

**HONG KONG EQUAL OPPORTUNITY LAW —
LEGISLATIVE HISTORY ARCHIVE, 1993–1997**

**Legco Bills Committee
proceedings —
notes of meetings**

**Centre for Comparative & Public Law
Faculty of Law
University of Hong Kong**

June 1999

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LEGCO BILLS COMMITTEE PROCEEDINGS — NOTES OF MEETINGS

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Ref : MC/61
Tel : 869 9255
Date : 11 July 1994
From : Chief Assistant Secretary (Bills Committee)4
Legislative Council Secretariat
To : All Hon Members of the Legislative Council

**Bills Committee to study the
Equal Opportunities Bill
(A Private Member's Bill)**

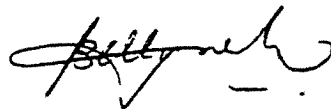
At the House Committee meeting on 8 July 1994, Members agreed that a Bills Committee should be formed and activated to study the Equal Opportunities Bill. Members who have indicated their intention to join the Bills Committee are at Appendix I.

2. Other Members who wish to join the Bills Committee are requested to complete the attached reply slip at Appendix II and return it to the undersigned on or before Thursday, 14 July 1994.

3. The first meeting of the Bills Committee is scheduled as follows -

Date : Monday, 18 July 1994
Time : 10:30 a.m.
Venue : Conference Room C (closed meeting)
Purpose of meeting : Election of Chairman and Deputy Chairman

4. To facilitate preparatory arrangements, Members are invited to indicate their attendance by completing and returning the same reply slip to the undersigned.



(Mrs Betty NEOH)
Chief Assistant Secretary (Bills Committee)4

Encl
c.c. Legal Adviser
BN/cc

**Notes of Meeting of the
Bills Committee to study the
Equal Opportunities Bill
(A Private Member's Bill)
held on Monday, 18 July 1994 at 10:30 a.m.
in Conference Room C of the Legislative Council Building**

Present : Hon Mrs Selina CHOW, OBE, JP
Hon TAM Yiu-chung
Hon Ronald Arculli, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon Moses CHENG Mo-chi
Hon Simon IP Sik-on, OBE, JP
Hon LAU Chin-shek
Hon Emily LAU Wai-hing
Hon Christine LOH Kung-wai
Hon Anna WU Hung-yuk

Absent with apologies : Hon Mrs Miriam LAU Kin-ye, OBE, JP] away from
Hon James TO Kun-sun] Hong Kong
Dr Hon YEUNG Sum]

Hon HUI Yin-fat, OBE, JP]
Hon Andrew WONG, OBE, JP]
Dr Hon LEONG Che-hung, OBE, JP]
Hon J D McGregor, OBE, ISO, JP] other
Hon Marvin CHEUNG Kin-tung, OBE, JP] commitments
Dr Hon Conrad LAM Kui-shing, JP]
Hon LI Wah-ming]
Hon Zachary WONG Wai-yin]
Hon Roger LUK Koon-hoo]
Hon Alfred TSO shiu-wai]

In attendance : Mr Jimmy Ma, SALA
Mr Stephen Lam, ALA4
Mrs Betty Neoh, CAS(BC)4
Mrs Karen Yuen, SAS(BC)4

Election of Chairman and Deputy Chairman

Dr Hon LEONG Che-hung was elected Chairman and as a result of a casting vote Hon Christine LOH Kung-wai was elected Deputy Chairman.

Date of Next Meeting

2. The next meeting of the Bills Committee would be held on Thursday, 28 July 1994 at 4:30 p.m. Being Member in charge of the Bill, Hon Anna Wu would give a briefing on the Bill to Members at the next meeting. As the Bill was a broadly based bill containing nine Parts, each of which addressed a particular ground of discrimination, Members were requested to give some thoughts as to how best the scrutiny of the Bill could proceed and any suggestions or options could be discussed at the next meeting.

20.7.94
LegCo Secretariat

**Bills Committee to study the
Equal Opportunities Bill
(A Private Member's Bill)**

Membership List

Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon HUI Yin-fat, OBE, JP
Hon TAM Yiu-chung
Hon Andrew WONG, OBE, JP
Hon Ronald Arculli, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-yee, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Hon Moses CHENG Mo-chi
Hon Marvin CHEUNG Kin-tung, OBE, JP
Hon Simon IP Sik-on, OBE, JP
Dr Hon Conrad LAM Kui-shing, JP
Hon LAU Chin-shek
Hon Emily LAU Wai-hing
Hon LI Wah-ming
Hon James TO Kun-sun
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Roger LUK Koon-hoo
Hon Anna WU Hung-yuk
Hon Alfred TSO shiu-wai

**Equal Opportunities Bill
(A Private Member's Bill)**

Legal Service Division Report

Purpose of Bill

To promote equality of opportunity in Hong Kong and to provide remedies in respect of discrimination on the grounds of sex, marital status, pregnancy, family responsibility or family status, race, religious or political conviction, disability, sexuality, spent criminal conviction, age, or union membership or activities, or involving sexual or racial harassment or harassment on the ground of disability or sexuality.

First Reading Date

2. 6 July 1994.

LegCo Brief Reference

3. Hon Ms Anna WU Hung-yuk is the Member in charge of the Bill. There is no LegCo Brief issued in respect of the Bill. However, an information kit containing background information to the Bill was issued by the office of Hon Ms WU on 27 March 1994 for public consultation.

Comments

4. The Bill clearly involves substantial policy issues, which Members may wish to study in detail. It is therefore recommended that a Bills Committee be set up.



(Stephen LAM)
Assistant Legal Adviser
5 July 1994

SL/11/RE-EOB

平等機會條例草案
(非官方議員條例草案)

法律事務部報告

條例草案目的

在香港推行平等機會，並就基於性別、婚姻狀況、懷孕、家庭責任或家庭崗位、種族、宗教或政治信念、身體殘障、性傾向、已喪失時效的刑事定罪、年齡、或職工會會員身分或職工會活動的歧視、或牽涉性騷擾或種族騷擾或基於身體殘障或性傾向的騷擾的歧視訂立法律補救。

首讀日期

2. 一九九四年七月六日。

立法局參考資料摘要

3. 胡紅玉議員是負責此條例草案的議員。當局未有就此條例草案發出立法局參考資料摘要。不過，胡紅玉議員辦事處曾於一九九四年三月二十七日發出一套載述條例草案背景資料的文件，諮詢公眾意見。

意見

4. 此條例草案顯然涉及重大的政策事宜，議員可考慮詳加審議。因此，本事務部建議成立條例草案審議委員會。

助理法律顧問 林秉文

一九九四年七月五日

Re: Equal Opportunities Bill

I move that the Equal Opportunities Bill be read a second time.

This Bill is about giving people a fair chance to participate in this society. It is a comprehensive legislative package that prohibits discrimination on a range of grounds including race, sex, disability, age and sexual preference. It does not seek to make the playing field level as much as offering all Hong Kong people equal access to that playing field.

Over the past year, I have consulted with many groups and individuals and have found broad support for this Bill. In an opinion poll commissioned by the South China Morning Post last month, an unusually high percentage of the 600 people questioned said that government action was needed to curb discrimination in Hong Kong. On discrimination against the handicapped, it was 81.9%; on discrimination against the elderly, it was 78.7%; on sexual discrimination, it was 51%; and on sexual harassment in the work place, it was 77%. Furthermore, in the case of racial discrimination, 39.2% said government action should be taken.

There is no question that the principle of non-discrimination has been embraced by and on behalf of the Hong Kong people. Both the International Covenant on Civil and Political Rights and the Bill of Rights provide that "all persons are entitled to the equal protection of the law" and that "the law shall prohibit discrimination." Other international treaties applicable to Hong Kong contain similar guarantees.

Many in this chamber will remember that, in 1990, when the Bill of Rights was first introduced, it included provisions

against discrimination by private parties. At the last minute the government withdrew them saying that such matters would be best handled by separate legislation. That was 4 years ago and nothing -- but nothing -- has happened until now.

This Bill is inspired by, and seeks to implement, international norms relating to equality and non-discrimination. This Bill's provisions are intended to be interpreted in the light of those standards. It eschews a formalistic approach to equality, embodying rather a commitment to ensuring that members of disadvantaged groups are not subject to discrimination.

This Bill is based upon legislation that has worked in other countries and takes account of the special circumstances of Hong Kong. It provides exemptions where the legislation might interfere with individuals' privacy, or where compliance would impose undue hardship. And the legislation is by no means a "radical" one, as it does not impose quotas or any form of "affirmative action".

In the case of promoting equal opportunities, this Bill does not say you must hire a woman or someone over 40 but rather it is saying, among other things, to consider them for employment. It is saying widen the choice and let everyone have a fair go at participating. This precept is not a danger to our economy. On the contrary, it enhances the competitiveness of our economy. It reduces the burden of our community by providing the disabled with the opportunity to take care of themselves.

There is fear that this Bill will interfere with market forces and as a result will increase costs, erode profit margins and undermine the territory's competitive edge. No doubt these were the same charges levelled against the introduction of child labour laws and workers' safety regulations and environmental protection measures. But those regulations did not stop industry and nowhere is there proof in the other countries that have this type of legislation that anti-discrimination measures cause

economies to falter.

There is also the social engineering argument that says you cannot get rid of prejudice by legislation alone. That is no doubt true but what this Bill does is to tell people that this society does not sanction such behaviour, that this prosperous society believes that remedies should be offered to those who are rejected because they are crippled, or Catholics, or pregnant, or over 40, or Sikhs or single parents. This Bill says such rejection is wrong and that the society does not condone such behaviour.

Although this Bill has been introduced by me as a private member, I trust that its passage will be assisted by the administration, which has after all frequently proclaimed its commitment to human rights and which is bound by international standards to take effective legislative steps to protect Hong Kong people against all forms of discrimination.

Perhaps the government felt that a private member should not take the initiative by gazetting and introducing this Bill. Last month the government, with all the symptoms of disarray, presented a proposal for sex discrimination legislation that was hastily conceived and deficient. Marital status and pregnancy were not included. As evidenced by its provisions on sex discrimination, the proposal was made in the most grudging and piecemeal fashion.

Whether adequate provisions on sex discrimination will show up when the government finally introduces its bill next year is anybody's guess. But it is certain that some things will not show up. There will be no -- and I repeat, absolutely no -- measures to protect those afflicted by age or race discrimination. These are only a tiny sample of the measures that will not be included.

Even those who resist legislation cannot deny that

discrimination exists. Without legislation there is no commitment to change. To have legislation that says it is wrong to do what we all know is wrong represents a social contract between all of us: not to deny the opportunity to a better life because some people are considered the wrong colour, sex or age.

Hong Kong people are not niggardly nor are they people who are content with half measures. Were this so, the territory would not be what it is today. Our society is strong and prosperous and surely can only grow more so by widening the pool of talent and offering everyone what every human being wants: a fair chance.

(AN-6.7.94)

檔 號：MC/61

電 話：869 9255

日 期：一九九四年七月十一日

發文者：立法局秘書處

總主任(條例草案審議委員會)(四)

受文者：立法局議員

平等機會條例草案審議委員會
(非官方議員條例草案)

一九九四年七月八日內務委員會會議席上，議員同意成立條例草案審議委員會，着手審議平等機會條例草案。業已表示有意參加條例草案審議委員會的議員名單載於附錄 I。

2. 其他議員如有意參加上述條例草案審議委員會，請填妥附錄 II 所載回條，於一九九四年七月十四日(星期四)或以前將回條交回本文件署名人。

3. 條例草案審議委員會首次會議安排如下 一

日 期：一九九四年七月十八日(星期一)

時 間：上午十時三十分

地 點：會議室 C (閉門會議)

會議目的：推選正副主席

4. 為方便作出會議安排，請議員在填寫上述回條時註明是否出席會議，並將回條交回本文件署名人。

總主任(條例草案審議委員會)(四)梁陳詠儀

連附件

副本送：法律顧問

平等機會條例草案審議委員會
(非官方議員條例草案)
會議摘錄

日期：一九九四年七月十八日(星期一)
時間：上午十時三十分
地點：立法局大樓會議室 C

出席者：周梁淑怡議員
譚耀宗議員
夏住理議員
林貝聿嘉議員
鄭慕智議員
葉錫安議員
劉千石議員
劉慧卿議員
陸恭愷議員
胡紅玉議員

缺席者：劉健儀議員)
涂謹申議員) 不在本港
楊 森議員)

許賢發議員)
黃宏發議員)
梁智鴻議員)
麥理覺議員)
張建東議員)
林鉅成議員)
李華明議員)
黃偉賢議員)
陸觀豪議員)
曹紹偉議員)

另有要事

司 席 者：馬耀添先生
高級助理法律顧問
林秉文先生
助理法律顧問(四)
梁陳詠儀女士
總主任(條例草案審議委員會)(四)
袁鄧愛華女士
高級主任(條例草案審議委員會)(四)

推選正副主席

梁智鴻議員當選審議委員會主席，而經主席投決定性一票後，陸恭慧議員獲選為副主席。

下次會議日期

2. 條例草案審議委員會定於一九九四年七月二十八日(星期四)下午四時三十分舉行下次會議，屆時負責此條例草案的胡紅玉議員將會向議員簡介條例草案的內容。鑑於條例草案的內容牽涉甚廣，當中包含九個部分，每個部分均針對一種歧視理由，議員有必要考慮一下審議條例草案的最佳方式，任何建議或方案可在下次會議提出討論。

立法局秘書處

一九九四年七月二十日

Ref: MC/61

Notes of Meeting of the
Bills Committee to study the
Equal Opportunities Bill
held on Thursday, 28 July 1994 at 4:30 p.m.
in the Legislative Council Chamber

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon HUI Yin-fat, OBE, JP
Hon TAM Yiu-chung
Hon Ronald Arculli, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Hon Marvin CHEUNG Kin-tung, OBE, JP
Hon Simon IP Sik-on, OBE, JP
Hon LAU Chin-shek
Hon Emily LAU Wai-hing
Hon LI Wah-ming
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
- Absent with : Hon Christine LOH Kung-wai (Deputy Chairman)]
apologies Hon Andrew WONG, OBE, JP]
Hon Moses CHENG Mo-chi] other
Dr Hon Conrad LAM Kui-shing, JP] commitments
Hon James TO Kun-sun]
Hon Roger LUK Koon-hoo]
- Hon Mrs Miriam LAU Kin-ye, OBE, JP] away from
Hon Alfred TSO shiu-wai] Hong Kong
- In attendance : Mr Jimmy Ma, SALA
Mr Stephen Lam, ALA4
Mrs Betty Neoh, CAS(BC)4
Mrs Karen Yuen, SAS(BC)4

Confirmation of the notes of meeting held on 18.7.94

The notes of meeting (circulated to Members vide LegCo Paper No.3818/93-94) were confirmed.

Briefing on the Bill

2. Ms Anna Wu, Member in charge of the Bill gave a brief introduction on the Bill with the aid of transparencies and handouts. Members noted that the Bill aimed at eradicating all forms of discriminations and nine areas were identified covering both direct and indirect discrimination in work, education, provision of goods, services and facilities and other areas. It also covered discrimination involving harassment or vilification. The Bill also provided general exemptions to safeguard religious freedom and the right to privacy. Under the Bill, discriminatory acts were generally regarded as civil wrongs except for serious vilification and discrimination involving advertisements which would be criminal offences.

General Discussion on the Bill

3. Some Members expressed their appreciation of the efforts and resources which Ms Wu had put in producing the Bill and indicated their support of the spirit and principles of the Bill. Nevertheless, most Members were worried that the scrutiny of the Bill could not be completed before the dissolution of the Council in July 1995 because of its length and complexity. In response to the concerns expressed and the other queries raised by Members, Ms Wu made the following points:-

(a) Similar legislation was available in some other jurisdictions, either in the forms of a consolidated legislation or separate legislation on specific areas of discrimination. The drafting of the Bill was based on the Australian model which was considered to be the most effective and appropriate one for Hong Kong. Precedent cases were readily available for reference. Further information on the Australian experience in implementing the Bill and the availability of similar legislation in other Asian countries would be provided to Members for reference at subsequent meetings of the Bills Committee.

Hon
Anna W

(b) The Bill adopted a certain pattern in the drafting since almost the same standards and principles would be applied to each and every prohibited grounds of discrimination. Once Members were familiar with the pattern, it would not require much more effort as expected to take a comprehensive approach to scrutinize the Bill. She was hopeful that Members would be able to complete the scrutiny before the end of the next LegCo session. Ideally, the Bill should be passed in its entirety and not in truncated form.

Follow
Up

- (c) Consultation had been and would continue to be conducted during the summer. A summary of the views received would be made available to Members for reference.
- (d) Since the Bill was actually the continuity of the Hong Kong Bill of Rights Ordinance (BOR) which was passed by the LegCo in 1991, the Administration should have both the moral and legal obligations to extend the legal protection against discrimination to all private individuals, to educate the public about the concept of human rights and the impact of the Bill on the general public.
- (e) She was aware that the Administration was prepared to introduce legislation prohibiting discrimination against sex and disability, the former would also include equal pay legislation. The Bill from the Administration on disability would resemble the relevant part of this Bill. Members might wish to seek further information from the Administration as to how to interface the Administration's bill on disability with the present Bill.

Hon
Anna Wu

Future Work Plan

4. Members generally felt that a very tight time schedule should be drawn up to scrutinize the Bill. Some indications should be gathered from the Administration as to the number of Bills which would be introduced into Legislative Council in the next session through the Chairman of the House Committee so that some assessment on the workload could be made. It was expected that the Bill would attract views from the public. The Bills Committee would need to set aside some time slots to meet organizations/individuals who wished to make representations on the Bill.

The
Chairman

5. The Chairman, in summing up, said that the Bills Committee would need to address the following points:-

- (a) the Administration's response to the Bill as a whole;
- (b) the public's response to the Bill;
- (c) the method of scrutiny of the various parts of the Bill;
- (d) how to deal with similar bills on discrimination to be introduced into the Legislative Council by the Administration; and
- (e) the general work plan.

6. In respect of e) in paragraph 5 above, Members agreed that a tentative timetable should be worked out by the Chairman, Ms Anna Wu and the Clerk for consideration of the Bills Committee.

Clerk

7. It was also agreed that the Administration should be invited to attend the next meeting of the Bills Committee to give their views on the Bill and on the reasons for their introducing separate Bills on discrimination.

AcM

Date of Next Meeting

8. The next meeting would be held on 5 August at 8:30 a.m.

9. There being no other business, the meeting was closed at 6:10 p.m.

LegCo Secretariat
26.8.94

Ref: MC/61

**Notes of Meeting of the
Bills Committee to study the
Equal Opportunities Bill
(A Private Member's Bill)
held on Friday, 5 August 1994 at 8:30 a.m.
in Legislative Council Chamber**

- Present :** Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon HUI Yin-fat, OBE, JP
Hon Andrew WONG, OBE, JP
Hon Ronald Arculli, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-yee, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Hon Marvin CHEUNG Kin-tung, OBE, JP
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Roger LUK Koon-hoo
Hon Anna WU Hung-yuk
- Absent with apologies :** Hon TAM Yiu-chung]
Hon Simon IP Sik-on, OBE, JP]
Dr Hon Conrad LAM Kui-shing, JP] other
Hon LAU Chin-shek] commitments
Hon LI Wah-ming]
Hon James TO Kun-sun]
- Hon Moses CHENG Mo-chi]
Hon Emily LAU Wai-hing] away from
Hon Alfred TSO shiu-wai] Hong Kong
- By invitation :** Mrs Stella Hung
Deputy Secretary for Home Affairs
- Miss Susie Ho
Principal Assistant Secretary for Home Affairs
- Ms Ava Chiu
Principal Assistant for Secretary for Home Affairs (Atg)
- Ms A E Shepherd
Principal Assistant Secretary for Health and Welfare
- Mr Y C Cheng
Principal Assistant Secretary for Health and Welfare

Miss Elley Mao
Government Economist (Atg)

Mr A G O'Brien
Principal Assistant Secretary for Financial Services
(Retirement Schemes & Insurance)

Mr Raymond Fan
Principal Assistant Secretary for Economic and Manpower

Mr Derek Pang
Deputy Principal Crown Counsel (Atg)

In attendance : Mr Jimmy Ma, SALA
Mr Stephen Lam, ALA4
Mrs Betty Neoh, CAS(BC)4
Mrs Karen Yuen, SAS(BC)4

Follow
Up

Meeting with the Administration

On the invitation of the Chairman, representatives of the Administration gave their initial response to the Equal Opportunities Bill. The gist of the points made by the Administration was summarized in the ensuing paragraphs.

2. The Administration supported the principle of equal opportunities for all. It would introduce two anti-discrimination bills on sex and disability. The proposed legislation on sex discrimination would be introduced into LegCo in October 1994. The bill prohibiting discrimination against disabled people was still at its drafting stage and would be introduced into LegCo towards the end of 1994. It was hoped that Members would examine Hon Anna Wu's Bill alongside with the Government's bills and decide which one was preferable. Anti-discrimination legislation was a new area of law and many of their social, economic and legal implications might not be fully appreciated in Hong Kong. A step-by-step approach was more appropriate. The impact on the economy, the labour market and the livelihood of the Hong Kong people was unknown and had yet to be assessed. All the relevant policy branches of the Administration were still in the process of studying and examining the details and the implications of the Bill.

3. The Administration considered that the Bill was not clear, for example, in the following aspects:-

- (a) whether the provisions prohibiting discrimination against sexual orientation would mean that marriages by homosexuals had the same legal status as heterosexual marriages;
- (b) whether the provisions prohibiting age discrimination would affect the classification systems for films, obscene and indecent articles;
- (c) whether the provisions prohibiting discrimination on the ground of religious or political conviction would affect the practice of only employing staff having the same religious or political beliefs by schools, hospitals and organizations etc;
- (d) in the area of social welfare, whether the provisions prohibiting discrimination on grounds of age, race and spent criminal conviction (for instance, where a single fine more than three years previously did not exceed \$5,000) would affect the current restrictions imposed on the age and background of the persons applying for adoption of child and the priority given to local applicants; and whether the different rates of assistance granted to single persons and families under the Comprehensive Social Security Scheme would be construed as a "discriminatory" act; and
- (e) in the area of financial services, whether the provisions prohibiting discrimination against spent conviction, for instance, where a single fine more than three years previously did not exceed \$5,000 would have an impact on the existing adoption of the "fit and proper" criteria in determining the applications for registration or authorization under legislation concerning Insurance Companies, the banking industry and Securities and Futures.
- (f) On the broader economic fronts, whether the Bills would reduce the competitiveness and flexibility of the local economy and labour market having regard to the fact that the economies of Australia and Hong Kong were different. Specifically, whether the Bill would increase rigidity in the labour market, thereby unnecessarily constraining competition as well as freedom of choice of both the employees and employers. In consequence, whether this may encourage replacement of workers by machinery, as well as avoidance of open-market operations in due course. Also, whether the Bill would indirectly raise the cost of operating business in Hong Kong thereby discouraging investment and reducing economic growth in the longer term.

- (g) A clause of the Bill had the effect of nullifying provisions in other pieces of legislation which were inconsistent with the Bill. Had any research been undertaken on the number of legislation that would be affected and the contents of such legislation?

4. Ms Anna Wu provided a general reply to the queries raised by the Administration as follows:-

- (a) The Bill would give long-term benefits for the local economy as employers would have a wider choice of candidates for appointment. The examination of the Bill was not as difficult as it seemed since the contents of many sections were substantially the same. It only required a thorough understanding of the concept of discrimination, its application, balances and exemptions across a wide range of areas of activities.

- (b) The original scope of the Hong Kong Bill of Rights Ordinance (BOR) which was enacted in 1991 covered both the Government and private individuals. The Administration should have studied all the necessary considerations and implications for its implementation long time ago.

Adm

5. The Administration reiterated that they believed that taking an incremental approach was the best way to legislate against discrimination. Ms Wu was fully aware of the Administration's intention to introduce the two anti-discrimination bills on sex and disability. The scope of the bill on sex discrimination would be extended to cover pregnancy and marital status. An Equal Opportunities Commission would be set up to deal with complaints and would work towards the elimination of sex and disability discrimination.

6. The Legal Adviser of the Administration offered his advice to the Bills Committee. The respective scopes of the BOR and the Equal Opportunities Bill are different. The former is of narrower ambit in the sense that it is based on the International Covenant on Civil and Political Rights whereas Ms Wu's Bill takes the matter of anti-discrimination beyond what is provided for in the Bill of Rights by way of substantive law. He agreed to provide Members with an elaboration of his views in writing.

Adm

7. Members generally felt that it was very confusing for the Bills Committee to study a Private Member's Bill which included two areas of discrimination covered by two Bills to be introduced by the Administration. Some Members urged that Ms Wu and the Administration should discuss and consider whether there were some common grounds in their Bills and whether the differences could be ironed out. It was suggested that the Chairman, Deputy Chairman and Ms Wu should seek an opportunity to discuss with the Administration and explore the most efficient way to scrutinise these Bills.

Chairma

Internal Discussion

8. Referring to the tentative timetable for the scrutiny of the Equal Opportunities Bill prepared by the LegCo Secretariat (copy attached), Members agreed that the purpose of the meetings to be held in September and October 1994 should be for Members to understand the structure of the Bill and to receive the views and representations from the concerned groups. Consideration would be given to how the future meetings should be structured after some indication of whether there could be some compromised approach between Ms Wu and the Administration had become clear.

Date of Next Meeting

9. The next meeting would be held on 16 September at 10:45 a.m. in the Legislative Council Chamber.

10. There being no other business, the meeting was closed at 10:45 a.m.

LegCo Secretariat
12.9.94

Drafting and consideration of the Bills Committee's proposed CSAs and last round of meetings with organizations/individual on request will be conducted between 10 May to 15 June 1995

The Bills Committee's report will be submitted to the House for consideration at its meeting on 30 June 1995.

Resumption of Second Reading Debate of the Bill will take place on 12 July 1995.

**Tentative Timetable for the
scrutiny of the Equal Opportunities Bill**

28 July 1994	General briefing by Hon Anna Wu, Member in charge of the Bill
5 August 1994	Preliminary meeting with the Administration
Early August to end of September 1994	Invitation for written submission from the public
12-16 Sept 1994	Further briefing by Hon Anna Wu
7-18 October 1994	Meetings with organizations/individuals (4 half-days)

**Weekly meetings to discuss the following areas
of discrimination as contained in the Bill:-**

21-31 October 1994	- notion of discrimination - types of discriminating behaviour - remedies/enforcement in general
1-30 Nov 1994	Work
1-31 Dec 1994	Provision of goods, services and facilities
3-30 January 1995	Access/Accommodation
3-28 February 1995	Government programmes
1-31 March 1995	(a) Education (b) Club (c) Application Form
1-22 April 1995	(a) Professional or trade organization (b) Land (c) Others
24 April-9 May 1995	Exceptions and remaining general provisions

**Progress of work of the Bills Committee
in the scrutiny of the Equal Opportunities Bill**

Nature of activities discrimination	Work	Provision of goods, services and facilities	Access/ Accommodation	Government programmes	Education a) Club b) Application c) Form	Professional or trade organization a) Professional or trade organization b) Land c) Others	Exceptions
art VI (Disability)							
art II Sex, marital status (pregnancy)							
art III (Family responsibility or family status)							
art VIII (Age)							
art IV (Sexuality or sexual reference)							
art V (Race)							
art VII (Religious or political conviction)							
art X Union activities)							
art IX Spent conviction)							
art XI, XII and IV (General exceptions and miscellaneous)							

Ref: MC/61

Notes of Meeting of the
Bills Committee to study the
Equal Opportunities Bill
held on Friday, 16 September 1994 at 10:45 a.m.
in the Legislative Council Chamber

- Present :
- Dr Hon LEONG Che-hung, OBE, JP (Chairman)
 - Hon Christine LOH Kung-wai (Deputy Chairman)
 - Hon Mrs Selina CHOW, OBE, JP
 - Hon Mrs Peggy LAM, OBE, JP
 - Hon Mrs Miriam LAU Kin-yee, OBE, JP
 - Hon J D McGregor, OBE, ISO, JP
 - Hon Marvin CHEUNG Kin-tung, OBE, JP
 - Hon LAU Chin-shek
 - Hon Emily LAU Wai-hing
 - Hon James TO Kun-sun
 - Dr Hon YEUNG Sum
 - Hon Roger LUK Koon-hoo
 - Hon Anna WU Hung-yuk
- Absent with apologies :
- Hon HUI Yin-fat, OBE, JP - away from Hong Kong
 - Hon TAM Yiu-chung]
 - Hon Andrew WONG, OBE, JP]
 - Hon Ronald Arculli, OBE, JP]
 - Hon Moses CHENG Mo-chi] other
 - Hon Simon IP Sik-on, OBE, JP] commitments
 - Dr Hon Conrad LAM Kui-shing, JP]
 - Hon LI Wah-ming]
 - Hon Zachary WONG Wai-yin]
- In attendance :
- Mr Jimmy Ma, LA (Atg)
 - Mr Stephen Lam, ALA4
 - Mrs Karen Yuen, CAS(BC)4 (Atg)
 - Mrs Anna Lo, CAS(BC)2
 - Mrs Helen Wan, SAS(BC)2
-

Confirmation of notes of meeting held on 5 August 1994

The notes of meeting (circulated to Members vide LegCo Paper No. 4240/93-94) were confirmed.

2. Dr Hon LEONG Che-hung, the Chairman, briefly reported to the Bills Committee the outcome of his informal discussion with the Secretary for Home Affairs regarding the possibility of reaching some compromises between Hon Anna Wu and the Administration. Hon Christine Loh, the Deputy Chairman, and Hon Anna Wu were also present during the discussion. Members were disappointed to learn that the Administration was reluctant to cooperate with Ms Wu. The Administration indicated that they would not abandon their plan to introduce their own bills on sex and disability discrimination despite the fact that a wide-ranging Private Member's Bill on equal opportunities was already under scrutiny by a Bills Committee in the Legislative Council. General comments made by Members were summarized in the ensuing paragraphs.

3. A Member, representing the commercial functional constituency, remarked that the lack of cooperation between the Administration and Ms Wu had created a very confusing situation. The business sector would be in considerable disarray as to how to deal with the conflicting claims of the Government and a Private Member's Bill. The public would be confused by the simultaneous discussion of the two bills. He suggested that the Administration should be invited to attend the subsequent meetings when necessary and they should be asked to answer questions on the Bill e.g. whether there were any legal problems within the Bill and the practical difficulties in the implementation. Another Member pointed out that Members were going to face an unprecedented and unique situation whereby two similar bills were laid before the Council. It would duplicate the efforts of Members in scrutinizing these bills. In response, Ms Wu shared the view that a Private Member's Bill of this nature needed the Administration's cooperation and input. If the Bill were passed into law, the Administration should have the obligation to implement the provisions in the Bill.

4. After some discussion, Members agreed that the Bills Committee should continue with its task of scrutinising Ms Wu's Bill. It was for the House Committee to consider how to tackle the situation when the Administration introduced the proposed legislation on sex discrimination and to decide whether the Government's bill should be scrutinized by the same Bills Committee. Some Members were of the view that any further discussion with the Chief Secretary on the issue should be taken up by the House Committee. Responding to a Member's concern over the procedural aspect, the Legal Adviser advised Members that the existing practice and procedures of the Legislative Council could deal with the situation.

Briefing by Hon Anna Wu, Member in charge of the Bill

5. After introducing her adviser and staff to the Bills Committee, Ms Wu started her briefing along the lines as contained in the handouts tabled at the meeting. Using discrimination on the ground of disability and discriminating activities in the area of education as illustrations, she explained to Members the definition of discrimination, the areas of discrimination, the exemptions and limitations. A Schematic Index to the Equal Opportunities Bill was provided to Members for easy reference. She stressed that it was not as difficult to understand the Bill as it seemed once Members had got acquainted with the pattern of the Bill. She had not attempted to deal with discrimination in broad terms omitting all the sub-sections as they were now contained in the Bill because she felt that discrimination so described would be very rough and would require a lot of cross referencing. After the briefing, one of Ms Wu's staff introduced to Members LegCo Paper No. 4265/93-94 which provided the information on the scope of equal opportunity law in other common law jurisdictions. Ms Wu informed Members that some other papers covering the economic impact of the Bill, the extension of international covenants to Hong Kong, the questions raised by the Administration, the details of her consultation exercise and the response, were under preparation by her and would be sent to Members when ready.

Ms Wu

6. In response to the briefing, Members made the following response/comments:-

- (a) In view of the impact of the Bill, the Administration should be requested to consider consulting the Government's various advisory bodies to allow for more public consultation.
- (b) Consideration should be given to making the Bill in a simpler form for public consumption by means of pamphlets, leaflets etc to enable the public to understand the Bill.
- (c) There was a need to arouse public awareness on the Bill. Consideration could be given to inviting some target groups to give their views to the Bills Committee. Members of the Bills Committee might wish to give their assistance by consulting their respective geographical and functional constituencies. The two rounds of the hearings of the views from the public would be conducted as scheduled.

Clerk

7. Members noted that a public education video about discrimination was being made by Ms Wu to publicize the Bill. She also had plans to publish some pamphlets to explain the content of the Bill.

Date of Next Meeting

8. The revised tentative timetable (At Appendix) for future meetings of the Bills Committee was endorsed by Members. The next meeting would be held on 21 October 1994 at 10:45 a.m.

9. There being no other business, the meeting was adjourned at 1:00 p.m.

LegCo Secretariat
14.10.94

Ref: MC/61

**Notes of Meeting of the
Bills Committee to study the
Equal Opportunities Bill
held on Friday, 21 October 1994 at 10:45 a.m.
in the Legislative Council Chamber**

- Present** :
- Dr Hon LEONG Che-hung, OBE, JP (Chairman)
 - Hon Christine LOH Kung-wai (Deputy Chairman)
 - Hon HUI Yin-fat, OBE, JP
 - Hon Mrs Peggy LAM, OBE, JP
 - Hon Mrs Miriam LAU Kin-yee, OBE, JP
 - Dr Hon Conrad LAM-Kui-shing, JP
 - Hon LAU Chin-shek
 - Hon Emily LAU Wai-hing
 - Hon LI Wah-ming
 - Dr Hon YEUNG Sum
 - Hon Roger LUK Koon-hoo
 - Hon Anna WU Hung-yuk
- Absent with apologies** :
- Hon Mrs Selina CHOW, OBE, JP] away from
 - Hon Ronald Arculli, OBE, JP] Hong Kong
- Hon TAM Yiu-chung]
 - Hon Andrew WONG, OBE JP]
 - Hon J D McGregor, OBE, ISO, JP]
 - Hon Moses CHENG Mo-chi] other
 - Hon Marvin CHEUNG Kin-tung, OBE, JP] commitments
 - Hon Simon IP Sik-on, OBE, JP]
 - Hon James TO Kun-sun]
 - Hon Zachary WONG Wai-yin]
- By invitation** :
- Eric Chow
Legislative Assistant, Office of Anna Wu
 - Adam Mayes
Legislative Assistant, Office of Anna Wu
 - Andrew Byrnes
Faculty of Law, University of Hong Kong
 - Carole Petersen
Faculty of Law, University of Hong Kong
- In attendance** :
- Mr Stephen Lam, ALA4
 - Mrs Betty Neoh, CAS(BC)4
 - Mrs Karēn Yuen, SAS(BC)4
 - Mrs Anna Lo, CAS(BC)2
 - Miss Odelia Leung, SAS(BC)1

Relevance of International Obligations to Eradicate Discrimination

After a brief introduction given by Hon Anna Wu on the agenda of the meeting, Mr Andrew Byrnes invited Members to go through the paper on International Obligations to Eradicate Discrimination and to enact Anti-discrimination Legislation (circulated to Members vide LegCo paper 163/94-95). The major points made by him were summarized below:-

- (a) The international treaty obligations applicable to Hong Kong obliged the United Kingdom and Hong Kong governments to provide legislative protection against different forms of discrimination, by both public and private sectors. The Equal Opportunities Bill would give effect to existing obligations under the international treaties and would go a significant way towards fulfilling the international obligations under the following treaties which were of particular relevance:-
 - (i) the International Convention on the Elimination of All Forms of Racial Discrimination;
 - (ii) the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
 - (iii) the International Covenant on Civil and Political Rights (ICCPR).
- (b) Each of the treaties envisaged or made explicit that effective remedies for a breach of the rights guaranteed should be made available through appropriate national institutions, including courts and tribunals. The Administration's proposals for sex discrimination and disability discrimination legislation were much more limited in substantive coverage and the refusal to set up a Human Rights Commission would leave the important international obligations unfulfilled. The passage of the Equal Opportunities Bill would go further towards fully implementing the international obligations which applied to Hong Kong.

Briefing by Hon Anna Wu

2. Ms Wu invited Members to go through the Note to Members of the Bills Committee and its annexes prepared by her office. She explained to Members the scope of grounds of discrimination e.g. sex discrimination, marital status, pregnancy, family responsibility or family status, sexuality, race, disability, religious or political conviction, age, spent conviction etc. She also gave a brief explanation on their definitions, the meaning of direct and indirect discrimination, and "discrimination on the basis of the characteristics of an associate or relative of a person" etc.

3. In response to Members' questions, Ms Wu made the following clarifications:-

- (a) The question of whether a person had discriminated against another person on ground of disability might have to be heard and decided by the court. To assist the court in determining whether there was discrimination on ground of disability, medical advice and medical evidence might be called. It would be more important to establish whether there was actual discrimination rather than actual disability or the degree of disability. The possibility and the desirability of imposing a quota for the employers to employ disabled persons was a separate issue and would be discussed with Members at subsequent meetings.
- (b) Consideration would be given to a Member's suggestion of providing the same definition of "de facto spouse" to "another person who is living with the person on a genuine domestic basis" under the definition of "associate" if there was no substantial difference between the two.

Ms Wu

Matters Arising

4. Members noted that in pursuance of paragraph 6(a) of the notes of the meeting held on 16 September 1994, the Administration had provided the Bills Committee with a list of the Government advisory bodies but they refused to offer their assistance in the consultation on the Bill. It was agreed that the Administration should be approached again and requested to assist in identifying the relevant advisory bodies for consultation. It would be for Ms Wu to consider how the consultation should be conducted.

Clerk

5. Members noted that the Sex Discrimination Bill would be introduced by the Administration at the Legislative Council Sitting on 26 October 1994. Most of the Members present at the meeting were of the view that the Government's bill should be scrutinized by this Bills Committee to avoid duplication of work and efforts.

Internal Discussion

6. The Chairman informed Members that so far 18 groups/individuals had written to the Bills Committee seeking to meet the Bills Committee to express their views. Arrangements had been made for the Bills Committee to meet four of the groups on 27 October 1994 and two other groups on 28 October 1994. Members also agreed to meet the remaining groups on 31 October 1994.

Date of Subsequent Meetings

7. Subsequent meetings would be held on 27, 28 and 31 October 1994.

8. There being no other business, the meeting was closed at 12:35 p.m.

LegCo Secretariat
10 November 1994

Ref : MC/61

**Bills Committee to study
the Equal Opportunities Bill**

**Notes of Meeting held on
Thursday, 27 October 1994 at 4.30 p.m.
in Conference Room B of the Legislative Council Building**

- Present** : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
 Hon Christine LOH Kung-wai (Deputy Chairman)
 Hon Ronald Arculli, OBE, JP
 Hon Mrs Miriam LAU Kin-yee, OBE, JP
 Hon LAU Chin-shek
 Hon Emily LAU Wai-hing
 Hon Zachary WONG Wai-yin
 Hon Roger LUK Koon-hoo
 Hon Anna WU Hung-yuk
- Absent with apologies** : Hon Mrs Selina CHOW, OBE, JP)
 Hon Mrs Peggy LAM, OBE, JP) out of town
- Hon HUI Yin-fat, OBE, JP)
 Hon TAM Yiu-chung)
 Hon Andrew WONG, OBE, JP)
 Hon Moses CHENG Mo-chi)
 Hon Marvin CHEUNG Kin-tung, OBE, JP) other
 Hon Simon IP Sik-on, OBE, JP) commitments
 Dr Hon Conrad LAM Kui-shing, JP)
 Hon LI Wah-ming)
 Hon James TO Kun-sun)
 Dr Hon YEUNG Sum)
- By invitation** : Alliance for the Promotion of Rights for
Grass-roots Women (爭取基層婦女權益聯盟)
- Ms KWOK Yuk-mei (郭玉媚女士)
 Ms KWONG Mei-yee (鄺美兒女士)
 Ms LEUNG Kit-chu (梁潔珠女士)

Ms TANG Kwan-ho (鄧群好女士)
Ms CHIU Lai-chu (趙麗珠女士)
Ms YAN Sa-wah (殷沙華女士)
Ms LEE Shui-ming (李瑞明女士)
Ms HO Yu-chun (何如珍女士)
Ms TIN Yuet-sheung (田月嫦女士)
Ms TUET Chi-fong (脫志芳女士)
Ms MUI Mei-yin (梅美賢女士)
Ms PONG Ka-ki (龐家棋女士)
Ms TAM Lai-lin (譚麗蓮女士)
Ms CHANG Sau-chun (蔣秀珍女士)
Ms KONG Yuk-mui (江玉梅女士)

Movement Against Discrimination (MAD)

(反歧視大聯盟)

Mr MAK Hoi-wah (麥海華先生)
Mr John Wing-ling TSE (謝永齡先生)
Ms CHUNG Pui-fong, Magdalen (鍾佩芳女士)
Mr Mark Kin-yin LI (李建賢先生)
Ms CHAN Sui-ching, Iris (陳萃菁女士)
Ms LAI Lai-ha (黎麗霞女士)
Ms YIM Pik-shan (嚴碧珊女士)
Ms Vinci CHAN (陳楚芝女士)

Task Group on Anti-Discrimination Legislation for Disabled Persons

(立法消除歧視傷殘人士工作小組)

Mr CHONG Chan-yau (莊陳有先生)
Mr KONG Siu-hong (江紹康先生)
Mr Peter F S CHAN (陳福成先生)
Mr LAI Boon-lap (黎本立先生)
Mrs Julie LEE (李劉茱麗女士)
Mr William CHANG (張廣嗣先生)
Miss Stella HO (何笑笑小姐)
Mr CHUA Hoi-wai (蔡海偉先生)

Hong Kong Ten Percent Club 香港十分一會)

(At the request of the Club, the names of the representatives were not recorded)

In attendance : Mrs Anna LO, CAS(BC)2

Miss Odelia LEUNG, SAS(BC)1

Action
Required

**I. Meeting with Alliance for the Promotion of Rights
for Grass-roots Women**

The outline of the issues raised by the representatives of the Alliance was at Appendix I. The deputations's main points were summarised in the ensuing paragraphs.

