

立法會
Legislative Council

LC Paper No. CB(2)782/19-20
(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, 9 December 2019, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

- Members present** : Hon Alice MAK Mei-kuen, BBS, JP (Chairman)
Hon Elizabeth QUAT, BBS, JP (Deputy Chairman)
Hon WONG Ting-kwong, GBS, 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
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, SBS, JP
Hon Alvin YEUNG
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan, JP
Hon CHAN Chun-ying, JP
Hon LUK Chung-hung, JP
Dr Hon CHENG Chung-tai
Hon Vincent CHENG Wing-shun, MH, JP
- Members absent** : Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Charles Peter MOK, JP
Hon Kenneth LEUNG

Hon Dennis KWOK Wing-hang
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHU Hoi-dick
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon AU Nok-hin

Public Officers : Item I
attending

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 : Miss Josephine SO
attendance : Chief Council Secretary (2) 2

Staff in : Mr Bonny LOO
attendance : Senior Assistant Legal Adviser 3 (Acting)

Ms Wendy LO
Senior Council Secretary (2) 2

Miss Cally LAI
Legislative Assistant (2) 2

Action

I. Meeting with the Administration

(LC Paper Nos. 1421/18-19(01) and CB(2)310/19-20(01))

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

2. The Bills Committee completed examination of the Administration's draft proposed amendments to the Discrimination Legislation (Miscellaneous Amendments) Bill 2018 ("the Bill").

Follow-up actions required of the Administration

3. The Administration was requested to provide a written response to issues raised by members and the Legal Adviser to the Bills Committee at the meeting (as set out in **Annex B**) as well as a full set of its finalized draft amendments to the Bill for members' consideration.

(Post-meeting note: The Administration's written response and the finalized version of its proposed amendments to the Bill were issued to members vide LC Paper No. CB(2)460/19-20 on 2 January 2020. Members were informed vide LC Paper No. CB(2)515/19-20 issued on 13 January 2020 that the Secretariat had not received by the specified deadline any views from members on the Administration's written response and the finalized version of the Administration's proposed amendments to the Bill. In this connection, the Bills Committee had completed the scrutiny of the Bill.)

II. Any other business

4. There being no other business, the meeting ended at 12:25 pm.

**Proceedings of the meeting of the Bills Committee on
Discrimination Legislation (Miscellaneous Amendments) Bill 2018
on Monday, 9 December 2019, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action Required
001156 - 001205	Chairman	The Chairman's opening remarks.	
001206 - 003025	Chairman Admin	<p>The Administration briefed members on its response to issues raised at the meeting on 7 May 2019 (LC Paper No. CB(2)310/19-20(01)), which enclosed the draft amendments proposed by the Administration to the Discrimination Legislation (Miscellaneous Amendments) Bill 2018 ("the Bill"). The Administration's advice on its proposed timeline for introducing a separate bill to amend the Sex Discrimination Ordinance (Cap. 480) ("SDO") to provide for the protection against harassment on the ground of breastfeeding ("the separate bill").</p> <p>The Chairman's view that since it was uncertain when the separate bill would undergo scrutiny in the Legislative Council ("LegCo") in view of the impact of the delay in the election of the chairman and deputy chairman of the House Committee ("HC") on transacting business that required HC's decision (including whether to form another bills committee to study the separate bill in detail or to refer the separate bill to this Bills Committee for scrutiny after it had been presented to LegCo for First Reading), it would be more appropriate for the Administration to proceed with the legislative procedures for the Bill currently under scrutiny according to its planned schedule for resumption of the Second Reading debate within the current session.</p>	
003026 - 003356	Chairman SALA3 (Acting) Admin	Regarding the Administration's draft proposed amendments to include volunteers and interns in Part 5 of the Bill, which outlawed harassment at a common workplace under SDO, the Disability Discrimination Ordinance (Cap. 487) ("DDO") and the Race Discrimination Ordinance (Cap. 602) ("RDO"), the Legal Adviser to the Bills Committee raised the following issues:	

