



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2840 0657)

7 January 2019

Ms Judy CHUNG
Principal Assistant Secretary
(Constitutional & Mainland Affairs)5
Constitutional and Mainland Affairs Bureau
12/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Ms CHUNG,

Discrimination Legislation (Miscellaneous Amendments) Bill 2018

We are scrutinizing the legal and drafting aspects of the Bill.

Please find attached an appendix listing our observations in relation to the Bill. We would be most grateful if you could let us have your response in bilingual form by 12 January 2019.

Yours faithfully,

(Kelvin Ka-yun LEE)
Senior Assistant Legal Adviser

Encl.

c.c. DoJ (Attn: Miss Queenie WU and Ms Wendy HO) (By Fax: 3918 4613)
Clerk to the Bills Committee
LA

Clause 7

1. Clause 7 proposes to introduce a new section 8A to the Sex Discrimination Ordinance (Cap. 480) on discrimination against breastfeeding. Under the proposed section 8A(2), 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. (emphasis supplied)

2. Please clarify whether section 8A intends to protect breastfeeding women in general or only breastfeeding mothers. If the provision aims at protecting breastfeeding women in general, please explain the reason for imposing the condition of "her child" in section 8A. In this regard, we note that similar provisions in Australia (section 7AA of the Sex Discrimination Act 1984) and UK (section 13(6) of the Equality Act 2010) do not have such condition.

3. If the legislative intent is to protect breastfeeding mothers only, please clarify, in relation to the operation of the provision, how a member of the public could tell whether a breastfeeding woman is a mother breastfeeding her child. Please also clarify what is the relevant factors for a child to be considered the woman's child. Would it cause any anomaly (or any human right implication) if two women are expressing breast milk at the same time at the same place but one is protected because she is expressing breast milk for "her child" but the other one is not?

Part 3 of the Bill

4. While we note that the amendments proposed in Part 3 of the Bill to the Race Discrimination Ordinance (Cap. 602) in relation to discrimination on the ground of race of association are based on recommendation 7 of the Equal Opportunities Commission in its submissions to the Government, please explain what considerations the Administration has taken into account in adopting the definition of "associate" in the Disability Discrimination Ordinance (Cap. 487),

bearing in mind the protected characteristics of Cap. 487 and Cap. 602 are different.

5. In relation to "genuine domestic basis" in the definition in "associate", please explain what are the factors for persons to be covered by the expression. Please also explain whether the expression would cover, for example, tenants sharing a housing unit provided by the community housing movement.