- (a) Women aged 35 or above had encountered great difficulty in finding job. This was particularly the case for those who had quitted the job market for a period of time to raise children and wished to re-enter it when family conditions allowed. Discrimination against women on the ground of age was prevalent. The situation was aggravated by the labour importation scheme.
- (b) The effectiveness of the re-training scheme conducted by Government was doubtful. The representatives expressed reservation on the accuracy of the statistics reported by the Government that about 70% of the students of the scheme were able to change job. A representative claimed that out of 18 students in a re-training class, 16 students were unable to find a job upon completion of the course. The shortcomings of the scheme included short duration of the course, impractical contents and lack of follow up actions by Government on students who had completed the course.
- (c) To address the difficulties faced by grassroots women, the representatives suggested that -
 - i) legislation be enacted to eliminate age discrimination in work;

Action
Required

- ii) the labour importation scheme be suspended;
- iii) child care services be improved, for example child care centres should be located in working areas and their opening hours should tie in with the working hours of women; and
- iv) Government to take an active role in referring re-trained workers to organisations which applied for imported labour, and the re-training programme be modified to gear for practical needs.

2. Members noted the deputation's views and agreed that the issues of re-training scheme and provision of child care service should be referred to the Manpower Panel and Welfare Panel respectively for follow up action. The Secretariat should provide the terms of reference of the relevant panels to the deputation for information.

Clerk

[Post-meeting note : the Alliance provided supplementary information in a further submission at **Appendix II.**]

II. Meeting with the Movement Against Discrimination

3. Ms Anna WU declared interest as being a member of the organisation.

4. Representatives of the organisation which included the Hong Kong Society for the Deaf and Concern Group on the Welfare of the Mentally Retarded went over their submissions at **Appendix III.** They supplemented the following points -

- (a) Very roughly disabled persons constituted around 10% of the population. The unemployment rate in this group was high. A survey conducted in 1991 showed that 70% of the mentally retarded school leavers could not find job.
- (b) Being the largest employer, Government had not set a good example in employing disabled persons. Only around 50 disabled persons were in the civil service.

- (c) The Bill should provide for affirmative action in respect of the disabled in work. The deputation considered that disabled persons should make up 5% of the size of employees in an organisation. Taking Japan and UK as models, a minimum quota ranging from 1.5% to 3% would be acceptable. Government should implement measures to encourage employers to employ the disabled, e.g. tax reduction.

5. A Member was of the view that the figure on unemployment of disabled persons must be accurate in order to form the basis for any discussion on quota system. It should be cautious to proceed with any proposal in legislating quota as the impact would be significant.

III. Meeting with the Task Group on Anti-Discrimination Legislation for Disabled Persons

6. Representatives of the Task Group went over their written submission at **Appendix IV**. They supplemented the following points -

- (a) Disabled persons suffered discrimination in almost every aspect of life including employment, education, social and medical arena.
- (b) The Bill should provide for positive measures to resolve the technical difficulties faced by the disabled in full participation in society.

7. A Member considered that some measures taken by institutions e.g. banks were to protect the interest of the disabled with no discriminatory intent. Representatives responded that banks should provide service to the disabled and ordinary clients alike. Disabled customers should themselves be responsible for any risk entailed.

IV. Meeting with Hong Kong Ten Percent Club

8. At the request of the Club, this was a **closed session**.

9. Representatives of the Club went over their written submission at **Appendix V**. In response to Members' enquiries, they gave the following comments -

Action
Required

- (a) According to a survey done in the US in 1979, about 10% of the population showed homosexual inclination, hence the name of their Club.
- (b) Once their identity was exposed, homosexuals would face enormous pressure in work and social circle. As not each and every member of the Club was yet ready to live with this pressure, the Club preferred the meeting to be a closed session for protection of individual privacy. This was a clear indication of how homosexuals were being discriminated against.
- (c) Lesbians, being double minority, had even greater difficulties in articulating themselves.
- (d) The representatives hoped that the proposed Equal Opportunity Commission should promote public education on individual liberty to choose sexuality, not just on equality on sex gender.

10. The meeting closed at 6.55 p.m.

LegCo Secretariat
2 December 1994

檔 號：MC/61

平等機會條例草案審議委員會
會議摘錄

日 期：一九九四年十月二十七日(星期四)
時 間：下午四時三十分
地 點：立法局大樓會議室 B

出席者：梁智鴻議員(主席)
陸恭蕙議員(副主席)
夏佳理議員
劉健儀議員
劉千石議員
劉慧卿議員
黃偉賢議員
陸觀豪議員
胡紅玉議員

缺席者：周梁淑怡議員)
林貝聿嘉議員) 不在本港

許賢發議員)
譚耀宗議員)
黃宏發議員)
鄭慕智議員)
張建東議員) 另有要事
葉錫安議員)
林鉅成議員)
李華明議員)
涂謹申議員)
楊 森議員)

應邀出席者：

爭取基層婦女權益聯盟
郭玉媚女士
鄺美兒女士

梁潔珠女士
鄧群好女士
趙麗珠女士
殷沙華女士
李瑞明女士
何如珍女士
田月嫦女士
脫志芳女士
梅美賢女士
龐家棋女士
譚麗蓮女士
蔣秀珍女士
江玉梅女士

反歧視大聯盟

麥海華先生
謝永齡先生
鍾佩芳女士
李建賢先生
陳萃菁女士
黎麗霞女士
嚴碧珊女士
陳慧芝女士

立法消除歧視傷殘人士工作小組

莊陳有先生
江紹康先生
陳福成先生
黎本立先生
李劉茱麗女士
張廣嗣先生
何笑笑小姐
蔡海偉先生

香港十分一會

(應該會的要求，代表姓名不予記錄)

列席者：總主任(條例草案審議委員會)(二)盧程燕佳
高級主任(條例草案審議委員會)(一)梁慶儀

1. 與爭取基層婦女權益聯盟會晤

該聯盟的代表提出討論的事項大綱載於附錄 I。與會代表在會上申述的要點，綜述於下文各段：

- (a) 年屆35歲或以上的婦女在就業上困難重重，尤其是那些曾因照顧子女而暫停工作，及後家庭情況許可，希望再投入工作的女性。婦女因年齡而受歧視的現象非常普遍，在輸入勞工計劃實施後，問題更為惡化。
- (b) 政府實行再培訓計劃的成效令人懷疑。根據政府的統計數字，約有七成的再培訓計劃學員能夠成功轉業，但與會代表對此數字的真確程度有所保留。一位代表更聲稱，在其中一班18位學員中，有16位在完成再培訓課程後無法找到工作。該計劃的缺點包括課程為期過短、內容不切實際，以及政府為畢業學員所做的跟進措施不足。
- (c) 與會代表提出下列的建議措施，以解決基層婦女所面對的困難：
 - (i) 制訂法例以消除工作上的年齡歧視；
 - (ii) 暫擱輸入勞工計劃；
 - (iii) 改善幼兒護理服務，例如在婦女工作的地方開設幼兒中心，而中心的開放時間應與婦女的工作時間互相配合；及
 - (iv) 政府應積極向申請輸入勞工的機構推薦再培訓工人，並針對實際需要修訂再培訓計劃的內容。

2. 議員審悉與會代表的意見，並答允將該聯盟對推行再培訓計劃及提供幼兒護理服務等事宜的意見，分別轉交人力事務委員會及福利事務委員會作進一步處理。秘書處將會向與會代表提供該兩個事務委員會的職權範圍，以供參考。

秘書

【會後補註：該聯盟其後再提交意見書，以作補充，有關資料見於附錄II。】

II. 與反歧視大聯盟會晤

3. 胡紅玉議員作出利益聲明，表明自己為該組織的成員。

4. 該組織連同其屬下的香港聾人協進會及弱智人士權益關注組一起派出代表出席會議，會上各人除申述其意見書（見於附錄III）的內容外，更補充了下列各點：

- (a) 按粗略估計，弱能人士約佔人口的一成，這類人士的失業率頗高。一九九一年的一項調查顯示，有七成的弱智學校畢業生無法找到工作。
- (b) 政府作為全港的最大僱主，並無在聘用弱能人士方面樹立榜樣，只有約50名弱能人士獲聘為公務員。
- (c) 條例草案應針對弱能人士的就業問題，訂立一些正面措施。與會代表認為當局應規定每家機構所僱用的弱能人士佔僱員總數的5%。參照日本及英國的情況，把最低名額定在1.5%至3%，是可以接受的做法。政府應採取措施以鼓勵僱主聘用弱能人士，稅項寬減即屬一例。

5. 一位議員認為弱能人士的失業數字必須準確無誤，方能成為定額制度的討論依據，而且由於立法規定僱用一定數量的弱能人士，所涉影響深遠重大，因此必須審慎考慮，不宜輕率提出建議。

III. 與立法消除歧視傷殘人士工作小組會晤

6. 工作小組的代表陳述其提交的意見書（載於附錄IV）後，補充下列各點：

- (a) 弱能人士幾乎在生活每一環節均飽受歧視，包括就業、教育、社會及醫療等方面。
- (b) 條例草案應訂立積極措施，以解決弱能人士在生活上一些「技術」困難，俾能全面參與社會。

7. 一位議員認為，有些機構（例如銀行）所採取的某些措施旨在保障弱能人士的利益，全無歧視的意圖。該小組的代表表示，銀行應一視同仁，為弱能人士及一般顧客提供服務，毋須加以區分。屬於弱能人士的顧客須自行承擔任何所涉風險。

IV. 與香港十分一會會晤

8. 應該會的要求，會議以閉門形式進行。

9. 該會代表申述其提交的意見書（載於附錄V）。在回應議員詢問時，他們提出下述意見：

- (a) 根據一九七九年一項在美國進行的調查，約有十分一的人口表現同性戀傾向，該會由此得名。
- (b) 同性戀者的身份一旦揭露，他們在工作上及在社交圈子中，均要面對龐大的壓力。由於該會成員並非每位均有足夠的心理準備，能夠承受此等壓力，為保障個人私隱，該會選擇以閉門形式進行會議。這恰好清楚證明現時同性戀者如何備受歧視。
- (c) 女同性戀者數目少之又少，因此在申述本身處境上，困難更大。
- (d) 與會代表希望擬議的平等機會委員會不但向市民灌輸男女平等的觀念，更應教導大眾認識選擇性傾向的個人自由。

10. 會議於下午六時五十五分結束。

立法局秘書處

一九九四年十二月二日

Ref : MC/61

**Bills Committee to study
the Equal Opportunities Bill**

**Notes of Meeting held on
Friday, 28 October 1994 at 10.45 a.m.
in Chamber of the Legislative Council Building**

- Present** : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
 Hon Christine LOH Kung-wai (Deputy Chairman)
 Hon Ronald Arculli, OBE, JP
 Hon Mrs Miriam LAU Kin-yee, OBE, JP
 Hon Simon IP Sik-on, OBE, JP
 Dr Hon Conrad LAM Kui-shing, JP
 Hon Emily LAU Wai-hing
 Dr Hon YEUNG Sum
 Hon Zachary WONG Wai-yin
 Hon Roger LUK Koon-hoo
 Hon Anna WU Hung-yuk
- Absent with** : Hon Mrs Selina CHOW, OBE, JP)
apologies Hon Mrs Peggy LAM, OBE, JP) out of town
- Hon HUI Yin-fat, OBE, JP)
 Hon TAM Yiu-chung)
 Hon Andrew WONG, OBE, JP)
 Hon Moses CHENG Mo-chi) other
 Hon Marvin CHEUNG Kin-tung, OBE, JP) commitments
 Hon LAU Chin-shek)
 Hon LI Wah-ming)
 Hon James TO Kun-sun)
- By invitation** : Hon Anna WU's team
- Mr Andrew Brynes, Consultant
 Ms Carole Petersen, Consultant
 Mr Eric CHOW
 Mr Adam Mayes
 Mr David Viotti
 Ms Celie Nehmer

Hong Kong Monitor (香港論衡)

Mr SUNG Lap-kung (孫立功先生)

Mr CHAN Cho-wai (陳祖為先生)

Mr CHAN Ho-man (陳浩文先生)

Hong Kong Association of Business and
Professional Women

(香港商業與專業婦女協會)

Ms Anne Godfrey

Ms Rosalie McKenzie

In attendance : Mr Stephen LAM, ALA4

Mrs Anna LO, CAS(BC)2

Miss Odelia LEUNG, SAS(BC)1

Action
Required

The Chairman informed Members of Hon J D McGregor's resignation from the Bills Committee. In view of the voluminous work involved in translating public submissions, the Bills Committee agreed that it was not necessary to translate public submissions in the Chinese language into English.

2. As there would be a Chief Secretary's briefing on 11 November 1994 at 11.30 a.m., Members decided to cancel the meeting scheduled for 10.45 a.m. on that date.

Members
to note

3. As at the date of the meeting, the number of Members who had indicated their intention to attend the meeting on 31 October 1994 fell short of the quorum. In order that the meeting be proceeded with and having considered ALA4's advice that it might not be appropriate to form a subcommittee under Standing Order 60D(3A), which was normally formed to study technical issues of a bill, Members resolved that the meeting on 31 October 1994 should be held notwithstanding the shortage of a quorum. In such circumstances, no formal decision should be made at the meeting and Members attending the meeting would not be covered by the Legislative Council (Powers and Privileges) Ordinance.

Action
Required

4. The meeting noted Members' disappointment on the anticipated poor attendance rate at the meeting on 31 October 1994. The Chairman/Deputy Chairman would relay the Bills Committee's resolution to the Sub-Committee on Procedural Matters for review of related issues.

Chairman/
Deputy
Chairman

I. Meeting with the Hong Kong Monitor

5. The Chairman drew the representatives' attention that they were not protected by the Legislative Council (Powers and Privileges) Ordinance.

6. The outline of the deputation's views on the Bill was at Appendix I. The following summarised the deputation's main points and its response to Members' enquiries -

- (a) Despite the enactment of the Bill of Rights Ordinance in 1991, elimination of discrimination progressed slowly. The Bill of Rights Ordinance was general in nature and applied to Government and public bodies only. The Sex Discrimination Bill introduced by Government did not cover age discrimination. The to-be-gazetted Disability Discrimination Bill only extended protection to certain disability groups. Hong Kong Monitor found it both timely and necessary for the introduction of the Equal Opportunities Bill which had a comprehensive coverage.
- (b) Apart from legislation, the deputation found it of no less importance to promote public education on fair and equal treatment to all.
- (c) Notwithstanding its support to the Bill, Hong Kong Monitor emphasized that extensive public consultation on some controversial areas covered by the Bill was necessary. These included whether cohabitants and homosexuals had any marital status; whether homosexual had the right to adopt and be given tax reduction in respect of de facto spouse. The society had yet to have a consensus on these issues. The court should not be given the power to determine on the moral standard for the public.
- (d) To allow sufficient public discussion, Hong Kong Monitor suggested that the Bill should provide for a freezing period on those controversial areas as in the case of Bill of Rights Ordinance.

Action
Required

II. Meeting with the Hong Kong Association of Business and Professional Women

7. The Chairman drew the representatives' attention to the fact that they were not covered by the Legislative Council (Powers and Privileges) Ordinance.

8. The representatives read through their written submission at Appendix II. In response to Members' enquiries, they gave the following comments -

- (a) They supported Ms Anna WU's proposal to set up a Human Rights Commission, the jurisdiction of which should include, inter alia, handling of woman issues. As Government had rejected the proposal, they hoped that a Women Commission should be established on its own.
- (b) Since it took time to work out the relevant codes of practice in relation to employment matters and the codes changed with time, the enactment of the Equal Opportunities Bill should not be withheld until after these codes were promulgated as proposed under the Sex Discrimination Bill.
- (c) To allow women to catch up with men in some areas, organisations, e.g. tertiary institutions, might adopt different standards in respect of the two sex for a limited period of time.
- (d) On the issue of equal-work-equal-pay for men and women, the deputation would do some research work and provide to the Committee later with information on recommended foreign models.

Clerk
to note

III. Briefing by Hon Anna WU

9. Ms WU resumed and completed briefing on direct and indirect discrimination on the ground of sex, marital status, pregnancy, family responsibility, sexuality, race, disability, religious or political conviction, age, spent criminal conviction and union membership or activity (Ref : LegCo Paper No. 259/94-95).

10. The meeting closed at 12.45 p.m.

檔 號：MC/61

平等機會條例草案審議委員會
會議摘錄

日期：一九九四年十月二十八日（星期五）
時間：上午十時四十五分
地點：立法局大樓會議廳

出席者：梁智鴻議員（主席）
陸恭蕙議員（副主席）
夏佳理議員
劉健儀議員
葉錫安議員
林鉅成議員
劉慧卿議員
楊 森議員
黃偉賢議員
陸觀豪議員
胡紅玉議員

缺席者：周梁淑怡議員)
林貝聿嘉議員)不在本港

許賢發議員)
譚耀宗議員)
黃宏發議員)
鄭慕智議員)
張建東議員)另有要事
劉千石議員)
李華明議員)
涂謹申議員)

應邀出席者：胡紅玉議員的工作小組

包愛迪先生，顧問
柏嘉露女士，顧問
周樂寧先生
馬爾斯先生
David Viotti 先生
李瑪詩女士

香港論衡

宋立功先生
陳祖為先生
陳浩文先生

香港商業與專業婦女協會

Anne Godfrey 女士
Rosalie Mckenzie 女士

列席者：助理法律顧問(四)林秉文
總主任(條例草案審議委員會)(二)盧程燕佳
高級主任(條例草案審議委員會)(一)梁慶儀

經辦人

主席告知議員，麥理覺議員已向條例草案審議委員會請辭。鑑於翻譯市民意見書的工作繁重，條例草案審議委員會通過，市民提交的中文意見書毋須譯成英文。

2. 由於布政司在一九九四年十一月十一日上午十一時三十分舉行簡報會，議員決定取消原定於當日上午十時四十五分舉行的會議。

議員備悉

3. 截至本次會議當日，已表示有意出席一九九四年十月三十一日下次會議的議員，仍未達到法定開會人數。為使會議能夠舉行，並考慮到助理法律顧問(四)的意見，即議員不宜按立法局會議常規第60D(3A)條的規定成立小組委員會，因為此類委員會通常只用作研究條例草案的技術事宜，議員遂決定，即使當天出席者不足法定人數，一九九四年十月三十一日的會議仍會如期舉行。在此情況下，會議將不得通過正式決定，而出席會議的議員亦不受立法局(權力及特權)條例所保障。

4. 與會各人察悉，議員對一九九四年十月三十一日下次會議的出席率估計甚低一事感到失望。主席或副主席會將條例草案審議委員會的決定轉達研究議事程序事宜小組委員會，以便其就有關問題進行檢討。

主席／
副主席

I 與香港論衡會晤

5. 主席提醒各與會代表，他們不受立法局(權力及特權)條例所保障。

6. 與會代表對條例草案所提出的意見要點載述於附件I。他們申述的要點及其對議員詢問所作的回覆，綜述於下文各段：

- (a) 雖然人權法案條例已於一九九一年制定，本港在消除歧視方面進展緩慢。人權法案條例不但性質籠統，而且只適用於政府及公共團體。政府提出的性別歧視條例草案，並無涵蓋年齡歧視，而即將刊登憲報的身體殘障歧視條例草案，保障範圍亦只延伸至包括若干類身體殘障人士。香港論衡認為現時提出涵蓋範圍全面的平等機會條例草案，既合時宜，亦屬必要。
- (b) 與會代表認為，除制訂法例外，透過公眾教育向市民灌輸人人均應獲得平等待遇的觀念，亦同樣重要。
- (c) 雖然香港論衡支持該項條例草案，但亦強調當局必須就條例草案中一些具爭議性的範疇，廣泛徵詢市民的意見，包括：同居者及同性戀者是否納入婚姻狀況的定義範圍內；同性戀者是否有權領養兒童，並且基於其實際配偶的關係而獲得稅項減免。鑑於目前市民大眾對此等問題仍意見分歧，當局實不應賦予法院權力為公眾定立道德標準。
- (d) 爲了讓市民有充分討論的機會，香港論衡認為當局應倣效當年制訂人權法案條例的做法，就條例草案中具爭議性的範疇定立一個凍結期。

II 與香港商業與專業婦女協會會晤

7. 主席提醒與會代表，他們不受立法局(權力及特權)條例所保障。

8. 與會代表口述其意見書(載於附錄II)的內容。在回應議員的詢問時，他們提出下述意見：

- (a) 該會支持胡紅玉議員建議成立人權委員會，而委員會應有權力處理與婦女有關的事宜。由於政府已拒絕採納此項建議，與會代表希望當局可以成立一個獨立的婦女委員會。
- (b) 由於制定僱傭事宜的實務守則需時，而且該等守則亦會隨時修訂，當局不應待性別歧視條例草案中所建議的實務守則頒布後，始行通過平等機會條例草案。
- (c) 為使女性在某些範疇能趕上男性，包括專上教育院校在內的各類機構，或可於一段限期內，對男女兩性採用不同的對待標準。
- (d) 關於男女同工同酬的問題，與會代表表示將研究此方面的資料，稍後會向委員會建議可行的外國模式，以供參考。

秘書備悉

III 胡紅玉議員作簡介

9. 胡紅玉議員繼續簡介基於性別、婚姻狀況、懷孕、家庭責任、性傾向、種族、身體殘障、宗教或政治信念、年齡、已喪失時效的定罪及職工會會籍或活動等各種直接及間接的歧視(有關資料載於立法局94-95年度第259號文件)。在是次會議上，胡議員完成其對以上範疇的簡介。

10. 會議於下午十二時四十五分結束。

立法局秘書處
一九九四年十二月二日

Ref : MC/61

**Bills Committee to study
the Equal Opportunities Bill**

**Notes of Meeting held on
Monday, 31 October 1994 at 10.00 a.m.
in Conference Room B of the Legislative Council Building**

- Present** : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
 Hon Christine LOH Kung-wai (Deputy Chairman)
 Hon TAM Yiu-chung
 Hon LAU Chin-shek
 Hon Emily LAU Wai-hing
 Hon LI Wah-ming
 Dr Hon YEUNG Sum
 Hon Anna WU Hung-yuk
- Absent with** : Hon Mrs Selina CHOW, OBE, JP)
apologies : Hon Ronald Arculli, OBE, JP) out of town
 Hon Mrs Peggy LAM, OBE, JP)
- Hon HUI Yin-fat, OBE, JP)
 Hon Andrew WONG, OBE, JP)
 Hon Mrs Miriam LAU Kin-yea, OBE, JP)
 Hon Moses CHENG Mo-chi)
 Hon Marvin CHEUNG Kin-tung, OBE, JP) other
 Hon Simon IP Sik-on, OBE, JP) commitments
 Dr Hon Conrad LAM Kui-shing, JP)
 Hon James TO Kun-sun)
 Hon Zachary WONG Wai-yin)
 Hon Roger LUK Koon-hoo)
- By invitation** : Hong Kong Women Christian Council
(香港婦女基督徒協會)
- Ms Rose WU (胡露茜女士)
 Ms HO Lai-han (何麗嫻女士)
 Mr CHAN Yu-cheong (陳裕昌先生)
 Ms LEE Tin-ki (李天機女士)

Hong Kong Women Workers' Association
(香港婦女勞工協會)

Ms Linda TO (杜潔麗女士)
Ms MOK Miu-ying (莫妙英女士)
Ms TONG Lai-chi (唐麗芝女士)
Ms CHEUNG Yun-lin (張潤蓮女士)

Association for the Advancement of Feminism
(新婦女協進會)

Ms CHEUNG Yuet-fung (張月鳳女士)
Ms YUEN Ka-wah (袁嘉華女士)
Ms HUNG Suet-lin (洪雪蓮女士)

Helpers for Domestic Helpers (家庭傭工協會)

Remy Borlongan, Asian Domestic Workers Union
Carla Natan, Asian Migrant Centre
Kate Laverty, Helpers for Domestic Helpers
Ampan, Friends of Thai in Hong Kong
Bruce Van Voovhis, Christian Conference of Asia
Sujita Shakya, Asia Monitor Resource Centre
Marz Balaoro, UNIFIL
Eliza LEE Fung-kwai, Caritas

Hong Kong Confederation of Trade Unions
(香港職工會聯盟)

Ms CHEUNG Lai-ha (張麗霞女士)
Mr TSE Woon-sung (謝煥崧先生)
Ms SIU Sun-yee (蕭順意女士)
Mr NG Yan-kwong (吳恩光先生)
Ms TAM Pik-yan (譚碧茵女士)

Mr Robin Adams & Mr Bill Proudfit

Coalition of Religious Bodies

(基督徒團體關注平等機會法案聯席)

Mr Kenneth CHAN (陳裕昌先生)

Mr Eli CHAN (陳家偉先生)

Mr Lech LEE (李子揚先生)

Mr Tony FUNG (馮錦霖先生)

Christians for Hong Kong Society

(基督徒關懷香港學會)

Mr CHIU Sin-wing, Anthony (趙善榮先生)

Mr WONG Man-tai, Frederick (黃文泰先生)

Mr CHUNG Lap-kong (鍾立光先生)

Hong Kong AIDS Foundation (香港愛滋病基金會)

Dr Patrick LI (李頌基醫生)

Mr Frederick TONG (唐建生先生)

Concern Group on Single Parents (關注單親人士會)

Ms YU Sau-chu (余秀珠女士)

Ms KU Sui-ling (辜垂玲女士)

Ms WONG Sau-kuen (黃秀娟女士)

In attendance : Mrs Anna LO, CAS(BC)2

Miss Odelia LEUNG, SAS(BC)1

Action
Required

Before inviting each deputation to present its views on the Equal Opportunities Bill (EOB), the Chairman/Deputy Chairman brought the representatives' attention to the following -

- (a) invited guests were not covered by the Legislative Council (Powers and Privileges) Ordinance; and

- (b) views on the Sex Discrimination Bill (SDB) were welcomed as the same Bills Committee would also scrutinize the SDB.

I. Meeting with Hong Kong Women Christian Council

2. Mr LAU Chin-shek declared interest as being a member of the Council.

3. The deputation went over its main points at **Appendix I**. In response to Members' questions, the representatives expressed the following views -

(a) They were concerned that the definition of religious and political conviction in the EOB might not cover some conviction, e.g. feminism and environmentalism.

(b) Religious institutions should not be given blanket exemption under the EOB. Whilst their freedom to select staff with the same religion to perform religion-related duties should be respected, there should be no excuse to discriminate on the ground of religion in any other areas of activities not directly associated with religion, e.g. provision of educational and social services.

4. Members welcomed the open-mindedness of the deputation on the issue of exemption. Ms Anna WU explained that in drafting the exemption provisions under the EOB, she had sought to strike a balance between eliminating discrimination on the ground of religion and upholding freedom of religion. She would examine international interpretation on the definition of religious and political conviction to see whether feminism and environmentalism fell within their domain.

Hon Anna WU

II. Meeting with Hong Kong Women Workers' Association

5. The Association went over its written submission at **Appendix II**. Representatives supplemented the following points -

(a) They were dissatisfied with the SDB which covered limited scope. Since the provisions relating to employment under the SDB would not take effect until after promulgation of the relevant codes of practice, representatives were worried that operation of the Bill would

inevitably be delayed. They also saw no need to provide for a transitional period of five years to allow business establishments with not more than five employees to comply with the provisions of the Bill.

- (b) To eliminate discrimination in particular on the ground of age, representatives suggested that job seekers should not be obliged to provide information immaterial to the assessment on suitability for the job, e.g. age. Besides, information on employers who persistently engaged in discriminatory practices should be released to the public to serve a deterrent effect.

6. Members responded that employers' organisations should be invited to give their views on the EOB. The proposal on supply of personal particulars in job application should be further discussed.

III. Meeting with Association for the Advancement of Feminism

7. The issues raised by the Association were at Appendix III. The main points were summarised as follows -

- (a) On the SDB, representatives considered that its scope was not as comprehensive as the EOB. The SDB did not cover discrimination on the ground of age and family responsibility. Besides, discrimination against a person on the ground of marital status or pregnancy was only applicable in the employment field. The SDB did not touch upon some areas of activities, e.g. social and political participation. The Association was of the view that the SDB should also provide for review of existing policy to assess its impacts, if any, on the discrimination phenomenon. It also cast doubt on the necessity to allow a transitional period to small business establishments to comply with the provisions of the SDB.
- (b) On the establishment of the Equal Opportunities Commission, representatives were concerned about the time required by the Commission to develop and issue the codes of practice. The provisions in the SDB had not stipulated the penalty for non-compliance of these codes. They held the view that instead of giving the

discretionary power to the court as proposed under the SDB, it should be made mandatory for the court to permit persons to address it who were neither legally qualified nor parties to the proceedings in respect of sex discrimination and sex harassment cases.

- (c) Regarding the EOB, representatives found it inadequate that the object of the Bill, inter alia, was to promote "recognition and acceptance" within the community of the equality of men and women. It should go further to promote equality of the two sexes and of all persons irrespective of race, religion, political conviction, disability and age.
- (d) Representatives did not agree to the proposal to exempt N.T. land from the application of the EOB. The right of indigenous male villagers to build a small house should be abolished altogether. The system in electing village representatives should also be reviewed.

8. A Member echoed the deputation's view that the small house policy should be reviewed. Some Members responded that the existing legislation intended to protect women's interest should also be examined, e.g. prohibition on overtime work for women.

[Post-meeting note : the Association submitted a newsletter on the subject at Appendix IV.]

IV. Meeting with Helpers for Domestic Helpers

9. The preliminary comments of the group on the Bill were at Appendix V. Representatives supplemented the following views -

- (a) Discrimination against foreign domestic helpers was prevalent. Some local leaders and even enforcement agents showed similar discriminatory attitude.
- (b) Immigration legislation should not be exempted from application of the EOB. The existing rule that foreign domestic helpers who had had 7-year residence in the territory were not entitled to the right of abode was discriminatory.

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- (c) Foreign domestic helpers faced great hardship while awaiting adjudication of their cases in the Labour Tribunal. Usually they had to wait for about one year, and during this period they were not allowed to work. Neither did they receive any assistance from Government in terms of finance and accommodation.
- (d) Representatives hoped that the EOB would achieve the effect of treating employers and employees on equal footing. To enforce the provisions, cooperation of various bodies was necessary.

10. Ms Anna WU explained that section 9 of the EOB on exemption was modelled on the Bill of Rights Ordinance. At Members' request, the deputation would provide statistics on the number of foreign domestic helpers who were awaiting the Labour Tribunal's adjudication of their cases and the average length of waiting time.

deputation

V. Meeting with Hong Kong Confederation of Trade Unions

11. The representatives' main points and their response to Members' enquiries were summarised as follows -

- (a) The Confederation preferred the EOB to the SDB as the scope of the former was wider. They welcomed in particular the provisions regarding discrimination on the ground of membership of a trade union. However, the EOB should incorporate the provisions of the SDB on establishment of the Equal Opportunities Commission.
- (b) Currently, both men and women faced discrimination on the ground of age. The main reason was attributed to the labour importation scheme.
- (c) Affirmative action on employment of the disabled should be added to the EOB as this group faced even greater hardship. In view of its small number, the impact of setting a minimum quota for it would not be too great.

[Post-meeting note : the Confederation made a written submission at **Appendix VI.**]

VI. Meeting with Mr Robin Adams and Mr Bill Proudfit

12. Mr Adams shared his personal experience on development of sexual orientation. He also explained his voluntary work for the homosexual community, e.g. assisting operation of a telephone hot line for homosexuals and taking part in fund raising activities. Both Mr Adams and Mr Bill Proudfit highlighted how they were discriminated because of their sexual orientation. They were of the view that explicit legislative protection of homosexuals was necessary. Besides, public education on acceptance of persons irrespective of their sexual orientation should also be emphasized.

[Post-meeting note : Mr Robin Adams and Mr Bill Proudfit each submitted a written statement at **Appendices VII and VIII.**]

VII. Meeting with Coalition of Religious Bodies

13. Mr LAU Chin-shek declared interest as being a member of the Coalition.

14. Representatives went over their written submission at **Appendix IX**. They supplemented the following comments in response to Members' enquiries -

- (a) Since the source of funding of subvented organisations came from Government, they should not be allowed to practice discrimination on the ground of religious or political conviction.
- (b) Rarely would employers explain the reasons for requesting some personal particulars from job applicants. Job applicants should not be required to provide any information not directly related to the nature of the job, e.g. native place.

15. Ms Anna WU stated that the information to be provided should depend on the nature and requirement of the job. Under the EOB a person who imposed a condition bore the burden of proof that the condition or requirement was reasonable. Section 163(2) provided exemption to employers of partisan bodies to discriminate on the ground of political conviction with respect to the offering of employment.

VIII. Meeting with Christians for Hong Kong Society

16. Representatives expressed their disappointment on the poor attendance rate of Members at the meeting. They went over their written submission at **Appendix X**. In response to Members' enquiries, they had the following comments -

(a) Religious schools including government subvented ones should be given the freedom to employ teaching staff who had the same religious conviction. This would, on the one hand, leave room to individual schools to decide the contents of religious education and, on the other, open an option to an individual who might wish to study in a school the staff of which held the same religious belief. Hence, they supported the exemption provision in section 163 but considered that the section should be re-drafted to make it clear that religious schools should be exempted.

(b) There should be more public discussion on some controversial areas covered by the EOB, e.g. whether homosexuals should have marital status.

17. Some Members expressed reservation on the appropriateness of exempting government subvented religious schools from the provisions on discrimination on the ground of religion in work. Ms Anna WU said that in drafting the EOB, she had sought to strike a balance between the need to maintain freedom of religious belief and to eliminate discrimination on the ground of religion.

IX. Meeting with the Hong Kong AIDS Foundation

18. The Chairman declared interest as being a member of the organisation.

19. Representatives went over their written submission at **Appendix XI**. Members noted their views.

X. Meeting with Concern Group on Single Parents

20. The main points raised by the deputation were at **Appendix XII**. Representatives provided the following supplementary views -

Action
Required

- (a) Single parent family faced discrimination in daily activities. Staff of government clinics did not welcome their visit. Staff of Post Office made them feel embarrassed when collecting public assistance. Schools were not ready to issue receipts for purchase of stationery to facilitate their application for reimbursement from Social Welfare Department.
- (b) Whilst discrimination against single parent family in some areas of activities was intentional, sometimes it was inadvertent, e.g. children of single parent family had genuine difficulty in applying for Student Travel Allowance under the points system.
- (c) The need of single parent family should be taken into account in devising policy and legislation.

21. Members acknowledged the difficulties encountered by single parent families. They agreed that the problems raised should be followed up by the relevant LegCo Panels.

