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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 18 February 2021**

**Briefing by the Chairperson of the Equal Opportunities Commission on the
work of the Equal Opportunities Commission**

Purpose

This paper gives a brief account of the major issues raised by members when the Panel on Constitutional Affairs ("the Panel") received briefings on the work of the Equal Opportunities Commission ("EOC") by its Chairpersons.

Background

2. Established under the Sex Discrimination Ordinance ("SDO") (Cap. 480) on 20 May 1996, EOC is a statutory body responsible for the implementation of SDO, the Disability Discrimination Ordinance (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527) and the Race Discrimination Ordinance (Cap. 602) ("RDO"). EOC comprises the Chairperson and up to 16 members. The authority of appointment of the Chairperson and members rests with the Chief Executive who shall determine the remuneration and the terms and conditions of appointment of the Chairperson. Under section 63 of SDO, the Chairperson shall be appointed on a full-time basis whereas other members of EOC may be appointed on a full-time or part-time basis.

3. The post of the Chairperson of EOC, which has the executive responsibility for the overall operation and management of EOC, is pitched at the rank equivalent to Point 8 on the Directorate Pay Scale of the Civil Service. EOC used to have a post of Chief Executive Officer ("CEO") which was pitched at the rank equivalent to Point 3 of the Directorate Pay Scale, but the post was deleted in July 2000. The responsibility of the CEO post was then shared between the Chairperson and the Director (Planning and Administration) of EOC.

4. In Chapter 3 of Report No. 52 of the Director of Audit tabled at the Legislative Council ("LegCo") on 22 April 2009, the Audit Commission has recommended that the Secretary for Constitutional and Mainland Affairs should expedite action to take forward the proposal of separation of the posts of the

Chairperson and CEO of EOC which was recommended both in the report of the Independent Panel of Inquiry on the Incidents Relating to EOC as well as the reports of two internal reviews conducted by EOC. The Administration subsequently decided that the post of CEO at the level of Point 3 of the Directorate Pay Scale should be reinstated to oversee the administrative and operational matters, and to strengthen the governance of EOC. The post of CEO was filled in December 2015 and renamed as Chief Operations Officer.

5. On 22 March 2019, the Government announced the appointment of Mr Ricky CHU Man-kin as the new Chairperson of EOC for a term of three years commencing on 11 April 2019 to succeed Prof Alfred CHAN Cheung-ming, the former EOC Chairperson.

Relevant issues raised by the Panel

6. It has been the established practice for the Chairpersons of EOC to brief the Panel on EOC's work on a regular basis. Mr Ricky CHU Man-kin last briefed the Panel on the work of EOC at the meeting on 18 May 2020.

Complaints handling and provision of legal assistance

7. Some members expressed concern about the measures implemented by EOC since 2018 to enhance its complaint-handling process and questioned why the number of complaint cases which were not further investigated had increased after implementing those measures.

8. The Chairperson of EOC advised that in response to public feedback about EOC's lengthy process of screening an enquiry and classifying it into a complaint, EOC had changed the basis for classifying a case as a complaint since 2018. The Chairperson of EOC explained that before 2018, a case received by EOC would be classified as an enquiry and not as a complaint if it was resolved after initial investigation conducted by EOC. Since 2018, a case would be classified as a complaint right away, if EOC was of the view that the case could possibly become a complaint that might warrant further investigation and/or conciliation. As a result, the number of cases recorded as enquiries had decreased whereas the number of cases classified as complaints had greatly increased since 2018, following which there was a larger number of cases which, after investigation, were not further investigated due to inadequate evidence.

9. Members noted that Prof Anselmo REYES, a retired High Court judge appointed by EOC to conduct an independent review concerning EOC's complaint-handling process, had recommended that the Legal and Complaints Committee ("LCC") of EOC should be cautious about refusing legal assistance for court proceedings merely because a case had less than a 50% chance of

success. In Prof REYES's view, LCC should consider granting legal assistance so long as a case had a 20%-30% chance of success. Some members enquired whether EOC would implement Prof REYES's recommendation.

10. The Chairperson of EOC explained that it was already the current practice of LCC to consider a range of factors, including but not limited to the likelihood of success in court, in deciding whether or not to grant legal assistance. The Chairperson of EOC advised that other important factors that would also be considered by LCC included whether the case could set an important legal precedent and whether the case could be effectively used to enhance public awareness and promote equal opportunities.

11. Regarding the "Prescribed Form" provisions in the four existing anti-discrimination ordinances, which conferred powers to EOC and/or an aggrieved person to question a respondent, and for the latter to respond, some members raised concern that these provisions had not yet been brought into operation. At the request of the Panel, EOC provided a written response on the above issue in July 2020 (**Appendix I**) for members' reference.