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		<p>(a) in respect of the proposed definition of "volunteer (義工)" (i.e. "volunteer (義工) means a person who performs volunteer work other than in the capacity of an employer or employee"/"義工 (volunteer) 指並非以僱主或僱員身分進行義工工作的人"), the reason(s) for using the expression "volunteer work (義工工作)" rather than "voluntary work (義務工作)" in the proposed definition; and the difference in meaning as well as scope of coverage between the two expressions "volunteer work (義工工作)" and "voluntary work (義務工作)";</p> <p>(b) whether the Administration would consider amending "提出法律程序" to "提起法律程序" in all relevant provisions in SDO and DDO (including the amendments to be proposed to the Bill by the Administration) through this legislative exercise, so as to achieve consistency with RDO; and</p> <p>(c) there was a minor typographical error (i.e. "an volunteer") in the English version of the Administration's proposed amendments to Part 5 of the Bill - Division 3 in relation to the proposed new section 47A(6) of RDO.</p> <p>The Administration's advice that:</p> <p>(a) compared with "voluntary work (義務工作)", the term "volunteer work (義工工作)" placed emphasis on the identity of a volunteer and could give a wider interpretation for the protection of persons who performed work in the capacity of a volunteer and in the absence of an employment relationship ;</p> <p>(b) as SDO and DDO were drafted in 1990s and RDO in 2008, different drafting styles had been adopted. Yet, both expressions "提出法律程序" and "提起法律程序" carried the same legal meaning in the relevant provisions of</p>	

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		<p>these Ordinances; and</p> <p>(c) the Administration would correct the typographical error as pointed out by the Legal Adviser to the Bills Committee.</p>	
003357 - 004000	Chairman Dr CHENG Chung-tai Admin	<p>In response to Dr CHENG Chung-tai's enquiry, the Administration advised that persons who might not satisfy the definition of "employee" but working at or attending a workplace as interns or volunteers (e.g. social work students on fieldwork placement) would be afforded protection against harassment at a common workplace after "interns" and "volunteers" were expressly included in the proposed definition of "workplace participant" under Part 5 of the Bill (under the proposed new section 23A of SDO, new section 22A of DDO and new section 24A of RDO).</p> <p>The Administration's explanation on paragraph 14(b) of its response (LC Paper No. CB(2)310/19-20(01)) and examples of conduct that might create a hostile or intimidating environment for a breastfeeding woman which could be regarded as an act of harassment under the proposed scope of protection against harassment of breastfeeding women to be provided under the separate bill.</p>	
004001 - 004551	Chairman Ms YUNG Hoi-yan Admin	<p>In response to Ms YUNG Hoi-yan's enquiry, the Administration confirmed that the proposed definition of "internship" intended to cover work that had to be completed for attaining a professional or academic qualification (e.g. pupillage for pupils of barristers).</p> <p>Ms YUNG's further enquiries/expression of concern on:</p> <p>(a) the proposed sanctions against harassment of breastfeeding women (to be formulated under the separate bill) as compared with the existing sanctions against sexual harassment;</p> <p>(b) whether the Administration would afford protection against harassment of pregnant women under the separate bill; and</p>	

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		<p>(c) whether the Administration would take proactive steps in promoting public awareness against discrimination on the ground of pregnancy and consider introducing new prescribed areas (e.g. attending meetings of LegCo or its committees) to provide wider protection under existing anti-discrimination legislation.</p> <p>The Administration's response that:</p> <p>(a) the term "harass" would be defined under the separate bill to comprise both sexual harassment and harassment of breastfeeding women. References to "sexual harassment" and "sexually harass" in certain provisions of SDO would be replaced by "harassment" and "harass" to make the provisions currently applicable to sexual harassment under SDO also applicable to harassment of breastfeeding women;</p> <p>(b) it was the Administration's policy intent that any persons who harassed breastfeeding women would be subject to the same level of sanctions as imposed against sexual harassment; and</p> <p>(c) other issues raised by Ms YUNG would be considered at a later stage together with the Equal Opportunities Commission ("EOC")'s holistic study on the applicable circumstances of protection from sexual harassment and related issues.</p>	
004552 - 005122	Chairman Mr CHAN Chi-chuen Admin SALA3	<p>Mr CHAN Chi-chuen's expression of support for adding "intern" and "volunteer" in the definition of "workplace participant", to protect them against sexual, disability and racial harassment by other workplace participants.</p> <p>Mr CHAN's enquiries on:</p> <p>(a) whether people participating in volunteer activities and receiving transport subsidies or souvenirs in return from the companies/associations organizing the</p>	

