and "harassment" were two distinct legal concepts referring to two different types of conduct under the four existing anti-discrimination legislation in Hong Kong, whilst "harassment on the ground of breastfeeding" and "sexual harassment" were also two distinct concepts from a legal perspective. Therefore, amendments to introduce protection from "harassment on the ground of breastfeeding" were not relevant to the subject matters of the Bill relating to SDO amendments, which concerned "breastfeeding discrimination" and "sexual harassment". Any such amendment would fall outside the scope of the Bill and thus should not be admissible; and</p> <p>(b) the Administration considered that a holistic review after completing this legislative exercise would be the preferred approach for addressing the community's concerns over the issues of harassment on the ground of breastfeeding and sexual harassment.</p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
002743 - 004239	Chairman Dr Helena WONG Admin	The Administration's views to Dr Helena WONG's suggestions on (a) expanding the scope of protection under SDO to cover sexual harassment between students from different schools/educational establishments and (b) expressly including "intern"/"unpaid trainee" and "volunteer" in the proposed definition of "workplace participant" as set out in the proposed new section 23A of SDO, new section 22A of the Disability Discrimination Ordinance (Cap. 487) ("DDO") and new section 24A of the Race Discrimination Ordinance (Cap. 602) ("RDO").	
<i>The meeting was suspended at 4:57 pm and resumed at 5:05 pm.</i>			
004240 - 004856	Chairman Mr CHAN Chi-chuen Admin	In response to Mr CHAN Chi-chuen's suggested scenario (i.e. harassment between a staff member employed by a Legislative Council ("LegCo") Member (e.g. personal assistant) and a member of the public seeking assistance/service from another LegCo Member), the Administration clarified that protection from harassment at a common workplace applied to "workplace participants" within the meaning of relevant provisions in Part 5 of the Bill, but not to all persons present in the workplace premises.	
004857 - 005228	Chairman Mr SHIU Ka-chun Admin	<p>Mr SHIU Ka-chun's enquiries on (a) whether students studying programmes on social work and arranged to work as unpaid interns in non-government organizations fell within the definition of "employee" (hence, the proposed definition of "workplace participant" in Part 5 of the Bill) and thus would be afforded protection from harassment at workplace; and (b) whether acts of harassment between interns from different schools/educational establishments but working for the same organization would be prohibited under Part 5 of the Bill.</p> <p>The Administration's advice that:</p> <p>(a) protection from harassment between workplace participants would only apply to an intern who entered into a contract of service or of apprenticeship with the organization concerned for the relevant work, such that they qualified as an</p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>"employee" within the meaning of the existing anti-discrimination ordinances; and</p> <p>(b) while protection might be available for "intern"/"unpaid trainee" and "volunteer" where relevant provisions of the anti-discrimination ordinances applied, the Administration would consider expressly including these roles in the proposed definition of "workplace participant" to ensure protection from harassment in a common workplace.</p>	
005229 - 005648	Chairman Deputy Chairman Admin SALA3	<p>The Deputy Chairman's expression of support for the Administration's proposal to amend the proposed definition of breastfeeding so that the scope of protection for breastfeeding women against discrimination would not be limited to women who fed their own children with their breast milk.</p> <p>The Deputy Chairman's view that the Administration should take forward the suggestion of expanding the scope of protection under SDO to cover acts of harassment, vilification and offensive behaviour towards women on the ground of breastfeeding by proposing amendments to the Bill under scrutiny. She sought the view of the Legal Adviser to the Bills Committee on whether the proposed amendments fell outside the scope of the Bill.</p> <p>The advice of the Legal Adviser to the Bills Committee that the admissibility of amendments to bills would be decided by the President in accordance with the relevant rules under the Rules of Procedure ("RoP"). Under RoP 57(4)(a), an amendment to a bill must be relevant to the subject matter of the bill and to the subject matter of the clause to which it related. In line with the established practice, when considering the subject matter of a bill, the President would take into account the long title, Explanatory Memorandum and provisions of the bill, the relevant LegCo Brief and other relevant factors. In determining whether amendments were relevant to the subject matter of the bill, the President would consider whether those amendments would</p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>have the effect of altering the subject matter of the bill or merely amending its details.</p>	
005649 - 005934	<p>Chairman Mr POON Siu-ping Admin</p>	<p>In response to Mr POON Siu-ping's enquiries, the Administration advised that:</p> <p>(a) it would draw reference on local situations and overseas practices (as applicable) in defining "intern"/"unpaid trainee" and "volunteer" if these new roles were to be included in the definition of "workplace participant"; and</p> <p>(b) for self-employed persons, "employment" meant employment under a contract of service or apprenticeship, or a contract personally to execute any work or labour in the context of the four existing anti-discrimination ordinances. If a contract satisfying the above definition had been made for the relevant work, a self-employed person would be protected from harassment at workplace under Part 5 of the Bill.</p>	
005935 - 010545	<p>Chairman Dr CHENG Chung-tai Admin</p>	<p>In response to Dr CHENG Chung-tai's enquiry, the Administration advised that since acts of sexual harassment were prohibited in prescribed areas (including employment and provision of services) under SDO, the situation quoted by Dr CHENG (i.e. sexual harassment between a client/student and a fitness /swimming coach) could be dealt with under existing provisions of SDO.</p> <p>Dr CHENG's concern about sexual harassment between pastoral staff and congregation participating in religious activities in churches and religious facilities.</p> <p>The Administration's advice that there was no express provision in SDO prohibiting sexual harassment in churches and religious facilities as such. However, under the existing anti-discrimination ordinances, a "club" meant an association, incorporate or unincorporate, of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes and which provided and maintained its facilities, in whole</p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>or in part, from the funds of the association. "Committee of management", in relation to a club, meant the group or body of persons (howsoever described) that managed the affairs of the club. If an organization formed for religious purposes satisfied the definition of "club", certain provisions concerning "discrimination by clubs" would apply to the management of the organization concerned.</p>	
010546 - 011048	<p>Chairman Mr Holden CHOW Admin</p>	<p>Mr Holden CHOW's expression of support for the Bill, including the prohibition of discrimination on the ground of breastfeeding.</p> <p>Mr CHOW's views that the Administration should (a) examine how to compile statistics on civil claims made in respect of unlawful acts of racial vilification; and (b) step up enforcement efforts to combat acts of serious racial vilification and review the threshold for instituting a prosecution against such offences.</p> <p>The Administration's advice that relevant government bureau/department and the Equal Opportunities Commission would closely monitor the situation of racial vilification and serious racial vilification (in terms of number and seriousness of reported cases) and review areas for improvement.</p>	
011049 - 011717	<p>Chairman Mr HUI Chi-fung Admin</p>	<p>Mr HUI Chi-fung expressed his view that the Administration should propose amendments to the Bill for outlawing harassment on the ground of breastfeeding in the prescribed areas as currently covered under SDO.</p>	
011718 - 012401	<p>Chairman Ms YUNG Hoi-yan Admin</p>	<p>Ms YUNG Hoi-yan's expression of support for outlawing acts of harassment, vilification and offensive behaviour towards breastfeeding women in broader daily life situations.</p> <p>Ms YUNG's enquiry and the Administration's response regarding factors to be considered by the court in determining whether indirect discrimination against a breastfeeding female employee in a workplace was substantiated.</p>	
012402 - 012904	<p>Chairman Admin</p>	<p>The Administration was requested to advise whether it would consider members' suggestion of expanding the scope of</p>	<p>Admin (item 1(a) of Annex B</p>