Clerk

22. The meeting closed at 5.10 p.m.

LegCo Secretariat
2 December 1994

檔 號：MC/61

平等機會條例草案審議委員會
會議摘錄

日 期：一九九四年十月三十一日(星期一)
時 間：上午十時
地 點：立法局大樓會議室 B

出席者：梁智鴻議員(主席)
陸恭蕙議員(副主席)
譚耀宗議員
劉千石議員
劉慧卿議員
李華明議員
楊 森議員
胡紅玉議員

缺席者：周梁淑怡議員)
夏佳理議員) 不在本港
林貝聿嘉議員)

許賢發議員)
黃宏發議員)
劉健儀議員)
鄭慕智議員)
張建東議員) 另有要事
葉錫安議員)
林鉅成議員)
涂謹申議員)
黃偉賢議員)
陸觀豪議員)

應邀出席者：

香港婦女基督徒協會

胡露茜女士
何麗嫻女士
陳裕昌先生
李天機女士

香港婦女勞工協會

杜潔麗女士
莫妙英女士
唐麗芝女士
張潤蓮女士

新婦女協進會

張月鳳女士
袁嘉華女士
洪雪蓮女士

家庭傭工協會

Remy Borlongan	Asian Domestic Workers Union
Carla Natan	Asian Migrant Centre
黎芬蒂	家庭傭工協會
Ampan	Friends of Thai in Hong Kong
Bruce Van Voovhis	亞洲基督教議會
Sujita Shakya	亞洲專訊資料研究中心
Marz Balaora	UNIFIL
LEE Fung Kwai	明愛

香港職工會聯盟

張麗霞女士
謝煥崧先生
蕭順意女士
吳恩光先生
譚碧茵女士

Robin Adams先生及Bill Proudfit先生

基督徒團體關注平等機會法案聯席

陳裕昌先生
陳家偉先生
李子揚先生
馮錦霖先生

基督徒關懷香港學會

趙善榮先生

黃文泰先生
鍾立光先生

香港愛滋病基金會

李頌基醫生
唐建生先生

關注單親人士會

余秀珠女士
辜垂玲女士
黃秀娟女士

列席者：總主任(條例草案審議委員會)(二)盧程燕佳
高級主任(條例草案審議委員會)(一)梁慶儀

經辦人

在邀請各團體就平等機會條例草案發表意見前，主席及副主席提醒各與會代表注意下列事項：

- (a) 應邀出席會議者不受立法局(權力及特權)條例所保障；及
- (b) 本條例草案審議委員會同時負責審議性別歧視條例草案，因此亦歡迎與會代表就此草案發表意見。

1. 與香港婦女基督徒協會會晤

2. 劉千石議員作出利益聲明，表明自己為該協會的成員。

3. 與會代表申述載於附錄 I 的要點。各人在回答議員的問題時，提出下列意見：

- (a) 平等機會條例草案中有關宗教及政治信念的定義可能並未涵蓋若干信念，例如男女平等主義及環境保護主義等，與會代表對此表示關注。

- (b) 平等機會條例草案不應對宗教團體一律給豁免。雖然這些團體選擇宗教信仰相同人士擔任與宗教有關職務的自由應獲得尊重，但在他與宗教無直接關係的範疇，例如教育及社會服務方面，則不能以宗教信仰為理由對他人加以歧視。

4. 議員歡迎與會代表對豁免問題抱開明態度。胡紅玉議員解釋，在擬訂平等機會條例草案的例外條文時，她盡量在消除基於宗教的歧視及維護宗教自由兩者之間，達致適當的平衡。她會研究國際間對宗教及政治信念的釋義，以確定其定義是否涵蓋男女平等主義及環境保護主義。

胡絲

II. 與香港婦女勞工協會會晤

5. 該協會的代表陳述載於附錄II的意見書，並提出以下各點，以作補充：

- (a) 與會代表對性別歧視條例草案的保障範圍狹窄，感到不滿。由於該項條例草案中關於僱傭事宜的條文，須待有關的實務守則頒布後才生效，各代表擔心該條例草案的實施，勢將受到耽擱。她們亦認為，當局不必給予僱員人數少於五名的工商機構一個五年的過渡期，讓其履行條例草案的規定。
- (b) 爲了消除各種形式歧視，特別是基於年齡的歧視，與會代表認為應毋須規定求職者提供一些與評估其是否適合擔任有關職位無關重要的資料，例如年齡。此外，屢次干犯歧視行爲的僱主，其資料應予公布，以收阻嚇之效。

6. 議員回應時表示，有需要邀請僱主團體發表其對平等機會條例草案的意見。至於求職時須提供哪些個人資料的建議，則有待詳細研究。

III. 與新婦女協進會會晤

7. 該協會在會上提出的事項載於附錄III，其主要意見概述如下：

- (a) 與會代表認為性別歧視條例草案的涵蓋範圍，不及平等機會條例草案那樣廣泛。前者並無包括基於年齡及家庭責任的歧視，而且禁止基於婚姻狀況或懷孕的歧視的條文，亦只適用於僱傭方面。性別歧視條例草案亦未有涵蓋若干範疇的活動，例如參與社會及政治活動。該協會認為，這項條例草案應訂定條文，規定對現行政策作出檢討，以評估其是否對歧視現象有任何影響。該協會亦質疑有否需要給予小型機構一個過渡期，讓其履行性別歧視條例草案的規定。
- (b) 關於設立平等機會委員會的問題，與會代表關注到委員會制訂及頒布實務守則所需的時間。草案條文亦未有訂明，違反此等守則會判處何種刑罰。她們認為，當局應強制規定法院容許未具法律資格或不屬訴訟一方的人士就性別歧視及性騷擾的個案，向法院作出陳詞，而不應如性別歧視條例草案建議般給予法院酌情權。
- (c) 關於平等機會條例草案，與會代表認為，條例草案其中一項目的，即推廣男女平等，使之在社會中「獲得承認及接受」，涵蓋範圍不夠廣闊，應再進一步提倡男女兩性人人平等，而不論其種族、宗教、政治信念、身體是否有殘障及年齡等等。
- (d) 與會代表對平等機會條例草案建議將新界土地定為例外情況，不表贊同。男性原居民興建丁屋的權利應完全廢除，而村代表選舉制度亦應予檢討。

8. 一位議員對與會代表指出丁屋政策須予檢討一點，表示贊同。部分議員回應時表示，當局應對現行用以保障婦女權益的法例加以檢討，例如禁止女性超時工作的規定。

【會後補註：該協會隨後提交一份有關此事的通訊，該刊物載於附錄IV。】

IV. 與家庭傭工協會會晤

9. 該團體對平等機會條例草案所提出的初步意見載於附錄 V。與會代表提出下述的補充意見：

- (a) 海外家庭傭工受歧視的情況比比皆是，本港一些社區領袖，以至執法機關，亦表現出類似的歧視態度。
- (b) 入境法例不應豁免於平等機會條例草案的適用範圍，現行有關居港7年的海外家庭傭工不獲香港居留權的規定，是歧視的做法。
- (c) 海外家庭傭工在等待勞資審裁處審理其個案期間，處境極為困難。這些傭工通常需等候約一年，其間，當局既不准其工作，又不給予經濟及住屋方面的援助。
- (d) 與會代表希望，藉著制訂平等機會條例草案，僱主和僱員雙方地位變得平等。要實施各項條文，則必須有賴各方團體通力合作。

10. 胡紅玉議員解釋，平等機會條例草案第9條所訂的例外條文，是參照人權法案條例而訂定的。應議員的要求，與會代表稍後會提交有關海外家庭傭工正等候勞資審裁處審理其個案及平均等候時間的統計數字。

團體代表

V. 與香港職工會聯盟會晤

11. 與會代表申述的要點及其對議員詢問所作出的回覆，綜述於下文各段：

- (a) 該聯盟認為平等機會條例草案較性別歧視條例草案為佳，因為前者在保障範圍上比後者廣闊，其中有關禁止基於職工會會員身分的歧視的條文，他們尤表歡迎。不過，各代表認為，平等機會條例草案應加入性別歧視條例草案中有關設立平等機會委員會的條文。

- (b) 現時，不論男女一樣會受到年齡歧視，主要原因是政府推行輸入外地勞工計劃。
- (c) 鑑於弱能人士在就業上面對較大困難，平等機會條例草案應加入條文，訂立針對弱能人士就業問題的積極措施。此類人士數目不多，設立定額制度，規定僱主最低限度須僱用若干名弱能人士，影響不會很大。

【會後補註：該聯盟所提交的意見書載於附錄IV。】

VI. 與Robin Adams先生及Bill Proudfit先生會晤

12. Adams先生在會上申述其性傾向發展的個人經歷，並講述他本人為同性戀人士所做的義務工作，例如協助成立一條專為同性戀者而設的電話熱線，並參與各項籌款活動。Adams先生和Bill Proudfit先生分別陳述他們如何因其性傾向而備受歧視。他們認為當局必須訂立明確的法例，為同性戀者提供保障。此外，有關方面亦應教導公眾學習接納別人，而不論對方的性傾向為何。

【會後補註：Adams先生及Bill Proudfit先生所提交的意見書分別載於附錄VI及VII。】

VI. 與基督徒團體關注平等機會法案聯席會晤

13. 劉千石議員作出利益聲明，表示自己為該組織的成員。

14. 與會代表申述載於附錄IX的意見書。在回應議員的詢問時，各人提出下列補充意見：

- (a) 由於資助機構的撥款來自政府，當局應禁止各機構基於宗教或政治信念的原因，採取一些歧視的做法。
- (b) 僱主甚少會解釋為何求職者要提供某些個人資料，求職者實不應被硬性規定提供一些與工作性質無直接關係的資料，例如籍貫。

15. 胡紅玉議員指出，求職者須提供的資料應視乎有關工作的性質及要求而定。根據平等機會條例草案規定，擬施加某項條件的人負有舉證責任，須證明該項條件或要求為合理者。草案第163(2)條為政治黨派團體的僱主基於政治信念而在要約僱用方面對某人歧視的情況訂立例外條文。

VII. 與基督徒關懷香港學會會晤

16. 與會代表對出席會議的議員人數稀少，表示失望。他們申述附錄X所載意見書的內容，並就議員的詢問，提出下列意見：

- (a) 有宗教信仰的學校，包括政府資助的學校在內，應有自由僱用宗教信仰相同的教職員。此舉不但令校方能夠決定其宗教教育的內容，亦可給予學生選擇的機會，俾能就讀一所由宗教信仰相同的教師任教的學校。因此，他們支持草案第163條中的例外條文，但認為有關條文須予重寫，以訂明有宗教信仰的學校應獲得豁免。
- (b) 與會代表亦認為，有必要讓市民廣泛討論平等機會條例草案所涉及的一些具爭議性問題，例如同性戀者應否納入婚姻狀況的定義內。

17. 部分議員對豁免有宗教信仰的政府資助學校，使之在工作上基於宗教信念而歧視某人亦不屬違法此一建議，持保留意見。胡紅玉議員表示，在草擬平等機會條例草案時，她已盡量在維持宗教信仰自由及消除基於宗教的歧視兩者之間，尋求適當平衡。

IX. 與香港愛滋病基金會會晤

18. 主席作出利益聲明，表明自己為該基金會的成員。

19. 與會代表申述附錄XI所載意見書的內容，議員察悉他們的意見。

X. 與關注單親人士會會晤

20. 與會代表所提出的意見要點載述於附錄XII，各人並提出下列意見，以作補充：

- (a) 單親家庭在日常生活上飽受歧視，政府診所的人員不歡迎單親人士到來求診，郵政局職員在她們領取公共援助時，亦令其感到難堪。學校也不太願意為其開發購買文具的收據，以便其向社會福利署申請發還款項。
- (b) 單親家庭在某些範疇所受的歧視，是歧視者故意而為的，但亦有部分情況卻是有關方面無心之失，例如在現行的計分制度下，單親家庭子女在申請學童車船津貼時，確實遇到困難。
- (c) 與會代表認為，當局在制定政策及法例時，應考慮單親家庭的需要。

21. 議員察悉單親家庭所面對的困難，並同意在會上提出的問題，應交由立法局各有關事務委員會研究跟進。

秘書

22. 會議於下午五時十分結束。

立法局秘書處
一九九四年十二月二日

Summary of Areas of Discrimination raised by deputations
meeting with the Bills Committee on 27, 28 and 31 October 1994

Name of organization/individual	Area of discrimination	Sex Marital Status Pregnancy	Family responsibility	Sexuality	Race	Disability	Religious or political conviction	Age	Spent criminal conviction	Union membership	Remarks
Alliance for the Promotion of Rights for Grass-roots Women (爭取基層婦女權益聯盟)		✓						✓			- Labour importation scheme being the main cause for discrimination - Ineffectiveness of re-training scheme
Movement Against Discrimination (反歧視大聯盟)		✓	✓	✓	✓	✓	✓	✓	✓	✓	Support quota system in work for the disabled
Task Group on Anti-Discrimination Legislation for Disabled Persons (立法局障礙視聽殘障人士工作小組)						✓					Support quota system in work for the disabled
Hong Kong Ten Percent Club (香港十分一會)				✓							Public education on liberty to choose sexual orientation important

Name of organization/individual	Area of discrimination	Sex Marital Status Pregnancy	Family responsibility	Sexuality	Race	Disability	Religious or political conviction	Age	Spent criminal conviction	Union membership	Remarks
Hong Kong Monitor (香港監察)		✓	✓	✓		✓		✓			- Public discussion on controversial areas necessary - Freezing period be provided on controversial issues
Hong Kong Association of Business and Professional Women (香港商業專業婦女協會)		✓	✓					✓			Support setup of Women Commission
Hong Kong Women Christian Council (香港婦女基督教協會)							✓				Have reservation on proposed exceptions relating to religious bodies
Hong Kong Women Workers Association (香港婦女勞工協會)		✓						✓			Equal Opportunities Commission's role in providing assistance in respect of proceedings should be emphasized

Name of organization/individual	Area of discrimination	Sex Marital Status Pregnancy	Family responsibility	Sexuality	Race	Disability	Religious or political conviction	Age	Spent criminal conviction	Union membership	Remarks
Association for the Advancement of Feminism (新婦女協進會)		v						v			- Disagree to proposed exceptions relating to NT land - Existing policy should be reviewed to assess its impacts on discrimination
Helpers for Domestic Helpers (家庭傭工協會)					v						Immigration legislation and policy should be covered by the BOB
Hong Kong Confederation of Trade Unions (香港職工會聯盟)						v		v		v	- Labour importation scheme being the cause for discrimination - Support quota system for the disabled in work
Mr Robin Adams and Mr Bill Proudfit				v							Public education on acceptance of persons irrespective of sexual orientation important

Name of organization/individual	Area of discrimination	Sex Marital Status Pregnancy	Family responsibility	Sexuality	Race	Disability	Religious or political conviction	Age	Spent criminal conviction	Union membership	Remarks
Coalition of Religious Bodies (基督教團體關注平等機會法 委員會)							✓				<ul style="list-style-type: none"> - Have reservation on proposed exceptions relating to religious bodies - Some job applicants' personal particulars need not be provided to employers
Christians for Hong Kong Society (基督教徒關懷香港學會)							✓				<ul style="list-style-type: none"> - Support exceptions relating to religious bodies - Public discussion on controversial issues necessary
Hong Kong AIDS Foundation (香港復發病基金會)						✓					<ul style="list-style-type: none"> - Advocate equal treatment of PWHIV/AIDS as people with other disabilities - Request HIV/AIDS be covered by the EOB

Name of organization/ individual	Area of discrimination	Sex Marital Status Pregnancy	Family responsibility	Sexuality	Race	Disability	Religious or political conviction	Age	Spent criminal conviction	Union member- ship	Remarks
Concern Group on Single Parents (關注單親人士管)		√	√					√			The need of single parent families should be considered in devising policy and legislation

一九九四年十月二十七日、二十八日及三十一日各團體代表與
條例草案審議委員會晤所論及歧視範疇的綜合一覽

歧視範疇 團體或 個別人士名稱	性別 婚姻狀況 懷孕	家庭 責任	性傾向	種族	身體 殘障	宗教或 政治信念	年齡	已喪失 時效的 刑事定罪	職工會 會員身分	意見摘要
爭取基層婦女權益聯盟	✓						✓			<ul style="list-style-type: none"> — 輸入外地勞工計劃是造成歧視的主因 — 再培訓計劃並不見效
反歧視大聯盟	✓	✓	✓	✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> — 贊成訂立定額制度，規定僱主須僱用一定數目的弱能人士
立法消除歧視傷殘人士 工作小組					✓					<ul style="list-style-type: none"> — 贊成訂立定額制度，規定僱主須僱用一定數目的弱能人士

歧視範疇 團體或 個別人士名稱	性別 婚姻狀況 懷孕	家庭 責任	性傾向	種族	身體 殘障	宗教或 政治信念	年齡	已喪失 時效的 刑事定罪	職工會 會員身分	意見摘要
香港拾分壹會			✓							— 倡議教導大眾尊重選擇性傾向的個人自由
香港論衡	✓	✓	✓		✓		✓			— 有必要讓市民就具爭議性的範疇進行討論 — 應為具爭議性的範疇定立凍結期
香港商業與專業婦女協會	✓	✓					✓			贊成設立婦女委員會
香港婦女基督徒協會						✓				對有關宗教團體的擬議例外條文有所保留

歧視範疇 團體或 個別人士名稱	性別 婚姻狀況 懷孕	家庭 責任	性傾向	種族	身體 殘障	宗教或 政治信念	年齡	已喪失 時效的 刑事定罪	職工會 會員身分	意見摘要
香港婦女勞工協會	✓						✓			應強調平等機會委員會在訴訟方面提供協助的功能
新婦女協進會	✓						✓			<ul style="list-style-type: none"> — 不贊同有關新界土地的撥議 — 例外條文 — 應檢討現行政策以評估其對歧視問題的影響
家庭傭工協會				✓						平等機會條例草案應涵蓋入境法例及政策

歧視範疇 團體或 個別人士名稱	性別 婚姻狀況 懷孕	家庭 責任	性傾向	種族	身體 殘障	宗教或 政治信念	年齡	已喪失 時效的 刑事定罪	職工會 會員身分	意見摘要
香港職工會聯盟					✓		✓		✓	<ul style="list-style-type: none"> — 推行輸入外地勞工計劃是歧視成因 — 贊成訂立定額制度，規定僱主僱用一定數目的弱能人士。
Robin Adams先生及 Bill Proudfit先生			✓							<ul style="list-style-type: none"> — 必須教導公眾學習接納別人，而不論對方的性傾向為何
基督徒團體關注平等機 會法案聯席						✓				<ul style="list-style-type: none"> — 對有關宗教團體的擬議例外條文有所保留 — 求職者應毋須向僱主提供若干個人資料

歧視範疇 或 團體或 個別人士名稱	性別 婚姻狀況 懷孕	家庭 責任	性傾向	種族	身體 殘障	宗教或 政治信念	年齡	已喪失 時效的 刑事定罪	職工會 會員身分	意見摘要
基督徒關懷香港學會						✓				<ul style="list-style-type: none"> — 支持訂立有關宗教團體的例外條文 — 有必要讓市民廣泛討論一些具爭議性的問題
香港愛滋病基金會					✓					<ul style="list-style-type: none"> — 倡議把愛滋病毒帶菌者及愛滋病患者視爲一類身體殘障人士，而給予同等的對待 — 要求平等機會條例草案把該兩類人士納入保障範圍
關注單親人士會	✓	✓					✓			<ul style="list-style-type: none"> — 當局在制定政策及法例時，應考慮單親家庭的需要

Ref : MC/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 4 November 1994 at 10.45 a.m.
in Chamber of the Legislative Council Building**

Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
 Hon Christine LOH Kung-wai (Deputy Chairman)
 Hon Mrs Selina CHOW, OBE, JP
 Hon Mrs Miriam LAU Kin-ye, OBE, JP
 Hon J D McGregor, OBE, ISO, JP
 Hon Moses CHENG Mo-chi
 Rev Hon FUNG Chi-wood
 Dr Hon Conrad LAM Kui-shing, JP
 Hon LAU Chin-shek
 Hon LI Wah-ming
 Hon James TO Kun-sun
 Dr Hon YEUNG Sum
 Hon Zachary WONG Wai-yin
 Hon Anna WU Hung-yuk

Absent with : Hon Ronald Arculli, OBE, JP)
apologies Hon Mrs Peggy LAM, OBE, JP) out of town
 Hon Emily LAU Wai-hing)

Hon HUI Yin-fat, OBE, JP)
 Hon TAM Yiu-chung)
 Hon Andrew WONG, OBE, JP) other commitments
 Hon Simon IP Sik-on, OBE, JP)
 Hon Roger LUK Koon-hoo)

By invitation : Hon Anna WU's team
 Mr Andrew Byrnes, Consultant
 Ms Carole Petersen, Consultant
 Mr Eric CHOW
 Mr Adam Mayes
 Mr David Viotti
 Ms Celie Nehmer

In attendance : Mr Jonathan Daw, LA
Mr Stephen LAM, ALA4
Mrs Anna LO, CAS(BC)2
Miss Odelia LEUNG, SAS(BC)1

I. Re-election of Chairman and Deputy Chairman

As the scope of study of the Bills Committee had been expanded to scrutinize the Sex Discrimination Bill and its membership was re-opened, the Committee resolved to re-elect the Chairman and the Deputy Chairman. Dr LEONG Che-hung and Miss Christine LOH were re-elected Chairman and Deputy Chairman respectively.

II. Way Forward

2. Members discussed the way forward in deliberating the two Bills. Ms Anna WU favoured the present approach, i.e. examination of the Bills by nature of activities, be continued. Referring Members to the papers at **Appendices I and II** which were tabled at the meeting, Ms WU explained that both the content and linguistic structures of the two Bills were similar. The present approach would facilitate Members to examine in a comprehensive manner the scope of discrimination covered by the two Bills in each area of activity. It was also the general view held by the deputations that the Bills Committee should take a comprehensive approach in scrutiny of the Bills.

3. Some Members supported Ms WU's view. Other Members disagreed to it. The latter Members said that the nature-of-activity approach would render it difficult to grasp the similarities and differences between the SDB and the provisions relating to sex discrimination in the EOB. Some sections in the SDB could not fit into the framework of the EOB and had to be examined on their own, e.g. the establishment of the Equal Opportunities Commission. The present approach also had the defect of holding up completion of deliberation of the SDB until the EOB was studied in full, hence delaying enactment of the former. Besides, should Government introduce the Disability Discrimination Bill early next year, the Bills Committee

Action
Required

would have to go through each nature of activity in relation to disability discrimination all over again. Some members therefore proposed to study the SDB and the part of the EOB regarding discrimination on the ground of sex and sexuality first and then the remaining parts of the EOB.

4. A vote was taken on the proposal to study the two Bills by the area of discrimination. There were 4 votes for the proposal and 7 votes against it. The nature-of-activity approach would therefore be continued.

5. It was agreed that the Administration should be invited to the next meeting to brief Members on the SDB.

Clerk

6. The meeting adjourned at 11.20 a.m.

LegCo Secretariat
2 December 1994

檔號：MC/61

平等機會條例草案及
性別歧視條例草案審議委員會會議摘錄

日期：一九九四年十一月四日(星期五)

時間：上午十時四十五分

地點：立法局大樓會議廳

出席者：梁智鴻議員(主席)

陸恭蕙議員(副主席)

周梁淑怡議員

劉健儀議員

麥理覺議員

鄭慕智議員

馮智活議員

林鉅成議員

劉千石議員

李華明議員

涂謹申議員

楊 森議員

黃偉賢議員

胡紅玉議員

缺席者：夏佳理議員)

林貝聿嘉議員) 不在本港

劉慧卿議員)

許賢發議員)

譚耀宗議員)

黃宏發議員) 另有要事

葉錫安議員)

陸觀豪議員)

應邀出席者：

胡紅玉議員的工作小組

包愛迪先生，顧問

柏嘉露女士，顧問

周樂寧先生

馬爾斯先生

David Viotti先生

李瑪詩女士

列席者：法律顧問
杜俊能先生
助理法律顧問(四)
林秉文先生
總主任(條例草案審議委員會)(二)
盧程燕佳女士
高級主任(條例草案審議委員會)(一)
梁慶儀小姐

經辦人

I. 再度推選正副主席

由於條例草案審議委員會的審議範圍已擴大至包括性別歧視條例草案，而且亦重新邀請議員加入，審議委員會遂決定重新推選正副主席，結果梁智鴻議員及陸恭蕙議員分別再度當選為主席及副主席。

II. 日後工作

2. 議員討論日後審議該兩項條例草案的方式。胡紅玉議員認為應繼續採用現時的方式，按活動性質來審議條例草案。胡議員請各議員閱覽在會議席上提交的附錄I及II所載文件，並解釋該兩項條例草案在內容及語言結構上相近。現時的方式會有助議員全面研究兩項條例草案在每個活動範圍所涵蓋的歧視範疇，而且各團體代表亦普遍認為，條例草案審議委員會應採用一個全面的方式來審議該兩項條例草案。

3. 部分議員贊同胡議員的意見，亦有其他議員表示反對，認為按活動性質審議草案的方式，會令議員難以洞悉性別歧視條例草案與平等機會條例草案中有關性別歧視的條文彼此有何異同。性別歧視條例草案中有部分條文無法納入平等機會條例草案的結構，必須另作研究，例如有關設立平等機會委員會的條文。此外，現時的方式亦有另一缺點，就是性別歧視條例草案的審議工作須待整條平等機會條例草案一併研究完畢方能完成，前者的制訂程序會因而受到耽擱。除此以外，如政府明年初提交身體殘障歧視條例草案，審議委員會將要就每種性質的活動，重新審議所有與身體殘障歧視有關的草案條文。因此，部分議員建

議先研究性別歧視條例草案及平等機會條例草案中有關基於性別和性傾向的歧視的部分，之後才審議平等機會條例草案的其餘部分。

4. 此項按歧視範疇審議兩項條例草案的建議在會上付諸表決，結果有四票贊成，七票反對。因此，審議委員會將繼續採用現時的方式，按活動性質來審議條例草案。

5. 與會各人通過邀請政府當局出席下次會議，向議員簡介性別歧視條例草案的條文。

秘書

6. 會議於上午十一時二十分結束。

立法局秘書處

一九九四年十二月二日

**Tentative Timetable for the
scrutiny of the Equal Opportunities Bill
(Position as at 31.10.94)**

28 July 1994	General briefing by Hon Anna Wu, Member in charge of the Bill
5 August 1994	Preliminary meeting with the Administration
Early August	Invitation for written submission from the public
16 Sept 1994 21 Oct 1994	Further briefing by Hon Anna Wu and internal discussion on work plan
27, 28 & 31 Oct 1994	First round of meetings with organizations/individuals

**Weekly meetings to discuss the following areas
of discrimination as contained in the Bill:-**

1-30 Nov 1994	Work
1-31 Dec 1994	Provision of goods, services and facilities
3-30 January 1995	Access/Accommodation
3-28 February 1995	Government programmes
1-31 March 1995	(a) Education (b) Club (c) Application Form
1-22 April 1995	(a) Professional or trade organization (b) Land (c) Others
24 April-9 May 1995	Exceptions and remaining general provisions

10 May-15 June 1995	Committee Stage Amendments and round of meetings with organiza individuals
30 June 1995	Report to House Committee
12 July 1995	Resumption of Second Reading Debat

**Progress of work of the Bills Committee
in the scrutiny of the Equal Opportunities Bill**

Nature of activities Area of Discrimination	Work	Provision of goods, services and facilities	Access/Accommodation	Government programmes	a) Education b) Club Application Form	a) Professional or trade organization b) Land c) Others	Exceptions
Part VI (Disability)							
Part II (Sex, marital status or pregnancy)							
Part III (Family responsibility or family status)							
Part VIII (Age)							
Part IV (Sexuality or sexual preference)							
Part V (Race)							
Part VII (Religious or political conviction)							
Part X (Union activities)							
Part IX (Spent conviction)							
Part XI, XII and XIV (General exceptions and miscellaneous)							

審議平等機會條例草案的暫定時間表
(到一九九四年十月三十一日為止的最新安排)

一九九四年七月二十八日	由負責此條例草案的胡紅玉議員作簡介
一九九四年八月五日	與政府當局初次舉行會議
一九九四年八月初	邀請公眾人士提交意見書
一九九四年九月十六日及 十月二十一日	胡紅玉議員對草案內容再作闡述 審議委員會就工作計劃進行內部討論
一九九四年十月二十七日、 二十八日及三十一日	與團體及個別人士舉行首輪會議

每週舉行會議討論條例草案所包括的下列歧視範疇：

一九九四年十一月一日至 三十日	工作
一九九四年十二月一日至 三十一日	提供貨物、服務及設施
一九九五年一月三日至 三十日	進出地方及交通工具／居停地方
一九九五年二月三日至 二十八日	政府計劃
一九九五年三月一日至 三十一日	(a) 教育 (b) 會社 (c) 申請表格
一九九五年四月一日至 二十二日	(a) 專業或行業的組織 (b) 土地 (c) 其他

一九九五年四月二十四日至 五月九日	例外條文及其餘一般規定
一九九五年五月十日至 六月十五日	委員會審議階段修訂事項，並與團體 及個別人士舉行最後一輪的會議。
一九九五年六月三十日	向內務委員會提交報告
一九九五年七月十二日	恢復二讀辯論

平等機會條例草案審議委員會的工作進度表

活動 歧視性 範疇	工作	提供貨物、服務及設施	進出地方及交通工具／居停地方	政府計劃	(a)教育 (b)會社 (c)申請表格	(a)專業或行業的組織 (b)土地 (c)其他	例外條文
第VI部 (身體殘障) 第II部 (性別、婚姻狀況或懷孕) 第III部 (家庭責任或家庭崗位) 第VIII部 (年齡) 第IV部 (性傾向或性別上的偏袒) 第V部 (種族) 第VII部 (宗教或政治信念) 第X部 (職工會活動) 第IX部 (已喪失時效的定罪) 第XI、XII及XIV部 (一般例外條文及雜項)							

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 18 November 1994 at 10.45 a.m.
in Chamber of the Legislative Council Building**

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon HUI Yin-fat, OBE, JP
Hon Ronald Arculli, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Hon Moses CHENG Mo-chi
Rev Hon FUNG Chi-wood
Hon LAU Chin-shek
Hon James TO Kun-sun
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
- Absent with : Hon Christine LOH Kung-wai) out of
apologies (Deputy Chairman)) town
- Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Mrs Miriam LAU Kin-yee, OBE, JP)
Hon Simon IP Sik-on, OBE, JP) other
Dr Hon Conrad LAM Kui-shing, JP) commitments
Hon Emily LAU Wai-hing)
Hon LI Wah-ming)
Hon Roger LUK Koon-hoo)
- By invitation : Hon Anna WU's team
- Mr Andrew Byrnes, Consultant
Ms Carole Petersen, Consultant
Mr Eric CHOW
Mr Adam Mayes
Ms Celie Nehmer

In attendance : Mr Stephen LAM, ALA4
Mrs Anna LO, CAS(BC)2
Miss Odelia LEUNG, SAS(BC)1

I. Matters Arising

The Chairman reported that he and Ms Anna WU had an informal meeting with the Secretary for Home Affairs (SHA) concerning the way forward in deliberating the Equal Opportunities Bill (EOB) and the Sex Discrimination Bill (SDB). SHA expressed reservation on the "nature of activity" approach on the grounds that it would lengthen the scrutiny of the SDB and the Administration would have difficulty, due to resource constraint, in attending each and every Bills Committee meeting. The Administration needed to assemble a team with representatives from different Policy Branches to attend the Bills Committee meeting. The Chairman had explained to SHA that it was a decision made by the Bills Committee. It was then agreed that the Bills Committee would first scrutinise provisions in respect of different types of discrimination before moving on to the part relating to sex discrimination. The Administration would be given an opportunity to present the SDB before the Bills Committee wrapped up its work on the EOB and the SDB. Ms Anna WU would continue to liaise with the Administration on the best way to examine the two Bills.

2. Some Members indicated difficulty in attending the Bills Committee's meetings scheduled for every Friday at 10.45 a.m. It was agreed that the Secretariat should explore whether there was another time slot more convenient to Members. For those Friday meetings which would clash with Chief Secretary's scheduled briefings (i.e. 6 January, 10 March, 12 May and 21 July 1995), they would be advanced to the preceding Thursday.

II. Continuation of briefing by Ms Anna WU

3. Ms Anna WU briefed Members on the clauses on discrimination against relatives or associates, remedies and enforcement, and discrimination against applicants and employees in work. The discussion is summarised in the ensuing paragraphs.

A. Section 6

4. Under section 6, discrimination against a person might include discrimination on grounds related to that person's associate or relative. For example, it would be discriminatory under this clause for a school to turn away a student because the student's parents were disabled.

B. Section 4

5. Following up on a question raised by Members at an earlier meeting, Ms WU explained that this section was intended to cater for situations where there were mixed motives for the doing of an act prohibited under the Bill. Any motive with discriminatory intent, albeit a mixed one, could constitute a ground for instituting prosecution action. In taking such action, the person had to differentiate between relevant and irrelevant factors. This provision was considered necessary as it would be difficult for a plaintiff to testify the original motive of the defendant in doing the act before the court.

C. Section 231

6. Ms WU stated that any person contravened the provisions of the EOB committed a civil wrong with the exception of sections 85, 110 and 142 concerning serious libel, section 224 on victimisation and section 225 on advertisement.

D. Section 232

7. Notwithstanding that the District Court should have jurisdiction to hear and determine actions brought pursuant to the EOB, some actions could also be heard in magistracies and relevant tribunals.

E. Section 237

8. The provision that each party to proceedings brought under the EOB should pay the party's own costs was at variance with the normal practice. It was so intended as not to discourage a person from taking legal action because of the cost involved should he lose the suit. Subsection (3) provided sufficient safeguard against possible abuse.

F. Section 233

9. The provision for the court to make interim orders was necessary as conclusion of a case would take time. A similar arrangement existed in different level of courts.

G. Section 234

10. This section provided for remedies to be made by court as deemed appropriate.

H. Section 235

11. Under this section, the court had discretion to consider any relevant matter in determination of a case, including statistical evidence.

I. Section 236

12. This section provided that a person who sought to benefit from an exception must bear the burden of proving that the exception applied.

J. Section 8

13. This section provided that should there be inconsistency between a legislation and the EOB, the latter should prevail.

K. Section 9

14. This section applied the savings and exceptions in the Bill of Rights Ordinance to the EOB as well.

L. Section 242

15. Some Members were concerned about the proposed amendment to apply the Bill of Rights (BOR) Ordinance to relations between private persons. This might lead to an upsurge of legal action initiated by employees against employers since under the EOB employees could file a case on any ground of discrimination provided therein.

16. Ms WU responded that the BOR Ordinance was originally intended to apply to both public and private bodies. In scrutinising the BOR Bill, it was then raised that without specific guidelines, it might be difficult for private persons to implement the provisions therein. Moreover, it was then envisaged that the Human Rights Commission would be established which could take on a conciliation role in resolving private disputes and also educate the public on human rights issues. Ms WU was of the view that the costly legal action was an effective deterrent to initiation of any frivolous or vexatious cases.

17. To facilitate Members to further consider the issue, it was agreed that the Secretariat should retrieve the relevant records of meetings of the Ad Hoc Group to study the BOR Bill on why the BOR Bill did not apply to the private sector for Members' consideration.

Clerk

M. Section 3 - Definition of employment

18. In response to a Member's question, Ms WU clarified that the meaning of employment in the EOB included ordinary meanings of the term under the common law. In her view, voluntary work should not usually fall within its scope.

N. Section 88

19. Subsection (3) provided exceptions to discrimination against a person on the ground of race in connection with employment to perform domestic duties. These exceptions were necessary as a domestic worker would have a close connection with the employer's family and the employer therefore had personal reasons in the choice of worker. However, the exceptions were limited to the offer of employment and did not extend to any treatment after employment.

20. Some Members were very concerned about the effects of the proposed section 88 regarding discrimination against applicants and employees on the ground of race. They questioned whether the employer would be deemed breaching the law should he adopt certain criteria in recruiting staff and offer different employment terms to local and overseas employees. Members were of the view that sometimes the preference for a particular type of applicants in respect of certain job was exercised unknowingly or naturally with no discriminatory intent. The present drafting of the provision allowed an unsuccessful applicant or a disgruntled employee to use it as an excuse to take litigation action against the employer.

21. In response, Ms WU and her consultants commented that it was difficult to give a blanket answer as to whether a practice was considered discriminatory since each case had to be assessed on its own merits. As a general rule, specification of certain criteria, e.g. language requirement, in recruitment advertisement would not be unlawful provided the requirement was relevant to the nature of the job. There appeared to be no valid reason for which race should constitute a prerequisite employment condition. The same principle applied to differential treatment of local and overseas employees. The crux of the issue was whether it was based on relevant considerations, e.g. the requirements of the job, rather than on the ground of race. Ms WU and her consultants emphasized that the provision required employers to adopt fair and transparent procedures and policy in every aspect relating to work and that every person should be given a fair chance to compete irrespective of his/her race. Similar to other legislation, there was no way to bar a person from taking vexatious litigation. However, the person himself would be penalised in terms of cost and time to initiate any unjustified legal action.

22. A Member echoed that the EOB would challenge many existing assumptions underlying practices and make it mandatory for employers to select staff on merits basis.

23. On a Member's enquiry as to whether it was lawful for an employer, for genuine financial reasons, to impose a particular condition on age in recruiting staff, Ms WU said that she would follow this up in later meetings.

Ms Anna WU

O. Other employment sections

24. Ms WU explained that aside from section 88 concerning race discrimination, sections 44, 63, 118, 148, 165, 190 and 207 addressed discrimination against employees on other grounds. These sections were identical in language to section 88 except for three subsections to which she would now direct Members' attention.

P. Sections 44 and 118

25. Ms WU drew Members' attention to the exceptions provided in section 44(4) and section 118(4).

26. On section 118(4)(b), Members were concerned about the meaning of unjustifiable hardship on an employer. They queried whether it could be based solely on financial reasons. Ms WU explained that section 117(1) set out the factors to be taken into account in determining what constituted unjustifiable hardship, which included, inter alia, financial circumstances of the employer and the estimated amount of expenditure required for modification of facilities for the purpose of employing disabled persons.

27. Addressing to a Members' concern that section 118(4)(b) might provide a ready excuse for employers not to modify existing facilities, Ms WU responded that the Bill would require employers to consider employment of disabled persons and any changes needed for this purpose. She invited Members to consider the appropriateness of providing for affirmative action in respect of disabled persons in the area of employment.

28. Ms WU would consider a Member's suggestion to allow a transitional period so that the persons concerned could make necessary arrangements to comply with the provisions of the Bill.

29. To enable further discussion on the issue, Ms WU agreed to provide an information paper on unjustifiable hardship for Members' consideration.

Q. Section 207

30. Ms Anna WU was reviewing the necessity to provide for exceptions in subsection (3) to employers to discriminate on the ground of union membership in the employment of domestic workers should the number of persons employed not exceed five.

III. Date of Next Meeting

31. The Chairman reminded Members that the next meeting would be held on 25 November 1994 (Friday) at 10.45 a.m.

32. The meeting closed at 12.50 p.m.

LegCo Secretariat
29 December 1994

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 25 November 1994 at 10.45 a.m.
in Chamber of the Legislative Council Building**

- | | |
|--------------------------|---|
| Present | <p>Hon Christine LOH Kung-wai (Deputy Chairman)</p> <p>Hon HUI Yin-fat, OBE, JP</p> <p>Hon Mrs Peggy LAM, OBE, JP</p> <p>Hon Mrs Miriam LAU Kin-ye, OBE, JP</p> <p>Hon J D McGregor, OBE, ISO, JP</p> <p>Rev Hon FUNG Chi-wood</p> <p>Dr Hon Conrad LAM Kui-shing, JP</p> <p>Hon LAU Chin-shek</p> <p>Dr Hon YEUNG Sum</p> <p>Hon Zachary WONG Wai-yin</p> <p>Hon Anna WU Hung-yuk</p> |
| Absent with
apologies | <p>Dr Hon LEONG Che-hung, OBE, JP (Chairman))</p> <p>Hon Mrs Selina CHOW, OBE, JP)</p> <p>Hon TAM Yiu-chung)</p> <p>Hon Andrew WONG, OBE, JP)</p> <p>Hon Ronald Arculli, OBE, JP) other</p> <p>Hon Moses CHENG Mo-chi) commitments</p> <p>Hon Simon IP Sik-on, OBE, JP)</p> <p>Hon LI Wah-ming)</p> <p>Hon Roger LUK Koon-hoo)</p> <p>Hon Emily LAU Wai-hing)</p> <p>Hon James TO Kun-sun) out of town</p> |
| By invitation : | <p><u>Hon Anna WU's team</u></p> <p>Ms Carole Petersen, Consultant</p> <p>Mr Eric CHOW</p> <p>Mr Adam Mayes</p> <p>Ms Celie Nehmer</p> |

In attendance : Mr Stephen LAM, ALA4
Mrs Anna LO, CAS(BC)2
Miss Odelia LEUNG, SAS(BC)1

I. Confirmation of record of previous meeting

The record of meeting held on 21 October 1994 (LegCo Paper No. 494/94-95) was confirmed.

II. Continuation of briefing by Ms Anna WU

2. Following up on the issue concerning amendment to the Bill of Rights (BOR) Ordinance raised at the last meeting, Ms Anna WU clarified that the amendment only concerned applicability of the BOR to legislation which affected both public bodies and private persons.

3. Ms Anna WU noted that in her 18 November briefing to Members on EOB clauses relating to employment, she had omitted reference to clauses concerning sex, marital status and pregnancy discrimination because the Administration was expected to appear before the Bills Committee this week to discuss these matters. Because the Administration was still unable to appear, Ms WU proposed this week to begin including the sex-related discrimination clauses. She referred Members to the clause omitted last week (clause 13) concerning sex, marital status and pregnancy discrimination in employment, which was structurally the same as the other clauses discussed in that meeting. Ms WU then resumed briefing on provisions relating to discrimination in work. The discussion is summarised in the ensuing paragraphs.

A. Discrimination against commission agents

4. The relevant clauses were 14, 45, 64, 89, 119, 149, 166, 191 and 210.

5. Ms Anna WU stated that under the EOB, the relation between a commission agent and a principal was the same as that between an employee and an employer, and that the prohibited grounds of discrimination applicable to commission agents were the same as well, with the exception provided in section 119(3) in relation to disability.

B. Discrimination against contract workers

6. The relevant clauses were 15, 46, 65, 90, 120, 150, 167, 192 and 211.

7. Likewise the relations between a contract worker and a principal was equivalent to an employee-employer relation under the EOB. As in the employment clauses, exceptions were provided in every relevant clause in connection with engagement to perform domestic duties. Additionally, clause 150(2) gave contract workers the same right as employees to carry out religious practices in the workplace, while clause 120(2) concerned disability and incorporated the notions of inherent requirements and unjustifiable hardship. Ms WU was reviewing the necessity to give blanket exceptions to discrimination in connection with employment to perform domestic work.

C. Partnerships

8. The relevant clauses were 16, 47, 66, 91, 121, 151, 168, 193 and 212.

9. Ms Anna WU stated that the term "partnerships" was not defined under the EOB. It should carry the same meaning as that under the common law. In deciding that partnership of less than 6 persons should not be subject to provisions of the EOB, Ms WU had considered that sometimes small or family businesses were formed unknowingly and gradually into partnerships and that partnerships not exceeding 6 persons would affect relatively less public interest. Partnerships consisting of less than 6 persons were also exempted

from applicability of the SDB. It should be noted that the exceptions were confined to formation of partnership and did not go beyond to employment of persons or any other activities.

10. Ms WU added that the provisions on partnership applied to both existing and to-be-formed partnerships. Clause 121(4) stipulated exceptions to discrimination on the ground of disability provided that the person's past experience relevant to the particular profession, the inherent requirements of the profession and all other relevant factors had reasonably been taken into account.

D. Professional or trade organisations

11. The relevant clauses were 17, 48, 67, 92, 122, 152, 169, 194 and 213.

E. Qualifying bodies

12. The relevant clauses were 18, 49, 68, 93, 123, 153, 170, 195 and 214.

13. Clause 123(2) concerned disability and provided an exception where the inherent requirements of the job are not met.

F. Employment agencies

14. The relevant clauses were 19, 52, 69, 94, 124, 154, 171, 196 and 215.

15. The same exceptions in respect of disability were provided in section 124(2).

G. Union membership

16. The relevant clauses were sections 208 and 209. These clauses were modelled on sections 21B and 21C of the Employment Ordinance. The only difference was that in addition to liability to criminal prosecution under the Employment Ordinance, a discriminator might be sued by civil action under the EOB.

H. General exceptions to discrimination in work

17. The relevant clauses were 33, 35, 38(1), 39, 60, 61, 111, 163, 182(1)(a)(b)(c), 182(2), 183 and 186. These exceptions were confined to employment only.

18. Ms Anna WU explained that sections 33, 111 and 186 specified the conditions under which sex, race and age respectively should be regarded as genuine occupational qualifications. With respect to sex as a genuine occupational qualification (clause 33), the specific conditions listed at 33(2) bore no connection with sex appeal and were not meant to be exclusive.

19. A Member questioned whether it would be deemed discriminatory for employers to employ a person of a particular sex to sell product for that sex only. Ms Anna WU responded that a person's sex should not be regarded a genuine occupational qualification under that circumstance. However, it was natural for a person of that particular sex to have better knowledge about the product than the opposite sex. On that basis, it would be reasonable for an employer to select employees predominantly of that particular sex with no discriminatory intent.

I. Discrimination on the ground of religious conviction

20. Members were concerned about the circumstances under which an act might or might not be regarded as discriminatory on the ground of religion under the EOB. Ms Anna WU gave the following comments -

- i) The EOB had not defined the term "religious conviction". The interpretation of "religion" should be in accordance with the common law. Ms Anna WU would provide a paper on this issue for Members' consideration.
- ii) In determining whether an act in connection with employment was discriminatory, it had to take into account the nature of the job. Similarly in deciding whether a person of certain religious conviction should be allowed to carry out a religious practice during working hours, the

Ms Anna WU

circumstances of the employment and reasonableness with which such practice was performed were relevant factors. The principle in assessing each case in each area of activity would therefore be a question of whether the act was done in an impartial manner in those particular circumstances.-

- iii) To uphold the principle of freedom to believe, the EOB provided for exceptions to discrimination on the ground of religion in areas of activities which directly related to religion. Sections 163(1) and 228 were relevant.