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		<p>activities would still be regarded as volunteers; and</p> <p>(b) the appropriateness for adopting a circular approach to define the term "volunteer (義工)" with reference to "volunteer work (義工工作)".</p> <p>The Administration's response that:</p> <p>(a) for the purpose of Part 5 of the Bill, "volunteer" meant "a person who performs volunteer work other than in the capacity of an employer or employee". This definition aimed to describe the status of a volunteer and to draw a clear distinction from employers and employees, such that the concept of employment under existing anti-discrimination ordinances was not affected;</p> <p>(b) under the existing anti-discrimination ordinances, "employment" was defined as "employment under a contract of service or of apprenticeship, or a contract personally to executive any work or labour"; and it should not be determined merely on the basis of whether payment was made. As such, people participating in volunteer activities and receiving transport subsidies/souvenirs would not be regarded as "employees" if they were not employed under a contract to carry out the volunteer activities; and</p> <p>(c) the Administration suggested adopting the expression "volunteer work" in the definition of "volunteer (義工)" so that emphasis was placed on the status of a volunteer, and persons performing work of a voluntary nature outside an employment relationship could be broadly included. In comparison, the expression "voluntary work" focused more on the nature of work, which might give rise to a wrong impression that the definition emphasized on whether payment was involved.</p>	

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		<p>The Legal Adviser to the Bills Committee advised that according to the New Shorter Oxford English Dictionary (1993), "volunteer" as a noun relevantly meant "a person who voluntarily offers his or her services in any capacity", and as an adjective meant "of or pertaining to a volunteer or volunteers". Whether such service would bring monetary return did not appear to be a relevant consideration.</p> <p>The Administration was requested to explain in writing the difference in meaning as well as scope of coverage between the two expressions "volunteer work (義工工作)" and "voluntary work (義務工作)" and the reason(s) for using the expression "volunteer work (義工工作)" rather than "voluntary work (義務工作)" in the proposed definition of "volunteer (義工)".</p>	<p>Admin (item 1(a) of Annex B refers)</p>
005123 - 005529	Chairman Mr Vincent CHENG Admin	<p>Mr Vincent CHENG's declaration that he was a member of EOC, and expression of support for the Administration's plan to introduce a separate bill to provide for the protection against harassment on the ground of breastfeeding.</p> <p>Mr CHENG's expression of concern about people making discriminatory remarks against pregnant employees at discussion forums. His enquiries and the Administration's responses on: (a) the publicity work to be carried out by EOC about the expanded protection under the four anti-discrimination ordinances after the passage of the Bill and (b) the Administration's handling of discriminatory acts committed on the Internet.</p>	
005530 - 005831	Chairman Mr YIU Si-wing Admin	Discussion on whether practitioners of certain industries (e.g. tour escorts/guides working outside Hong Kong and taxi drivers who rented a taxi for operation) would be afforded protection from harassment under the scenarios as raised by Mr YIU Si-wing.	
005832 - 010314	Chairman Mr POON Siu-ping Admin	Mr POON Siu-ping's expression of support for including "intern" and "volunteer" in the definition of "workplace participant".	

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		<p>In response to Mr POON's enquiry, the Administration advised that whether a person adopting a flexible work arrangement (e.g. a freelancer) would be afforded protection from harassment at a common workplace depended on whether that person fell within the proposed definition of "workplace participant" in Part 5 of the Bill (i.e. in what capacity he/she was performing the job). For instance, a musician who entered into a contract with a bar owner to perform at the bar might be regarded as an "employee" and the bar owner as the "employer" for the purposes of the anti-discrimination ordinances.</p>	
010315 - 010759	<p>Chairman Mr LUK Chung-hung Admin</p>	<p>Mr LUK Chung-hung's expression of views that the Administration should combat acts of racial vilification and consider expanding the definition of "race" under RDO, with a view to addressing discrimination on the ground of citizenship and residency status.</p>	
010800 - 011410	<p>Chairman Deputy Chairman Admin</p>	<p>In response to the Deputy Chairman's enquiry, the Administration advised that whether a person could be regarded as an "employee" and be afforded protection depended on whether a contract of service or of apprenticeship, or a contract personally to execute any work or labour, had been made with an "employer". As explained earlier, employment, as defined in the four existing anti-discrimination ordinances, should not be determined merely on the factor of payment. Verbal agreement made between two parties to enter into a contract to provide services could also be given due recognition.</p> <p>The Deputy Chairman's expression of view that the Administration should expeditiously introduce the separate bill to provide for the protection against harassment on the ground of breastfeeding. The Administration's advice that it would proceed with the legislative exercise in relation to the separate bill as soon as practicable.</p>	
011411 - 012634	<p>Chairman Dr Helena WONG Admin SALA3 (Acting)</p>	<p>Dr Helena WONG welcomed the inclusion of "intern" and "volunteer" in the proposed definition of "workplace participant".</p>	

