

**Meeting of Legislative Council  
Panel on Constitutional Affairs  
23 April 2014**

**Submission from the Equal Opportunities Commission (EOC)**

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**Purpose**

This paper aims to provide information on the EOC's efforts and achievements, as well as future priority areas and new initiatives. It also seeks support from legislators on the EOC's work and request for additional funding from the Government.

**The EOC's Strategic Priority Work Areas**

2. On 17 June 2013, the Commission provided a briefing of the EOC's three-year strategic work priorities to the Constitutional Affairs Panel after Dr. York CHOW was appointed as Chairperson.

3. These strategic work priorities have been developed following consultation with key stakeholders and the Board of the EOC. They include:

- i) Discrimination Law Review (DLR)
- ii) Legal Protection for Sexual Minorities (lesbian, gay, bisexual, transgender and intersex or LGBTI persons) from Discrimination on the Basis of Sexual Orientation and Gender Identity
- iii) Education and Employment Opportunities for Ethnic Minorities
- iv) Integrated Education for Students with Special Education Needs (SEN) and Its Implication on Employment Opportunities
- v) Adopting an Updated and Unified Definition of Disability in the Performance of Government Functions
- vi) Anti-Sexual Harassment Campaign in the Community

4. The Commission is pleased to report that these strategic priority work areas are being implemented and there is good progress in all these areas.

## **Progress**

### *Discrimination Law Review (DLR)*

5. Given the EOC's statutory duty to keep under review and, where appropriate, to make submission to the Government to amend the Discrimination Ordinances, the Commission is undertaking the Discrimination Law Review (DLR) of all the existing discrimination laws in Hong Kong.

6. An internal review by the EOC of the discrimination laws and their operation in practice has been completed, including informal sharing sessions with key stakeholders. A public consultation with all key stakeholders and the general public on their views is tentatively scheduled to commence in the third quarter of 2014. Some key issues for public consultation include:

- a) Whether the discrimination ordinances should be rationalized and consolidated;
- b) Whether protection should be extended to cover, for instance, de-facto relationships or the duty of service providers and employers to provide reasonable accommodation for people with disability;
- c) Whether the existing provisions on sexual harassment should be expanded (including but not limited to customers harassing employees of service providers. In the former, the Government has already agreed and will seek legislative amendment accordingly);
- d) Whether the protection of the Race Discrimination Ordinance should be expanded to cover mainlanders and new migrants.

7. In addition to requesting submissions on the public consultation document, the Commission will continue to directly approach stakeholders for feedback in order to widen the participation of different sectors and groups.

8. After the public consultation period, the submissions and views expressed during the public consultation will be summarised and prioritised for the purpose of drafting submissions and recommendations to the Government on how the discrimination law should be modernized. The Commission looks forward to working with the Government, once the

submissions have been made, on how the recommendations can be implemented.

### *Legal Protection for Sexual Minorities from Discrimination on the Basis of Sexual Orientation and Gender Identity*

9. Sexual minorities continue to experience discrimination and harassment in the public sphere due to their sexual orientation and/or gender identity, which necessitates consideration for their protection under the law from discrimination. The Commission will undertake a feasibility study on legislating against discrimination on the grounds of sexual orientation and gender identity (SOGI). The study will aim to provide an overview on discrimination encountered by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and solicit views from stakeholders on the feasibility of the proposed legislation, with the goal of facilitating the Government to consider the possibility of legislating against discrimination on the ground of SOGI.

10. The EOC recognises that there is much to learn in this area from other parts of the world, particularly to better understand the introduction of legislation in overseas countries and the impact on business, religious organisations and the wider society. In order to share experiences on promoting the rights of the LGBTI community and identify international best practices in this area, the EOC will be co-organising an international symposium in late August 2014. This event will be held in collaboration with the European Union Office to Hong Kong and Macau; the Gender Research Centre, Hong Kong Institute of Asia Pacific Studies, The Chinese University of Hong Kong; and a local business partner. Both overseas and local speakers conversant with this subject will be invited to speak at the symposium.

### *Education and Employment Opportunities for Ethnic Minorities*

11. Ethnic minorities (EM) continue to face systemic barriers in pursuing equal education, which, in turn, limit their employment opportunities over their lifetime. The obstacles stem in large part from the lack of support EMs receive in learning Chinese in mainstream schools in the absence of an appropriate home language environment.

12. The EOC has been actively following up on this issue with various Government Bureaux/Departments, the Hospital Authority as well as local tertiary institutions to urge them to widen education and employment opportunities for ethnic minorities and provide culturally sensitive services to ethnic minority users. The Government Bureaux/Departments and the organizations concerned have all agreed to give consideration to the suggestions and advice by the EOC.