Time marker	Speaker	Subject(s)/Discussion	Action Required
		protection under SDO to cover acts of harassment, vilification and offensive behaviour towards breastfeeding women and if the answer was in the affirmative, how it would take forward the suggestion (by proposing amendments to the Bill under scrutiny or by introducing a separate bill to deal with the matter).	refers)
012905 - 013521	Chairman Dr Helena WONG Admin	Dr Helena WONG expressed concern over sexual harassment in churches and religious facilities. Her view was that the Administration should step up publicity to remind non-government organizations (such as churches) that they were subject to certain regulatory requirements under SDO if they fell within the definition of "club".	
013522 - 013939	Chairman Deputy Chairman Admin	The Deputy Chairman's view that the proposed definition of "workplace participant" in Part 5 of the Bill should cover "intern"/"unpaid trainee" and "volunteer".	
013940 - 014535	Chairman Dr CHENG Chung-tai Admin	Referring to the Administration's reply dated 22 February 2019 (LC Paper No. CB(2)866/18-19(01)) regarding "reserved matter" as defined under the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (Cap. 632) to which the laws of Hong Kong applied and over which Hong Kong exercised jurisdiction, Dr CHENG Chung-tai requested the Administration to clarify (a) whether the principle mentioned in the Administration's reply applied in legal proceedings involving foreigners/foreign nationals and if yes, (b) whether the "Law of the People's Republic of China on Application of Laws to Foreign-Related Civil Relations", which came into effect from 1 April 2011, had any implications on Hong Kong courts' handling of legal proceedings involving foreigners/foreign nationals which fell within the scope of "matters pertaining to the contractual or other legal relationships of a civil nature" under 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	Admin (item 2 of Annex B refers)