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		<p>Her view that the proposed definition of "internship (實習)", in particular the Chinese rendition "通常稱為實習的任何其他期間的工作", was not clear in defining the type(s) of work that was/were usually described as an internship. The Administration's explanation of the rationale behind using the present rendition.</p> <p>The Administration was requested to consider reviewing the drafting of the proposed definitions of "internship (實習)" and "intern (實習人員)" (both the English and Chinese texts), with a view to improving the clarity of these two terms.</p>	<p>Admin (item 1(b) of Annex B refers)</p>
012635 - 012915	Chairman Ms Claudia MO Admin	Discussion on the scope of coverage for the proposed capacity of "volunteer".	
012916 - 013111	Chairman Admin	The Administration was requested to provide a full set of its finalized draft amendments to the Bill (in Chinese and English) for consideration by members and incorporation into the Bills Committee's report. The document should (a) incorporate any further amendments to be proposed to the Bill by the Administration after considering the issues raised by members and the Legal Adviser to the Bills Committee and (b) correct the minor typographical error as pointed out by the Legal Adviser to the Bills Committee.	<p>Admin (item 2 of Annex B refers)</p>
013112 - 014010	Chairman Dr Helena WONG Admin SALA3 (Acting)	<p>Discussion on the vicarious liability of employers engaging interns and volunteers, and the practicable steps that could be taken by employers to prevent interns and volunteers from committing unlawful acts of harassment in a common workplace in the course of employment.</p> <p>Dr Helena WONG's view that the Administration should step up publicity to remind employers of their vicarious liability of engaging interns and volunteers after the passage of the Bill.</p>	
014011 - 014400	Chairman Ms Claudia MO Admin	Discussion on the scope of coverage for the proposed capacities of "intern" and "volunteer".	

Time marker	Speaker	Subject(s)/Discussion	Action Required
014401 - 014451	Chairman	The Chairman's closing remarks.	

Council Business Division 2
Legislative Council Secretariat
1 April 2020

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

**List of follow-up actions arising from the discussion
at the meeting on 9 December 2019**

Regarding the Administration's draft proposed amendments to Part 5 of the Bill, under which harassment at a common workplace involving, among others, volunteers and interns, is proposed to be rendered unlawful under the Sex Discrimination Ordinance (Cap. 480), Disability Discrimination Ordinance (Cap. 487) and Race Discrimination Ordinance (Cap. 602) ("RDO"), the Administration was requested to provide a written response to the following issues raised by members and the Legal Adviser to the Bills Committee:

- (a) in respect of the proposed definition of "volunteer (義工)" (i.e. "volunteer (義工) means a person who performs volunteer work other than in the capacity of an employer or employee" / "義工 (volunteer) 指並非以僱主或僱員身分進行義工工作的人"), the reason(s) for using the expression "volunteer work (義工工作)" rather than "voluntary work (義務工作)" in the proposed definition; and the difference in meaning as well as scope of coverage between the two expressions "volunteer work (義工工作)" and "voluntary work (義務工作)"; and
- (b) whether the Administration would, in order to address some members' concern, consider reviewing the drafting of the proposed definitions of "internship (實習)" and "intern (實習人員)" (both the English and Chinese texts), with a view to improving the clarity of these two terms.

2.. The Administration was requested to provide a full set of the finalized draft amendments to the Bill (in Chinese and English) proposed by the Administration for consideration by members and incorporation into the Bills Committee's report. The document should (a) incorporate any further amendments to be proposed to the Bill by the Administration after considering the matters referred to in paragraph 1 above and (b) correct the minor typographical error (i.e. "an volunteer") in the English version of the Administration's proposed amendments to Part 5 of the Bill - Division 3 in relation to the proposed new section 47A(6) of RDO as pointed out by the Legal Adviser to the Bills Committee.

12 December 2019