21. A Member queried whether the society was now ready to accept the EOB in full and whether the Bill would have the effect of limiting the free choice of an individual.

22. Ms Anna WU responded that rather than limiting an individual's choice, the EOB required a person to consider all possible choices and there would be no room for stereotyping. With enactment of the EOB, the Equal Opportunities Commission should educate and promote the concept of equal opportunities to the general public.

III. Date of meetings

23. Ms Christine LOH informed Members that the Secretariat had attempted but could not identify another better time slot to hold the Bills Committee meetings. Members therefore agreed to stick to the original time slot, i.e. on every Friday at 10.45 a.m. To avoid clash with Chief Secretary's briefings, the meetings on 6 January, 10 March, 12 May and 21 July 1995 would be advanced to 5 January, 9 March, 11 May and 20 July respectively.

24. Members noted that the Administration might not be ready to brief the SDB at the next meeting, if so, Ms Anna WU would continue briefing on the EOB.

25. The meeting closed at 12.30 p.m.

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 2 December 1994 at 10.45 a.m.
in Chamber of the Legislative Council Building**

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon Ronald Arculli, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-yee, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Hon Moses CHENG Mo-chi
Rev Hon FUNG Chi-wood
Dr Hon Conrad LAM Kui-shing, JP
Hon James TO Kun-sun
Dr Hon YEUNG Sum
Hon Anna WU Hung-yuk
- Absent with : Hon Christine LOH Kung-wai (Deputy Chairman))
apologies Hon HUI Yin-fat, OBE, JP)
Hon TAM Yiu-chung)
Hon LAU Chin-shek) out of town
Hon Emily LAU Wai-hing)
Hon LI Wah-ming)
Hon Zachary WONG Wai-yin)
Hon Roger LUK Koon-hoo)
- Hon Andrew WONG, OBE, JP)
Hon Simon IP Sik-on, OBE, JP) other commitments
- By invitation : Hon Anna WU's team
Mr Andrew Byrnes, Consultant
Ms Carole Petersen, Consultant
Mr Adam Mayes
Ms Celie Nehmer

The Administration

Miss Susie HO

Principal Assistant Secretary for Home Affairs

Mr J A Fox

Senior Assistant Law Draftsman

Mr Raymond FAN

Principal Assistant Secretary for Education and Manpower

In attendance : Mr Stephen LAM, ALA4
Mrs Anna LO, CAS(BC)2
Miss Odelia LEUNG, SAS(BC)1

B

I. Meeting with the Administration

The Administration briefed Members that the result of the consultation exercise on the Green Paper on Equal Opportunities for Women and Men showed that members of the public supported enactment of legislation to eradicate sex discrimination and to establish a statutory commission working to this end. Having considered the widespread public support for legislation, the concerns expressed by some sectors, such as employers, and the need of the society, the Administration introduced the Sex Discrimination Bill (SDB). The main features of the Bill were as follows -

- a) The Bill rendered unlawful sex discrimination, both direct and indirect, and sexual harassment in specified areas of activities, which included employment, education, provision of goods & services and disposal & management of premises. In the employment field, the Bill made it unlawful to discriminate against a person on the ground of marital status or pregnancy.

- b) The SDB provided for the establishment of a statutory Equal Opportunities Commission (the Commission), the functions of which included, inter alia, development and issue of codes of practice in relation to employment matters. The Commission could issue guidelines on circumstances which would be regarded as sexual harassment in work.
- c) A District Court would be designated to hear all the cases arising out of the Bill. To enhance accessibility of the District Court which was empowered to hear all sex discrimination and sexual harassment cases under the Bill, the use of Chinese language would be allowed.

2. Detailed discussion on the SDB is set out below.

A. Scope

3. Some Members expressed reservation on the limited scope of the SDB. Age discrimination in employment, in particular against women, which had been raised by many deputations received by the Bills Committee, was not covered. Neither was discrimination on the ground of sexuality covered. Moreover, the Bill only confined prohibition of discrimination on the ground of marital status or pregnancy to the employment field.

4. In response, the Administration stated that notwithstanding it had received some complaints from trade unions, the difficulty encountered by women after reaching a certain age, say 30, in finding job was not necessarily due to age discrimination. Whilst age might be a factor, other possible reasons could be their lack of skill and self-confidence after quitting the job market for some time to look after their families after marriage, and the change of economic structure of Hong Kong. Since discrimination was basically a question of attitude, education rather than legislation might be a more effective means to change people's attitude. Given that any legislation against age discrimination would have considerable impacts on society, for example on retirement age, the

Administration did not intend at this stage to legislate in that respect. Instead the Administration considered it more practical to assist women in job finding, for example by organising some courses specifically for them under the Employee Retraining Scheme. It should also be noted that employees enrolled under the Scheme must be 30 or above.

5. Regarding the issue on discrimination on the ground of sexuality, the Administration responded that it had not received any views on that during the consultation exercise. In the Administration's view, there appeared no direct relation between sex discrimination and discrimination on the ground of sexual preference. It was necessary to solicit public views before formulating any policy on the subject.

6. The Administration further clarified that the original intention of the SDB was not to cover discrimination on the ground of marital status or pregnancy. However, having considered the public support and that the Employment Ordinance did not render protection against such types of discrimination, the Administration included provisions to make such discriminatory practices unlawful under the SDB.

7. Ms Anna WU was of the view that sex and age discrimination was inter-related and the scope of the SDB should be expanded to cover both age and sexuality discrimination. Some Members suggested that the Administration should start consulting the public now on the issue about discrimination on the ground of a person's sexual orientation.

B. Time-table

8. The Administration's present intention was that the provisions relating to employment in the SDB would be brought into operation after the Commission had developed and issued relevant codes of practice in relation to employment matters. Members were generally concerned about the time required for the establishment of the Commission and issue of the codes.

9. The Administration advised that the Commission was expected to be established within two to three months upon enactment of the Bill and resources had been set aside for the preparatory work. Upon passage of the SDB, it would be unlawful for employers to offer different terms of conditions to employees simply on the ground of sex. On the part of employees, the SDB enhanced their right and provided a channel for redress when being discriminated. It was therefore paramount that the codes of practice which would set out clearly the details on equal pay and equal terms of employment should first be in place for reference by both employers and employees, and by the Commission in adjudicating disputes. The relevant codes of practice would have to include technical details. In developing the codes of practices, the Commission could make reference from similar codes overseas. The time required for development of the codes would not be unduly long and could be a matter of months. The Administration was convinced that as a statutory body tasked to eliminate sex discrimination, the Commission would have no reason to delay issue of the codes.

10. The Administration noted Ms Anna WU's view that the provisions should come into effect first so that the Commission would have practical experience to develop the codes of practice.

11. In response to Ms Anna WU's question, the Administration would clarify whether application of the SDB to legislations with discriminatory provisions, if any, would be suspended pending issue of the codes.

Adm.

C. Clause 2

(i) Subsection (5)

12. Members raised the difficulty in applying subsection (5) about sexual harassment which involved a subjective feeling on an objective act. The Administration explained that the definition was modelled on an Australian Act. It had provided for an objective test since the response of "a reasonable person" would be taken into account in deciding whether an act should be treated as sexual harassment. Members were not satisfied with the explanation.

13. The Administration would clarify whether the drafting of subsection (5) covered sexual harassment by persons of the same sex.

(ii) Subsection (6)

14. The Administration responded to a Member's query that "conduct of a sexual nature" under subsection (6) fell far short of the criminal offence of sexual assault. "Conduct of a sexual nature" would include gestures.

(iii) Subsection (7)

15. This subsection stated that the provisions relating to sexual harassment should apply equally to men and women. The Administration emphasized that it was simply a drafting manner to use words importing a gender meaning in the SDB and they entailed no difference in applicability to the two sexes.

D. Clause 10

16. Some Members questioned the reasons for confining sexual harassment to employment field. The Administration explained that sexual harassment was made unlawful in specified areas of activity. These included employment, education, provision of goods & services and disposal & management of premises. In fact, sexual harassment occurred most likely in situations where the persons involved were in position of relative power. Overseas experience had indicated that complaints about sexual harassment arose mainly from the employment and the educational field. It should be noted that laws relating to sexual harassment in overseas countries were also put in context.

17. On the proposal to provide a transitional period of five years to allow business establishments with not more than five employees to comply with the provisions of the SDB, Members had reservation on the need for such a lengthy grace period. They were concerned that under subsection (8) the Governor could extend the transitional period to more than five years. The Administration

stated that the transitional arrangement was intended to address the worry expressed by small business establishments during the consultation exercise on the Green Paper. Large corporations usually had a set of objective procedures in handling recruitment and promotion matters. Small organisations, on the other hand, did not have such a system and might incline to be subjective. Hence, they would need both time and money to acquire the skill of personnel management with a view to complying with the provisions of the Bill. The Commission, and hopefully large business establishments, could assist small firms in this area. It was estimated that around 80% of business establishments in Hong Kong employed less than 5 persons. They constituted about 30% of the workforce, totalling 600,000 to 700,000 employees. The Administration would confirm the exact figure and provide a paper setting out the reasons put forth by small business establishments for transitional arrangements. It would also consider Members' suggestion that the transitional period should not exceed five years.

Adm.

Adm.

E. Schedule 4

18. Members were concerned about the exceptions to the SDB provided in Schedule 4, in particular in respect of security matters and small house policy. Ms Anna WU queried whether these exceptions would relieve the Administration from being challenged under the Bill of Rights (BOR) Ordinance for discriminatory practices. The Administration made the following comments -

- (i) The exceptions provided to disciplinary services were considered necessary on security ground. These exceptions were about different ratio of both sexes holding an office and different requirements relating to height, uniform, weight or equipments in areas specified in Part 2(1). Representatives from the Security Branch would brief Members further on these exceptions at the next meeting.
- (ii) Under Part 2(2), small house policy was exempted from application of the SDB. The present drafting would cover any revision to the policy. The Administration was

Adm.

reviewing the small house policy. This issue would be further looked into when discussing on the provisions relating to disposal of premises under the SDB.

- (iii) The definition of discrimination under the SDB and the BOR Ordinance was different. For the purpose of the SDB, any differential treatment on the ground of sex was regarded as discriminatory. Sections 4, 5, 6, 7 and 8 set out the circumstances under which discrimination was rendered unlawful. The BOR Ordinance, however, did not specify what constituted discrimination. In the Administration's view, the exception provisions in the SDB did not affect applicability of the BOR Ordinance on Government.

19. Members were of the view that the definition of discrimination under the SDB, the BOR Ordinance and the Convention on the Elimination of All Forms of Discrimination Against Women should be the same. In the light of Members' concern, the Administration would seek legal advice on the implication of the exception provisions in the SDB from the perspective of the BOR Ordinance.

20. In response to a Member's enquiry, the Administration clarified that air-conditioning allowance for persons of different marital status was different under the Civil Service Regulations, hence the provision under Part 2(3)(b).

II. Date of Next Meeting

21. The Administration would continue briefing on the SDB at the next meeting scheduled for 9 December 1994 (Friday) at 10.45 a.m.

22. The meeting closed at 12.40 p.m.

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

Notes of Meeting held on
Friday, 9 December 1994 at 10.45 a.m.
in Chamber of the Legislative Council Building

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon Ronald Arculli, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Rev Hon FUNG Chi-wood
Hon LAU Chin-shek
Hon Emily LAU Wai-hing
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
- Absent with : Hon Christine LOH Kung-wai (Deputy Chairman))
apologies Hon TAM Yiu-chung) out of town
Hon Moses CHENG Mo-chi)
- Hon Andrew WONG, OBE, JP)
Hon HUI Yin-fat, OBE, JP)
Hon Simon IP Sik-on, OBE, JP)
Dr Hon Conrad LAM Kui-shing, JP) other commitments
Hon LI Wah-ming)
Hon James TO Kun-sun)
Hon Roger LUK Koon-hoo)
- By invitation : Hon Anna WU's team
Mr Andrew Byrnes, Consultant
Ms Carole Petersen, Consultant
Mr Adam Mayes
Mr David Viotti
Ms Celie Nehmer

The Administration

Miss Susie HO
Principal Assistant Secretary for Home Affairs

Mr J A Fox
Senior Assistant Law Draftsman

Miss Esther LEUNG
Acting Principal Assistant Secretary for Education and Manp

In attendance : Mr Stephen LAM, ALA4
Mrs Anna LO, CAS(BC)2
Miss Odelia LEUNG, SAS(BC)1

Before inviting the Administration to the meeting, the Chairman drew Members' attention that in view of the tight schedule in the scrutiny of the EOB and the SDB, the Bills Committee would, subject to adequate quorum, hold meetings on 23 and 30 December 1994. The Secretariat would enquire Members of their availability for these two meetings.

I. Meeting with the Administration

Matters Arising

2. The Administration had given a reply enclosing the submissions from small businesses on the necessity for grace period in implementation of the SDB. These submissions would be circulated for Members' information. As regards the other issues raised at the last meeting, the Administration would give a written reply later. Representatives from the Security Branch would attend the next meeting to brief Members on security related issues.

3. The Administration resumed briefing on the SDB and the discussion is summarised below.

A. Clause 11

4. This clause provided for exception where sex was a genuine occupational qualification for a job. Examples quoted included employment of actor/actress, model, private tutor or nurse, and social workers working in Harmony House.

B. Clause 13

5. On Members' enquiry as to the reasons for not covering an employee whose contract was signed in Hong Kong but who did his work mainly outside Hong Kong, the Administration explained that the SDB was not intended to have extra-territorial effect. This clause should be read together with clause 10 which outlawed discrimination against a person in relation to employment at an establishment in Hong Kong. Thus the main consideration was the place where the person carried out his work. Notwithstanding, employment on board a ship registered in Hong Kong or on aircraft or hovercraft registered in Hong Kong would fall within the ambit of the SDB under subsection 13(2).

C. Clause 14

6. This clause provided that the SDB should not apply to firms consisting of less than 6 persons. In response to Members' enquiries, the Administration explained that this figure was not determined on the basis of any objective yardstick. As a reference, anti-discrimination Act in Australia was applicable to partnerships consisting of 6 or more persons; in the UK, this figure was initially pitched at 5 but the exception was subsequently removed after the legislation had been enacted for some considerable time. The Administration had not solicited public views on the subject during the consultation exercise on the Green Paper. The number of small partnerships was not insignificant in Hong Kong. In some cases they were family businesses. In view of their small size, the Administration felt that they should be given more flexibility in formation.

7. Members, however, held different views. Theoretically small partnerships should, because of their limited size, have less difficulty in making changes and hence, greater flexibility. The fact that they were family businesses was not a justifiable reason for carrying out discriminatory practices. At Members' request, the Administration would try to find out the estimated number of partnerships consisting of less than 6 persons. Ms Anna Wu would also provide information on the average size of partnerships with a breakdown in different occupations.

8. On Members' questions as to whether some bodies like women's club fell within the ambit of the SDB, the Administration stated that it would depend on the nature of the organisation and the role of a person vis-a-vis the organisation. In the context of employment, the provisions relating to work would apply. Should the person take on a consumer's role, the provisions relating to provision of goods & services would be relevant. The SDB provided for exceptions for voluntary bodies and charitable organisations under clauses 29 and 41 respectively. It would not be deemed discriminatory if the objective of the body or the provision of a service or facility by that body, e.g. scholarship, was intended to promote the welfare of a particular sex.

D. Clause 15

9. The provisions relating to trade unions applied equally to men and women. Whilst it was not considered discriminatory for a trade union to restrict its membership to a particular sex provided its object was for the promotion of welfare of that particular sex, the Administration would think that the need for such an establishment should be examined.

E. Clause 18

10. This clause provided that it was unlawful for an employment agency to provide its service in a discriminatory manner. Unless where sex was a genuine occupational qualification for a job, it was unlawful for an employer to require an employment agency to select prospective employees of a particular sex or to engage in any

discriminatory act prohibited under the SDB. Should a person consider himself/herself being discriminated against due to his/her sex, he/she might file a complaint to the Equal Opportunities Commission or to take civil action against both the employer and the employment agency under the SDB.

F. Clause 19

11. Some Members queried the need of giving special treatment to religious bodies in connection with applicability of the SDB. A Member considered it appropriate to exempt religious organisations but found that the present drafting of the clause "to avoid offending the religious susceptibilities of a significant number of its followers" would pose practical difficulty in implementation. Ms Anna WU also echoed that objective criteria, such as compliance with the doctrines of the religion, rather than the views of the followers of a religion should be the main consideration in deciding whether or not an activity should be exempted.

12. The Administration responded that the proposed exceptions were to respect the independence of religious bodies and to allow them flexibility in handling matters relating to employment, authorization and qualification. Such exceptions were considered necessary as the conviction on the status of the two sexes could be fundamental to a religion, e.g. Islam. However, the Administration recognized that the doctrines of a religion could be changed with time and with the development of the society. The Administration suggested that the Bills Committee might consider meeting religious bodies to further discuss the issue.

Clerk to
note

G. Clauses 20 and 21

13. On sexual harassment, a Member raised that the proposed provisions only covered situation where a person was sexually harassed by his/her employer or supervisor in connection with employment or promotion or admission to an organisation, but not vice versa. The Administration explained that the victim of sexual harassment would most likely be the one who was in a less powerful position relative to the harasser. The need for protection on persons

who had an upper hand or was in control of the situation was less obvious. Nevertheless, in view of Members' concern, the Administration would rethink the issue.

H. Clauses 45 and 46

14. These clauses permitted provision of discriminatory training for a particular sex with a view to enhancing the participation rate of persons of that sex doing the work or to equipping the persons of the relevant sex with the necessary skill to undertake the work. Employee retraining course for women was one example. A Member was of the view that these two clauses did not derive from the principle of equal opportunities for men and women but were more orientated to the need of the job market. Ms Anna WU found it inadequate to allow positive discrimination solely in training activities. The need for affirmative action in other areas of activities should be considered. Provisions on positive discrimination were included in anti-discrimination legislation in other countries and in the Convention on the Elimination of All Forms of Discrimination Against Women.

15. The Administration replied that the two clauses would have the effect of increasing the number of persons of a particular sex who previously had taken up a relatively small percentage in certain occupations. As the SDB only dealt with sex discrimination, there might not be such a need for provisions on affirmative action as in the case of race and disability discrimination. In the Administration's view, to legislate on affirmative action in respect of a particular class of persons could leave room for abuse. However, in the light of Members' concern, the Administration would give further thought on the issue.

I. Clause 49 and Schedule 2

16. Ms Anna WU questioned the need to exempt legislations listed in Schedule 2 from application of the SDB. She opined that some of the regulations intended to protect women might have become inadvertent restrictions. Some regulations should apply

equally to both men and women. She was concerned in particular whether these regulations which should have been repealed under the Bill of Rights (BOR) Ordinance were exempted under the SDB.

17. The Administration said that consultation with the women division of some trade unions revealed that they found no need to revise those regulations which aimed primarily to protect women. Rather they would hope that the scope of these regulations should be expanded to cover men as well. The Administration drew Members' attention to the power of the Equal Opportunities Commission to review the legislation specified under Schedule 2. Regarding the BOR issue, the Administration reiterated that these regulations were not in contravention of the BOR Ordinance. In fact, differential treatment was permitted under the BOR Ordinance provided it was reasonable and justified. As agreed at the last meeting, the Administration would give a written reply to explain the matter in detail.

Adm.

18. A Member said that it might be helpful if the Administration could advise Members of the rationale for each of the exempted regulations. Another Member suggested that the Bills Committee should meet representatives from trade unions in the next round of public consultation.

Clerk to
note

J. Clause 51

19. In response to a Member's question, the Administration advised that clause 51 was considered necessary to handle possible situations where the security of Hong Kong was at stake. Representatives from the Security Branch would further brief Members on the issue at later meeting(s).

Adm.

K. Schedule 4

20. The Administration reiterated that benefits and allowances for persons of different marital status were different under the existing Civil Service Regulations, hence the provisions under Part 2(3), Schedule 4. These provisions applied to private sectors equally. In

view of a Member's concern that allowing differential treatment to continue might lead to abuse, the Administration would further consider the issue.

L. Clause 10

21. On the proposal for exempting provision in relation to death or retirement under clause 10(4), the Administration explained that without such exception, many existing retirement schemes would be seriously affected. As a matter of fact, women and men were permitted to retire at different age under existing legislation. To facilitate further deliberation on the subject, the Administration, at Members' request, would provide a list of such legislations. The Administration would also give some thought on provision in relation to retirement scheme operated after commencement of the SDB.

M. Clause 31

22. Responding to a Member's enquiry, the Administration advised that it was necessary to make provisions specifically for barristers which were neither covered by the provisions relating to employer-employee relationship nor partnership. It should be noted - that clause 31 only applied to pupillage and barristers in Chamber.

II. Date of Next Meeting

23. The Administration would continue briefing on the SDB at the next meeting scheduled for 16 December 1994 (Friday) at 10.45 a.m.

24. The meeting closed at 12.30 p.m.

LegCo Secretariat
19 January 1995

Ref . HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 16 December 1994 at 10.45 a.m.
in Chamber of the Legislative Council Building**

- Present** : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon Mrs Peggy LAM, OBE, JP
Rev Hon FUNG Chi-wood
Dr Hon Conrad LAM Kui-shing, JP
Hon LI Wah-ming
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
- Absent with** : Hon Mrs Selina CHOW, OBE, JP)
apologies : Hon HUI Yin-fat, OBE, JP)
Hon TAM Yiu-chung) out of town
Hon Mrs Miriam LAU Kin-ye, OBE, JP)
- Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP)
Hon J D McGregor, OBE, ISO, JP)
Hon Moses CHENG Mo-chi)
Hon Simon IP Sik-on, OBE, JP)
Hon LAU Chin-shek) other commitments
Hon Emily LAU Wai-hing)
Hon James TO Kun-sun)
Hon Roger LUK Koon-hoo)
- By invitation** : Hon Anna WU's team
Mr Andrew Byrnes, Consultant
Mr Eric CHOW
Ms Celie Nehmer

The Administration

Home Affairs Branch

Miss Susje HO
Principal Assistant Secretary for Home Affairs

Security Branch

Mr Jack CHAN
Principal Assistant Secretary for Security

Royal Hong Kong Police Force

Mr Steve Chandler
Senior Superintendent (Support)

Customs & Excise Department

Mr David TONG
Assistant Commissioner of Customs & Excise

Correctional Services Department

Mr PANG Sung-yuen
Assistant Commissioner of Correctional Services (Personnel)

Fire Services Department

Mr HSU King-ping
Chief Fire Office (Headquarters)

In attendance : Mr Stephen LAM, ALA4
Mrs Anna LO, CAS(BC)2
Miss Odelia LEUNG, SAS(BC)1

Ac
Re

I. Meeting with the Administration

A. Exceptions for security related issues

Members questioned the need for exceptions from the SDB on security related matters under Clause 51 and Schedule 4. A Member raised whether it would be more appropriate to confer a discretionary power on the Equal Opportunities Commission to determine on legislations to be exempted instead of specifying the

exempted legislations under the SDB. In response, the Administration provided the following comments -

- (a) Due to the special nature of work and the operational need of disciplined services, the general exemption provisions under clause 11 of the SDB were inadequate for the purpose. At present the majority of offenders and prisoners were male. It was therefore necessary to have different treatment on the two sexes in respect of matters relating to recruitment, equipment of weapons and deployment of work.
- (b) It should be noted that under the SDB any differential treatment would be regarded as discrimination and the definition did not take into account whether or not the differential treatment was reasonable. There was thus a need for exemption in this respect. The initial legal advice was that these exemption provisions were not inconsistent with the BOR Ordinance. The Administration would give a written reply on the issue. It would also examine their compatibility with the provisions under the Letters Patent and the interpretation of discrimination under the International Covenant on Civil and Political Rights.
- (c) It was questionable whether the Commission should be vested with a discretionary power to decide which legislations should be exempted. Clause 58 already empowered the Commission to review the provisions specified in Schedules 2 and 4.
- (d) At Ms Anna WU's request, the Administration would examine and advise Members of any provisions of the EOB with which it was envisaged that disciplinary forces would have difficulty in complying.

Adm.

Adm.

9. Ms Anna WU then compared the EOB and SDB in the aspect of discrimination in work and identified the differences as below -

- (a) The EOB included provisions relating to discrimination against commission agents but the SDB did not.
- (b) The SDB included a separate clause that prohibited discrimination on provision of vocational training. The protection extended by the EOB was at least as comprehensive in this respect, covering access to training in general by both public and private bodies (clauses 13(2)(b) and 14(2)(b), as well as clauses 22 and 27).
- (c) Clause 27 of the EOB outlawed discrimination in the administration of laws and government programmes, and clause 28 specifically prohibited discrimination in political elections and appointments. Government recognition of the status of Village Representatives, elected or selected in violation of the equal opportunities principle, would constitute a breach of these clauses. The SDB made no similar coverage.
- (d) The SDB made provisions specifically for barristers (clause 31) which were not provided for under the EOB. Ms Anna WU would consider either to include similar provisions in the EOB or to expand the definition of employment to cover barristers.

Ms Anna WU

- (e) On genuine occupational qualification, the SDB was more specific (clause 11) while the EOB allowed for more flexibility (clause 33). Since the SDB only dealt with sex discrimination, genuine occupational qualification related solely to sex, but the EOB provided for age and for race as a genuine occupational qualification as well. Ms Anna WU considered that the term 'personal service' under clause 11(f) of the SDB could be used loosely and might be abused.
 - (f) On the definition of discrimination, Mr Andrew Byrnes commented that it was more or less the same under the two Bills. Provided that clause 4 of the SDB was read with clause 9, both definitions spelt out that the circumstances of the cases under comparison should not be materially different, hence the question of "reasonableness" would come into play.
 - (g) The EOB only allowed a transitional period of 2 years on existing retirement schemes. The SDB exempted provisions on death and retirement entirely from its application.
 - (h) In Ms Anna WU's view, discrimination on the grounds of sex, age and family responsibility was related. The limited scope of the SDB could not cater for their inter-relationship.
10. On (g), the Administration stated that retirement at different age for men and women were allowed under the international Labour Convention. As agreed at the last meeting, it would provide a written reply on the issue.

Adm.

Sexual Harassment

11. Ms Anna WU went on to brief Members on clause 29 of the EOB on sexual harassment. In gist, an act would be amounted to sexual harassment if it was sexual in nature, unwelcome by the

harassee and the refusal of which would disadvantage the harassee. Conduct of sexual nature¹⁴ which created a sexually hostile or intimidating work environment for the harassee would fall within the meaning of the term. Ms WU then compared the EOB and the SDB in this aspect, and highlighted the differences below -

- (a) The SDB adopted the community standard in defining sexual harassment. The emphasis was put on the attitude and behaviour of the harasser. The EOB, on the other hand, required some evidence of the effects of an act on the harassee in determining whether it should be treated as sexual harassment. In view of the fact that the definition under the SDB would allow for more flexibility, Ms Anna WU intended to include the essence of it into the EOB. Ms
- (b) The protection extended by the EOB included commission agents and persons doing domestic works. These two classes of persons were not covered by the SDB. But the SDB made provisions on sexual harassment in relation to partnerships and qualifying bodies. Ms Anna WU would include these organisations into the relevant provisions of the EOB. Ms
- (c) The EOB provided for protection against harassment on the ground of a person's sexuality, race and disability under clauses 78, 103 and 135 respectively. Under these clauses, a person would be taken to harass another person if the former's behaviour threatened, abused, insulted or taunted the latter.
- (d) In Ms Anna WU's view, sexual harassment of a person of the same sex were covered by both the EOB and the SDB.

12. In response to a Member's enquiry, the Administration replied that the SDB covered sexual harassment occurred in public places. The main factor in deciding whether an sexual act should be regarded as sexual harassment was the harassee's feeling of being offended, humiliated or intimidated. The act did not necessarily have to constitute a threat to work.

III. Date of Next Meeting

13. The Chairman reminded Members that there would be bare quorum for the meetings on 23 and 30 December 1994 and the meeting would be held as scheduled.

14. The meeting closed at 12.45 p.m.

LegCo Secretariat
13 February 1995

Ref : HB/C/61
Tel : 2869 9266
Date : 4 May 1995
From : Senior Assistant Secretary (Bills Committees)2
Legislative Council Secretariat
To : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon HUI Yin-fat, OBE, JP
Hon TAM Yiu-chung
Hon Andrew WONG, OBE, JP
Hon Ronald Arculli, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Hon Moses CHENG Mo-chi
Rev Hon FUNG Chi-wood
Hon Simon IP Sik-on, OBE, JP
Dr Hon Conrad LAM Kui-shing, JP
Hon Emily LAU Wai-hing
Hon James TO Kun-sun
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Roger LUK Koon-hoo
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

Members are invited to consider the amendments proposed by Ms Anna WU (copy at Appendix I) to the notes of meeting held on 16 December 1994 and 3 March 1995 which were forwarded to Members vide LegCo Papers No.HB 202 and 543/94-95 respectively. The relevant pages of the notes of meetings incorporating the proposed amendments are enclosed at Appendix II for Members' easy reference. These proposed amendments will be considered at the next meeting to be held on 5 May 1995.



(Colin CHUI)

Senior Assistant Secretary (Bills Committees)2

Encl

c.c. Hon Michael HO Mun-ka
Hon LI Wah-ming
Assistant Legal Adviser 4

The Office of Anna Wu, Legislative Councillor

Rm 415, Central Government Offices (West Wing), Ice House St., Hong Kong.

Tel: (852) 537-2467 Fax: (852) 530-2018

FACSIMILE MESSAGE

TO : Colin Chui NO. OF PAGES (INCLUDING THIS ONE) : 1
FROM : Adam Mayes DATE : 1/5/95

IF THE FAX IS INCOMPLETE, PLEASE NOTIFY US IMMEDIATELY.

MESSAGE :

As well as the addition to the 3 March minutes we discussed by phone, there is a correction to be made to the 16 December minutes. Deletions are struck out and additions are in italic.

Re. Administration's portion of 16 December EOB/SDB Bills Comm. minutes 

Para. 3:

"... These exceptions were ruled in breach of the ~~BOR Ordinance~~ *human rights standards applicable to the UK* by the European Court in 1983."

Re. Administration's portion of 3 March EOB/SDB Bills Comm. minutes

Add a new Para. after 11:

"With regard to the UK Equal Pay Act, Ms Anna WU [or "A Member" — according to your usual practice] recalled that the Administration had previously indicated that equivalent equal pay provisions would be made for Hong Kong, and inquired whether the Administration was now suggesting that such provisions be made in the form of Codes of Practice under the SDB rather than as primary legislation. She suggested it would be inappropriate to delegate such an important legislative matter to the Equal Opportunities Commission."

Action
Required

B. Age Discrimination

2. Members reiterated their concern on the necessity in legislating on age discrimination. The Administration replied that the difficulty encountered by women over 35 was not necessarily due to age. The change of economic structure of Hong Kong and the lack of adequate skill could be possible factors. Before formulating any policy in age discrimination, the Administration had to assess its implications. It noted Ms Anna WU's view that should the public be consulted on the issue, it would be helpful to work out the details in co-operation for the avoidance of public confusion.

C. Transitional arrangement

3. On the proposal for transitional arrangement, Ms Anna WU pointed out that the exceptions provided for firms consisting of less than 6 persons under the UK legislation were not deleted on UK's own initiative. These exceptions were ruled in breach of the human rights standards applicable to the UK by the European Court in 1983.

4. The Administration responded that in drafting the SDB, references were made to similar legislations in the UK and Australia, but the guiding principle was that the legislation should cater for the unique situation of Hong Kong. The exception provisions in the UK legislation were different from those in the SDB in that the SDB only allowed a 5-year grace period and the Governor could amend the duration whereas the UK legislation had not stipulated any time limit for exemption. At Ms Anna WU's request, the Administration would consider making a comparison between the UK legislation and the SDB but envisaged that the exercise would take some time. The Administration also added that the decision of judicial bodies in Europe was not binding on Hong Kong. In determining on the legality of a matter, the particular circumstances of a society should be a relevant factor for consideration.

Adm.

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 23 December 1994 at 10.45 a.m.
in Chamber of the Legislative Council Building**

- Present** : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon TAM Yiu-chung
Hon Andrew WONG, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Rev Hon FUNG Chi-wood
Dr Hon Conrad LAM Kui-shing, JP
Hon LAU Chin-shek
Hon James TO Kun-sun
Dr Hon YEUNG Sum
Hon Anna WU Hung-yuk
- Absent with apologies** : Hon Mrs Selina CHOW, OBE, JP)
Hon Ronald Arculli, OBE, JP) out of
Hon Mrs Miriam LAU Kin-ye, OBE, JP) town
Hon Emily LAU Wai-hing)
- Hon Christine LOH Kung-wai (Deputy Chairman))
Hon HUI Yin-fat, OBE, JP)
Hon J D McGregor, OBE, ISO, JP)
Hon Moses CHENG Mo-chi) other
Hon Simon IP Sik-on, OBE, JP) commitments
Hon LI Wah-ming)
Hon Zachary WONG Wai-yin)
Hon Roger LUK Koon-hoo)
- By invitation** : Hon Anna WU's team
Mr Eric CHOW

In attendance : Mr Stephen LAM, ALA4
Mrs Anna LO, CAS(BC)2
Miss Odelia LEUNG, SAS(BC)1

I. Confirmation of record of previous meetings

The record of meetings held on 27, 28 and 31 October 1994 (LegCo Paper Nos. 805, 806 and 807/94-95) were confirmed.

II. Briefing by Ms Anna WU on the EOB

Access to places and vehicles

2. Ms Anna WU started briefing on clauses relating to access to places and vehicles. The discussion on the relevant provisions is set out below.

A. Clauses 21, 52, 71, 96, 156, 198 and 217

3. These clauses rendered it unlawful for a person to discriminate against another person by refusing to allow the aggrieved person access to or use of places and vehicles, imposing different terms for or terminating such access or use on the ground of the person's sex, marital status or pregnancy (clause 21), family responsibility or family status (clause 52), sexuality (clause 71), race (clause 96), religious or political conviction (clause 156), spent conviction (clause 198), and union membership (clause 217). Whether or not payment was required for such access and use was immaterial.

B. Clause 126

4. This clause had the same structure as the aforementioned clauses, except that it provided for a defence against claims of

disability discrimination in situations of proven unjustifiable hardship. The criteria for determining unjustifiable hardship was provided in clause 117(1).

C. Clause 173

5. This clause, concerning age, had the same structure as the aforementioned clauses, except that sub-clause (2) permitted differential treatment in the provision of bona fide benefits by reason of the person's age, e.g. concessionary fare for students and the elderly.

6. A Member was concerned about the disabled persons' access to public transport and the time-table in making necessary alteration to facilitate their access. Ms Anna WU responded that as far as the EOB was concerned, upon its enactment the person concerned had to make immediate alteration unless he could demonstrate proven unjustifiable hardship. At present, the disabled persons could gain access to some public transport e.g. the lower deck of ferries (of at least one company). However, the design of some public transport was still inaccessible to persons with a disability e.g. taxi stand and boarding stairs for bus. Enquiries could be made of the authority concerned on any facilities in the new airport for the disabled, women and children. Ms Anna WU was expecting the gazettal of the Disability Discrimination Bill which should also cover the issue. She also hoped that the Administration could brief the Bills Committee on existing facilities in public transport for the disabled.

7. In response to Members' enquiry, Ms Anna WU said that the provision of transport for union members with a view to enhancing their welfare was permitted under the EOB. She would examine whether the exception for health and safety reasons in respect of age discrimination provided in clause 182 should be expanded to cover pregnancy. She would also consider whether mental health should be included.

Ms Anna WU

8. Members noted that the definition of "vehicle" in the EOB was not exhaustive.

9. On the definition of 'voluntary body', Ms WU stated that it was defined in a narrow sense to prevent abuse on the one hand and to respect freedom of assembly on the other. Since an association that provided grants and loans to its members would

have extensive contact with society and would be in the nature of a commercial activity, the definition therefore purposely excluded it from its coverage.

Provision of goods and services

10. Ms Anna WU then proceeded to briefing Members on provision of goods and services. The EOB defined services, but not goods; the latter should be interpreted under common usage. The general principle of the relevant provisions in the EOB was to make it unlawful for a person to discriminate against another person by refusing to provide goods or services, imposing different terms for such provision or in the manner in which goods or services were made available. The EOB covered both direct and indirect discrimination. Whether or not payment was required for the provision was immaterial. Examples included refusal to rent premises to single parent families and guarantee requirements on bank loans to married women. Clauses 40, 144, 180 and 187 permitted differential treatment in respect of superannuation and insurance provided the differentiation was based upon actuarial or statistical data.

11. Members were concerned about the implications of the relevant provisions on long service pay and retirement age. Some Members raised the point that the rationale behind some government policies should not be regarded as discrimination, e.g. a compulsory retirement age should not be taken as age discrimination. Forcing an employee to retire ensured lower ranked employees of upward advancement. There could be institutional need in implementing a

Action
Required

certain practice, e.g. imposing an age ceiling in recruitment of a particular rank of civil servants built in a career path for them.

12. Ms Anna WU responded that she would examine the rationale behind the legislation on long service pay. If the provisions were based on actuarial data, they would in any case be exempted from the EOB by clause 180. Should it be established that long service pay was not regarded as a form of social security and its provisions violated the principle of the EOB, then the Administration would have to make amendment to it.

13. Regarding the issue on retirement age, Ms Anna WU said that further thought was needed on the appropriateness to legislate on compulsory retirement age. Clause 183 of the EOB provided for a grace period of 2 years after commencement of the EOB for retirement schemes to be exempted from its provisions. The EOB also did not outlaw any offer of incentive to encourage voluntary retirement.

Ms Anna WU

14. A Member expressed that it was difficult to decide on the issue of retirement age. He considered that discrimination and equal opportunities should not be confused. The EOB should aim at minimising discrimination rather than maximising equal opportunities. Ms Anna WU emphasised that although Members might hold different views on the issue but the need for legislation on equal opportunity should not be undermined. Pending provision of information by the Administration on legislation about different treatments on retirement, the Bills Committee would further consider the issue.

Clerk to note

15. Ms Anna WU said that the Administration should be invited to brief Members on public consultation on age discrimination.

Clerk to note

16. The meeting closed at 12.40 p.m.

LegCo Secretariat
13 February 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 30 December 1994 at 10.45 a.m.
in Chamber of the Legislative Council Building**

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Dr Hon Conrad LAM Kui-shing, JP
Hon LAU Chin-shek
Hon Emily LAU Wai-hing
Hon LI Wah-ming
Hon James TO Kun-sun
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
- Absent with : Hon Christine LOH Kung-wai (Deputy Chairman))
apologies Hon HUI Yiu-fat, OBE, JP)
Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP) other
Hon J D McGregor, OBE, ISO, JP) commitments
Hon Moses CHENG Mo-chi)
Hon Simon IP Sik-on, OBE, JP)
Hon Roger LUK Koon-hoo)
- Hon Mrs Selina CHOW, OBE, JP)
Hon Ronald Arculli, OBE, JP) out of town
Rev Hon FUNG Chi-wood)
- By invitation : Hon Anna WU's team
Mr Eric CHOW

In attendance : Mr Stephen LAM, ALA4
Mrs Anna LO, CAS(BC)2
Miss Odelia LEUNG, SAS(BC)1

I. Provision of goods and services

Ms Anna WU resumed briefing on clauses relating to provisions of goods and services. The relevant clauses included 22, 53, 72, 97, 127, 157, 174, 199 and 218. All these clauses had the same structure with the only difference on the discriminative ground. Ms WU highlighted some of the clauses below.

A. Clause 127

2. This clause exempted differential treatment on the ground of disability if the provision of goods or services would impose unjustifiable hardship on the provider.

B. Clause 174

3. This clause allowed provision of bona fide benefits to a person by reason of his or her age, e.g. concession.

C. Clause 146

4. In connection with disability, this clause allowed a grace period of 3 years to phase in the provision of telecommunication services through payphones and public payphones. In response to a Member's enquiry, Ms WU clarified that such transitional arrangement in effect imposed a time limit on the service provider to make alterations to enhance the disabled persons' access.

D. Clause 182

5. This clause exempted differential treatment on the ground of age provided it was based on reasonable health and safety considerations. Sub-clause (2) required due regard be given to all relevant circumstances of the case in determining reasonable health and safety considerations.

II. Harassment in provision of goods, services and facilities

6. Ms Anna WU then proceeded to the clauses relating to harassment in the provisions of goods, services and facilities. The discussion is set out below.

E. Clause 32

7. This clause outlawed sexual harassment in the provision of goods, services and facilities. The structure was the same as that of the provisions on sexual harassment in other areas of activities.

F. Clauses 81, 106 and 138

8. These clauses rendered it unlawful to harass in the provision of goods, services and facilities on the ground of sexuality (clause 81), race (clause 106) and disability (clause 138). Sub-clause (2) in each of these clauses set out the conditions under which an act would be regarded as harassment.

G. Clause 82, 107 and 139

9. These clauses outlawed harassment by reference to the sexuality (clause 82), race (clause 107) and disability (clause 139) of a person or of a relative or associate of that person.

10. A Member considered it appropriate to expand the scope of harassment to spent conviction. Another Member objected to this view and raised that since there were no objective criteria in determining harassment, each and every case would have to be

escalated to the court for a decision. A Member expressed concern on the ultimate cost for effecting alteration to facilities which would probably fall on the consumers.