13. In the 2014 Policy Address, the Government has responded to the call of the EOC and other stakeholders and announced education support measures for non-Chinese speaking (NCS) and/or ethnic minority students. These measures include providing a “Chinese Language Curriculum Second Language Learning Framework” and enhanced funding to implement the framework, an alternative qualification for NCS students to enhance their employability and strengthening support for kindergartens, etc. The EOC welcomes these proposed measures. However, as no concrete plans have been released by the Government at present, the EOC will continue to rigorously monitor and follow up with the Government on the effectiveness of the enhanced measures and will not rule out the possibility of conducting a Formal Investigation in the future.

14. The EOC is also pleased that additional recurrent funding of \$4.69M will be provided to the Commission by the Government to promote inclusion, diversity and equal opportunities for ethnic minorities from 2014/15. To this end, the EOC will form a multi-ethnic taskforce comprising 7 staff members, and will conduct targeted public education and public outreach programmes, cultural sensitivity training and focused researches on issues and challenges faced by EMs with the aim of stimulating policy changes. A plan is currently being formulated.

*Integrated Education for Students with Special Education Needs (SEN) and its Impact on Employment Opportunities*

15. A 2012 EOC Study suggests that resources, training and support for Integrated Education (IE) remain inadequate, which negatively impacts the ability of students with special educational needs to pursue equal opportunities in education and employment over their lifetime. The EOC has been following up with both the Education Bureau and local tertiary institutes on enhancing support for students with disability. The tertiary institutes have agreed that the EOC should act as the facilitator and provide

a platform for them to discuss equal opportunity issues of common concern and to share best practices. In the 2014 Policy Address, the Government undertook to increase funding and support measures for students with SEN, including increasing the Learning Support Grant by 30% in the 2014/15 school year.

16. The EOC will continue to keep a close eye on the Government's enhanced support for SEN students, and will leave open the conduct of a Formal Investigation as an option.

*Adopting an Updated and Unified Definition of Disability in the Performance of Government Functions*

17. The EOC has advocated to the Government to adopt a broader definition of "disability" by taking into consideration attitudinal and environmental barriers that hinder persons with disability from full participation in society. In some instances, certain categories of persons with disability are excluded from services provided by the Government, such as the Disability Allowance Scheme, which may not necessarily be in line with equal opportunity principles.

18. The Commission notes that there has been some progress on this issue. A Government Inter-Departmental Working Group has been set up to review the assessment criteria of the Disability Allowance. The EOC will continue to closely monitor any development in this area.

*Anti-Sexual Harassment Campaign in the Community*

19. The EOC has received a considerable number of complaints on sexual harassment and elimination of discrimination in this area has always been its work priority. In an effort to approach the problem from a policy perspective, a structured anti-sexual harassment campaign targeted at the education and business sectors has been launched, including:

- (a) Conducting researches and surveys, including questionnaire surveys for the education and business sectors, as well as for flight attendants on this subject.
- (b) Training for the education sector, including those for principals and vice principals on preventing sexual harassment in schools and formulating a sexual harassment policy.

- (c) Providing resources for organisations to establish and implement sexual harassment policies, including a Framework for Sexual Harassment Policies in Schools and for Corporates, as well as the creation of a one-stop Anti-Sexual Harassment Resources webpage on the Commission's website.

20. The EOC has also met with local tertiary institutes to urge them to appoint EO Officers/ set up Units to address sexual harassment issues and mainstream equal opportunities on campus. Such programmes and activities were very well received and the EOC has been able to heighten awareness and encourage stakeholders to develop appropriate anti-sexual harassment policies.

### **International Participation**

21. The EOC has participated in a number of events and activities related to equal opportunities outside of Hong Kong.

22. By sharing the experience and expertise of the EOC in addressing discrimination in Hong Kong, the EOC hopes to learn from overseas practices, build our capacity and knowledge of equality in the region, and contribute to the development of equal opportunities on the international front.

23. On 1-3 October 2013, the EOC Chairperson, Dr. York Chow, shared the work of the Commission at the Eighteenth Annual Meeting and Biennial Conference of the Asia Pacific Forum, held in Doha and hosted by the National Human Rights Committee of Qatar. The EOC was also represented by Susanna Chiu, EOC Member and Michael Chan, Director of Planning and Administration. The Conference considered the opportunities and challenges, as well as strategies for advancing human rights in Asia Pacific countries.