Time marker	Speaker	Subject(s)/Discussion	Action Required
		Co-location Arrangement (including claims made under the four anti-discrimination ordinances).	
014536 - 015259	Chairman Mr HUI Chi-fung Admin SALA3	Mr HUI Chi-fung requested the Administration to introduce a separate bill for the purpose of outlawing acts of harassment, vilification and offensive behavior towards women on the ground of breastfeeding. He indicated the intention to ask the Legal Adviser to the Bills Committee to draft amendments to this effect should the Administration decide not to accede to the request.	
015300 - 015927	Chairman Dr Helena WONG Admin	<p>In view of the concerns raised by Dr Helena WONG and some other members (including the Deputy Chairman), the Administration would provide a written response to the following issues:</p> <p>(a) whether the Administration would consider including "intern", "unpaid trainee" and "volunteer" in the proposed definition of "workplace participant" as set out in Part 5 of the Bill in relation to the proposed new section 23A of SDO, new section 22A of DDO and new section 24A of RDO; and if yes, how the Administration would take forward the suggestion;</p> <p>(b) whether the existing definition of "club" in the four anti-discrimination ordinances covered churches and religious facilities; and whether the proposed protection relating to harassment by clubs (i.e. proposed new section 39A to SDO) would extend to cover pastoral staff and congregation participating in religious activities in churches and religious facilities such that they would have legal protection against sexual harassment;</p> <p>(c) regarding the definition of "club", the rationale for setting the threshold at "not less than 30 persons" for being classified as "club"; and</p>	Admin (items 1(b) to 1(e) of Annex B refers)

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>(d) regarding the scope of protection against sexual harassment under SDO, whether the Administration would reconsider the suggestion of including sexual harassment between students from different schools/educational establishments within the scope of SDO.</p> <p>The Administration was also requested to provide for members' consideration its proposed amendments to the Bill such that the scope of protection for breastfeeding women against discrimination would not be limited to women who fed their own children with their breast milk.</p>	<p>Admin (item 3 of Annex B refers)</p>
015928 - 020029	Chairman SALA3	The Legal Adviser to the Bills Committee's advice that depending on the actual circumstances of individual cases, the existing SDO already offered to persons participating in religious activities (such as pastoral staff and congregation of a religious body) protection from sexual harassment that took place in prescribed areas (e.g. provision of goods, facilities and services).	
020030 - 020156	Chairman	Date of next meeting.	

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

**List of follow-up actions arising from the discussion
at the meeting on 26 March 2019**

The Administration was requested to provide a written response to the following issues raised by members:

- (a) whether the Administration would consider members' suggestion of expanding the scope of protection under the Sex Discrimination Ordinance (Cap. 480) ("SDO") to cover acts of harassment, vilification and offensive behaviour towards breastfeeding women. If the answer was in the affirmative, how the Administration would take forward the suggestion (by proposing amendments to the Bill under scrutiny or by introducing a separate bill to deal with the matter);
- (b) whether the Administration would consider members' suggestion to include "interns", "unpaid trainees" and "volunteer" in the proposed definition of "workplace participant" as set out in Part 5 of the Bill in relation to the proposed new section 23A of SDO, new section 22A of the Disability Discrimination Ordinance (Cap. 487) ("DDO") and new section 24A of the Race Discrimination Ordinance (Cap. 602) ("RDO"). If yes, please advise how the Administration would take forward the suggestion;
- (c) whether the existing definition of "club" in the four anti-discrimination ordinances (i.e. "an association, incorporate or unincorporate, of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes and which provides and maintains its facilities, in whole or in part, from the funds of the association") covered churches and religious facilities; and whether the proposed protection relating to harassment by clubs (i.e. proposed new section 39A to SDO) would extend to cover pastoral staff and congregation participating in religious activities in churches and religious facilities such that they would have legal protection against sexual harassment;
- (d) regarding the definition of "club" mentioned in item (c), the rationale for setting the threshold at "not less than 30 persons" for being classified as "club"; and
- (e) regarding the scope of protection against sexual harassment under SDO, whether the Administration would reconsider the suggestion of including sexual harassment between students from different schools/ educational establishments within the scope of SDO.

2. The Administration has advised in its reply letter dated 22 February 2019 (LC Paper No. CB(2)866/18-19(01)) that an act of discrimination or harassment which gave rise to a claim under SDO, DDO, RDO and the Family Status Discrimination Ordinance (Cap. 527) fell within the scope of "matters pertaining to the contractual or other legal relationships of a civil nature" among the bodies or individuals as 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 ("the Co-operation Arrangement"). A "reserved matter", as defined under section 3 of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (Cap. 632), was a matter to which the laws of Hong Kong applied and over which Hong Kong exercised jurisdiction, under Article 3 or 7 of the Co-operation Arrangement. Against this background, a member enquired and requested the Administration to clarify (i) whether the above principle applied in legal proceedings involving foreigners/foreign nationals and if yes, (ii) whether the "Law of the People's Republic of China on Application of Laws to Foreign-Related Civil Relations", which came into effect from 1 April 2011, had any implications on Hong Kong courts' handling of legal proceedings involving foreigners/foreign nationals which fell within the scope of "matters pertaining to the contractual or other legal relationships of a civil nature" under Article 7(5) of the Co-operation Arrangement (including claims made under the four anti-discrimination ordinances).

3. As the Administration has indicated in its reply letter dated 21 March 2019 (LC Paper No. CB(2)1033/18-19(01)) its willingness to consider how the proposed definition of breastfeeding might be amended such that the scope of protection for breastfeeding women against discrimination should not be limited to women who feed their own children with their breast milk, the Administration was requested to provide, as early as possible, its proposed amendments to the Bill to facilitate members' consideration.