Outlawing discrimination on the ground of sexual orientation and gender identity

12. EOC launched the Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status and published the Study Report in January 2016. At its meeting on 15 February 2016, the Panel received a briefing by Dr York CHOW Yat-ngok, the then EOC Chairperson, on the recommendations of the Study Report. He advised that the study commissioned by EOC indicated that the Hong Kong society and the general public were more supportive of legislating against discrimination on the grounds of sexual orientation and gender identity than before. In particular, there was a significant increase of public support for legislating against discrimination on such grounds in the past 10 years from 28.7% to 55.7%. EOC recommended that the Government should consider launching a public consultation exercise with a view to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. Some members urged the Administration to introduce legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status, taking into account the findings of the EOC Study Report. Some other members, however, considered that it was equally important to safeguard the freedom of parental choice of children's religious and moral education under Article 18(3) and (4) of the International Covenant on Civil and Political Rights, as well as the freedom of religious belief under Article 32 of the Basic Law. They considered that legislating against discrimination on the ground of sexual orientation might result in "reverse discrimination".

13. At the same Panel meeting, the Chairperson of the former Advisory Group on Eliminating Discrimination against Sexual Minorities ("the Advisory Group"), Professor Fanny CHEUNG Miu-ching, was also invited to brief members on the Report of the Advisory Group. One of the recommendations was that an in-depth study on the experience of legislative and non-legislative measures in other jurisdictions should be conducted and issues to be covered should include the implications of legislation on the freedom of religion. The Administration acknowledged that more people in Hong Kong had expressed support for enacting anti-discrimination legislation to protect sexual minorities in recent years. The Administration advised that it would study both the Advisory Group's report and the Study Report of EOC, and would map out the way forward in consultation with different stakeholders. At the policy briefing cum meeting on 16 December 2019, the Administration informed members that the Administration's study on the experience of other jurisdictions on eliminating discrimination against sexual minorities by legislative and administrative measures was near completion and the draft report was being prepared.

14. When the Panel received a briefing by the incumbent Chairperson of EOC on 18 May 2020, some members urged EOC to work towards enacting legislation to prohibit discrimination against sexual minorities in the fields of employment, education, as well as access to public facilities and services. They enquired whether EOC could provide a timetable in this regard. The Chairperson of EOC explained that while EOC would continue to do its best to evaluate and make recommendations on the feasibility of enacting legislation to prohibit discrimination on the grounds of sexual orientation and gender identity, it was for the Government to decide whether relevant legislation should be introduced. As such, EOC was unable to provide a timetable for legislating against discrimination on such grounds. That said, EOC would conduct further studies on the relevant issues, and would listen to and take into account the views of different stakeholders in formulating relevant recommendations to the Government.

Anti-Sexual Harassment Campaign

15. Some members expressed concern that the problem of sexual harassment remained serious and enquired about the latest progress of EOC's Anti-Sexual Harassment Campaign ("the Campaign"), particularly in respect of the education and sports sectors as well as the disciplined services. Members also enquired how the Campaign would cater for the needs of people of diverse race.

16. According to EOC, the Campaign had been implemented since 2012. EOC had been encouraging schools to develop guidelines on the formulation of policies for preventing sexual harassment, by collaborating with the Education

Bureau to conduct workshops and seminars to school principals and discipline masters/mistresses. The proportion of schools having developed such guidelines had risen from around half in 2014 to over 90% in 2018. The policies on preventing sexual harassment formulated by schools under the guidelines would also cover the appointments of agents such as contract coaches and instructors. At the Panel's request, EOC provided supplementary information on the progress of the Anti-Sexual Harassment Campaign in March 2018 (LC Paper No. CB(2)1126/17-18(01)).

17. When the Panel received a briefing by the Chairperson of EOC on 18 May 2020, members noted that EOC would set up the Anti-Sexual Harassment Unit ("ASHU") in 2020-2021 to tackle sexual harassment issues. Some members enquired whether ASHU would proactively examine whether the conduct of police officers in the course of carrying out police duties had contravened the provisions relating to sexual harassment under SDO, and whether ASHU would serve as a first port of call for those claimed to have been sexually harassed by police officers. Some other members also enquired about EOC's measures to enhance the awareness of prevention of sexual harassment in the workplace.

18. The Chairperson of EOC advised that ASHU would conduct a holistic review of the current legal protection regime against sexual harassment, identify gaps and recommend legislative amendments where appropriate. This apart, ASHU would promote public awareness of anti-sexual harassment policies and measures, as well as serve as a first port of call for those affected by sexual harassment. The Chairperson of EOC further advised that EOC had received enquiries relating to acts of sexual violence or sexual harassment allegedly committed by police officers in 2019. Although EOC had issued a statement calling upon the person(s) aggrieved by relevant alleged acts to approach EOC for assistance, EOC had not received any complaint lodged by the aggrieved person(s) or his/her representative(s) so far. In the absence of any complaint lodged by the aggrieved person(s) or his/her representative(s), EOC would be unable to establish a case for taking further follow-up action merely based on relevant media reports or information provided by third parties.