24. On 5-8 May 2014, an EOC Board Member, Dr. John Tse and Dr Ferrick Chu, Head of Policy and Research, will attend the 52<sup>nd</sup> session of the Committee on Economic, Social and Cultural Rights under the United Nations (UN) in Geneva, Switzerland, on behalf of the EOC. The Committee monitors the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by state parties. As the

principle of the Covenant is closely related to the work of the EOC as the statutory body in Hong Kong responsible for promoting equal opportunities and eliminating discrimination, it is appropriate for the Commission to attend the CESCR session. The EOC will also submit an alternative report to the UN focusing on equal rights of men and women, right to enjoy just and favorable conditions of work, right to health and right to education to enhance the full realization of the economic, social and cultural rights of people in Hong Kong.

### **Enhancing Efficiency and Effectiveness**

25. To better respond to stakeholders' expectation and to enhance the EOC's effectiveness in meeting a wide variety of challenges, the EOC will review the need to redefine the role of each function and consider whether any organizational restructuring is required. The review is expected to commence shortly.

### **Need for a Permanent Office**

26. The EOC funds its operations through subvention from the Government. The EOC has autonomy over the management and control of its activities and budget. At the same time, it has the responsibility to ensure the most effective and prudent use of government subventions. The total subvention received by the EOC from the Government is HK\$98.9M for the Financial Year 2014/15. This amount is inclusive of the additional recurrent funding of HK\$4.69M earmarked specifically for the promotion of equal opportunities for ethnic minorities previously mentioned.

27. A major concern for the EOC is the increase in office rent due to market conditions and movements beyond the Commission's control. At the commencement of the first lease agreement to our present premises in 2005, the rental rate was HK\$22/ft<sup>2</sup>. At EOC's start up in 1996 when it had its office in Wanchai, the rental was also about HK\$22/ft<sup>2</sup> and the Government had not provided additional subvention for EOC's increased in rent since then. However, the market rent of the EOC's office has been markedly increased twice since, shooting up to HK\$32/ft<sup>2</sup> in 2008 and again in 2011 to the present-day level of HK\$42/ft<sup>2</sup>. The lease is coming up for renewal in mid December 2014, and current indications are that rent would rise by that time. This would put the estimated subvention shortfall to about HK\$4M per annum.

28. Despite these increases, which add a substantial financial burden on the Commission, the Government has not provided the EOC with additional subvention earmarked for rent. Consequently, the EOC has been tapping into its reserves to fund the shortfall. As a result, the reserves will be used up in about two years.

29. The EOC has considered the possibility of office relocation. Of a number of offices with lower rent which may suited for relocation that EOC inspected, it is still more cost effective, to continue to stay in its present premises, after taking into account the reinstatement, fitting out and other costs. Moreover, moving to another office with a lower rent does not actually solve the problem. There is still the issue of rent increase when lease is renewed.

30. The Commission's move is further complicated by the strict requirement, as the statutory body responsible for eliminating disability discrimination, for a barrier-free office environment, so that all of the EOC's stakeholders can equally access our services and premises.

31. As previously mentioned, the EOC has been tapping into the reserve to finance the rental shortfall. However, the EOC believes that this is not appropriate use of reserve funds. Rather, the reserves should be set aside, in the first instance, for new and one-off initiatives related directly to the promotion of equal opportunities.

32. For example, as previously mentioned, the EOC will be conducting public consultation for the Discrimination Law Review, which may incur additional expenses to ensure that the public's awareness and participation. In addition, the EOC is currently conducting a feasibility study on legislating against discrimination on the grounds of sexual orientation and gender identity; this may be an area where public consultation may be needed in the future. Furthermore, the EOC will commission an "Exploratory Study on Age Discrimination in Employment", which may also require follow-up work. Such initiatives and projects, which benefit Hong Kong society at large and aim to further the cause of equal opportunities for all, should be the focus of any use of reserve funds. Aside from these, reserve funds should be kept back for contingency and unexpected expenditures.

33. A permanent office is the most preferred, long-term solution to this issue. The EOC has submitted a number of RAE Bids for acquisition of a permanent premises and most recently in 2013/14 but have not been acceded to. The Commission seeks the support of legislators for a permanent premises for the EOC. In the meantime, the EOC also urges legislators to support the provision to the EOC by the Government of additional recurrent resources to fund the projected rent shortfall stated in paragraph 27 above.

### **The EOC's Stance**

34. The EOC is firmly committed to our status and image as a staunch defender of equal opportunities and human rights, both locally and internationally.

35. Mainstreaming the culture of equal opportunity remains our major priority. The EOC is dedicated to achieving our vision of fostering an inclusive society with no barriers to equal opportunities.

36. The EOC will continue to proactively advance the values of diversity and equality. As a matter of principle, we will speak up against discrimination, including in those areas beyond our current remit.

37. The EOC recognises that our work would not be possible without the support of the Legislative Council and the community. The EOC will continue to listen to the views of different stakeholders and actively support NGOs as well as other members of the community to contribute to the cause of equal opportunity and social justice for all.