11. Ms Anna WU reacted that it was not necessary for a person with spent conviction to disclose any information that was not relevant to the job. In judging whether an act should fall within sub-clauses (2), the court would put the act into context, consider its effects on the victim and draw reference from relevant overseas cases. Ms WU said that it would be desirable for the Equal Opportunities Commission to issue guidelines on harassment for public reference.

12. Regarding the cost incurred in effecting alteration to facilities, Ms WU expected it to be absorbed by the service provider and in the end by the general public. The cost should not be borne by the disabled. It was hoped that Government would introduce incentive to encourage provision of facilities for disabled persons, e.g. tax deduction. Ms WU emphasised that if disabled persons were deprived of equal opportunities, the price would be paid by society in any event, through welfare and assistance programmes.

III. Clubs

13. On the definition of 'club', Ms Anna WU explained that it covered an association of not less than 30 persons that provided and maintained its facilities and sold or supplied liquor for consumption on its premises. A club house of a professional organisation supplying liquor to its members on its own premises would fall within the ambit. The definition should have covered most of the clubs in Hong Kong which had 30 or more members. Voluntary organisations were excluded in order to respect their freedom of assembly.

14. Before proceeding to explaining the relevant clauses, Ms Anna WU stated that the general principle was to render it unlawful to discriminate by refusing a person's application for membership, imposing different terms for admission or limiting the person's access to benefits provided by the club. Any action taken by the management committee of the club would be deemed to be the club's action. The relevant clauses included 25, 56, 75, 100, 130, 160,

177, 202 and 221. Ms Anna WU highlighted some of the clauses below.

H. Clause 25

15. Sub-clause (3) provided a limited exception in cases in which a club benefit could not be enjoyed equally or simultaneously by both men and women. In such cases, a club would be permitted to offer the benefit separately to members of each sex or to apportion its use between them.

I. Clause 100

16. Sub-clause (3) permitted the provision of benefits by a club for persons of a specified race if those persons were described otherwise than by reference to colour. In other areas of activities under the EOB, it would not be lawful to give favour or confine the benefits to a particular race or nationality.

J. Clause 130

17. The exceptions provided in sub-clauses (3) and (4) respectively allowed restriction of club membership to persons of a particular disability and provided a defence of proven unjustifiable hardship in provision of benefits. In response to a Member's enquiry, Ms Anna WU stated that the exception (clause 182) based on health and safety considerations related to age only and not disability, although such considerations would nonetheless be relevant if they amounted to materially different circumstances.

K. Clause 177

18. Sub-clause (3) rendered it lawful for a club to provide bona fide benefits for persons of a particular age. Hence, it would be acceptable for a club to provide different facilities for members of varying age. However, the ultimate authority would rest with the court to decide what constituted bona fide benefits in the particular circumstances of a case.

L. Clauses 202 and 221

19. These clauses, concerning spent conviction and union membership, had the same structure as the preceding clauses except that they did not provide for exemptions. Ms Anna WU also stated that the criteria for spent conviction under the EOB should be the same as those under the Rehabilitation of Offenders Ordinance. In response to a Member's enquiry, Ms WU would discuss with Members later on implications of the spent conviction provisions on eligibility for candidature in election.

20. Some Members considered that the management of clubs should be encouraged to put forth their views on the EOB. In principle they should be aware of the relevant provisions from media coverage of the scrutiny of the EOB by the Bills Committee.

IV. Date of Next Meeting

21. The Chairman reminded Members that the next meeting would be held on 5 January 1995 (Thursday) at 2.30 p.m.

22. The meeting closed at 12.40 p.m.

LegCo Secretariat
27 February 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Thursday, 5 January 1995 at 2.30 p.m.
in Chamber of the Legislative Council Building**

- Present : Hon Christine LOH Kung-wai (Deputy Chairman)
Hon HUI Yin-fat, OBE, JP
Hon TAM Yiu-chung
Hon Mrs Peggy LAM, OBE, JP
Rev Hon FUNG Chi-wood
Dr Hon Conrad LAM Kui-shing, JP
Hon Emily LAU Wai-hing
Hon James TO Kun-sun
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Roger LUK Koon-hoo
Hon Anna WU Hung-yuk
- Absent with : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
apologies Hon Andrew WONG, OBE, JP)
Hon Mrs Miriam LAU Kin-ye, OBE, JP)
Hon J D McGregor, OBE, ISO, JP) other
Hon Moses CHENG Mo-chi) commitments
Hon Simon IP Sik-on, OBE, JP)
Hon LAU Chin-shek)
Hon LI Wah-ming)
- Hon Mrs Selina CHOW, OBE, JP)
Hon Ronald Arculli, OBE, JP) out of town
- By invitation : Hon Anna WU's team
Mr Andrew Byrnes, Consultant
Ms Carole Petersen, Consultant
Mr Eric CHOW
Mr Adam Mayes
Ms Celie Nehmer

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Miss Odelia LEUNG
Senior Assistant Secretary (Bills Committees)1

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

I. Confirmation of notes of previous meetings

The notes of meetings held on 4 and 18 November 1994 (LegCo Papers No. 808 and 1138/94-95) were confirmed.

II. Briefing by Ms Anna WU on the EOB

A. Accommodation

2. Ms Anna WU stated that the relevant clauses in the area of accommodation included 23, 54, 73, 98, 128, 158, 175, 200 and 219. The exception provision was laid down in the sub-clause (3) of each of these clauses. The general principles for exceptions were the following -

- (i) the premises were occupied by the provider or his/her near relative(s) and the accommodation provided in those premises was for no more than 3 persons;
- (ii) accommodation provided by religious bodies; and

- (iii) accommodation provided by charitable or voluntary bodies.

However, the exceptions in (ii) and (iii) above did not apply to discrimination on the ground of a person's disability and sexuality respectively. Neither exception applied to discriminative ground of spent conviction.

(a) Clause 23

3. Sub-clause (3)(d) permitted discrimination on the ground of a person's sex if the premises provided by the employer were not equipped with separate sleeping accommodation for persons of each sex and were already occupied by persons of one sex.

(b) Clauses 38 and 60

4. Both clauses allowed provision of accommodation of different standards to employees of different household size. Clause 38(2) permitted provision of single sex student accommodation at an educational institution.

(c) Clause 128

5. Sub-clause (2)(d) made it unlawful for a person to disallow reasonable alterations to accommodation occupied by a disabled person if he had undertaken to reinstate the accommodation to its original condition on leaving the accommodation. Sub-clause 3(c) exempted discrimination on the ground of disability if the person could prove unjustifiable hardship in the provision of accommodation.

(d) Clause 175

6. Sub-clause (3)(d) permitted provision of bona fide benefits to a person by reason of his or her age.

7. A Member raised the difficulty on the part of the victim in proving the discriminative reason for being refused for accommodation. She was worried that many cases would have to be brought before the court for judgement. Another Member had different opinion and was of the view that there should be no worry of increase in litigation cases.

8. In response, Ms Anna WU said that whether discrimination was at play could be shown by comparing cases that were not materially different except on the alleged discriminative ground. It was hoped that the victim, apart from resorting to legal action, could turn to the Equal Opportunities Commission for conciliation. Public education was important to enhance the public's awareness and acceptance of the concept of equal opportunities. In the event that a case had to be heard in court, once a complainant had shown evidence suggesting discrimination, the burden of proving that the challenged treatment was reasonable or that it fell within an exception would lie with the provider of accommodation. The court would consider all relevant circumstantial evidence pertaining to a case in arriving at a decision.

9. Ms WU added that it would not be deemed discriminatory if the refusal to provide accommodation was based on reasonable economic criteria such as the payment ability of the person requiring the service.

B. Harassment in relation to accommodation

10. Ms Anna WU proceeded to briefing Members on harassment in relation to accommodation. The relevant clauses were 31, 80, 105, 137, 82, 107 and 139. Clauses 31, 80, 105 and 137 had

the same structure.

11. Under clause 31, it would be unlawful for a person to engage in unwelcome sexual advances or other sexual conduct in relation to another person if the latter had reasonable grounds to believe that objecting would disadvantage him/her in connection with accommodation, or if the conduct substantially interfered with his/her enjoyment of accommodation. Other forms of harassment made unlawful in similar circumstances included threats, abuse, insults or taunts relating to a person's sexuality (clause 80), race (clause 105) or disability (clause 137) or to the sexuality, race or disability of a person's associate or relative (clause 82, 107 and 139 respectively).

C. Land

12. The relevant clauses relating to land were 24 (sex, marital status or pregnancy), 55 (family responsibility or family status), 74 (sexuality), 99 (race), 129 (disability), 159 (religious or political conviction), 176 (age), 201 (spent conviction) and 220 (union membership). These clauses had the same structure with the only difference in discriminative ground. The basic principle was to render it unlawful to discriminate by refusing to dispose of an estate or interest in land or imposing different terms for such disposal. All of the clauses exempted dispositions of land by will or by gift. Sub-clause 176(2)(b) also permitted differential treatment on the basis of age in disposal of land within a complex of residential premises occupied by persons of a particular age or particular ages. Ms Anna WU drew Members' attention to clause 42 which stipulated that the provisions did not apply to New Territories land. The issue on small house policy would be dealt with under the clauses relating to administration of laws and government programmes, to which Ms Anna WU then proceeded.

D. Administration of laws and government programmes

13. Ms Anna WU stated that although most administrative activities could be covered as “services” or “facilities” under the EOB, she considered it necessary to make separate, specific provisions on discrimination in the administration of laws and government programmes to cover grey areas which might otherwise fall outside the EOB because of legal technicalities. All administrative activities are already covered by the non-discrimination provision (Article 22) of the Bill of Rights (BOR) Ordinance, and it would be desirable that they also be covered by the EOB because the EOB had more detailed provisions on a wide spectrum of activity and enforcement. The relevant clauses included 27 (sex, marital status or pregnancy), 58 (family responsibility or family status), 77 (sexuality), 102 (race), 133 (disability), 162 (religious or political conviction), 181 (age), 204 (spent conviction), and 223 (union membership). All these clauses had the same linguistic structure. Ms Anna WU stated that the small house policy would fall within the coverage of these clauses.

E. Discrimination in relation to eligibility for election and appointment to advisory bodies

14. Ms Anna WU said that clause 28 was made in light of the existing situation in the NT. The clause rendered it unlawful to discriminate on the ground of sex or marital status in eligibility to vote and be elected or appointment to advisory or public body. Sub-clause (2) spelt out the meaning of relevant position in a public body which included, inter alia, position of Village Representative (VR) and office-holder of a Rural Committee (RC). The prohibited areas of discrimination were set out in sub-clause (3). To put beyond doubt the existing role of the Secretary for Home Affairs (SHA) to monitor the election of VR and RC and to approve the person or body being elected, sub-clause (5) spelt out the SHA’s responsibility to ensure the participation of women on equal terms with men in these elections.

15. In response to Members’ enquiries, Ms Anna WU stated

that the Administration was aware of this provision. She envisaged that the Heung Yee Kuk would not object to it as it had accepted the principle of one-person-one-vote.

16. A Member opined that the requirement for approval by the SHA on the person elected could not ensure the fairness of election. The person elected could occupy the position indefinitely without being approved. Ms Anna WU would examine whether the provisions of the EOB could address this situation.

Ms Anna
WU

F. Education

17. The relevant clauses included 20, 51, 70, 95, 125, 155, 172, 197 and 216. These clauses rendered it unlawful to discriminate by refusing a person's application for admission as a student, imposing different terms for admission or denying access to benefits provided by the educational authority. Ms Anna WU highlighted some of these clauses below.

(a) Clauses 172 and 193

18. Sub-clause (3) of each of these two clauses disallowed discrimination in respect of scholarship award on the ground of the person's age (clause 172) and spent conviction (clause 197).

19. Sub-clause 172(4) permitted discrimination in favour of old age students under a mature age admission scheme.

(b) Clause 20

20. This clause exempted discrimination in admission of students in single sex school on the ground of a person being the opposite sex to the sex of the school.

(c) Clause 38

21. Sub-clause (2) made it lawful to provide accommodation to persons of one sex who were students of a single sex school.

(d) Clause 51

22. Sub-clause (2) permitted schools lawfully to provide single-sex accommodation to students.

(e) Clause 125

23. Sub-clause (3) permitted an educational institution established for students with a particular disability unlawful to refuse admission to a person not having that disability. Sub-clause (4) spelt out the exemption on proven unjustifiable hardship.

(f) Clause 155

24. Sub-clause 155(3) drew attention to the general exception in clause 229(3), which permitted religious schools to undertake positive discrimination in admissions in favour of persons with the same religious conviction.

25. A Member was of the view that the “religious susceptibilities” of adherents of a particular religion under clause 229 was not an objective criterion. Ms Anna WU would provide information on the relevant provisions in overseas countries for Members’ consideration.

(g) Clause 216

26. Sub-clause (3) allowed for exceptions to be prescribed by regulations. In response to a Member's enquiry, Ms WU clarified that this sub-clause would enable the provision of exceptions authorising, for example, retraining courses by a trade union for employees of a particular trade.

27. Members have different views on the appropriateness in granting exemption to religious schools to discriminate on the ground of a person's religious conviction. Ms Anna WU said that the BOR Ordinance and other international covenants respected religious freedom. The provisions relating to education did not, however, appear to allow an educational institution to give admissions preference to persons of a particular native place. Ms WU would consider this, as well as a Member's question as to whether the EOB allowed an educational institution to give preference to students whose parents had studied there.

Ms Anna
WU

28. Ms WU said that the issue of religious freedom vis-a-vis equal opportunities would be discussed further at later meetings.

Clerk to note

29. The meeting closed at 4.35 p.m.

LegCo Secretariat
15 March 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 13 January 1995 at 10.45 a.m.
in Chamber of the Legislative Council Building**

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon Ronald Arculli, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Rev Hon FUNG Chi-wood
Hon Emily LAU Wai-hing
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
- Absent with : Hon HUI Yin-fat, OBE, JP)
apologies Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon J D McGregor, OBE, ISO, JP)
Hon Moses CHENG Mo-chi) other
Hon Simon IP Sik-on, OBE, JP) commitments
Dr Hon Conrad LAM Kui-shing, JP)
Hon LAU Chin-shek)
Hon James TO Kun-sun)
Hon Roger LUK Koon-hoo)
- By invitation : The Administration
Home Affairs Branch
Miss Susie HO
Principal Assistant Secretary for Home Affairs

Education and Manpower Branch

Miss Maureen TO
Principal Assistant Secretary for Education and Manpower

Attorney General's Chambers

Miss Elizabeth WU
Acting Senior Assistant Solicitor General

Mr J A Fox
Senior Assistant Law Draftsman

Hon Anna WU's team

Mr Andrew Byrnes, Consultant
Ms Carole Petersen, Consultant
Mr Adam Mayes
Mr David Viotti

In attendance : Mr Stephen LAM, ALA4
Mrs Anna LO, CAS(BC)2
Mr Colin CHUI, SAS(BC)2

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I. Meeting with the Administration

The Administration briefed Members on its written reply dated 12 January 1995 to questions raised at the last meeting held on 2 December 1994 (Appendix I to LegCo Paper No. HB 56/94-95). The discussion arising from the written reply is set out in paragraphs 2 to 8.

Sexual Harassment

2. Members enquired whether sexual harassment of the same sex could be explicitly stated in the Bill as unlawful. The Administration replied that it would review the relevant clauses of the Bill to see if they would need to be redrafted for the sake of clarity.

Adm.

Exception for the Small House Policy

3. Members were concerned about the exception for the Small House Policy and considered differential treatment for woman and man under this Policy unreasonable. A Member quoted the Report from the UN Committee on Economic and Social Rights which stated, inter alia, that the Hong Kong Government's Small House Policy discriminated against woman.

4. The Administration responded that the differential treatment for woman and man under the Small House Policy was not discriminatory as there was an objective and reasonable justification for the treatment. It also advised that the Policy was currently under review by a Working Group chaired by an officer from the Planning, Environment and Lands Branch (PELB) with members from the Home Affairs Branch and other relevant branches/departments. It undertook to ask representative from the PELB to attend the next meeting to answer questions on the Policy.

Adm.

5. A Member enquired on the number of small houses owned by indigenous villagers and the number of small houses sold to outsiders to see if the small houses served the objective of the Policy, i.e., to improve the rural house standard and preserve life style in the indigenous community. The representative from the PELB would respond to the enquiry at the next meeting.

Adm.

6. In response to a Member's enquiry, the Administration replied that the proposed Equal Opportunities Commission could not assist woman to bring land disputes arising from the Small House Policy to court since, with the exception, this Policy would not be unlawful under the SDB. The Commission could, however, receive views from the public on this exception. It could keep this exception under review and, if the Commission considered it necessary, submitted to the Governor proposals for amending the exception pursuant to clause 58 and Schedule 4 of the Bill. The exception would not bar a person from challenging the Policy under the Bill of Rights

(BOR) Ordinance.

7. A Member enquired if the proposed Equal Opportunities Commission could take enforcement actions against discriminatory practices under the BOR Ordinance. The Administration clarified that the Commission could only deal with gender discrimination under the Sex Discrimination Bill.

8. A Member indicated that he might move amendment to the SDB regarding the Small House Policy if the Administration could not provide a timetable or give details on the review of the Policy, in particular, the differential treatment for woman and man under the Policy.

Members
to note

Election of Village Representative

9. As a related issue, a Member enquired on the equal election rights for both sexes in the election of village representatives. The Administration replied that election would not fall within the coverage of provision of goods and services in the SDB. It would review the election practice after the election to be held in March, 1995 and would provide Members with a written reply on this issue.

Adm.

Exceptions under clause 53

10. A Member enquired on the details of exception under clause 53 of the SDB. In reply, the Administration undertook to provide Members with a list of the exceptions under clause 53 but the list may not be exhaustive as there would be difficulties in listing out all customs used in settling land disputes under Section 13 of the New Territories Ordinance.

Adm.

Education

11. The Administration went on to brief Members on clauses 22-24 and 32 which were on discrimination and sexual harassment in education.

12. In response to a Member's enquiry, the Administration clarified that a responsible body for an educational establishment referred to those listed in Schedule 1 Part 1. If a staff member of an educational establishment discriminated against a woman in discharging his duties, both the staff and the responsible body would be liable under clause 39(1) and clause 40 of SDB. The responsible body could, however, have a defence under clause 39(3) if the body could prove that he had taken reasonably practicable steps to prevent the employee from the discriminatory act.

13. A Member questioned the need for differential treatment to government schools under clause 68(7), in particular, why 2 months' notice was required before civil proceedings could be instituted. She would also like to know the meaning of the last sentence of clause 68(7). The Administration would provide a written reply to these questions.

Adm.

14. The Administration further clarified that, under clause 40(2) of SDB, a teacher or principal of a school would be deemed to aid the unlawful act under SDB. As such, both the responsible body, pursuant to clause 39, and the teacher (or principal), under clause 40(2), would be liable for enforcing any discriminatory practice.

15. Members were concerned about the liability of the responsible body for its employee(s)' unlawful acts, in particular, indecent acts against students. The Administration clarified that the SDB would not be applicable to criminal proceedings. Sexual harassment under the SDB would be a civil wrong rather than

criminal offence. Acts like indecent assault were criminal in nature and would, according to clause 39(4), not fall within clause 39. The Administration also advised that to avoid any liability arising from any civil claims on discriminatory acts, the responsible body could devise code and practice on equal opportunities for both sexes for its employees to follow. The Equal Opportunities Commission could also draw up code and practice of this kind for use by educational establishments.

Provisions of Goods, Facilities, Services and Premises

16. The Administration briefed Members on clauses 25 to 30 on discrimination in the provision of goods, facilities, services and premises.

17. The Administration stated that clause 25 applied to both public and private members' clubs as clause 29(2), which provided exceptions to clause 25, allowed exception to private members' clubs with restricted membership. The Administration also clarified that section of the public under clause 25(1) might, for example, refer to a particular age group, e.g. persons aged on or above 18.

18. Members were concerned about the wordings of clause 25(1) and questioned the reason for not explicitly stating that the clause covered both public and private members' clubs. The Administration considered that the inclusion of private members' clubs in the clause might incur problem on definition of 'private' and might also render the coverage of the provision too wide. Nevertheless, the Administration would review the clause in light of Members' comments.

Adm.

19. The Administration clarified that the exception under clause 30(2) only referred to provision of facilities or services restricted to men. Such exceptions might, for example, apply to a gymnasium restricted to male members as the equipment was for male users and there were physical contacts between the users when

using the services or facilities and the male users might reasonably object to female users.

Exceptions for Voluntary Bodies

20. A Member enquired on whether clause 29 covered government funded welfare organisations and whether the activities of these welfare organisations were state activities to which gender discrimination legislation might not apply as in UK. She quoted a House of Lord's decision which stated that Section 29 of UK's Sex Discrimination Act, the parallel of clause 29 of SDB, could only apply to market place activities. The Administration noted the comments and said that in Hong Kong the BOR Ordinance, which had no parallel in UK, bound the government. The Administration would, however, look at the meaning of state activities and see whether it was applicable in the Hong Kong context.

Adm.

II. Date of Next Meeting

21. The next meeting was scheduled for 20 January 1995 (Friday) at 10.45 a.m.

22. The meeting closed at 12.40 p.m.

LegCo Secretariat
27 February 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 20 January 1995 at 10.45 a.m.
in Chamber of the Legislative Council Building**

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon HUI Yin-fat, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon Moses CHENG Mo-chi
Rev Hon FUNG Chi-wood
Dr Hon Conrad LAM Kui-shing, JP
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Roger LUK Koon-hoo
Hon Anna WU Hung-yuk
- Absent with : Hon Mrs Selina CHOW, OBE, JP)
apologies Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP)
Hon Mrs Miriam LAU Kin-ye, OBE, JP) other
Hon J D McGregor, OBE, ISO, JP) commitments
Hon Simon IP Sik-on, OBE, JP)
Hon Emily LAU Wai-hing)
Hon James TO Kun-sun)
- By invitation : The Administration
Home Affairs Branch
Miss Susie HO
Principal Assistant Secretary for Home Affairs

Planning, Environment and Lands Branch

Mr Trevor Keen
Principal Assistant Secretary (Lands)

Attorney General's Chambers

Mr J A Fox
Senior Assistant Law Draftsman

Hon Anna WU's team

Mr Andrew Byrnes, Consultant
Ms Carole Petersen, Consultant
Mr Eric CHOW
Ms Celie Nehmer

In attendance : Mr Stephen LAM, ALA4
Mrs Anna LO, CAS(BC)2
Mr Colin CHUI, SAS(BC)2

The Chairman drew Members' attention to the departure of Hon LI Wah-ming and Hon LAU Chin-shek from the Bills Committee. With the reduction of members of the Bills Committee to 20, the quorum for the meeting was now 6.

I. Meeting with the Administration

Matters Arising

2. Representative from the Planning, Environment and Lands Branch attended the meeting to answer questions on the Small House Policy. The discussion is summarised in paragraphs 3 to 10.

Small House Policy

3. The Administration stated that the Small House Policy

originated from a policy to recognize indigenous community's desire to provide homes for themselves. This policy objective was achieved by issue of free building licence to indigenous villagers so that they could build house on their own lands or by grant of government land at a premium.

4. The current policy came into being in the early 1970s. It arose out of concerns in the indigenous community when the new town programme was in full swing and the rural areas were affected by rapid urbanization. It was formulated to address two problems, i.e. the need to preserve the traditional life style and interest of indigenous villagers and the need to address poor standard of housing in the indigenous villages. Some 700 houses had been built in the first three quarters of 1994/1995. Currently there were still a backlog of about 12 000 applications. Apart from these outstanding applications, the commitment would grow as the number of male indigenous villagers reaching the age of 18 increased continuously. The Administration accepted the need for a review of the Small House Policy but such a review would take time as a lot of consultation would be necessary. The Administration did not consider the Small House Policy a main issue of the Bill. In order not to delay the enactment of the Bill by any review, which could not be completed until about a year after the accepted passage of the Bill, an exception for the Small House Policy was proposed in the Bill. There was also a mechanism under clause 58 of the Bill to review the exceptions in Schedule 4 which included the Small House Policy.

5. A Member opined that some small houses were sold or rented to non-indigenous villagers and the purpose of the Policy might therefore be defeated. He enquired if the Administration could provide figures on this. The Administration replied that it did not have figures on the number of small houses occupied by indigenous villagers and non-indigenous people respectively. The key issue was whether the indigenous community itself would like to preserve its traditional life style, the answer to which was anticipated to be overwhelmingly affirmative if indigenous villagers were consulted.

6. A Member raised the question of whether the Administration could make known the options and strategies in the review so that Members would have a better idea of the Administration's stand on the Policy. The Administration pointed out that, having regard to the complexity of the Policy, the review was only in the internal discussion stage. It would need more time to consider the scope of the review and therefore could not provide a timetable of the review at present. It was therefore premature to reveal any options considered but undertook to revert to the Bills Committee or the relevant Panel when the Administration had a concrete proposal.

7. A Member questioned the need to retain the custom the Small House Policy was trying to preserve if the custom was outdated. The Administration stated that whilst it was committed to the principles of the SDB, it had to take into consideration its pre-existing commitments to the indigenous community in the Small House Policy. Nevertheless, the relationship between the Policy and the Bill would be taken into account in any review of the Policy.

8. The Administration advised that the policy was domestic in nature and discussion with the Chinese Authorities was not therefore required, although consultation with the Land Commission might be required if there were implications regarding land.

9. The Administration also clarified that the Policy was administrative in nature and the indigenous villagers' right to small houses was not a statutory entitlement. It would seek legal advice on whether a male indigenous villagers could take legal action against the Administration if the male villagers' right under the Policy was removed. It would revert to the Committee at the meeting to be held after the Chinese New Year.

10. Members were concerned about the impact to the male indigenous villagers if the Bill was enacted with the removal of the exception for Small House Policy and requested the Administration to

look at the issue.

Clause 49 of SDB

11. A Member was concerned about the Administration's interpretation of protection of women under clause 49 and enquired whether a comparison of the UK Act and the SDB had been made. The Administration responded that the comparison was under way but required more time to complete. A written reply would be given to Members on the objectives of the excepted items set out in Schedule 2. The Administration would also give more thought on the interpretation of protection of women.

Adm.

Clause 25 of SDB

12. A Member pointed out that the UK Sex Discrimination Act (SDA) did not apply to private members' clubs which were confirmed by case law. The SDA would only apply to market place activities and not state activities. She enquired if the same would also be applicable to the SDB.

13. The Administration replied that the issue of private members' clubs was being examined. It clarified that government services was included under clause 25(2)(h). It would seek legal advice on whether government services in the SDB covered state activities, non-market place activities as well as the administration of laws and government programmes. The Administration pointed out that the administration of laws and government programmes were already covered by the Bill of Rights Ordinance.

Adm.

II. Briefing by the Administration on the SDB

*Discrimination in disposal or management of premises
and other sexual harassment*

14. The Administration briefed Members on clauses 26 and 33

which were on discrimination in disposal or management of premises and other sexual harassment respectively.

III. Briefing by Ms Anna WU on the EOB

A. Education

15. Ms Anna WU briefed Members on the relevant clauses in the area of education which included clauses 30, 79, 104 and 136. In reply to Members' enquiry on inclusion of sexual harassment by a student to another student or by student to teacher in the Bill, Ms Anna WU undertook to -

- (a) add the SDB's definition of sexual harassment, based on the court's assessment of community standards, to the existing definitions of sexual harassment in the EOB;
- (b) add a clause on sexual harassment of a student by another student; and
- (c) add a clause on sexual harassment of a teacher by a student if the above two amendments could not cover this harassment.

B. Sport

16. The relevant clauses relating to sport were 41, 132 and 178. Exclusion of one sex from sporting activity was allowed in clause 41(1) where strength, stamina or physique of competitors was relevant. Clause 41(2) stipulated five situations where the physical strength of participants was irrelevant and such exclusion would therefore be unlawful. Clause 132 dealt with discrimination in sporting activity against a person's disability while clause 178 was on discrimination in sport on the ground of age.

17. A Member enquired whether it would be discriminatory if a person was barred from participating in the activities under

clause 178(4) on the ground that the person's age rendered him/her not to have the ability of judgement. Ms Anna WU replied that the issue to consider would be whether the differential treatment was reasonable with regard to the nature of the activity.

C. Unjustifiable Hardship

18. Ms Anna WU briefed Members on clause 117 with a paper explaining the meaning of the clause tabled at the meeting (**Appendix**). Clause 117 stated that the nature of the benefit or detriment to all persons concerned, the effect of the disability of the person concerned and the financial circumstances & cost & estimated amount of expenditure had to be considered in determining unjustifiable hardship. The paper provided illustrations to each of the above three factors.

19. Miss Susie HO undertook to forward the paper to the Health and Welfare Branch for reference in drafting the Disability Discrimination Bill which was scheduled to be introduced to LegCo in a few months' time. It also undertook to give a written reply to whether sexual harassment by a student to another student as well as by an employee to employer would be added in the SDB.

Adm.

IV. **Date of Next Meeting**

20. The next meeting was scheduled at 10.45 a.m. on 27 January 1995.

21. The meeting closed at 12.40 p.m.

LegCo Secretariat
28 February 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 27 January 1995 at 10.45 a.m.
in Chamber of the Legislative Council Building**

- Present** : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon HUI Yin-fat, OBE, JP
Hon Moses CHENG Mo-chi
Rev Hon FUNG Chi-wood
Hon Emily LAU Wai-hing
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
- Absent with** : Hon TAM Yiu-chung)
apologies Hon Andrew WONG, OBE, JP)
Hon Mrs Peggy LAM, OBE, JP)
Hon Mrs Miriam LAU Kin-ye, OBE, JP) Other
Hon J D McGregor, OBE, ISO, JP) Comm: ents
Hon Simon IP Sik-on, OBE, JP)
Dr Hon Conrad LAM Kui-shing, JP)
Hon James TO Kun-sun)
Hon Roger LUK Koon-hoo)
- Hon Ronald Arculli, OBE, JP (out of town)
- By invitation** : Hon Anna WU's team
Mr Andrew Byrnes, Consultant
Ms Carole Petersen, Consultant
Mr Eric CHOW
Mr Adam Mayes
Ms Celie Nehmer

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

Briefing by Ms Anna WU on the EOB

Ms Anna WU continued to brief Members on Part VII of the SDB on "Discrimination on the ground of religious or political conviction".

Meaning of religious conviction

2. Ms WU pointed out that there was no statutory definition of religion in Australian, Canadian, United Kingdom or United States law. There were two approaches in defining religion in common law :

- (a) traditional common law approach which developed principally in connection with the law of charitable trusts and rate and tax exemption. The two factors in this respect were appended below:
 - (i) theism, belief in a god or gods, was a central indicator of religiosity but exceptions were provided to recognise major religions such as Buddhism despite the absence of this factor; and
 - (ii) unity of doctrine and a large number of adherents.

- _(b) More open-ended definitions of religion developed as a result of growing legal concern with the individual's religious freedom. . The following factors were recognized by courts :
- (i) beliefs in the supernatural, beliefs relating to the nature and place of humanity in the universe or beliefs which offered a way to find meaning and purpose in life;
 - (ii) a group with some organizational structures and some belief systems that seriously affected believers' lives;
 - (iii) moral and ethical beliefs which an individual held with the strength of traditional religious views.

She pointed out that there was flexibility in defining religion in order not to induce discrimination against minority religious groups or creeds.

3. Meanings of direct discrimination and indirect discrimination in the context of religious discrimination were similar to those in other areas. Direct discrimination in this context meant treatment that was obviously unfair or unequal to a particular group of people; for example, a hotel refusing to rent its venue to Muslims for holding a religious ceremony or conference.

4. Indirect discrimination in this context meant a requirement that was the same for everyone but the effect or result of which would be unequal to persons with religious belief. The requirement would not be discriminatory if it was reasonable, objective and flexible. As such it would not be religious discrimination if, for example, an employer did not offer a job to a person because he/she, for religious reasons, refused to work on Sundays even though such work would be necessary for the discharge of his duties.

5. Clause 148(3) (for applicants and employees) and 150(2) (for contract workers) clarify one aspect of indirect discrimination. Under these two clauses, it was unlawful for an employer to discriminate against an employee/a contract worker by disallowing him/her to carry out a religious practice during working hours, if such practice was recognised as necessary and reasonable by persons of the same religious conviction having regard to the circumstances of employment.

6. Ms Anna WU would provide a note on meaning of religious conviction for Members' reference.

Ms Anna
WU

(Post-meeting note : a paper prepared by the office of Hon Anna WU on meaning of "religious conviction" was circulated to Members vide Appendix I to LegCo Paper No.HB 211/94-95)

Exceptions for religious bodies

7. Under clause 228, differential treatments were lawful for core activities of religious bodies. Such activities included :

- (a) ordination or appointment of priests, ministers or members of any religious order (sub-clause (a));
- (b) training of persons seeking to become any one of the positions as stated in sub-clause (a) (sub-clause (b));
- (c) selection or appointment of persons to perform duties on religious observance or practice (sub-clause (c)); or
- (d) acts done for religious purposes that confirmed to the doctrines of that religion or was necessary to avoid injury to the religious susceptibilities of the religion.

8. Activities, which were not for religious purposes, held by religious organisations would not be exempted. It would be unlawful if, for example, only adherents of a religion were employed as staff of a Chinese restaurant operated by a religious body.

9. Some Members questioned why exceptions for discrimination were given to religious bodies but not to other organizations. Ms Anna WU replied that some degree of tolerance was given to religious bodies to allow plurality of beliefs and to provide due respect to freedom of religious exercise as guaranteed in the Bill of Rights and in international human rights standards. Exceptions for differential treatment should therefore be provided for core activities of these religions.

10. Ms Anna WU pointed out that the Coalition of Women's Organizations had made a submission which recognized that religious groups would have autonomy over religious doctrine and ordination of religious leaders. However, when a religious institution acted as an ordinary employer, it should not be permitted to discriminate against women, either in the hiring process or in the setting of terms and conditions for employees.

Educational bodies established for religious purposes

11. Clause 229 permitted schools conducted in accordance with religious teachings to continue certain forms of differential treatment. Subclauses(1) and (2) applied to such schools' employment practices (covering respectively employment and contract work), and exempted any discrimination undertaken in good faith to avoid injury to religious susceptibilities. Subclause (3) applied to such schools' admission practices, and exempted any discrimination in good faith in favour of adherents of the same religion.

12. Ms Anna WU informed the meeting that nearly half of the primary and secondary schools in Hong Kong, with over 50% of students in the territory, were run by religious bodies. At present a

small percentage of school places in both primary or secondary school were allocated by educational establishments under a point-scoring system. Some aspects of the point system might be open to challenge under the EOB as religious conviction discrimination, or as family responsibility discrimination. 5 points, for example, would be awarded to an applicant if his/her father/mother was an adherent of the same religion. Points were also awarded to applicants with brothers/sisters studying in the same school. Ms WU suggested that most of these factors were in fact reasonable in the circumstances, and added that the system was devised by the Education Department rather than by the schools themselves. She suggested to add a sub-clause in clause 229 to the effect that educational bodies should not be challenged if they followed the system in allocating school places. Any challenge of differential treatment under the system should be directed instead to the government department responsible for devising it. She would provide details of the present point scoring system for Members' information.

13. Members' views were divided on the exception given to educational bodies run by religious organisations. Some Members considered such exception was given in recognition of the religious bodies' contribution to the education of Hong Kong. Other Members, however, were of the view that the exception was in breach of the principle of equal opportunities, particularly when the school places were publicly funded.

14. Members agreed that religious bodies should be consulted on the clauses relating to religious activities. The Bills Committee would therefore invite representatives of religious bodies to express their views in the second round of consultation.

Discrimination on the ground of political conviction

15. There was no statutory definition of political conviction in the EOB nor in the laws of other jurisdictions. The Australian courts have ruled that political conviction included beliefs and opinions on government, government policies, administration and the like. Ethical comments were not necessarily political conviction.

Criticisms on corruption, for example, would often be treated as only ethical remarks but not political conviction. On the other hand, the same views expressed as part of a political programme or by someone who was known as a political activist, for example by a university lecturer or a politician, would be political conviction.

16. Exceptions were allowed for discrimination on the ground of political conviction under clause 163(2). These included employment of employee for a political party or electoral staff. Ms Anna WU would propose amendment to ensure that employment by pressure groups would also be included in the clause.

Ms Anna
WU

Other general exceptions to the EOB

17. Apart from clauses 228 and 229 which were on exceptions for religious bodies, clauses 226, 227 and 230 provided other general exceptions to the EOB. Clause 226 gave exception for provision of charitable benefits to persons of a particular class. Clause 227 exempted voluntary bodies with respect to their admission of members or provision of benefits, facilities or services. This exception was provided in order to facilitate cultural exchange or gatherings to discuss matters of concerns. It would, however, not apply to clubs (defined in the bill as any association of over thirty members maintaining premises on which alcoholic drinks were served), to statutory bodies, or to associations that provided finance to members. Clause 230 exempted admission restrictions imposed by establishment providing housing accommodation for aged persons, e.g. retirement homes. It would, however, remain unlawful under clauses 230(3) for a retirement home to refuse a person admission because of disability, because such discrimination if practised widely could easily leave the infirm with nowhere to go.

18. A Member enquired why discrimination on the ground of religious conviction was allowed in the admission of aged persons. Another Member opined that such exception should be similar in scope to the exceptions given to educational bodies. Ms Anna WU responded that as old people tended to be less flexible, more flexibility should be provided to cater for their needs. She would

clarify if the existing code of subvention for government funded old aged homes allowed or prohibited such discrimination in the admission of aged persons.

19. A Member noted that "age discrimination" was on the agenda of the Manpower Panel meeting on 7 February 1995 and was concerned about the duplication of efforts if the Bills Committee and the Panel were looking at the same issue.

(Post-meeting note : The item was raised by Hon CHEUNG Man-kwong on "employment opportunities for local women employees over 30 years of age")

20. Members noted that Mr Michael SÜEN, Secretary for Home Affairs, had held a press conference on, inter alia, legislative programmes regarding discrimination. In this connection, he would be requested to attend the next meeting personally and brief Members, particularly on the following :

- (a) Government's plans in the legislative programme as it was understood that the Administration was conducting consultation on other areas of discrimination apart from sex and disability;
- (b) The Administration's reassessment of the EOB considering that the SDB and the EOB had been studied for some time; and
- (c) The Administration's plan to implement the Equal Opportunities Bill, if passed, possibly with some amendments.

Members also considered that the Administration's attendance in briefings by Ms Anna WU on the EOB would be necessary to facilitate the work of the Bills Committee.

21. -Ms Anna WU informed the meeting that she had written to the Governor on 23 January 1995 seeking his consent that :

- (a) the Administration would not withdraw the legislation establishing the Equal Opportunities Commission if Members chose to press beyond the confines of the Administration's legislative proposals; and
- (b) the Administration would expand the Equal Opportunities Commission's proposed jurisdiction to encompass those grounds of discrimination now under discussion, but omitted from the Administration's legislative proposals.

(Post-meeting note : Copies of letters between Hon Anna WU and the Governor were circulated to Members vide Appendix I to LegCo Paper No.HB 176/94-95)

22. The meeting ended at 12:38 p.m.

LegCo Secretariat
27 March 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 10 February 1995 at 9:15 a.m.
in Chamber of the Legislative Council Building**

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon HUI Yin-fat, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Rev Hon FUNG Chi-wood
Hon Emily LAU Wai-hing
Hon James TO Kun-sun
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
- Absent with : Hon TAM Yiu-chung)
apologies Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP) Other
Hon Moses CHENG Mo-chi) commitments
Hon Simon IP Sik-on, OBE, JP)
Dr Hon Conrad LAM Kui-shing, JP)

Hon Roger LUK Koon-hoo - out of town

By invitation : The Administration

Home Affairs Branch

Mr Michael SUEN
Secretary for Home Affairs

Mrs Stella HUNG

Deputy Secretary for Home Affairs

Miss Susie HO
Principal Assistant Secretary for Home Affairs

Health and Welfare Branch

Ms Anne Shepherd
Principal Assistant Secretary for Health and Welfare

Hon Anna WU's team

Ms Carole Petersen, Consultant
Mr Eric CHOW
Mr Adam Mayes
Mr David Viotti
Ms Celie Nehmer
Ms Barbara Kvoske

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

I Confirmation of notes of meetings

The notes of meetings held on 25 November 1994 and 2 December 1994 (LegCo Paper No.HB 91 and 92/94-95) were confirmed.

II. Meeting with the Administration

2. The Chairman welcomed Mr Michael SUEN to attend the meeting. The discussion between Members and the Administration is stated in paragraphs 3 to 12 below.

Time-table on anti-discrimination legislation

3. Mr Michael SUEN stated that the Disability Discrimination Bill (DDB) was scheduled to be introduced into the Legislative Council in April this year. It was hoped that this Bill and the Sex Discrimination Bill (SDB) would be enacted before the close of this legislative session.

4. The Administration, in principle, supported anti-discrimination legislation, but would prefer to take a step-by-step approach to first test out the effect of the SDB and the DDB, if passed, on the community. It would need to examine closely the social, economic and legal implications of adopting the legislative approach. It would also need to consider how best to deal with other areas of discrimination. This could be achieved by, for example, a public consultation exercise on discrimination on the grounds of age, family status, and sexual preference.