Expanding the scope of the existing anti-discrimination ordinances

19. Some members expressed concern that some local restaurants had, on the pretext of preventing the spread of coronavirus disease 2019, refused to serve people who came from the Mainland or spoke Putonghua. These members considered such practice clearly discriminatory against people from the Mainland and enquired how EOC would follow up relevant cases and curb relevant discriminatory acts which were currently not covered by the anti-discrimination ordinances.

20. The Chairperson of EOC advised that in its submission to the Government on the Discrimination Law Review in 2016, EOC had recommended that the Government should conduct public consultation and introduce legal protection from discrimination on the grounds of nationality, citizenship and residency status under RDO. As compared with the situation in 2016, EOC observed that discrimination against Mainland visitors or new arrivals had become more prevalent in recent years. EOC also noted that there had been suggestions that the issue of discrimination on the ground of residency status did not necessarily have to be addressed in the context of the existing four anti-discrimination ordinances. As such, EOC would keep an open mind in studying possible legislative approaches for addressing the issue and would listen extensively to the views of stakeholders and the public before formulating the way forward.

21. Some members expressed concern that practitioners of certain occupations (e.g. police officers) and their family members had been subject to discrimination amid continuing political controversies in society. These members asked whether legislative amendments would be necessary to tackle discrimination on the basis of occupation. The Chairperson of EOC advised that while EOC was open-minded to the suggestion of introducing anti-discrimination legislation on the ground of occupation, other legislative approaches might also be explored in order to ensure that the issue would be tackled effectively. EOC had also been carrying out research studies on various discrimination issues and would make submissions together with legislative amendment proposals to the Government as and when appropriate.

Recent development

22. The Chairperson of EOC will brief the Panel on the work of EOC at the next meeting on 18 February 2021.

Relevant papers

23. A list of relevant papers which are available on the LegCo website is in **Appendix II**.



Equal Opportunities Commission's Written Response

In relation to the question about “the use of the prescribed form” asked by Dr. Hon Fernando Cheung Chiu-hung and Hon Dennis Kwok Wing-hang in the Panel on Constitutional Affairs meeting on 18 May 2020, responses from the Equal Opportunities Commission are as follows:

- 1) The use of the Prescribed Form is stipulated in section 83 of the Sex Discrimination Ordinance, as well as its corresponding provisions in other three anti-discrimination ordinances, which confer powers to the EOC and / or an aggrieved person to question a respondent, and for the latter to respond. Such provision was adopted from the anti-discrimination legislation in the United Kingdom. However, it is noted that the corresponding provision in the Equality Act 2010 of the United Kingdom had been repealed in April 2014.
- 2) In Hong Kong, most of the aggrieved persons in a discrimination case would first lodge a complaint with the EOC, who would then commence investigation into the complaint. Whereas in the United Kingdom, our counterpart does not have the same investigative power as we do, hence aggrieved persons there have to rely on the Prescribed Form provision to initiate action against the respondent(s). Suffice to say, the Prescribed Form provision has much more practical usage in the United Kingdom than in Hong Kong because of the above-stated reasons.
- 3) The EOC is always mindful of reviewing the need of putting the Prescribed Form provision in use by discussing this matter from time to time in the Legal & Complaint Committee meetings, more recently in 2008, 2012 and 2017 respectively. So far the EOC still holds the view that it is not necessary to put the Prescribed Form in practical use, as the EOC's statutory power of investigation, conciliation, and granting legal assistance etc. are sufficient and effective enough in addressing the needs of an aggrieved person.
- 4) On 13 December 2019, the EOC has published its Process Review Report in which, among others, we have adopted the recommendation

that the EOC should be more readily to use its powers under the anti-discrimination laws to obtain information and evidence from respondent(s) and / or third parties, i.e. by using our power as stipulated in section 5 of the Sex Discrimination (Investigation and Conciliation) Rules Cap.480B to issue statutory notice to require a respondent and / or a third party to furnish information, and that failure in complying with the statutory notice so issued without reasonable excuse may render the respondent and / or third party criminally liable.

- 5) In December 2019, the EOC's Legal & Complaints Committee has again discussed the issue of using the Prescribed Form, and that the conclusion remains the same as there is no change in circumstances.
- 6) The EOC is conscious to always keep this issue alive for review, and would not hesitate to put it into practical use once circumstances so warrant.

Equal Opportunities Commission
July 2020

**Relevant documents on briefing by
the Chairperson of the Equal Opportunities Commission
on the work of the Equal Opportunities Commission**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	15.2.2016 (Item IV)	Agenda Minutes
	20.6.2016 (Item III)	Agenda Minutes
	19.4.2017 (Item V)	Agenda Minutes
	15.5.2017 (Item V)	Agenda Minutes
	14.2.2018 (Item V)	Agenda Minutes
	20.5.2019 (Item IV)	Agenda Minutes
	16.12.2019 (Item IV)	Agenda Minutes
	18.5.2020 (Item IV)	Agenda Minutes

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