5. Some Members agreed with this progressive approach but considered that there should be a concrete time-table for legislation. Mr SUEN pointed out that the Administration required more time to consider priority in resource allocation and in response to the needs of the community. However he emphasised that the ultimate measures to be adopted to tackle different types of discrimination would depend on the examination to be undertaken by the Administration and the outcome of public consultation. One should not preempt the outcome of this exercise. He undertook to revert to the Committee when a time-table was devised.

6. Responding to Members' request for speeding up of

consultation and introduction of anti-discrimination legislation on other aspects, the Chairman agreed to convey Members' views to the Chairman of the House Committee so that she could raise it at her next meeting with the Chief Secretary.

(Post-meeting note : The request was conveyed to the Chief Secretary by the Chairman at the CS' briefing on 10 February 1995. CS stated that while branches and departments might have different interests in a programme area and hence different priorities, she did not in principle see particular difficulties in co-ordinating their activities in order to reach a workable time-table.)

Implementation plan on the Equal Opportunities Bill (EOB)

7. Mr SUEN reiterated that it needed more time to assess the social, economic and legal implications of the EOB. It had already expressed concerns and raised some initial questions on the EOB in August 1994. One of the Administration's concerns was the lack of a mechanism such as a Commission or a Special Court to deal with problems in enforcing the legislation.

8. Ms Anna WU said that in her original EOB, there was a provision of such a Commission empowered to deal with all areas of discrimination but it was scrapped by the Administration. She was surprised that to date the Administration was still not aware of public opinion on equal opportunities when she began discussions with it in early 1993. She reiterated her willingness to discuss with government departments/branches concerned to solve any enforcement problems if she could be told what the problems were.

(Post-meeting note : A list of questions raised by the Administration in August 1994 on the EOB was forwarded to Members vide LegCo Paper No.HB 231/94-95.)

9. A Member enquired if the proposed Equal Opportunities Commission (EOC) in the SDB could be empowered to tackle problems arising from other areas of discrimination apart from disability and sex. The Administration replied that the EOC would be a new body set up under the SDB to deal with these two specific areas

of discrimination. It should not be overburdened at the start of its operation. Other bodies, like the Committee on the Promotion of Civic Education could undertake the task of educating the public on anti-discrimination and equal opportunities in the other areas.

10. A Member enquired why exceptions were provided for some discriminatory acts in the SDB. The Administration replied that there were justifiable reasons for providing for the exceptions. The exception for the Small House Policy, for example, was needed to allow the policy to continue while the Administration was reviewing how the policy could be improved. A Member considered that consultation on legislation against discrimination on the ground of sexuality would not be practicable as victims of this kind of discrimination would not be willing to tell others their experience. The Administration noted the difficulty and would take it into account in drawing up measures to tackle this kind of discrimination.

11. A Member enquired why the Administration did not use the provisions on disability in the EOB in drafting the DDB. Ms Shepherd replied that the same language as the SDB was used in drafting the DDB so as to facilitate effective operation of the EOC and enforcement of the two Bills.

12. Members opined that the Administration should attend briefings by Ms Anna WU on the EOB to answer questions and state Administration's position on issues discussed. The Chairman said he understood that an officer of the Home Affairs Branch usually attended meetings of the Bills Committee as an observer in the public gallery. Representatives of the Administration would be invited to meetings of the Bills Committee, as deemed necessary.

Clerk to note

III. Briefing by Ms Anna WU on the EOB

13. Ms Anna WU continued to brief Members on the following exception clauses in the EOB.

Rights or privileges in connection with pregnancy or childbirth

14. Under clause 34, it was not unlawful for a person to discriminate against a man on the ground of his sex because the person granted to a woman rights or privileges in connection with pregnancy or childbirth.

Measures to achieve equality

15. Under clauses 37(a), 112(a), 143(a) and 185(a), it was not unlawful to take measures intended to achieve equality (affirmative measures). These exceptions applied to discrimination on the grounds of sex, marital status, pregnancy, race, disability or age. It would, for example, not be unlawful for an employer to give some hiring preference to female applicants for certain posts if he/she considered that they had fewer opportunities for work.

16. There was no equivalent clause in the SDB authorising measures intended to achieve equality. The only comparable SDB Clauses were 45 and 46 permitting differential treatment in the provision of vocational training and Clause 47 concerning the composition of elective bodies like trade unions etc,. This meant that many forms of voluntary affirmative action for women, in government or in the private sector, would be unlawful under the SDB. Ms Anna WU said that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) required that measures intended to achieve equality be lawful and the Administration would therefore be requested to consider amendments to the SDB to include these measures.

Adm.

Measures to meet special needs

17. Measures intended to meet special needs were allowed in the areas of sex, marital status and pregnancy (clause 37(b)), family status (clause 59), sexuality (clause 86), race (clause 112(b)), disability (clause 143(b)) and age (clause 185(b)). It would not, for example, constitute discrimination against unmarried employees on the ground of marital status if an employer set up a nursery to take care of employees' children during working hours.

Infectious diseases (disability)

18. Under clause 145(1), it would not be unlawful to discriminate against a person if his/her disability was an infectious disease and the discrimination was reasonably necessary to protect public health. This would authorise, for example, separate hospital facilities for persons with contagious illnesses. Because of the widespread, mistaken belief that AIDS could be casually transmitted, subclause (2) clarified that more than HIV-positive status by itself would be required before the exemption would apply.

Contracts with minors (age)

19. Clause 184 allowed a person to refuse to enter into a contract with a person who was a minor if that contract would be unenforceable at common law.

Date of next meeting

20. The next meeting was scheduled at 10:45 a.m. on 17 February 1995.

21. The meeting was closed at 11:13 a.m.

LegCo Secretariat
23 March 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 17 February 1995 at 10:45 a.m.
in Chamber of the Legislative Council Building**

- Present : Hon Christine LOH Kung-wai (Deputy Chairman)
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Dr Hon Conrad LAM Kui-shing, JP
Hon Emily LAU Wai-hing
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
- Absent with : Dr Hon LEONG Che-hung, OBE, JP (Chairman))
apologies Hon Mrs Selina CHOW, OBE, JP)
Hon HUI Yin-fat, OBE, JP)
Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP) Other
Hon Moses CHENG Mo-chi) commitment
Rev Hon FUNG Chi-wood)
Hon Simon IP Sik-on, OBE, JP)
Hon James TO Kun-sun)
Hon Roger LUK Koon-hoo)
- By invitation : Hon Anna WU's team

Mr Andrew Byrnes, Consultant
Ms Carole Petersen, Consultant
Mr Eric CHOW
Mr Adam Mayes
Ms Celie Nehmer
Ms Barbara Kvoske

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committee)²
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committee)²

I. Acceptance of Hon LEE Cheuk-yan to the Bills Committee

In view of the special circumstances in which Mr LEE had become a new Member of the Council, Members endorsed his late membership to the Bills Committee. With the increase of Members of the Bills Committee to 21, the quorum for the meeting was changed to seven accordingly.

II. Confirmation of notes of meetings

2. The draft notes of meetings held on 9, 16 & 23 December 1994 (LegCo Paper No.HB 93, 202 & 203/94-95) were confirmed.

III. Briefing by Ms Anna WU on the EOB

3. Ms Anna WU briefed Members on clauses relating to application forms and advertisements. She pointed out that the provisions of these clauses would apply to employment as well as every other area of activity addressed by the bill, such as renting of housing accommodation.

4. The principle of these clauses was that it would be unlawful for a person to request another person, on the ground of an area of discrimination (e.g. because of the second person's sex or race), to provide information which other persons (e.g. persons of the opposite sex or a different race) would not be required to provide. The areas of discrimination in these clauses included sex, marital status and pregnancy (clause 26(1)), family status (clause 57), sexuality (clause 76), race (clause 101), disability (clause 131), religious or political conviction (clause 161), age (clause 179), spent conviction (clause 203) and membership of a trade union (clause 222). It would be unlawful if, for example, an employer asked only applicants with children questions on feasibility of overtime work and arrangements of children etc.. This would be discrimination against the applicants on the ground of family status (clause 57 referred). It would not constitute discrimination if the information requested was sought from all applicants and it was job related.

5. Exceptions were provided in clauses 26(2) and 163(2). Clause 26(2) allowed a person to ask another person to provide information concerning his/her medical history as related to medical conditions that affected persons of that sex only or a pregnant woman to provide medical information concerning the pregnancy. Clause 163(2) permitted an employer to ask information on political conviction in the recruitment of employee for a political party, electoral staff or the like.

6. Ms Anna WU took Members through a note illustrating effects of the clauses on recruitment including advertisements, application forms and interviews (Appendix). The discussion relating to the note is stated in paragraphs 7 to 13 below.

Advertisements

7. It would be unlawful if, for example, a particular sex and/or age limit were specified in an advertisement for a vacancy while the duties of the position could be performed by an adult of either sex.

8. A Member was concerned about whether these clauses would only create procedural equality without affecting the end result of discrimination. An employer would, for example, accept applications from either sex but he/she could still choose a male applicant irrespective of the skills and experience of female candidates. Ms Anna WU responded that the proposed legislation would be a starting point to remove discrimination in this respect. With these clauses an applicant of either sex, for example, could at least submit applications if he/she met the entry requirements. Moreover, if an applicant could show that the hiring decision itself was discriminatory, that discrimination would be unlawful under the bill's employment clauses even if the application process itself was unobjectionable. Ultimately, though, the sense of equal opportunities had to be cultivated by publicity and education in addition to legislative control.

Application forms

9. Ms Anna WU illustrated, with the aid of the sample application form in the note, how it could suit an employer's particular specifications without violating the relevant clauses in the EOB. The form had the following features :

Sex

- (a) an applicant would not be asked to specify his/her sex to avoid discrimination on the ground of sex.

Age

- (b) a person would not need to specify his/her age to prevent age discrimination. He/She would be asked instead if he/she was an adult (18 or older). She added that justified age limit could be imposed. An employer could, for example, ask an applicant to state if he/she was over the retirement age of 60.

Overtime Work

- (c) An applicant could be asked to state if he/she could work outside normal hours. This would remove discrimination on the ground of family status as a

female candidate with children would not be suitable as she could not work overtime, which was justified in the job, in order to take care of them after office hours.

Medical Examination

- (d) In response to a Member's question, Ms Anna WU explained that a medical examination for an applicant might include test on Acquired Immune Deficiency Syndrome (AIDS) but an employer could not discriminate against a person who was HIV-positive or who had AIDS unless his/her status was more than HIV-positive (clause 145(2) referred).

Interviews

10. The sample application form would provide an interviewer the necessary information to conduct an interview without any discriminatory elements. Discriminatory questions like the precise age of an applicant, contacts for emergencies and details of dependants should be avoided during interview. The information should be obtained from the chosen candidate(s) after selection. If a candidate had a disability that affected the job, the interviewer could discuss ways in which reasonable accommodation could be organized.

11. A Member commented that whilst he supported the spirit of equal opportunities, he found the clauses stated in paragraph 4 impracticable. He considered that these clauses would create added burden on employers, particularly those operating small business establishments, and was concerned about liability of employers should unsuccessful applicants take legal action against them. He opined that guidelines, such as the code of practice developed by the Hong Kong Chamber of Commerce, could be used to eliminate discrimination in this respect rather than by legislative control.

12. Ms Anna WU responded that there were serious cases of discrimination, such as small house policy and denial of women's right in rural election, which required mandatory legislative control

measures. Furthermore, legislation would be coupled with promotion of awareness of equal opportunities to facilitate anti-discrimination work. The said code of practice was developed in response to the introduction and legislative examination of the EOB and SDB which showed that legislative control could bring about measures to remove discrimination. As regards legal liability of employers, she pointed out that an employer would be legally liable only if a job applicant proved that he/she had been discriminated in the selection process and suffered damages as a result of such discrimination.

13. Some other Members shared Ms Anna WU's views that anti-discrimination legislation was necessary although some implementation problems were expected.

V. Date of next meeting

14. The next meeting was scheduled on 24 February 1995 at 8:45 a.m. in the Chamber.

(Post-meeting note : This meeting was subsequently cancelled due to lack of quorum - LegCo Paper No.HB 231/94-95 refers)

15. The meeting was closed at 12:13 a.m.

LegCo Secretariat
24 April 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

Notes of Meeting held on
Friday, 3 March 1995 at 8:45 a.m.
in Chamber of the Legislative Council Building

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon HUI Yin-fat, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan
- Absent with : Hon Mrs Selina CHOW, OBE, JP)
apologies Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP)
Hon Mrs Peggy LAM, OBE, JP)
Hon Mrs Miriam LAU Kin-ye, OBE, JP) Other
Hon Moses CHENG Mo-chi) commitments
Rev Hon FUNG Chi-wood)
Hon Simon IP Sik-on, OBE, JP)
Dr Hon Conrad LAM Kui-shing, JP)
Hon Emily LAU Wai-hing)
Hon James TO Kun-sun)
Hon Roger LUK Koon-hoo)
- By invitation : The Administration
Home Affairs Branch
Miss Susie HO
Principle Assistant Secretary for Home Affairs

Mr J A Fox
Senior Assistant Law Draftsman

Hon Anna WU's team

Mr Andrew Byrnes, Consultant
Ms Carole Petersen, Consultant
Mr Adam Mayes
Ms Celie Nehmer
Ms Barbara Kvoske

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

I. Confirmation of notes of meetings held on 30 December 1994, 13 & 20 January 1995 were confirmed (LegCo Paper No.HB 204, 276, 286/94-95)

The notes of meetings held on 30 December 1994, 13 and 20 January 1995 were confirmed.

II. Briefing by the Administration on the SDB

2. The Administration briefed Members on Part VII and schedule 5 of the SDB relating to the establishment of the Equal Opportunities Commission (EOC), its functions and powers, in particular on the issue of codes of practice (clause 61). Members raised a number of questions. The discussion is summarised in paragraphs 3 - 18.

Establishment of EOC

3. Under clause 55, the EOC, comprising a Chairman and not less than four or more than 16 other Members appointed by the Governor, would be set up. The Administration explained that the flexibility in the membership of the EOC under clause 55(3)(b) was intended to facilitate the EOC to tackle matters pertaining to disability discrimination. The Disability Discrimination Bill would be introduced into LegCo shortly. The EOC could set up committees to examine particular issues. A Member requested the Administration to consider appointing a person who was well versed in the area of sex discrimination and a person to deal specifically with discrimination against women.

Adm.

Functions and powers of EOC

4. A Member stated that the core functions set out in clause 56(1) were identical to those of the EOC in the UK. The UK courts, however, had significantly narrowed these functions in decisions that were likely to be followed by courts in Hong Kong. According to a UK court case in 1982, "discrimination" in this context referred only to discrimination as defined and made unlawful by the SDB itself. The function of "promoting equality of opportunity" was interpreted by UK courts as a restatement in positive terms of "working towards the elimination of discrimination" with the same restricted meaning. She enquired if the subclause could prevent the EOC from looking into matters that were not addressed by the SDB such as domestic violence or provisions in Immigration Ordinance, or at areas that were exempted or omitted from the SDB.

5. The Administration responded that under clause 58 the EOC could review and amend the exceptions listed in schedules 2 and 4 and stated that the EOC could only deal with discrimination as defined in the SDB. It added that clause 62 empowered the EOC to conduct a formal investigation for any purpose connected with the carrying out of any of the functions under clause 56(1). Matters like domestic violence were criminal in nature which would be dealt with under other legislation. The EOC would handle matters that were

connected with sex discrimination as defined in the SDB. Nevertheless, it undertook to study the 1982 case and revert to the Committee on its implications on the issues of domestic violence.

Clauses 57-60

6. Clause 57 allowed EOC to undertake research or educational initiatives while clause 58 permitted it to review and amend schedules 2 and 4. Under clause 59 the EOC could, subject to provisions in sub-clause (2), delegate its functions or powers to any member or employee of the EOC, any committee or any conciliator. Under clause 60 any member or employee of the EOC or any conciliator would not be personally liable for any act done or default made in performing any function of the EOC.

Codes of Practice

7. The Administration pointed out that under clause 61 the EOC could develop and issue Codes of Practice which would contain practical guidance to assist Members of the community to comply with the SDB. These Codes of Practice would carry legal effect but they would not have legislative effect. Under clause 61(14) any Codes of Practice would be admissible in evidence and taken into account in determining any question to which any Codes of Practice were relevant.

8. A Code of Practice on employment matters would be prepared by the EOC. The purpose of developing such code was to provide guidance to assist both employers and employees to comply with the SDB, in particular clause 10 which provided for equal terms of employment, equal opportunities in recruitment, promotion and provision of training etc.

9. The Administration proposed to bring the provisions in the SDB relating to employment into operation *after* the Code of Practice on the subject had been prepared in consultation with relevant organisations such as organizations representing employers or workers, organizations of personnel management and local

professional bodies. This arrangement was provided for under clause 1(2) which stated that different provisions could take effect from different dates and was a usual practice in the implementation of other Bills. It was hoped that the Code of Practice developed with this open approach would be practicable and meet the needs of its users. The Administration added that under clause 61(13) the EOC could, in preparing such Code of Practice, make reference to and/or incorporate any provisions of enactment against sex discrimination in other jurisdictions. If the provisions in respect of employment was brought into force before the EOC issued the relevant Code of Practice, it might give rise to uncertainties for the different parties involved. This would undermine the effective enforcement of the SDB.

10. Members were concerned about the possible delay of enforcing the provisions in relation to employment in the SDB with the above arrangement. It took ten years for UK to develop such Code of Practice. The Administration was therefore requested to reply in writing the status of the Codes of Practice and the lead time for the EOC to develop them.

11. The Administration responded that the situations in UK were different from those in Hong Kong. When the UK Sex Discrimination Act was enacted in 1985, there already existed an Equal Pay Act which stipulated what constituted equal pay for equal work. There was therefore no urgency for the UK EOC to develop a code of practice in 1985. It was inconceivable that the independent EOC, tasked to work towards elimination of discrimination would deliberately delay the process of developing codes of practice. The Administration had earmarked resources in the forthcoming financial year so that the drafting work of the Code of Practice could start as soon as possible. It would also begin to make preparations for recruiting staff for the preparatory work and hoped that a draft Code could be submitted to the EOC as soon as it was set up. Since the EOC had to consult with the organisations stated in paragraph 9 in preparing the Code, it would naturally take some time before the EOC could issue it. It undertook to address to Members' concerns before the next meeting.

(Post-meeting note : The Administration's reply was forwarded to Members vide Appendix I to LegCo Paper No.HB 237/94-95)

12. The Administration pointed out that clause 61(10) allowed flexibility for the EOC to provide transitional provisions or savings in the Code of Practice while under clause 61(5) the Legislative Council might amend it within 28 days after the sitting at which it was laid.

13. In reply to an enquiry about the coordination between Ms Anna WU and the Administration to eliminate the differences between the EOB and SDB, Ms Anna WU stated that she was willing to consider giving up the EOB should the Administration make policy commitments to legislation on areas of discrimination covered in the EOB. She opined that the functions and powers of the EOC should be widened to cover all areas of discrimination or at least promotion and monitoring of all types of discrimination. She also requested the Administration to put forward legislation on discrimination against sexuality, age and family status. She undertook to draw up a list of proposed amendments to the SDB with respect to the EOC and would also prepare suggested amendments to the EOB for Members' consideration.

Ms Anna
WU

14. The Administration reiterated that it would take a step-by-step approach in anti-discrimination legislation with introduction of the SDB followed by the Disability Discrimination Bill. Whether the legislative route would be taken in tackling other areas of discrimination would be determined after a study of the issues involved including an assessment of community response to these two enactments.

15. A Member supported the step-by-step approach but was of the view that the EOC should be allowed to monitor, give advice or promote anti-discrimination and, if necessary, take action to obtain legal authority in other areas of discrimination.

16. Dr YEUNG Sum stated that the Democratic Party supported the EOB but not the SDB. He added that this position would remain unchanged unless the Administration put forward

Action
Required

legislation against age discrimination in this legislative session.

17. Another Member shared the view that legislation against age discrimination should be enacted as soon as possible given the difficulties faced by female workers over 30 years of age in seeking employment.

18. In this connection the Chairman considered that the community needed measures to implement equal opportunities as soon as possible and requested the Administration to give some forms of commitments on how to tackle other areas of discrimination before the Committee could consider the way forward. He also opined that the second round of consultation would be conducted after the completion of the Administration's briefing on the SDB.

Adm.

Clerk to
note

Date of next meeting

19. The next meeting was scheduled on 10 March 1995 at 9:15 a.m. in Chamber of the Legislative Council Building.

20. The meeting ended at 10:39 a.m.

LegCo Secretariat
18 April 1995

Ref : HB/C/61
Tel : 2869 9266
Date : 4 May 1995
From : Senior Assistant Secretary (Bills Committees)2
Legislative Council Secretariat
To : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon HUI Yin-fat, OBE, JP
Hon TAM Yiu-chung
Hon Andrew WONG, OBE, JP
Hon Ronald Arculli, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Hon Moses CHENG Mo-chi
Rev Hon FUNG Chi-wood
Hon Simon IP Sik-on, OBE, JP
Dr Hon Conrad LAM Kui-shing, JP
Hon Emily LAU Wai-hing
Hon James TO Kun-sun
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Roger LUK Koon-hoo
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

Members are invited to consider the amendments proposed by Ms Anna WU (copy at Appendix I) to the notes of meeting held on 16 December 1994 and 3 March 1995 which were forwarded to Members vide LegCo Papers No.HB 202 and 543/94-95 respectively. The relevant pages of the notes of meetings incorporating the proposed amendments are enclosed at Appendix II for Members' easy reference. These proposed amendments will be considered at the next meeting to be held on 5 May 1995.

(Colin CHUI)
Senior Assistant Secretary (Bills Committees)2

Encl

c.c. Hon Michael HO Mun-ka
Hon LI Wah-ming
Assistant Legal Adviser 4

The Office of Anna Wu, Legislative Councillor

Rm 415, Central Government Offices (West Wing), Ice House St., Hong Kong.

Tel: (852) 537-2467 Fax: (852) 530-2018

FACSIMILE MESSAGE

TO : Colin Chui

NO. OF PAGES (INCLUDING THIS ONE) : 1

FROM : Adam Mayes

DATE : 1/5/95

IF THE FAX IS INCOMPLETE, PLEASE NOTIFY US IMMEDIATELY.

MESSAGE :

As well as the addition to the 3 March minutes we discussed by phone, there is a correction to be made to the 16 December minutes. Deletions are struck out and additions are in *italic*.

Re. Administration's portion of 16 December EOB/SDB Bills Comm. minutes

Para. 3:

"... These exceptions were ruled in breach of the ~~BOR Ordinance~~ *human rights standards applicable to the UK* by the European Court in 1983."

Re. Administration's portion of 3 March EOB/SDB Bills Comm. minutes

Add a new Para. after 11:

"With regard to the UK Equal Pay Act, Ms Anna WU [or "A Member" — according to your usual practice] recalled that the Administration had previously indicated that equivalent equal pay provisions would be made for Hong Kong, and inquired whether the Administration was now suggesting that such provisions be made in the form of Codes of Practice under the SDB rather than as primary legislation. She suggested it would be inappropriate to delegate such an important legislative matter to the Equal Opportunities Commission."

12. With regard to the UK Equal Pay Act, Ms Anna WU recalled that the Administration had previously indicated that equivalent equal pay provisions would be made for Hong Kong, and inquired whether the Administration was now suggesting that such provisions be made in the form of Codes of Practice under the SDB rather than as primary legislation. She suggested it would be inappropriate to delegate such an important legislative matter to the Equal Opportunities Commission.

13. The Administration pointed out that clause 61(10) allowed flexibility for the EOC to provide transitional provisions or savings in the Code of Practice while under clause 61(5) the Legislative Council might amend it within 28 days after the sitting at which it was laid.

14. In reply to an enquiry about the coordination between Ms Anna WU and the Administration to eliminate the differences between the EOB and SDB, Ms Anna WU stated that she was willing to consider giving up the EOB should the Administration make policy commitments to legislation on areas of discrimination covered in the EOB. She opined that the functions and powers of the EOC should be widened to cover all areas of discrimination or at least promotion and monitoring of all types of discrimination. She also requested the Administration to put forward legislation on discrimination against sexuality, age and family status. She undertook to draw up a list of proposed amendments to the SDB with respect to the EOC and would also prepare suggested amendments to the EOB for Members' consideration.

Ms Anna
WU

15. The Administration reiterated that it would take a step-by-step approach in anti-discrimination legislation with introduction of the SDB followed by the Disability Discrimination Bill. Whether the legislative route would be taken in tackling other areas of discrimination would be determined after a study of the issues involved including an assessment of community response to these two enactments.

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 10 March 1995 at 9:15 a.m.
in Chamber of the Legislative Council Building**

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Rev Hon FUNG Chi-wood
Hon Emily LAU Wai-hing
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan
- Absent with : Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP)
Hon Moses CHENG Mo-chi) Other
Hon Simon IP Sik-on, OBE, JP) commitments
Dr Hon Conrad LAM Kui-shing, JP)
Hon James TO Kun-sun)
Hon Roger LUK Koon-hoo)
- Hon Christine LOH Kung-wai)
(Deputy Chairman)) out of town
Hon Mrs Peggy LAM, OBE, JP)
Hon HUI Yin-fat, OBE, JP)
- By invitation : The Administration

Home Affairs Branch

Miss Susie HO
Principle Assistant Secretary for Home Affairs

Mr J A Fox
Senior Assistant Law Draftsman

Hon Anna WU's team

Mr Andrew Byrnes, Consultant
Ms Carole Petersen, Consultant
Mr Eric CHOW
Mr Adam Mayes
Ms Celie Nehmer
Ms Barbara Kvoske

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

Action
Required

The Chairman drew Members' attention to the written submission by the Employers' Federation of Hong Kong (forwarded to Members vide Appendices I and II to LegCo Papers Nos.HB 306 and 327/94-95 respectively) which stated that it did not support the EOB but was prepared to support the SDB subject to amendments proposed in the submission. He added that the Administration had replied to Members' enquiry on the status of the Codes of Practice and the lead time for the EOC to develop them, which was also forwarded to Members vide Appendix to LegCo Paper No.HB 327/94-95.

II. Briefing by the Administration on the SDB

2. The Administration continued its briefing on clauses 62-66 and Part VIII of the SDB. In this regard Ms Anna WU also took

Members through a note entitled the Equal Opportunities Commission under the SDB : Problems and Recommendations tabled at the meeting - copy at Appendix. The discussion between Members and the Administration is summarized in paragraphs 3 - 17 below.

Enforcement through formal investigations

3. The Administration stated that clauses 62 to 66 related to formal investigations by the Equal Opportunities Commission (EOC) undertaken either on its own initiative or at the request of the Chief Secretary(CS). For the purposes of a formal investigation, the EOC might require the production of information and documents if it had CS' authority or if the terms of reference of the formal investigation stated that the EOC believed a named person had discriminated under the SDB (clause 64).

4. As regards discrimination by a named person, clause 63(4) required the EOC to inform him/her of its belief and its proposal to investigate the discriminatory act and offered him an opportunity of making oral and/or written representations. The EOC, after serving a notice on a named person requiring him/her to give information on the discriminatory act, could apply to the District Court for an order requiring the person to comply with it if he/she failed to do so or the EOC had reasonable cause to believe that he intended not to do so. The EOC, after a formal investigation, might make such recommendations as appeared appropriate and if the investigation was made upon the CS's request, the CS would be required to publish the EOC's report (clause 65). Clause 66 provided restrictions on the disclosure of information given in connection with a formal investigation.

5. Clauses 69 to 72 related to enforcement notices which the EOC was empowered to issue if, in the course of a formal investigation, it was satisfied that a person had contravened the Bill (clause 69). A person served with an enforcement notice might appeal to the District Court (clause 70). Special provision was made as to requirements to produce information and documents for the purposes of a formal investigation to determine whether an enforcement notice was being complied with (clause 71). A register of enforcement

notices which had become final would be kept and would be available for inspection by the public (clause 72).

6. Ms Anna WU pointed out that the complex legal procedure for formal investigations had been widely criticised in the UK for radically undermining their effectiveness. She therefore proposed that unnecessary procedural obstacles to formal investigations should be removed to streamline the process, in line with the recommendations made by the EOC in the UK and the Commission of Racial Equality.

7. The Administration responded that checks and balances would be required on the powers of the EOC which was intended to be a body promoting good relations rather than a draconian regulator. Nevertheless, it would consider the recommendations made in the UK on this issue.

Adm.

Power of CS on formal investigation

8. In relation to the power of CS to require the EOC to conduct a formal investigation, Members were concerned about the independence of the EOC and the restrictions imposed on the terms of reference for formal investigations with this power. Some Members opined that the EOC's power to conduct formal investigations should be similar to that conferred upon the Commission for Administrative Complaints (COMAC) and suggested that such power of CS should be removed to maintain independence of the EOC. A Member, however, considered that the CS' power under clause 64(2)(a) would provide one more channel for the EOC to investigate discriminatory acts in addition to the one stated in clause 64(2)(b).

9. The Administration responded that this power of CS would provide checks and balances on the power of the EOC where it conducted a formal investigation without having a specific person whom the EOC believed to have conducted unlawful acts under the SDB. It only gave an additional power for the EOC to investigate a discriminatory act. Nevertheless, it undertook to consider if this power would impose undue restrictions on the EOC in conducting

Adm.

formal investigations.

Enforcement through the Courts

10. The Administration highlighted the following clauses in relation to enforcement through the courts :

- (a) Proceedings might not be brought in respect of any contravention of the SDB except those as were provided for in it (clause 67). Proceedings were to be brought in the District Court and the remedies were damages which included compensation for injury to feelings, a declaration or an injunction (clause 68);
- (b) The EOC might apply to the District Court for an injunction to restrain a person from contravening the SDB if, during the preceding five years, he had become subject to an enforcement notice or had been found by the District Court to have committed such a contravention (clause 73). The EOC could only bring proceedings in respect of discriminatory advertisements or instructions or pressure to discriminate (clause 74); and
- (c) Forms might be prescribed for use in preliminary exchanges between the person aggrieved and the other party, and the District Court would be entitled to draw such inferences from a failure to reply to a question, or an evasive reply, as appeared equitable (clause 75). A person might lodge with the EOC a complaint alleging that an unlawful act had been committed contrary to the SDB and, subject to certain exceptions, the EOC would investigate the act and to endeavour, by conciliation, to effect a settlement of the matter to which the act related (clause 76). If such conciliation had failed, the EOC might assist an aggrieved person in the preparation and conduct of his case (clause 77).

Proceedings in EOC's own name

11. Ms Anna WU recommended that the EOC should be empowered to bring proceedings in its own name for any type of claims under the SDB. It should be able to bring proceedings in its own name against government and public authorities, and also seek declaratory judgements such as those concerning the legality of discriminatory rules of law. In proceedings brought by the EOC, it was suggested that the District Court should be able to order any remedies that would be available in proceedings brought by an individual. In this connection she enquired if the District Court could reinstate a person who had been discriminated according to the SDB and suggested the Administration to refer to clause 234 of the EOB should provision on reinstatement be required in the SDB.

12. The Administration explained that the EOC could bring proceedings in its own name with respect to , for example, unlawful advertisements and pressure to discriminate because there were no specific victims of these discriminatory acts who would not organize themselves to lodge complaints. Given that there would be no specific victims of, for example, a discriminatory advertisement, and hence difficulties in assessing the compensation by court, the District Court was therefore empowered to grant injunction restraining the discriminator from doing the discriminatory act. The Administration, however, undertook to consider the suggestion of bringing proceedings in EOC's own name for any type of claims under the SDB. It added that Part VIII of the SDB allowed a person who had been discriminated under the Bill to be awarded damages which might include compensation for injury to feelings. As regards reinstatement, clause 68(3) stated that remedies would be obtainable in such proceedings brought in the District Court as would be obtainable in the High Court. The District Court could order reinstatement if the High Court had this power at present. It would be a policy decision whether the Bill be amended to give this additional power to the District Court if the High Court did not already have the power. It would address to this issue and reply to Members.

Adm.

Adm.

Financial or legal assistance to individual claimants

13. Noting that the EOC might, under clauses 76-77, render financial or legal assistance to individual claimants, Ms Anna WU proposed that adequate financial assistance should be provided to claimants under the SDB and requested the Administration to clarify the relationship between assistance from the EOC and from legal aid.

14. The Administration stated that the staff or members of the EOC, with or without legal qualification, could assist a claimant in taking legal action against discriminators free of charge and without any means test on him/her if the EOC considered that the case raised a question of principle and he/she could not bring legal proceedings without EOC's assistance. Legal aid would also be provided to a claimant subject to means test. Since the majority of the court cases were expected to be on sex discrimination in employment where the claimants were anticipated to be low income employees, it was expected that most of the claimants could obtain legal aid. Noting that the Legal Aid (Amendment) Bill 1995 proposed to waive means test on applicants for legal aid on disputes concerning the Bill of Rights (BOR), the Administration considered that the two types of proceedings were different in that legal proceedings for disputes on sex discrimination were between individuals while those for the BOR cases were between government and individuals. Nevertheless, it would reply to the question whether the proposed waiver of means test would be applicable to legal aid applications on disputes arising from sex discrimination. It also undertook to provide details of the EOC's budget for Members' reference.

Adm.

Adm.

Functions and powers of EOC

15. Ms WU stated that the UK courts had ruled that "discrimination" in the context of EOC's functions, and powers referred only to discrimination as defined and made unlawful by the SDB itself. Such functions and powers could in fact prevent the EOC from looking into matters that were not addressed by the SDB, or at certain major areas that were exempted or omitted from the SDB.

16. In this regard Ms WU suggested that the EOC's terms of

reference should be widened by linking them to the non-discrimination provisions (Articles 1 and 22) of the Bill of Rights, and to relevant international treaties and instruments. The widened terms of reference would cover the following :-

- (a) With respect to its law enforcement task against sex discrimination, EOC should be able to take action on the basis of the Bill of Rights as well as the SDB, at least with respect to all those grounds of discrimination addressed in both (e.g. sex, marital status, pregnancy);
- (b) The EOC, in carrying out its research, advisory and educational task with respect to the grounds of discrimination addressed in the SDB, should also be guided by other relevant instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women; and
- (c) It should be able to study and make recommendations on the way forward for Hong Kong with respect to all types of discrimination, whether or not addressed in the SDB, by reference to other international instruments concerning equal opportunity, such as the Declaration on the Rights of Disabled Persons and the International Convention on the Elimination of All Forms of Racial Discrimination.

17. The Administration replied that the EOC would only look into discrimination as defined in the SDB itself and clause 58 allowed the EOC to review exceptions to the Bill as stated in schedules 2 and 4. With the introduction of the Disability Discrimination Bill into LegCo, the EOC would also deal with disability discrimination but would not handle other areas of discrimination. The ultimate measures to be adopted to tackle different types of discrimination would depend on the examination of the problems involved including the social and economic implications on the community of adopting the different measures. It would study the relevant UK court cases and advise Members on its implications on the functions and powers of the EOC.

Adm.

III. Briefing by Ms Anna WU on the EOB

18. Ms Anna WU took members through the provisions in the EOB with respect to advertisements (clause 225), vilification (clauses 83-85, 108-110, 140-142) and victimization (clause 224) and highlighted the following :

Advertisements

19. Contents of job advertisements should relate to the job requirements. A person publishing discriminatory advertisement such as a discriminatory job advertisement committed a criminal offence because an individual could not prove damages from such advertisement which would prevent him/her from applying for the job in this first stage of recruitment. Discrimination in this respect also constituted a criminal offence in many other jurisdictions. Such an offence was punishable by a fine of \$30,000 for a first offence and \$100,000 for a subsequent offence.

Vilification

20. Vilification meant committing a public act (as defined in clause 108) that incited hatred, serious contempt or severe ridicule toward a particular person or group of persons because of their race, sexual preference, or disability. There were similar clauses in the laws of other jurisdictions such as Australia, Canada, New Zealand, Belgium and France. The International Covenant on Civil and Political Rights (ICCPR) stated that vilification particularly on the ground of race had to be eliminated. This was also stipulated in the International Convention on the Elimination of Racial Discrimination which was applicable to Hong Kong. Like the legal prohibition on defamation, the proposed legislation was not intended to restrain freedom of speech. However, it did recognize that in exercising the right to freedom of speech, one had to pay due respect to the fundamental rights of others; in this case, the right to be free from discrimination.

21. Vilification would bring about civil liability but serious vilification was a criminal offence only if it involved threatening, or encouraging others to threaten physical harm towards a person or group of persons (or towards their property) because of their race, or their sexual preference, or their disability.

22. An act would not constitute vilification, however, if it was a fair report of a public act, a communication which was subject to a defence of absolute privilege in proceedings for defamation or a public act, done in good faith, for academic, artistic, scientific or research purposes in the public interest.

Victimization

23. Clause 224 made victimization unlawful. Victimization consisted of subjecting or threatening to subject a person to any detriment because of that person's past or planned allegations, assertions of rights, or assistance to a court in connection with the EOB or proceedings under it.

Retirement

24. With regard to the provisions against discrimination on the ground of age, clause 183(a) and (b) exempted voluntary phased-in retirement schemes and provided a temporary exemption of two years for mandatory retirement schemes respectively although the former sub-clause might need to be removed in view of the Administration's proposal to implement mandatory occupational retirement schemes. Noting the divided views on compulsory retirement age, Ms WU undertook to amend the EOB so as not to prohibit mandatory retirement age, and suggested that the EOC should instead be tasked to look into this matter for the future.

Ms Anna
WU

Effect on existing age discriminatory laws

25. In response to Members' concerns about the protection of minors, Ms WU also undertook to amend the EOB to clarify that it would not affect existing laws concerning the legal status of persons

under 18. She also proposed adding a temporary exemption of a year or so for all existing laws with possible age discriminatory implications, in order to give government and the EOC time for orderly review and revision.

Insurance, superannuation schemes and provident funds

26. Clauses 40 (sex and marital status), 144 (disability), and 180 and 187 (age) allowed exemptions with respect to the availability and terms of annuities, insurance policies, superannuation schemes or provident funds if the discriminatory terms were reasonably based upon actuarial or other relevant data.

IV. Way Forward

27. Ms Anna WU opined that her objective was to have an effective bill on anti-discrimination. She would consider giving up the EOB should the Administration make policy commitments to legislation on areas of discrimination covered in the EOB. She would reply to the Administration's list of questions on the EOB (LegCo Paper No.HB 231/94-95) and propose amendments to the EOB and the SDB for Members' consideration.

28. A Member supported the step-by-step approach but considered that the EOC should also monitor, give advice or promote anti-discrimination and, if necessary, seek legal authority in other areas of discrimination.

29. Dr YEUNG Sum stated that the Democratic Party supported the EOB but not the SDB. He added that this position would remain unchanged unless legislation against age discrimination could be put forward in this legislative session.

30. The Administration reiterated that it would take a step-by-step approach in anti-discrimination legislation with introduction of the SDB followed by the Disability Discrimination Bill (DDB). Whether the legislative route would be taken in dealing with other

areas of discrimination would be determined after public consultation and assessment of community response to the SDB and the DDB. It would revert to the Committee when a timetable on the above was levised.

Adm.

31. The Chairman stated that legislation on anti-discrimination should be enacted as soon as possible. He also considered that the scope of the EOC should be widened and a timetable with respect to the Administration's commitments on how to tackle other areas of discrimination should be available to Members as quickly as possible. He undertook to discuss the way forward with Ms Anna WU and the Chief Secretary. The date of next meeting would be fixed after the discussion.

(Post-meeting note : the next meeting was scheduled on 31 March 1995 at 10:45 a.m. in Chamber of the Legislative Council Building.)

32. The meeting ended at 11:17 a.m.

LegCo Secretariat
8 April 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 31 March 1995 at 10:45 a.m.
in Chamber of the Legislative Council Building**

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Rev Hon FUNG Chi-wood
Dr Hon Conrad LAM Kui-shing, JP
Hon James TO Kun-sun
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan
- Absent with : Hon HUI Yin-fat, OBE, JP)
apologies Hon Andrew WONG, OBE, JP)
Hon TAM Yiu-chung)
Hon Ronald Arculli, OBE, JP) Other
Hon Moses CHENG Mo-chi) commitments
Hon Simon IP Sik-on, OBE, JP)
Hon Emily LAU Wai-hing)
Hon Roger LUK Koon-hoo)

Dr Hon YEUNG Sum - out of town

By invitation : The Administration

Home Affairs Branch

Mr Michael SUEN
Secretary for Home Affairs

Miss Susie HO
Principle Assistant Secretary for Home Affairs

Coalition of Women's Organisation

Hong Kong Federation of Women's Centres
Dr Fanny CHEUNG

Ms Cow WONG

Hong Kong Women Workers Association
Ms MOK Miu-ying

Association for the Advancement of Feminism
Ms April TSANG

Chan Hing Social Service Centre
Ms Irene NG

AWARE
Ms Susanna HOC

Hong Kong Council of Women
Ms Ann Jordan

The Hong Kong Association of Business
and Professional Women
Mrs Anne Godfrey
President

Ms Rosalie McKenzie

Hon Anna WU's team

Mr Andrew Byrnes, Consultant
Mr Eric CHOW
Mr Adam Mayes
Ms Celie Nehmer

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

**Action
Required**

**I. Confirmation of notes of meetings held on 5 January 1995,
27 January 1995 and 10 February 1995
(LegCo Papers Nos. HB 352, 421 and 395/94-95)**

The notes of meetings held on 5 January, 27 January and 10 February 1995 were confirmed.

II. Timetable for second round of meetings with deputations

2. The Chairman stated that, apart from the three deputations which the Bills Committee would be meeting later in the morning, so far there were 20 more who had indicated interest. A Member added that some judo enthusiasts would like to meet the Bills Committee on the judo association's discriminatory practice of prohibiting members aged over 30 from participating in judo competitions. Members agreed that the Committee would meet these deputations on 7 April am and 13 April pm.

III. Meeting with the Administration

3. The Chairman recapitulated that, at the last meeting, Members requested him to arrange a joint meeting with the Chief Secretary (CS), Mr. Michael SUEN, Secretary for Home Affairs (SHA) and Ms Anna WU on the way forward in the deliberation of the SDB and the EOB. The Chairman met CS and SHA on 22 March

1995. At the discussion, CS undertook to provide a timetable on the Administration's plan on anti-discrimination legislation and asked Mr Michael SUEN to attend this meeting to brief Members on the plan.

4. Mr SUEN reiterated that the Administration would take a step-by-step approach in anti-discrimination legislation with introduction of the SDB followed by the Disability Discrimination Bill (DDB), which would be introduced into the LegCo in April/May 1995. He added that it would conduct a study on the need for action to tackle discrimination on the grounds of age, sexuality and family status. The study would commence not later than the end of 1995 and anticipated to be completed in 12 months. In this study, the Administration would examine the nature of these types of discrimination, whether a problem existed, and if so to what extent. It would make reference to overseas experience in tackling these problems and, if these three types of discrimination were a problem in Hong Kong, the study would also identify the appropriate measures to tackle such problems. The social, economic and legal implications of these measures would then be assessed with a view to arriving at options to eliminate these types of discrimination. If there was a need for further consultation, this would also be considered. The Administration would report progress of the study to Members. He also pointed out that different branches and departments would be involved and different policy branches may take the lead in studying different types of discrimination.

5. Some Members opined that legislation against discrimination should be enacted within this year and considered that the Administration's study would only delay anti-discrimination legislation. They considered that legislation against, for example, age discrimination should be passed this year as only legislative control could eliminate discrimination in this area which already brought about employment difficulties for women aged 30 or above.

6. A Member was of the view that anti-discrimination should not be confined to employment field and taking the legislative route in dealing with discrimination might not be effective as discrimination was essentially an ethical problem. In this connection, she opined that the Administration should take a leading role in anti-

discrimination and enquired if it would have other measures to eliminate discrimination apart from legislation.

7. Another Member supported the step-by-step approach but was concerned whether studying the different types of discrimination would be affected by the change of sovereignty in 1997 or the attitude of Chinese authorities.

8. Ms Anna WU considered the Administration's study was a regression on anti-discrimination legislation given that the Bill of Rights Ordinance (BOR) which was enacted in 1991 already bound government to put forward anti-discrimination legislation. She also doubted the necessity to have a study as this Bills Committee, by scrutinising the EOB since July 1994, had been studying provisions to deal with discrimination which included the three areas in question. She added that some employers' groups had adopted guidelines advocating equal opportunity employment which, though without binding effect, had wider scope than the SDB.

9. Mr SUEN responded that the study was expected to be completed by end 1996, after which the Administration would take a decision on the next step forward. He stressed that, apart from legislative control, other measures, such as public education and the guidelines issued by the business sector recently, could be effective means to deal with discrimination. He also stated that the change of sovereignty in 1997 should not affect the formulation of policies on anti-discrimination. As regards the Administration's initiatives in anti-discrimination, he pointed out that a lot of work had been done in the past two years on anti-discrimination resulting in the introduction of the SDB and DDB. The Administration had already made changes to eliminate discriminatory practices within the Civil Service such as removal of age and sex requirements in press advertisements on Civil Service vacancies. A total of \$20 million was anticipated to be spent in the coming three financial years for civic education which included publicity and education on equal opportunities. The proposed Equal Opportunities Commission (EOC) would also promote education and publicity in this respect. He added that the BOR did not cover intercitizens' disputes.

10. Ms WU drew Members' attention to the paper entitled "Proposed Amendments to the Sex Discrimination Bill discussed with Home Affairs Branch, 17 March 1995" forwarded to Members vide Appendix III to LegCo Paper No. HB 437/94-95. She highlighted that the SDB should include discrimination on the grounds of family responsibility, age and sexuality. As regards the EOB, she would remove the provisions relating to disability discrimination therein if equivalent or more detailed provisions were stipulated in the DDB. She would consider breaking the EOB into different parts according to areas of discrimination and submit them to the Legislative Council for consideration. With respect to the paper entitled "Economic Implications of the Equal Opportunities Bill" tabled at the meeting, she would answer questions from Members on it at later meetings.

(Post-meeting note : the paper was forwarded to Members vide Appendix I to LegCo Paper No.HB 560/94-95)

IV. Meeting with deputations

Meeting with the Hong Kong Association of Business and Professional Women

11. The deputation stated that the Association comprised female employers and employees in the business sector and was a member of the Coalition of Women's Organizations (the Coalition) with which the Bills Committee would meet later in the morning. It briefed Members on its written submission forwarded to Members vide Annex A of Appendix I to LegCo Paper No. HB 437/94-95 and highlighted/supplemented the following:

- (a) The Association did not support any further study or public consultation on anti-discrimination legislation as it considered these had been done adequately which led to the introduction of the EOB and the SDB into the LegCo and also there did not seem to be any public consultation or research before the scheduled introduction of the DDB into the LegCo in April 1995. It also welcomed the adoption of equal opportunity

guidelines by some employers' groups which indicated that business sector was in favour of equal opportunity. The proposed five-year grace period to put the Code of Practice developed by the EOC in place was not necessary since legislation prohibiting discrimination in employment could start with these guidelines;

- (b) The Association stated that legislation should be passed to deal with all forms of discrimination, not merely sex discrimination, and would prefer to see the enactment of the EOB. If, however, legislators were minded to vote for the SDB, it should be amended to rectify the defects as stated in its written submission; and
- (c) The Association opined that views expressed in the Bills Committee by Members claiming to represent the business sector were opinions from Members representing businessmen only.

Meeting with the Hong Kong Council of Women

12. The Hong Kong Council of Women (HKCW) stated that it was a member of the Coalition. It strongly supported the enactment of the EOB subject to amendments suggested in its submission forwarded to Members vide Annex B of Appendix I to LegCo Paper No. HB 437/94-95. It believed that the EOB would provide comprehensive legislation against discrimination, a goal for which the HKCW had lobbied for many years.

13. The HKCW opined that the EOB was far superior to the SDB and the Administration's current approach to anti-discrimination did not comply with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which had been extended to Hong Kong. It maintained that any discriminatory practices should be eliminated through legislative control. A Member supported this view while another Member considered that the impact and scope of the discriminatory practices had to be examined before deciding on whether legislation or other measures should be adopted

to tackle them.

Meeting with the Coalition of Women's Organization

14. The deputation took Members through its submission forwarded to Members vide Annex C of Appendix I to LegCo Paper No. HB 437/94-95. The discussion between the deputation and Members is summarized in paragraphs 15 and 16 below.

15. The deputation urged the Bills Committee to give full consideration of its proposed amendments to the SDB as stated in its written submission. It considered that provision to allow the court to reinstate a person should be added to the SDB. It also opined that there should be legislation to deal with sex and age discrimination together instead of separate enactments on each area.

16. In response to a Member's enquiries, the deputation opined that there should be a tribunal to adjudicate disputes arising from discrimination and considered that the means test imposed on a married legal aid applicant might render him/her ineligible to obtain legal aid in taking legal action against the discriminator since his/her spouse's income and assets were counted in the means test.

V. Date of next meeting

17. The next meeting was scheduled on 7 April 1995 at 10.45 am in the Chamber of the Legislative Council Building.

(Post-meeting note: the meeting was advanced to 10:15 am on 7 April 1995 in the Chamber of the Legislative Council Building to cater for more deputations than originally planned.)

18. The meeting ended at 12.47 pm.

LegCo Secretariat
1 May 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 7 April 1995 at 10:30 a.m.
in Chamber of the Legislative Council Building**

- Present :
- Dr Hon LEONG Che-hung, OBE, JP (Chairman)
 - Hon Christine LOH Kung-wai (Deputy Chairman)
 - Hon Mrs Selina CHOW, OBE, JP
 - Hon Mrs Peggy LAM, OBE, JP
 - Hon Mrs Miriam LAU Kin-yee, OBE, JP
 - Hon J D McGregor, OBE, ISO, JP
 - Dr Hon Conrad LAM Kui-shing, JP
 - Hon Emily LAU Wai-hing
 - Hon Zachary WONG Wai-yin
 - Hon Anna WU Hung-yuk
- Absent with apologies :
- Hon HUI Yin-fat, OBE, JP)
 - Hon TAM Yiu-chung)
 - Hon Andrew WONG, OBE, JP)
 - Hon Ronald Arculli, OBE, JP)
 - Hon Moses CHENG Mo-chi) Other
 - Rev Hon FUNG Chi-wood) commitments
 - Hon Simon IP Sik-on, OBE, JP)
 - Hon James TO Kun-sun)
 - Dr Hon YEUNG Sum)
 - Hon Roger LUK Koon-hoo)
 - Hon LEE Cheuk-yan)

By invitation :

Employers' Federation of Hong Kong

Ms May CHOW Mee-yee
Executive Director, Employers' Federation of Hong Kong

Mr William CHAN
Human Resources Manager, Mass Transit Railway Corporation

Federation of Hong Kong Industries

Mr Carson CHAN
Director

Mrs V C Davies
Director - General

Hong Kong General Chamber of Commerce

Dr Y S CHEUNG

British Chamber of Commerce in Hong Kong

Mr Christopher Hammerbeck

Federation of Hong Kong and Kowloon Labour Unions

Ms LI Fung-ying, MBE

Mr WONG Kam-kuen

Ms POON Siu-ping

Ms CHAN Ying

Ms CHEUNG Lai-hing

Ms YU Wing-kam

Ms LUN Suet-hung

Ms CHEUNG Siu-ping

Ms KO Wai-kong

Hong Kong Association of Banks

Mr Ian R Wilson
Chairman, H.K.A.B.
General Manager, Hong Kong and China,
Standard Chartered Bank

Mr Paul R Lowndes
Secretary, H.K.A.B.

Mr John W C Richardson
H.K.A.B. Legal Adviser

Hong Kong and Kowloon Trades Union Council

Ms LEUNG Tung-yuen

Ms PUN Siu-ngar

Ms TO Kwai-fun

Ms KWAN Chui-kin

Ms LI Kuen-heung

Hong Kong Federation of Trade Unions

Ms CHAN Yuen-han

Ms LAI Chiu-hung

Ms CHOI Hing-shi

Ms CHAN Suet-yee

Ms CHAN Chui-ping

Hong Kong Confederation of Trade Unions

Miss CHEUNG Nai-ha

Miss TAM Bik-yan

Mr NG Sze-long

Mr CHUNG Pui-kuen

Hon Anna WU's team

Mr Andrew Brynes, Consultant

Ms Carole Petersen, Consultant

Mr Eric CHOW

Mr Adam Mayes

Ms Celie Nehmer

In attendance : Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

Before inviting each deputation to present its views on the Equal Opportunities Bill (EOB) and the Sex Discrimination Bill (SDB), the Chairman/Deputy Chairman brought the representatives' attention to the fact that they were not covered by the Legislative Council (Powers and Privileges) Ordinance.

I. Meeting with Employers' Federation of Hong Kong, Federation of Hong Kong Industries and Hong Kong General Chamber of Commerce

2. The three employers' organizations went over their written submissions forwarded to Members vide Annexes A-C of Appendix to LegCo Paper NO.HB 468/94-95. In response to Members' questions, the representatives expressed the following views :-

- (a) The three organizations supported equal employment opportunities (EEO). The Hong Kong General Chamber of Commerce supported the legislative approach to complement the education and promotion of EEO whereas the other two organizations preferred education and publicity without resort to legislative requirements as to attitudes and behaviour. To this end they were three of the five employers' associations involved in developing guidelines for EEO and good employment practice, which would be published soon;
- (b) As regards legislation, the three organizations were in support of a step-by-step approach. They did not support the EOB but were prepared to support the SDB subject to amendments suggested in their submissions; and
- (c) The three organizations supported the principle of equal pay for equal work and were opposed to discrimination on the grounds of age and sex which was seen in some job advertisements. They

considered that such discriminatory practices should be eliminated through promotion of and education on anti-discrimination in which the government should take a leading role and employers' voluntary adoption of guidelines on EEO.

II. Meeting with British Chamber of Commerce in Hong Kong

3. The representative's main points and his response to Members' enquiries are summarized as follows :-

- (a) The Chamber endorsed and supported the views of other substantial trade organizations that in the workplace the need for the use of fair employment practices and equality of opportunity was vital;
- (b) Promotion, education and voluntary self regulation (e.g. guidelines developed by some local employers' organizations) were the best methods to ensure that both employers and employees practise equality of opportunity; and
- (c) Large British companies with major holding entities in the United Kingdom came from an "Equal Opportunities" culture and therefore had no difficulty in maintaining the same standards in Hong Kong.

(Post-meeting note : the Chamber made a written submission at Appendix I.)

III. Meeting with Federation of Hong Kong and Kowloon Labour Unions

4. The deputations took Members through its written submission tabled at the meeting (copy at Appendix II). They highlighted/supplemented the following views :-

- (a) The Federation supported the EOB but not the SDB as the former could provide the public with comprehensive protection against discrimination. Notwithstanding the above, the EOB should be amended to the effect that an employer had to bear the burden of proof that an employee's dismissal was not due to his/her trade union membership or participation in union activities;
- (b) The economy of Hong Kong was undergoing transformation. Many workers in the manufacturing industries had become jobless as a result of the shift of production to the mainland. These workers, in particular those aged above 35, faced age discrimination in seeking employment. The principle of equal pay for equal work was also not followed by many companies. In this connection, a Member suggested the Federation to forward job advertisements and cases showing age discrimination to the Bills Committee for onward transmission to the Federation of Hong Kong Industries for investigation.

IV. Meeting with Hong Kong Association of Banks

5. Representatives briefed Members on their written submission forwarded to Members vide Annex D of Appendix to LegCo Paper No.HB 468/94-95. The discussion between Members and the deputation is summarised below :

- (a) The Association considered it undesirable for competing pieces of legislation (i.e. EOB and SDB) before the Legislative Council (LegCo) on the same or overlapping subject matter and would therefore request for only one piece of legislation to be enacted. Subject to its proposed amendments, the Association would support either one of the two Bills. It would also consider issuing guidelines, similar to those developed by some employers' bodies, for the banking industry:

- (b) The Association opined that the following areas of discrimination which were covered in the EOB did have an impact on ability to repay and were therefore legitimate factors in credit decisions :
- (i) family responsibility or family status - if a person was responsible for the maintenance of others, then this affected that person's credit standing. In this regard, the Association was not aware of any discrimination against single or divorced women in the granting of credit;
 - (ii) disability - a disability might affect a person's earning capability. The Association proposed that a bank, if it would incur an unjustifiable risk in the provision of services or facilities (including banking facilities) to persons with a disability, would be exempted from liability for discrimination. Such risk would arise from, for example, the conduct of banking business with a blind person who, by reason of fraud, mistake or otherwise, could successfully claim that any instruction given to the bank was not agreed to by him or her. The same kind of problem could arise in relation to a person with a mental disorder;
 - (iii) age - it would be imprudent for a bank to enter into a long-term commitment with a person of advanced age when his/her ability or repay was considered;
 - (iv) spent conviction - a bank would not want to enter into a banking relationship with a person who had committed an offence involving dishonesty.
- (c) As regard discrimination in employment of persons based on sexuality or sexual preference, the Association was of the view that persons, other than heterosexuals, in a community which in general was

not particularly tolerant of them, might be exposed to possible threats of blackmail from persons who threatened to disclose their sexual preference. As such, having an employee with this possible threat would be a security risk in an organisation like a bank;

- (d) Noting that existing legislation outlawed discrimination on the ground of spent conviction, the Association was concerned that, under the EOB, it would be unlawful for a bank to refuse employment to someone who had been convicted of an offence involving dishonesty when honesty was essential in the provision of banking services which involved handling other people's money.

V. Meeting with Hong Kong and Kowloon Trades Union Council

6. The deputation went over its written submission forwarded to Members vide LegCo Paper No.HB 476/94-95. It urged in particular the setting up of a Women's Commission and elimination of age discrimination. Members noted their views.

VI. Meeting with Hong Kong Federation of Trade Unions

7. Representatives took Members through its written submission forwarded to Members vide Annex E of Appendix to LegCo Paper No.HB 468/94-95. In response to Members' enquiries, they had the following comments :-

- (a) The Federation supported the SDB subject to its proposed amendments in particular the inclusion of provisions against age discrimination and provisions permitting court to reinstate a person. Whilst supporting the spirit of equal opportunities, it had reservations on the EOB given that, there could not be expenses incurred in implementing a private

member's bill and there was not an Equal Opportunities Commission (EOC) in the Bill; and

- (b) The Federation was in support of the establishment of a Women's Commission which could more practically cater for the needs of women than the EOC.

VII. Meeting with Hong Kong Confederation of Trade Unions

8. The deputation went over its written submission tabled at the meeting (copy at Appendix III) and supplemented the following :

- (a) The Confederation supported the EOB subject to the inclusion of the EOC in it. The SDB was not supported in view of its narrow coverage and the inadequacies as stated in its submission;
- (b) The Confederation highlighted that an employer had to bear the onus of proof that an employee's dismissal was not on the ground of his/her trade union membership or participation in union activities. The penalty on discrimination against trade union should be raised and an employee dismissed on the ground of such discrimination should be reinstated and compensated.

VIII. Date of next meeting

9. The next meeting was scheduled at 2:15p.m. on 13 April 1995 in the Chamber of the Legislative Council Building.

10. The meeting ended at 1:03p.m.

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Thursday, 13 April 1995 at 2:15 p.m.
in Chamber of the Legislative Council Building**

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon HUI Yin-fat, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Rev Hon FUNG Chi-wood
Dr Hon Conrad LAM Kui-shing, JP
Hon Anna WU Hung-yuk
- Absent with : Hon Mrs Selina CHOW, OBE, JP)
apologies Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP)
Hon Mrs Miriam LAU Kin-yea, OBE, JP)
Hon Moses CHENG Mo-chi) Other
Hon Simon IP Sik-on, OBE, JP) commitments
Hon Emily LAU Wai-hing)
Hon James TO Kun-sun)
Dr Hon YEUNG Sum)
Hon Roger LUK Koon-hoo)
Hon LEE Cheuk-yan)
- Hon Zachary WONG Wai-yin - out of town

By invitation :

Hong Kong Council of Social Service

Ms WONG Wing-han, Jessica
Ms Lilian LAW
Ms Linda WONG
Ms NG Wai-ching

Movement Against Discrimination (MAD)

Mr MAK Hoi-wah
Mr John TSE Wing-ling
Ms CHAN Wai-chi
Ms CHUNG Pui-fong

Miss LUK Fung-ping

Hong Kong Christian Council

Rev LEE Ching-chee
Rev Lysta LEUNG
Rev Bettsy NG
Ms Lily LAU
Rev Dr TSO Man-king

Starbrook Sports International

Mr David Starbrook
Mr CHONG Siao-chin
Mr LAU Pak-ho
Mr MAK Yiu-cheung
Mr David Higgins

Hong Kong Women Workers' Association

Ms MOK Miu-ying
Ms TO Kit-lai
Ms WONG Kam-foon

Mongkok Kai-fong Assn Ltd Chan Hing Social Service Centre

Ms NG Wai-ching
Ms LAU Yin-fong
Ms LEE Wai-han
Ms SIN Lai
Ms KWAN Lai-king
Ms CHAN Leung-yuk

Association for the Advancement of Feminism

Ms CHEUNG Yuet-fung
Ms YUEN Ka-wah
Ms TSANG Man-hing

Hong Kong Federation of Women

Ms Elsie LEUNG
Mrs Kathleen HO YIP
Ms Christine TING

Mr Barrie Brandon

Horizons

Mr Daniel KONG Kin-pong
Mr TAM Chi-keung

Concern Group on Single Parents

Ms Polly KU
Ms Amy WONG
Ms YEUNG Luen-kuen
Ms Judy NG

Hon Anna WU's team

Ms Carole Petersen, Consultant
Mr Eric CHOW
Ms Barbara Kvoske
Ms Celie Nehmer

In attendance : Hon Martin LEE

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

Action
Required

Before inviting each deputation to present its views on the Equal Opportunities Bill (EOB) and/or the Sex Discrimination Bill (SDB), the Chairman brought the representatives' attention that they were not covered by the Legislative Council (Powers and Privileges) Ordinance.

I. Meeting with Hong Kong Council of Social Service

2. The representatives went over their written submission forwarded to Members vide Annex A to LegCo Paper No.HB 516/94-95. They highlighted/supplemented the following points :

- (a) The Council supported the SDB subject to the comments stated in its written submission;
- (b) The Council also supported the incorporation of court's power of reinstatement in the SDB. It considered that the means test imposed on legal aid applicants was too harsh which might render them ineligible for legal aid and suggested the Equal Opportunities Commission (EOC) to have the monetary support to provide legal assistance to people not eligible for legal aid; and

- (c) Noting that male workers aged above 35 also faced age discrimination in seeking employment, the Council was of the view that the impact of such discrimination on female employees was larger than that on male workers as many people held the view that women had a lesser need for a job than men. As such, anti-discrimination legislation in this area might facilitate educating the public.

II. Meeting with Movement Against Discrimination (MAD)

3. The MAD briefed Members on its written submission forwarded to Members vide Annex B to LegCo Paper No.HB 516/94-95. It highlighted the following :

- (a) The MAD supported comprehensive legislation on anti-discrimination together with the setting up of the Equal Opportunities Commission (EOC). It did not support splitting anti-discrimination legislation into different parts and enacting them by phase; and
- (b) The MAD considered that the SDB should incorporate provisions against discrimination on the grounds of age, family responsibility and sexuality and opined that the Administration's proposed one-year study on measures to tackle discrimination on the grounds of age, sexuality and family status revealed lack of sincerity in expanding the scope of anti-discrimination.

III. Meeting with Ms LUK Fung-ping

4. Ms LUK took Members through her written submission tabled at the meeting - copy at Appendix I. She related her experience as a victim of discrimination on the grounds of political and religious conviction in seeking employment. She supported the EOB and

considered that the Bill could eliminate discrimination relating to these areas.

IV. Meeting with Hong Kong Christian Council

5. The deputation went over its written submission forwarded to Members vide Annex C to LegCo Paper No.HB 516/94-95. The discussion between Members and the deputation is summarized below :-

- (a) The Council consisted of different, but not all, denominations/churches in Hong Kong. There were no consensus views amongst its members bodies on the issue of exception for religious bodies; and
- (b) Social workers and teachers employed by members of the Council consisted of Christians as well as non-Christians while principals appointed by them were all Christians. The Council considered that religious bodies should act according to the provisions of the SDB in employing staff other than ministers of religion.
- (c) The Council was concerned about the exceptions given under the SDB (e.g. exception to the Small House Policy) which adversely affected women's rights, particularly those of female indigenous villagers. It also opined that political participation of female indigenous villagers should be protected under the SDB;
- (d) Whilst permitting ordination of male and female ministers of religion, the Council supported the exception given to religious bodies in respect of employment for the purposes of an organized religion where the employment was limited to one sex. But some members of the Council suggested that the exception should only be granted on application by religious bodies which might

facilitate their review of such employment practice;
and

- (e) The Council considered the SDB, coupled with the EOC, was a good mechanism to enforce legislation against discrimination on the ground of sex.

V. Meeting with Starbrook Sports International

6. The representatives briefed Members on its written submission tabled at the meeting - copy at Appendix II. In response to Members' questions, the representatives made the following comments :

- (a) The ruling of the Hong Kong Judo Association, i.e., judo players aged 30 or more would no longer be eligible to represent Hong Kong in international competitions, should be overturned because it was discrimination on the ground of age and counter-productive; and
- (b) No such age limit was imposed elsewhere in the world. Hong Kong's strongest judo players were in the 30-40 years age bracket. If they were not allowed to enter, Hong Kong's already limited success in competitions would decline.

VI. Meeting with Hong Kong Women Workers' Association

7. The Association took Members through its written submission forwarded to Members vide Annex D to LegCo Paper No.HB 516/94-95. The Association supplemented that it supported the SDB subject to inclusion of provisions against discrimination on the grounds of age and family responsibility. It also opined that the court's power to reinstate a person should be incorporated into the SDB. It would be up to the court to decide on the amount of compensation in sex discrimination claims which should not be bound by a ceiling.

VII. Meeting with Mongkok Kai-fong Assn Ltd Chan Hing Social Service Centre

8. The deputation went over its written submission tabled at the meeting - copy at Appendix III. Whilst supporting the spirit of equal opportunities, it had reservations on the EOB as it did not provide financial resources for implementation. Neither, did it support the SDB which was inadequate to protect women, particularly on age discrimination. The deputation would only support enactment(s) which provided women with comprehensive protection from discrimination and with financial resources for implementation.

VIII. Meeting with Association for the Advancement of Feminism

9. The Association briefed Members on its written submission tabled at the meeting - copy at Appendix IV. It supplemented the following points :

- (a) The Association supported the SDB subject to the inclusion of provisions against discrimination on the grounds of age, family responsibility and sexuality as well as other amendments stated in its written submission;
- (b) The Association suggested that "paternity" leave of a week or so should be provided to fathers so that they could also share the responsibility of caring for their new-born children; and
- (c) The Association considered that sex segregation existed at the managerial/professional rank where the number of male far exceeded female employees. It opined that more training to women could address the problem but, as a long term solution, promotion and education of equality of employment opportunity should be strengthened to eliminate sex segregation in employment field.

IX. Meeting with Hong Kong Federation of Women

10. The representatives took Members through their written submission forwarded to Members vide Annex F to LegCo Paper No.HB 516/94-95. In response to Members' questions, they had the following comments :

- (a) The Federation supported the SDB, the establishment of the EOC and the Administration's proposal to enforce the provisions relating to employment after the formulation of the codes of practice. It did not support the EOB because that Bill covered too wide a scope and would unduly burden the court with cases many of which would have been thrown out since the EOB did not provide for the establishment of the EOC or the screening of cases by it;
- (b) The Federation proposed, for the avoidance of possible abuse, the setting of a ceiling, for compensation claims in sex discrimination and sexual harassment cases given that the SDB created a new cause of action and a ceiling for the amount recoverable would let the citizens know the consequences of their wrongful acts;
- (c) The Federation supported the exception to small house policy provided in the SDB as the policy addressed the housing problem of indigenous villagers in rural area rather than the problem of equality of opportunity between the two sexes, and catered for the provisions of the Joint Declaration and the Basic Law. Nevertheless, it considered a review of the policy necessary; and
- (d) The Federation supported Ms Anna WU's proposal that protection should be extended to discrimination on the ground of age because women were more seriously affected by such

discrimination than men. It also urged the Administration to schedule a timeframe for the elimination of other forms of discrimination contained in the EOB.

X. Meeting with Mr Barrie Brandon

11. Mr Brandon related his personal experience of being discriminated due to his sexual orientation. He illustrated with examples that discrimination took many forms and was by its nature insidious. He also stated how the "Contacts" magazine, which was the only homosexual magazine in Hong Kong, had been discriminated against since its inception. He supported the EOB and hoped that it would be enacted as soon as possible.

(Post-meeting note : Mr Barrie Brandon submitted a written statement at Appendix V)

XI. Meeting with Horizons

12. The deputation went over its written submission forwarded to Members vide Annex G to LegCo Paper No.HB 516/94-95. The deputation supported the EOB which was considered a cornerstone in fostering social acceptance and nurturing understanding and love of the less-understood segments of society.

XII. Meeting with Concern Group on Single Parents

13. The representatives briefed Members on their written submission tabled at the meeting - copy at Appendix VI. They shared with Members their experience on how single parents and their children were discriminated (on the grounds of age and family responsibility/family status) in work place and in school.

14. The representatives also pointed out that single parents

Action
Required

were adversely affected under the existing taxation system and, in this regard, requested single parents to be entitled to the same allowances as other parents. They also suggested to strengthen enforcement of court's judgement in relation to the maintenance of dependent family members in matrimonial cases. They urged the Administration to provide compassionate public housing to them and hoped that more assistance could be rendered to the housework and caring of children of these families. The Chairman considered these suggestions outside the scope of the Bills Committee and should therefore be referred to the relevant panel(s) for consideration.

Clerk

XIII. Date of next meeting

15. The next meeting was scheduled to be held at 10:45 a.m. on 21 April 1995 in the Chamber of the Legislative Council Building.

16. The meeting ended at 6:40 p.m.

LegCo Secretariat
10 May 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 21 April 1995 at 10:45 a.m.
in Chamber of the Legislative Council Building**

- Present** : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon Mrs Peggy LAM, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Rev Hon FUNG Chi-wood
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan
- Absent with** : Hon Mrs Selina CHOW, OBE, JP)
apologies Hon HUI Yin-fat, OBE, JP)
Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP)
Hon Mrs Miriam LAU Kin-ye, OBE, JP) **Other**
Hon Moses CHENG Mo-chi) **commitments**
Hon Simon IP Sik-on, OBE, JP)
Dr Hon Conrad LAM Kui-shing, JP)
Hon Emily LAU Wai-hing)
Hon James TO Kun-sun)
Hon Roger LUK Koon-hoo)

By invitation :

Miss Susie HO
Principle Assistant Secretary for Home Affairs

Hon Anna WU's team

Mr Andrew Brynes, Consultant
Mr Eric CHOW
Mr Adam Mayes
Ms Celie Nehmer

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

Action
Required

The Chairman stated that, having completed the second round of meetings with deputations at the last meeting on 13 April 1995, the Bills Committee would move into consideration of CSAs to both the Equal Opportunities Bill (EOB) and the Sex Discrimination Bill (SDB). It was envisaged that this would take four meetings to complete. He then invited Ms Anna WU to present her proposed CSAs.

I. Proposed Restructuring of the EOB

2. Ms Anna WU briefed Members on her proposed restructuring of the EOB as stated in her paper on "Restructure of EOB; Amendments and proposals" (Ref AW 042195-1) tabled at the meeting. In response to Members' questions, she supplemented the following points :

- (a) To facilitate Members in considering their preferences when eventually voting on the different parts of the EOB, Ms WU proposed to withdraw the EOB and regazette relevant parts of the EOB, in its original version, as three separate bills :
- the first bill would address discrimination on the grounds of age, family status, and sexuality
 - the second bill would address race discrimination
 - the third bill would address discrimination on the grounds of religious/political beliefs, union membership, and spent conviction.

She would withdraw Parts II and VI of the EOB as they were covered by the SDB and the Disability Discrimination Bill (DDB).

- (b) As the aspects of discrimination covered by Ms WU's proposed three separate bills had already been studied by the Bills Committee, she considered it useful and logical that these bills should be examined by the *same* Bills Committee *immediately* after going through the formality of re-gazetting and introduction.
- (c) Should the House Committee not support her proposal, Ms WU would proceed with the EOB in the usual manner.

(Post-meeting note : the paper was forwarded to Members vide Appendix II to LegCo Paper No.HB 560/94-95)

3. Dr YEUNG Sum was concerned that the proposed re-gazettal and introduction might lead to the placement of the three EO bills in the waiting list of bills pending formation of new by Bills Committees. Nevertheless, he stated that the Democratic Party was in support of Ms WU's proposal given that it only made technical

changes without alternations to the substantive contents of the EOB; and the three bills, each with a smaller scope, would make amendments and voting much easier when they were put to the full Legislative Council.

4. Mr. McGregor was of the view that Ms WU's proposal would make Members confused in a complicated debate. He did not support the proposal because it might delay the enactment of the SDB and the DDB. He opined that the SDB, the DDB and the three EO bills should be enacted one after another. The SDB and the DDB, being less controversial, should be considered first followed by the three EO bills.

5. Ms Anna WU stressed that she had not delayed the legislative process of the Government bill. The scrutiny of the SDB, which was introduced into the Legislative Council after the EOB, was facilitated by having the two Bills studied by the same Bills Committee. She added that, by dropping the parts concerning sex and disability discrimination in the EOB, the study of the SDB and the DDB could be expedited. She also stated that as her proposed amendments to the SDB were extensive, the amendment process would be complicated and lengthy. She welcomed a timetable on the EOB set by the Bills Committee or the House Committee but considered that a time limit should be imposed on the Administration in responding to her proposed amendments to the SDB which were discussed with it in March 1995.

6. The meeting decided to put Ms WU's proposal to vote. The majority of members present at the meeting voted in favour of it (5 against 1; the Chairman did not vote).

II. Proposed Amendments to the EOB

7. Ms Anna WU went over the proposed amendments to the EOB stated in her paper referred to in paragraph 2. She supplemented that a clause would be added to the EO bills listing out the provisions of existing laws that were exempted from discrimination in the areas

of age and sexuality. The exemption would expire in a year, during which the Administration could put forward amendments, and renewable by LegCo resolution. In this regard, she reiterated her request to the Administration for a list of provisions of existing laws relating to age discrimination. She repeated her willingness to give up any part of the EOB if it was included in the Administration's legislative programme.

Adm.

III. Proposed amendments to the SDB

8. Ms Anna WU took Members through the proposed amendments marked with a tick in the paper entitled "Proposed amendments to the Sex Discrimination Bill discussed with Home Affairs Branch, 17 March 1995" (Ref AW 033195-1) which was attached to the paper on "Restructure of EOB; Amendments and proposals" (Ref AW 042195-1).

9. Miss Susie HO replied that Ms WU's proposed amendments were being examined by the Administration. She would respond to some of them at this meeting and come back on the others in subsequent meetings. Her comments are summarized as follows :

General remarks

- (a) The Administration considered that discrimination on the grounds of family responsibility, age and sexuality was not directly related to sex discrimination and therefore would not be included in the SDB. The need for action to tackle these forms of discrimination would be determined after the study to be undertaken by the Administration (ref.: item 1.2 of the paper);
- (b) Sexist drafting would be eliminated by changing, for example, the word "Chairman" to "Chairperson" (ref.: item 1.3 of the paper). The Administration undertook to consider stating in the SDB the relationship between the Bill and existing laws and, in this regard, was examining the wordings of such provision(s);

Part II - Discrimination

- (c) The Administration considered that discrimination on the grounds of marital status and pregnancy existed mainly in the employment field. It would address the Bills Committee on this issue (ref. : items.3.1 and 3.2 of the paper);

Adm

Part III - Employment Field

- (d) In reply to the remarks that the Government neglected one-third of the work force engaged in 70% of the business establishments by giving a five-year exemption for small employers, the Administration stated that the arrangement was not discriminatory but was intended to give a reasonable transitional period for small employers to better understand the operation of the Bill and benefit from the experience of large business establishments. As regards the Administration's proposal to have the provisions relating to employment to be effective following promulgation of Codes of Practice, the rationale of the proposal was explained in its letter of 9 March 1995 to the Bills Committee forwarded to Members vide Appendix I to LegCo Paper No.HB 327/94-95. It would write to the Bills Committee on this subject (ref. : items 4.1 and 4.4 of the paper).;

Adm.

(Post-meeting note : a paper prepared by the Administration on this subject was forwarded to Members vide Paper No.SDB 2/95 attached to LegCo Paper No.HB 595/94-95)

- (e) Having considered the suggestion made by the Bills Committee, the Administration agreed to outlaw sexual harassment by an employee to his/her employer which would be included in the CSAs;

Adm.

Part IV - Other Fields

- (f) Clubs, with definitions similar to that in the EOB, would be explicitly covered in order to avoid exemption of "private" clubs from Clause 25 of the

SDB (ref.: item 5.1 of the paper). As regards the administration of laws and government programmes, the Bill of Rights Ordinance (BOR) bound the Administration in this respect. Nevertheless, the Administration undertook to write to the Bills Committee on this issue. (ref.: item 5.2 of the paper);

Adm.

(g) The Administration reiterated that a review on the election of village representatives was under way and would address to the proposed inclusion of political elections and appointments in the SDB after the review was completed (Ref item 5.3 of the paper);

Adm.

(h) As regards sexual harassment in other fields (Clause 32 of the SDB), the Administration agreed to extend it to cover harassment of students by students and of educational staff by students (ref.: item 5.6 of the paper);

Adm.

Part VI - General Exceptions .

(i) The Administration agreed to replace the limited exceptions for positive discrimination (Clauses 45-57 of the SDB) by general exceptions for special measures and for measures to achieve equality (ref.: item 7.2 of the paper). As regards the exception for protective legislation (Clauses 49, 50, 52 and Schedule 2 of the SDB), the Administration stated that the international conventions applicable to Hong Kong such as international labour conventions on employment of women, bound the Administration to take measures for the protection of women under the said clauses and schedule of the SDB. Exceptions for this protective legislation was therefore necessary. Nevertheless, it would revert to the Bills Committee on the subject before the next meeting. (ref.: item 7.3 of the paper);

Adm.

(Post-meeting note : a paper prepared by the Administration on exceptions for protective legislation in the SDB was forwarded to

Members vide Paper No.SDB 1/95 attached to LegCo Paper No.HB 595/94-95)

- (j) The Administration pointed out that the disciplinary services had already explained to the Bilis Committee in respect of the exemption relating to them (Clause 54 and schedule 4 part 2 section 1 of the SDB) (ref.: item 7.5 of the paper);
- (k) The request for deleting the exemption of the Small House Policy (Clauses 54 and schedule 4 and part 2 section 2 of the SDB) would be considered after the review on the Policy (ref.: item 7.6 of the paper);

Adm

Part VII - Equal Opportunities Commission

- (l) As regards the limited scope of the EOC, the Administration stated that the EOC would not cover all forms of discrimination because its formation would come under the rubric of the SDB. The EOC would look at other forms of discrimination if and when they were outlawed under statute. In determining whether to take the legislative approach against other forms of discrimination, the Administration would study the forms of discrimination such as the study to be conducted by the end of this year on discrimination on the grounds of age, family status and sexuality. The Administration was also seeking legal advice on the implications of the relevant UK court cases which might prevent the EOC from looking into matters that might be related to equal opportunities between men and women but were not specifically addressed by the SDB. It would revert to the Bills Committee as soon as possible. It added that the BOR only covered violations of rights between the Government and people but not intercitizens' disputes. As such, the functions of the EOC would not be extended by reference to relevant provisions of the BOR. Regarding the proposed extension of the functions of education and promotion of the EOC to cover matters not related to sex

Adm

discrimination, the Administration pointed out that other bodies, such as the Committee on the Promotion of Civic Education, could carry out these functions with respect to the BOR and relevant international treaties and instruments. It therefore did not support the extension of the EOC's functions in these areas (ref.: items 8.2-8.3 of the paper);

- (m) In this regard, Ms WU opined that future legislation on discrimination would be confined by the precedent set by the SDB and urged Members to pass anti-discrimination laws which could expand the scope of the EOC; and

Part VIII - Enforcement

- (n) The Administration undertook to reply to the request for including reinstatement in court's power under the SDB (ref.: item 9.3 of the paper).

Adm.

IV. Way Forward

10. It was agreed that an interim report of the Bills Committee would be submitted to the House Committee on 5 May 1995 seeking its views on the proposed restructure of the EOB. The Bills Committee would continue to examine CSAs to the SDB followed by those to the EOB.

V. Date of next meeting

11. The next meeting was scheduled at 10:45 a.m. on 28 April 1995 in the Chamber of the Legislative Council Building.

12. The meeting ended at 12:31 p.m.

LegCo Secretariat
17 May 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

Notes of Meeting held on
Friday, 28 April 1995 at 10:45 a.m.
in Chamber of the Legislative Council Building

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon J D McGregor, OBE, ISO, JP
Dr Hon Conrad LAM Kui-shing, JP
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan
- Absent with : Hon Mrs Selina CHOW, OBE, JP)
apologies Hon HUI Yin-fat, OBE, JP)
Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP)
Hon Mrs Miriam LAU Kin-ye, OBE, JP) Other
Hon Moses CHENG Mo-chi) commitments
Hon Simon IP Sik-on, OBE, JP)
Hon Emily LAU Wai-hing)
Hon James TO Kun-sun)
Hon Roger LUK Koon-hoo)
- Hon Mrs Peggy LAM, OBE, JP) out of town
Rev Hon FUNG Chi-wood)

By invitation :

Miss Susie HO
Principle Assistant Secretary for Home Affairs

Miss Elizabeth WU
Senior Assistant Solicitor General
(Constitutional and Electoral Affairs Team)

Mr Raymond FAN
Principle Assistant Secretary for Education and Manpower

Hon Anna WU's team

Mr Andrew Brynes, Consultant
Ms Carole Petersen, Consultant
Mr Eric CHOW
Mr Adam Mayes
Ms Barbara Kvoske

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

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Required

I. Meeting with the Administration

The Administration went over its papers No.SDB 1, 2 & 3/95 attached to LegCo Paper No.HB 595/94-95 responding to Ms WU's proposed amendments to SDB contained in her paper No. AW 033/95-1 (Appendix II to LegCo Paper No.HB 560/94-95). The discussion between Members and the Administration is summarized in paragraphs 3-31.

A. Exceptions for Protective Legislation in the SDB (clauses 11(2)(g) & 49 and schedule 2 of the SDB) (Paper No.SDB 1/95)

2. As regards the age restriction imposed under the Dutiable Commodities (Liquor) Regulations, Cap 109 sub leg (paragraphs 6-7 of Paper No.SDB 1/95), the Administration pointed out that amendments would be proposed to the effect that persons of both sexes under 18 were forbidden to work on licensed premises where liquor was sold or supplied for consumption on that premises. This proposed amendment would be put to the Legislative Council in the next legislative session.

3. Responding to a Member's enquiries, the Administration stated that protective legislation in the SDB was in line with the spirit of International Labour Conventions on Employment of Women. Noting the Member's remarks that some of the international labour conventions on employment of women, for example, Night Work (Women)(Revised) Conventions (No. 89), had been revised in 1990, the Administration pointed out that it would consider to adopt new conventions if they were ratified by the United Kingdom Government. It would revert to the Bills Committee on details of the revised conventions. The Administration added that it would meet international standards by complying with international conventions. It would review, for example, application of clauses relating to maternity protection in the Convention on the Elimination of Discrimination Against Women (CEDAW) which would be extended to Hong Kong and would consult the Labour Advisory Board in June on the result of the review.

Adm.

4. The Administration added that it had prepared a comparison of the SDB with the UK Sex Discrimination Act to identify differences between them. It would provide the Bills Committee with a copy of this comparison after seeking legal advice on it. The Administration would consider preparing comparison of the SDB and its schedules with other UK laws in this area but it emphasised that such an exercise would have significant resource implications.

Adm.

5. A Member opined that, in the UK Protection of Women Act which the SDB was based upon, most of the exemptions, such as those relating to underground work and cleaning dangerous parts of any machinery in motion, had been repealed. The UK Act only retained exceptions on, for example, maternity protection. In this connection, she suggested a one-year immunity for protective legislation, renewable by Legislative Council resolution, to allow the Administration time to review it against the current covenants, standards in the Bill of Rights Ordinance and the CEDAW. In the course of the review, the Administration should also consider whether the protective legislation required updating.

6. The Administration reiterated that the Equal Opportunities Commission (EOC) was empowered under the SDB to review, inter alia, the protective legislation. The issue was therefore whether the Administration or the EOC should conduct the review. It would consider this suggestion and reply to the Bills Committee.

B. Employment Field - Part III of the SDB (Paper No.SDB 2/95)

Code of Practice

7. Ms Anna WU did not support the Administration's plan to implement Part III of the SDB after promulgation of Codes of Practice (paragraph 2 of paper No.SDB 2/95 referred). She pointed out that a code of practice had already been developed by some employers' organisations and the UK Act was implemented without awaiting the issue of Code of Practice. Since the Administration had power to implement Part III of the SDB as planned, she suggested to impose a time limit of one year for the EOC to develop and issue the Code of Practice. Part III of the SDB should then be implemented even though the Code of Practice was not yet ready. She recapitulated that the Administration had previously indicated that equal pay provisions equivalent to those in the UK Equal Pay Act would be made for Hong Kong but now proposed that such provisions be made in the form of Codes of Practice under the SDB rather than as primary legislation. She considered it inappropriate to delegate such an important legislative matter to the EOC.

8. The Administration reiterated that the development and issue of the Code of Practice would be the first task of the EOC. It was expected to complete this task within six to nine months of its inception. It undertook to consider the Member's suggestion but was of the view that there might be a lack of flexibility if a time limit were set without a mechanism to change it. In reply to another Member's enquiry, the Administration pointed out that the EOC could refer to Codes of Practices developed in other countries in preparing the Code in Hong Kong. At the Member's request, the Administration would forward the UK Code of Practice to the Bills Committee for reference.

Adm. .

Adm.

(Post-meeting note : Copy of the UK Code of Practice was forwarded to Members vide LegCo Paper No.HB 668/94-95)

9. Noting that the Administration had already commenced preparatory work for the establishment of the EOC, Members requested it to develop a draft code as part of the preparatory work so that the EOC could consider it as early as possible.

Adm.

10. Dr YEUNG Sum stated that the Democratic Party did not support the Administration's plan to implement Part III of the SDB after the promulgation of the Code of Practice.

Five-year exemption for small employers (Clauses 10(3), (6)-(8) of the SDB)

11. The Administration pointed out that the SDB, in particular the clause on the five-year grace period for small business establishments, was not inconsistent with the Bill of Rights Ordinance (BOR). The concept of this provision was supported by the Hong Kong General Chamber of Commerce. The grace period was a reasonable transitional period for small employers to better understand the operation of the Bill and benefit from the experience of large business organizations with well-established personnel systems (paragraph 4 of Paper No.SDB 2/94 referred).

12. A Member opined that the Administration should, instead of granting a grace period for small employers, provide training to

them so as to facilitate them to understand and comply with Part III of the SDB.

13. Another Member did not object to the proposed grace period, but was concerned on the length of this period.

14. The Administration responded that the proposed EOC would undertake the education and promotion work in this respect and both employers' organizations and trade unions should assist in the related education and promotion work. It added that clause 10(8) of the SDB empowered the Governor-in-Council to amend the grace period and the size of business establishments. Nevertheless, the Administration undertook to consider shortening the grace period.

Genuine Occupational Qualification (GOQ) (Clauses 11(2)(e), (h) & 19-21 of the SDB)

15. The Administration, in reply to a Member's enquiry, stated that duplications in relation to GOQs under clause 11(2)(e) were necessary because exceptions presently provided under other GOQs in the SDB might not cover all single-sex hospitals, prisons and special care facilities. It was unclear whether the GOQ for work in, for example, single-sex boys/girls homes duplicated clause 11(2)(f) since these homes might not be regarded as institutions providing individuals with personal services promoting their welfare or education. The Administration therefore considered it prudent to include the GOQ in clause 11(2)(e) (paragraph 5 of Paper No.SDB 2/95)

16. A Member was concerned about the possible abuse of the general exemption for the GOQ for work likely to involve duties outside Hong Kong in places where discriminatory laws or customs applied (Clause 11(2)(h)) (paragraph 7 of Paper No.SDB 2/95 referred). The Administration responded that it could consider stating the exemptions explicitly and specifically instead of a general exemption but emphasized that an employer would be careful in using this exemption since, under this clause, the onus was upon the employer claiming the GOQ to show that it was the laws or the

customs of a foreign country which resulted in, for example, the women being unable to perform the job duties effectively.

17. Some Members were concerned that the reference to "a significant number of followers" in clause 19 (paragraph 8 of Paper No.SDB 2/95 referred) might adversely affect the minority interests of an organized religion. A Member suggested the Administration to make reference to similar clause in the EOB in amending the wording of the clause.

18. The Administration responded that the word "susceptibilities" normally related to person; hence reference to followers in qualifying the word might be necessary. Nevertheless, it would consider amending the clause if Members and/or religious groups expressed such concerns.

19. As regards whether sexual harassment in the employment field should be extended to cover harassment of a domestic helper by any co-resident of the employer (paragraph 9 of Paper No.SDB 2/95), the Administration requested Ms WU to provide further information on what persons were included in the term "co-resident", whether an employer would incur civil liability for any acts of sexual harassment committed by any of his co-residents, regardless of whether it was done with his knowledge or approval and what defences, if any, was proposed to give the employer in such situations.

20. Mr McGregor was opposed to imposing civil liability on an employer for sexual harassment committed by a co-resident without the employer's knowledge or approval.

21. In this regard, Ms Anna WU undertook to provide a paper giving further details of this proposal to the Bills Committee for consideration.

Ms Anna
WU

C. Preliminary - Part I of the SDB (Paper No.SDB 3/95)

Application to acts done for two or more reasons

22. The Administration requested Ms WU to clarify whether the inclusion of a provision similar to clause 4 of the Equal Opportunities Bill meant that where an employer dismissed his employee primarily because of his poor performance, then no matter how justifiable this dominant reason for the dismissal was, the employer would still be considered as acting unlawfully and would incur civil liability under the SDB if sex discrimination featured as a very minor reason for the dismissal. Ms Anna WU responded that she had explained the meaning of such provision in her paper AWO41194/2 dated 3 November 1994 and requested the Administration to study it.

(Post-meeting note : the paper was forwarded to Members vide Appendix II to LegCo Paper No.HB 614/94-95)

Discrimination against a person on ground of status of person's relative or associate

23. In reply to the Administration's enquiry on the need and relevance of including discrimination against a person on ground of status of person's relative or associate, Ms Anna WU pointed out that there would be discrimination against a person on the grounds of his relative's pregnancy or marital status. A person was discriminated if, for example, he was not employed because the employer considered that he might need to take leave to take care of his pregnant wife.

24. The Administration undertook to consider the proposed inclusion of this form of discrimination but considered the scope of "associate" too wide if it included persons who had a business, sporting or recreational relationship with each other. It would revert to the Bills Committee on this issue.

Adm

Definition of "marital status" should include status of de facto spouse (Clause 2(1) of the SDB)

25. Regarding the proposed inclusion of status of de facto spouse in the definition of "marital status" (paragraphs 4-5 of Paper No.SDB 3/95), the Administration did not think majority members of the community were prepared to give recognition to de facto relationships, including de facto couples of the same sex, in the same manner as to married relationships.

26. Some Members opined that many couples might be married under customary marriages which might not be declared valid under the Marriage Ordinance. They considered the proposal necessary if the number of these couples was large. The Administration undertook to consider this point and provide the figure to the Bills Committee.

Adm.

27. In reply to Ms WU's enquiries, the Administration stated that clause 57(3) of the SDB applied to research or educational activities undertaken by organizations with EOC's subventions. In this context prior approval of the Secretary for Home Affairs, after consulting with the Secretary for the Treasury, was required for provision of financial assistance to these activities.

28. Ms WU was concerned that this sub-clause and paragraphs 15, 16 and 17(2) of schedule 5 would impose unnecessary monitoring on the independent EOC in discharging its functions of research and education. She also reiterated her request for breakdown of the \$48 million budget of the EOC including staffing details. The Administration undertook to consider these points and provide the Bills Committee with the requested information.

Adm.

29. As regards the Administration's paper No.SDB 4/95 seeking clarification from Ms WU on her proposed amendments to the SDB on the administration of laws and government programmes, Ms Anna WU replied that most of the points had already been discussed with the Administration. In this connection, the Chairman suggested the Administration to contact Ms WU or her assistants

direct to resolve problems arising from her proposed amendments to the SDB. He also requested the Administration to revert to the Bills Committee on the amendments it agreed with and those it did not.

Adm.

(Post-meeting note : the paper No.SDB 4/95 was forwarded to Members vide Appendix II, to LegCo Paper No.HB 633/94-95)

II. Interim Report to House Committee on 5 May 1995

30. The Chairman recapitulated that, as agreed at the last meeting, an interim report of the Bills Committee on Ms WU's proposed restructuring of the EOB would be forwarded to the House Committee for discussion at its meeting on 5 May 1995. He urged Members to support the recommendation of the Bills Committee.

Attendance at meetings

31. A Member was concerned on the low attendance at meetings and the frequent delay in the start time of meetings due to lack of a quorum, and requested to publish the attendance record of the Bills Committee. The request was noted.

IV. Date of next meeting

32. The next meeting was scheduled to be held at 10:45 a.m. on 5 May 1995 in the Chamber of the Legislative Council Building.

33. The meeting ended at 12:49 p.m.

LegCo Secretariat
23 May 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 5 May 1995 at 10:45 a.m.
in Chamber of the Legislative Council Building**

Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Rev Hon FUNG Chi-wood
Hon Emily LAU Wai-hing
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan

Absent with : Hon Christine LOH Kung-wai)
apologies (Deputy Chairman))
Hon Ronald Arculli, OBE, JP)
Hon HUI Yin-fat, OBE, JP)
Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP) Other
Hon Moses CHENG Mo-chi) commitments
Hon Simon IP Sik-on, OBE, JP)
Dr Hon Conrad LAM Kui-shing, JP)
Hon James TO Kun-sun)
Hon Zachary WONG Wai-yin)
Hon Roger LUK Koon-hoo)

Dr Hon YEUNG Sum - out of town

By invitation :

Miss Susie HO
Principle Assistant Secretary for Home Affairs

Mr Anthony O'Brien
Principal Assistant Secretary for Financial Services

Mr Raymond TAM
Assistant Commissioner of Insurance

Miss Christina TSANG
Chief Executive Officer (Civil Service) Development

Miss Elizabeth WU
Senior Assistant Solicitor General
(Constitutional and Electoral Affairs Team)

Mr Jack CHAN
Principal Assistant Secretary (E)
Security Branch

Mr J H Walker
Assistant Commissioner of Police (Support)

Mr S J Chandler
Senior Superintendent of Police (Support)

Hon Anna WU's team

Mr Andrew Brynes, Consultant
Ms Carole Petersen, Consultant
Mr David Viotti
Ms Celie Nehmer

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

Action
Required

I. Confirmation of notes of meetings held on 16 December 1994, 17 February, 3 and 10 March and 7 April 1995 (LegCo Paper Nos.HB 202, 571, 543, 544 and 568/94-95)

Subject to the proposed amendments to the draft notes of meeting held on 16 December 1994 and 3 March 1995 vide LegCo Paper No.HB 645/94-95, the captioned draft notes of meetings were confirmed.

II. Meeting with the Administration

2. The Administration went over its papers No.SDB 5, 6 & 7/95 attached to LegCo Papers No.HB 648 and 651/94-95 responding to Ms Anna WU's proposed amendments to the Sex Discrimination Bill (SDB) contained in her paper No.AW 033195-1 (Appendix II to LegCo Paper No.560/94-95). The discussion between Members and the Administration is summarized in paragraphs 3 - 32.

(a) Exception for death or retirement benefits (Clause 10(4) of the SDB, SDB Paper No. 5/95)

3. The Administration stated that the purpose of providing the exception in Clause 10(4) was to ensure that retirement schemes and death benefits which rendered different treatment to male and female employees would not be made unlawful by virtue of the provisions in the SDB.

4. In explaining the reason of differential treatment to male and female employees in death or retirement benefits, the Administration said that provisions in relation to death and retirement was a complicated matter. In the private sector, many employers provided retirement and/or death benefits for their employees. A

majority of such employers provided these benefits to their employees under locally established retirement and/or death benefit schemes which followed Hong Kong practice, that was to say, they treated male and female members in the same way.

5. The Administration pointed out that there were, however, a number of international firms or their local subsidiaries which provided retirement and/or death benefits under schemes of their head offices of foreign designs which might have different treatment for females and males. In most of these cases where treatment differed, females had a lower eligibility requirement for entitlement to normal retirement or early retirement benefit. These provisions might be regarded as discriminatory against male members who were entitled to reduced benefits despite having the same age and earnings history. There were also cases, for example, in a defined contribution pension scheme, where female pensioners were paid a lesser amount as they were expected to have a longer life span. Such differential treatment between male and female employees was made on the basis of different life expectancy between males and females, notwithstanding that the same amount had been accumulated under the scheme for males and females with the same age and pensionable earnings. Similarly, a pension scheme might allow pensioners to convert their pensions into a lump sum and apply different commutation factors to males and females of the same age.

6. To tackle the differential treatment, the Administration proposed an exception under clause 43 of the Bill for "treatment of a person in relation to any class of insurance business, or similar matter involving the assessment of risk ...". The person relying on the exception had to prove that the differential treatment was effected by reference to actuarial or other data from a source on which it was reasonable to rely and was reasonable having regard to the data and other relevant factors.

7. Nevertheless, the Administration noted that some pension schemes did not have a reliable actuarial basis for the conversion of an accumulated sum into a pension for life (in the case of a defined benefit pension scheme) or for the commutation of pensions into lump sums; they only made broad reference to the gender of the employees

in question. As these schemes might not involve the assessment of risk by reference to actuarial or other reasonable data, they would not be able to take advantage of the Clause 43 exception. To continue with their operation, such schemes had to rely on the exception provided under Clause 10(4) of the Bill.

8. The Administration also noted that males and females were treated differently in other respects under local as well as foreign retirement and or death benefit schemes. These included, for example, the qualifying service for normal retirement and death benefit for surviving spouse. It did not have information on the features of all retirement and/or death benefit schemes covering employees in Hong Kong and so did not know whether there were cross-subsidies in these schemes. The Administration considered that equal treatment for males and females might incur funding problems for schemes with different treatment for males and females since, if they applied for registration under the Occupational Retirement Schemes Ordinance, additional funds had to be injected to these schemes in order to meet the solvency requirement under the Ordinance. It was therefore unsafe to remove the exception in Clause 10(4).

9. The Administration said that there were a number of obsolescent statutory provisions which provided different retirement and death benefits for male and female civil servants. An outline of the relevant provisions and the present position with respect to these statutory provisions was annexed to SDB Paper No. 5/95. As could be seen from the information at the annex, the statutory provisions in respect of the civil service had already been amended and the remaining relating to the Auxiliary Police Force would be amended in the next legislative session. Equal treatment was already provided for new officers joining the civil service. The differential death or retirement benefits provided for male and female civil servants were obsolescent preserved rights and would fall away in time. Nonetheless, it was necessary to retain the exception in Clause 10(4) for the time being so as not to render such differential treatment unlawful and honour the preserved rights of the officers concerned.

10. The Administration stressed that the provision of death and retirement benefits for employees was a complex matter and

pointed out that the provisions in relation to death and retirement were presently still retained in the UK Sex Discrimination Act.

11. The Administration was therefore of the view that, in the Hong Kong context, it was necessary to retain the exception in Clause 10(4) for the time being. In the light of the operation of the legislation and should the need arise, the Equal Opportunities Commission (EOC) could review the need to amend Clause 10(4) of the Bill.

12. A Member suggested to 'grandfather' the exception provided in Clause 10(4) so that it only applied to members of death or retirement schemes which were already in operation before the commencement of the provisions in the SDB and proposed a time limit of one year for the EOC to review the clause. She also enquired the implications of this clause on the proposed Mandatory Provident Fund Schemes (MPFS).

13. The Administration undertook to consider the suggestions and stated that the MPFS would not be inconsistent with the SDB and the Bill of Rights Ordinance (BOR). It would also include the issue of retirement age in the study of age discrimination scheduled to be conducted by the end of 1995.

Adm.

(b) Other Fields etc. (Parts IV, V & VI of the SDB, SDB Paper No. 6/95)

Exceptions for single-sex hospital services and special care facilities (Clause 30(1)(a) of the SDB)

14. Responding to Ms WU's suggestion that the exception for single-sex hospital services and special care facilities duplicated other exceptions in part and was otherwise inconsistent with the principle of the SDB and should be deleted, the Administration sought her clarification on the specific areas of duplication. It noted that a similar provision was in the UK Sex Discrimination Act and the UK EOC had not suggested repeal of that provision. The EOC to be established under the SDB would be tasked under Clause 56(1)(e) to

keep under review the working of the Ordinance. It would appear to be appropriate to retain the present Clause 30(1)(a) and let the EOC review the need for changes in the light of operational experience.

15. Ms WU replied that her suggestion related to the definition of discrimination under the SDB which appeared to regard any differential treatment, whether reasonable or not, as discrimination. With this definition, exceptions were provided in the SDB for differential treatments which the Administration did not intend to outlaw. As such the SDB exempted, for example, indirect discrimination. She considered that discrimination should only be confined to *unreasonable* differential treatments and these two concepts of discrimination would bring about different implications on the principles and drafting of the SDB. In this connection, she reiterated her request to meet the Administration and its legal advisers to discuss the issue.

16. The Administration undertook to arrange a meeting with Ms WU before the next Bills Committee meeting to discuss the subject matter.

Adm.

Discriminatory advertisements (Clauses 36 and 74 of the SDB)

17. In reply to Ms WU's proposal that discriminatory advertisement should carry a fixed financial penalty and be actionable by any person and should therefore be made a criminal offence subject to private prosecution, the Administration considered it reasonable that the remedy should be in the form of a court order restraining the continuation of the unlawful act. It did not believe that such acts were misconduct of so grave a nature as to warrant making it a criminal offence, in particular when it was noted that under the SDB liability might be incurred merely for publishing an advertisement with a job description which was sex specific (e.g. salesgirl), unless the advertisement also contained an indication that there was no intention to discriminate.

18. A Member supported the Administration's position in this respect, in particular that discriminatory advertisements should

not be made a criminal offence.

19. In this regard, some Members considered the proposed punishment under the SDB was too lenient and supported heavier penalty be imposed on the discriminators. Ms Anna WU pointed out that criminalization of discriminatory advertisements was effective in New South Wales of Australia in eliminating these advertisements. She did not object to civil liability if these advertisements could be actionable by any person and fixed financial penalty as well as injunction could be imposed on the discriminators. She added that, under the SDB, injunction would only be issued if the EOC had reason to believe that unless restrained the discriminator was likely to further publish discriminatory advertisements; hence it would be difficult to obtain.

Exception for protective legislation (Clauses 49, 50, 52 and Schedule 2 of the SDB)

20. A Member considered that the International Labour Conventions on Employment of Women, which the protective legislation in the SDB was based upon, appeared to be the 1948 conventions. She pointed out that the 1990 Conventions did not prohibit night work by women in industry but prohibit both male and female employees from dangerous work. The Administration was therefore requested to review the protective legislative in the light of these revised conventions, some of which had yet to be extended to Hong Kong.

Adm.

Exemption for acts done to safeguard the security of Hong Kong (Clause 51 of the SDB)

21. Addressing to Members' doubt on the need for exemptions from the SDB in respect of security related matters under Clause 51, the Administration reiterated that under the SDB any differential treatment would be regarded as discrimination and the definition did not take into account whether or not the differential treatment was reasonable. There was thus a need for exemption in this respect when, for example, male police officers had to be deployed to deal with male rioters.

Exemption of certain discrimination within the disciplinary Services (Clause 54 and Schedule 4 of the SDB)

22. A Member considered that the exceptions under Clauses 51, 54 and Schedule 2 were not necessary if the Administration was bound by the BOR. As a related issue, she raised whether the definition of employment relationship under the SDB might exclude relationship between the Crown and its servants and so render this relationship outside the ambit of the Bill.

23. The Administration responded that the Crown was bound by the BOR and could not discriminate on the ground of sex. Regarding the Member's question, the Administration would examine the definition of employment relationship under the SDB and revert to the Bills Committee on this issue.

Adm.

24. The Member reiterated her request that the Administration should advise Members of any provisions of the EOB with which it was envisaged that disciplinary forces would have difficulty in complying.

25. The Administration replied that the difference between the two Bills in respect of sex discrimination was the existence of the exceptions for security related issues under the SDB. It was of the view that these exceptions were required whereby the operation of disciplinary forces would not be hampered.

Exception of marital status discrimination in employment benefits and civil service benefits (Clause 54 and Schedule 4 of the SDB)

26. The Administration explained that the purpose of providing this exception was to allow employers to provide a higher level of benefits (for example housing benefits) to employees who were married. If the exception was removed, employers might then have to provide a flat rate of benefit to his employees, regardless of their marital status. The Administration felt that it was reasonable for

an employer to provide a higher level of benefits for married employees because such employees would have a larger household. It was examining whether such an exception would create a loophole, i.e. whether employers might legitimately give a higher level of housing benefits to unmarried staff thus treating his married staff less favourably. If there was a loophole, the Administration would consider effecting Committee Stage Amendments to the effect that unmarried staff were not allowed to have better employment benefits than married staff.

(c) Equal Opportunities Commission (Part VIII of the SDB, SDB Paper No. 7/95)

Procedure for formulating Codes of Practice (Clause 61(2)-(9) of the SDB)

27. As regards the request to simplify the procedure for formulating Codes of Practice, the Administration pointed out that, when the EOC proposed to issue a code, it would, according to Clause 61(2), first publish the code and consider representations made to it. The EOC was also obliged, under Clause 61(3), to consult the appropriate organisations and laid the code before the Legislative Council for passage by resolution.

28. The Administration added that the code was an important document providing guidance for all parties concerned and the court would take into account the relevant provisions of the code in proceedings before it. The Administration regarded that the procedures for drawing up the code, as spelt out in Clause 61 of the SDB, as appropriate.

29. As agreed at the last Bills Committee meeting, the Administration had handed a copy of the UK Code of Practice to the Clerk for circulation to Members for reference. It reiterated that a draft Code of Practice would be prepared as soon as possible for consideration by the proposed EOC.

(Post-meeting note : Copy of a Code of Practice by the UK EOC was forwarded to Members vide LegCo Paper No.HB 668/94-95)

Action
Requires

30. Regarding the issue of equal pay for equal work, the Administration undertook to reply to Ms WU's letter dated 4 May 1995 requesting the Administration's views on, inter alia, the issue of equal pay under the SDB (a copy of letter at Appendix II to LegCo Paper No.HB 651/94-95). At a Member's request, the Administration would provide a copy of UK Equal Pay Act for Members' reference.

Adm.

31. A Member requested the Administration to revert to the Bills Committee on the areas of Clause 10 of the SDB that could not be implemented without Codes of Practice. She recalled that the Administration only mentioned equal pay for equal work as an area requiring Codes of Practice to implement. In this regard, she reiterated that the Administration had previously indicated that equal pay provisions equivalent to those in the UK Equal Pay Act would be made for Hong Kong, but it now proposed that such provisions be made in the form of Codes of Practice under the SDB rather than as primary legislation. She considered it inappropriate to delegate such an important legislative matter to the EOC.

32. The Administration responded that it would review Clause 10 of the SDB to determine in what areas Codes of Practice were required.

Adm.

III. Way Forward

33. The Chairman said that an interim report of the Bills Committee on Ms WU's proposal to restructure the Equal Opportunities Bill (EOB) would be discussed at the House Committee meeting on 5 May 1995. He urged Members to support the recommendation of the Bills Committee. The Chairman reiterated that Ms WU could proceed with the EOB in the usual manner should the House Committee not support her proposal. In reply to a Member's enquiry on the Administration's position regarding Ms Anna WU's proposed restructuring of the Equal Opportunity bills, the Administration reiterated that it would take a step-by-step approach in dealing with discrimination and hoped that the SDB and

the Disability Discrimination Bill (DDB) would be enacted as soon as possible without delay due to scrutiny of other bills.

34. Ms Anna WU stressed that she had not delayed the legislative process of the Government bills. The scrutiny of the SDB, which was introduced into the Legislative Council after the EOB, was facilitated by having the two Bills studied by the same Bills Committee. She wished to have the five bills (3 EO bills, SDB and DDB) to resume Second Reading debate in the Legislative Council together, but pointed out that any bill could do so after the Bills Committee, if one was set up, had concluded its deliberations on the bill. She added that, if the Administration held back enactment of the EO bills by technical means, she would openly challenge it.

IV. Date of next meeting

35. Due to the CS briefing at 11:30 a.m. on 12 May 1995, the next meeting was scheduled at 9:30 a.m. that morning in the Chamber of the Legislative Council Building.

36. The meeting ended at 12:45 p.m.

LegCo Secretariat
21 June 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 12 May 1995 at 9:30 a.m.
in Chamber of the Legislative Council Building**

Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon HUI Yin-fat, OBE, JP
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Rev Hon FUNG Chi-wood
Hon Emily LAU Wai-hing
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan

Absent with : Hon Christine LOH Kung-wai)
apologies (Deputy Chairman))
Hon Ronald Arculli, OBE, JP)
Hon J D McGregor, OBE, ISO, JP)
Hon TAM Yiu-chung) Other
Hon Andrew WONG, OBE, JP) commitments
Hon Moses CHENG Mo-chi)
Hon Simon IP Sik-on, OBE, JP)
Dr Hon Conrad LAM Kui-shing, JP)
Hon James TO Kun-sun)
Hon Roger LUK Koon-hoo)

By invitation :

Miss Susie HO
Principle Assistant Secretary for Home Affairs

Mr J A FOX
Senior Assistant Law Draftsman

Hon Anna WU's team

Mr Andrew Brynes, Consultant
Ms Carole Petersen, Consultant
Mr Eric CHOW
Mr Adam Mayes
Mr David Viotti
Ms Celie Nehmer

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

Action
Requ

**I. Confirmation of notes of meetings held on 31 March 1995
(LegCo Paper No.HB 615/94-95)**

The draft notes of meeting held on 31 March 1995 were confirmed.

II. Proposed timetable to study the Equal Opportunities Bill (EOB), Sex Discrimination Bill (SDB) and Disability Discrimination Bill (DDB)

2. The Chairman said that, at the House Committee meeting on 5 May 1995, it was decided that this Bills Committee should also study the DDB and Ms Anna WU's proposal to restructure the EOB should go ahead. A call circular inviting Members who were interested in the DDB to join the Bills Committee had been issued.

3. Members noted that it would take three more meetings to wrap up deliberations of CSAs to the EOB and SDB. The Bills Committee would then proceed to study the DDB and meet interested groups and individuals on the Bill. In this connection, the Chairman urged Members to suggest amendments to the SDB and/or the EOB, if any, in these three meetings.

III. Meeting with the Administration

4. The Chairman said that, as agreed at the last meeting, Ms Anna WU and the Administration together with Assistant Legal Adviser 4 held a meeting on 11 May 1995 to discuss issues of the SDB, in particular the definition of sex discrimination under the Bill.

5. The Administration stated that Papers No.SDB 7 and 8/95 (forwarded vide Appendix I to LegCo Paper No.HB 651/94-95 and tabled at the meeting respectively) responded to Ms Anna WU's proposed amendments to the SDB contained in her paper No.AW 033195-1 (Appendix II to LegCo Paper No.HB 560/94-95) while Paper No.SDB 9/95 (also tabled at the meeting) concerned matters raised by the Bills Committee Members. It took Members through the papers and the discussion between Members and the Administration is summarised in paragraphs 6 - 35 below.

(Post-meeting note : SDB Papers No. 8/95 and 9/95 were forwarded to Members vide Appendices II and III to LegCo Paper No.HB 701/94-95)

Formal Investigations by the EOC (Clauses 62-4 of the SDB)

Named-person Investigations

6. The Administration recapitulated that Ms WU had suggested to empower the EOC to initiate formal investigations into named persons (named-person investigations) whether or not it believed that the named persons committed unlawful acts. The Administration considered it reasonable to require the EOC some grounds for a suspicion or belief that the named person might have committed some acts of discrimination. It added that this view was supported by Lord Diplock in the case of *CRE V Prestige Group Inc.*

7. A Member stated that there would be difficulties in naming an individual/organization for investigations of, for example, monopolies where only one or a small number of companies were involved, or the election of rural village representatives. She pointed out that a UKEOC report criticized, inter alia, the "Prestige" case and proposed an amendment to the Sex Discrimination Act to make it clear that the UKEOC should be empowered to investigate into a named person or organization for any purpose connected with the carrying out of his/its duties. Therefore the effect of the "Prestige" case would be reversed. She therefore enquired why the Administration did not accept the proposal. She added that no such checks and balances were imposed on other statutory bodies with power of investigation.

8. The Administration stressed that, in the context of a named-person investigation, before embarking on the investigation, the EOC should have a suspicion or belief that the named person might have committed an unlawful act of discrimination and had at least some grounds for so suspecting. It would carry serious implications if the EOC did not have any ground for a suspicion or belief before conducting this kind of investigation.

Terms of reference (Clause 63 of the SDB)

9. A Member pointed out that the legal procedure stated in

the equivalent provision of the UK Sex Discrimination Act had been criticized as complex and radically undermining the effectiveness of formal investigations in the UK EOC report. She said that the provision of the UK Act was included in the enactment due to drafting error. She therefore suggested to remove Clause 63 and requested the Administration to consider the recommendations in the UK EOC report in this respect. Another Member opined that only Clause 63(5), which empowered the EOC to revise the terms of reference (TOR) from time to time, need to be retained.

10. The Administration responded that the TOR were necessary to confine the scope of investigation. Nonetheless, it would consider Members' views on this subject.

Adm.

Power to obtain information

11. A Member doubted the need for the EOC to seek CS's prior approval before it could obtain information in connection with an investigation of a general nature where the TOR did not confine it to activities of person named in them. Another Member considered it inappropriate to seek CS's prior approval for investigations on complaints against government departments.

12. The Administration responded that, in a general investigation, where the EOC had no belief of any unlawful act by any specific individual or organisation and where the investigation was basically exploratory in nature, it was reasonable to limit (by requiring the EOC to seek the authorisation of the CS) the EOC's power to obtain information in relation to any named person or the activities of any named organisation. Such a limitation would not inhibit the EOC from seeking information generally (e.g. by approaching a particular person or agency and sought information through mutual co-operation). Once the EOC formed a belief that a particular person or organisation might have committed an unlawful act of discrimination, it might initiate a named-person investigation. It added that checks and balances of the EOC's powers would be available with this requirement of CS's prior approval. The CS would consider any of EOC's request in the light of public interest. It stated that, under the Companies Ordinance (CO), an application for investigation had to be

made to the Financial Secretary (FS) who, on approving the application, would appoint an inspector to conduct the investigation.

13. A Member pointed out that the investigation under the CO was *initiated* by FS and was therefore different from the CS's authorization of EOC's request under Clause 64(2).

Enforcement (Part VIII of the SDB, SDB Paper No. 8/95)

14. The Administration, after considering the suggestions by Ms WU, agreed that the District Court's powers to relax rules of evidence and vary the rule of costs, with no award of costs as the general rule, should be explicitly stated in the SDB. It also agreed in principle to the proposed amendment to the SDB to the effect that the District Court would have the power to order any appropriate remedy, including reinstatement in particular.

Award of Damages for indirect discrimination (Clause 68(5) of the SDB)

15. The Administration stated that, under Clause 68(5) of the SDB, no award of damages would be made in respect of indirect discrimination if the respondent (often the employer) proved that the requirement or condition concerned was not applied with the intention of treating the claimant unfavourably on the ground of the claimant's sex, marital status or pregnancy. It added that this clause was based upon an equivalent provision of the UK Sex Discrimination Act.

16. A Member pointed out that the UK provision had been overridden by European case law. The Administration was therefore requested to review the clause in the light of this development.

Assistance by way of conciliation (Clause 76 of the SDB)

17. The Administration did not agree with Ms WU's proposal to allow the EOC to provide assistance by way of conciliation to any claim of discrimination alleging an act that was inconsistent with

relevant provisions of the Bill of Rights Ordinance (BORO) or of international treaties and instruments, whether or not the act was unlawful under the SDB. It emphasised that EOC was established under the SDB and its purview was confined to matters in the SDB. The Administration did not agree that the EOC should handle matters outside the scope of the SDB.

18. In reply to Members' questions, the Administration stressed that it was bound by the SDB and, as an employer, could be investigated by the EOC. Noting the UK court ruling that the provisions of the UK Sex Discrimination Act did not apply to administration of government laws and programmes, the Administration was studying its implications on the implementation of the SDB and would propose ways to tackle the problems incurred before the resumption of Second Reading debate on the Bill.

Adm.

Period within which Proceedings to be brought (Clause 78 of the SDB)

19. The Administration recapitulated Ms WU's suggestion to allow, after the EOC published a formal investigation report that found unlawful discrimination, a new period of time to begin during which any person who claimed to have suffered from the reported discrimination might institute proceedings. The Administration stated that Clause 78(3) provided the District Court with discretion to consider any claim or application which was out of time, if, in all circumstances of the case, it was considered just and equitable to do so. Nevertheless, the Administration was agreeable to amend the Bill to stipulate a period of six months, from the publication of the formal investigation report, to allow a person who claimed to have suffered from the reported unlawful discrimination to institute proceedings.

20. Ms Anna WU considered that a period of two years should be adopted so as to allow a reasonable period of time for an aggrieved person to institute proceedings. She also suggested the same period of time be applied to the time limit under Clause 78(1) which provided that the "District Court shall not consider a claim under Clause 68 unless proceedings in respect of the claim are instituted before the end of a period of 12 months beginning when the

act complained of was done”.

21. The Chairman suggested the Administration to discuss further with Ms WU on this issue to agree on a reasonable period of time.

Consequential Amendments (Schedule 7 of the SDB)

22. As regards Ms WU's proposal to amend the BORO to clarify its application to all pre-existing legislation, whether relied upon by public authorities or others, she explained that it arose from an unexpected limitation on the BORO's effect emerged in 1991 from the Court of Appeal's decision in *Tam Hing-ye v. Wu Tai-wai*. As a result, although the BORO repealed inconsistent, pre-existing laws when these were relied on by Government, the same laws remained in force when relied upon by private citizens. Rectification of this serious and unintended anomaly in the BORO's effect was long overdue. Since the Home Affairs Branch had the policy responsibility on issues relating to human rights, the Administration was requested to consider the issue.

23. Miss Susie HO responded that the Administration did not agree with this proposal which was foreign to the subject matter of the SDB. Nonetheless, she undertook to convey Ms WU's views to the relevant division of the Home Affairs Branch for consideration.

Matters raised by Bills Committee Members (SDB Paper No. 9/95)

Powers of the EOC (Clause 56 of the SDB)

24. In reply to Members' enquiries on whether the EOC, under Clause 56 of the SDB, would have the power to look into matters related to Sex Discrimination but not made unlawful under the Bill, the Administration stated that the legislative intent of Clause 56 (which was based upon Section 53(1)(a) and (b) of the UK Sex Discrimination Act) was to provide the EOC with wide powers to examine matters related to sex discrimination and promotion of equality between men and women generally.

25. The Administration had sought the advice of the UKEOC on whether the 1982 ruling in *Home Office V Commission for Racial Equality* had any impact on the EOC's operation. The UKEOC advised that the ruling had had no adverse effects on the scope of the responsibilities of the EOC. The EOC gave a very broad interpretation to Section 53(1)(b) of the UK Act and could consider matters like wife battering if it concluded that they raised issues of equal opportunities between men and women generally. The UKEOC therefore did not consider it necessary or appropriate to seek legislative change or clarification as regards the EOC's powers.

26. In the light of the experience of the EOC, the Administration concluded that the powers of the EOC in the SDB were appropriate and adequate to tackle matters relating to equal opportunities between men and women generally.

27. A Member considered that the 1982 case, in which the UK court held that the EOC acted beyond its scope of power, should not be overlooked. She opined that the UKEOC's advice in this regard might not be correct as it might be contrary to the ruling in the 1982 case. The Administration was therefore requested to amend the wording of Clause 56 in the light of the 1982 case. She was also surprised that the Administration took the UKEOC's advice selectively by accepting its views in this respect but ignoring the proposals in the UKEOC report.

28. The Administration responded that it could examine this issue further but considered the drafting of the clause to be in order.

Adm.

Research and Education (Clause 57 of the SDB)

29. The Administration stated that the EOC should conduct research and education by itself or in conjunction with third parties. In this connection, it did not envisage that the EOC should indiscriminately provide direct financial assistance to third parties, hence Clause 57(3) of the Bill provided that the EOC should not

provide financial assistance except with the prior approval of the Secretary for Home Affairs, after consulting with the Secretary for the Treasury, generally or in any particular case. This sub-clause would apply if, for example, an organisation sought funds from the EOC to conduct its own research work. There was no need to go through the procedures stipulated in this sub-clause if the EOC conducted research or education by itself (e.g. the EOC hired a researcher to undertake a study on a subject relating to sex discrimination).

30. A Member considered that financial assistance under Clause 57(3) embraced a wider scope than subvention and pointed out that there was no equivalent provision in the UK Sex Discrimination Act. She also doubted the need of this subclause since the Secretary for the Treasury was empowered under paragraph 15(2) of Schedule 5 to the SDB to give directions to the EOC in relation to the amount of money to be expended by it.

Legal assistance to individual claimants

31. In reply to Members' question whether the proposed waiver of means test under the Legal Aid (Amendment) Bill 1995 would be applicable to legal aid applicants on disputes arising from sex discrimination, the Administration stated that proceedings on sex discrimination were considered intercitizens' disputes, and therefore would not be exempted from both the means and merits tests required for applying legal aid. So far as civil proceedings under the SDB also raised breach of BORO as an issue, the Director of Legal Aid could exercise her discretion if she was satisfied that the case had legal merits. It expected only a small number of sex discrimination cases would arise, out of which over 50% of potential Bill of Rights cases would be eligible for legal aid. It added that, in sex discrimination cases, people without professional legal qualifications could be able to address to court. There would be measures, for example, flexibility in adducing evidence, so that aggrieved persons could take legal action without assistance from lawyers.

32. Some Members considered that cases falling under the SDB should be exempted from the means test since legal costs for these proceedings would be high and the EOC might not be able to

conciliate the likely large number of disputes. The Administration was therefore requested to consider amending the Legal Aid (Amendment) Bill 1995 to allow the Director of Legal Aid to waive the means test for proceedings involving claims of discrimination under the SDB.

Exceptions under Clause 53

33. Responding to Members' request for examples of matters which might provide for differential treatment of men and women under the New Territories Ordinance, the Administration stated that Section 13 of the New Territories Ordinance (Cap. 97) (the Ordinance) provided for the power of the High Court or the District Court to recognise and enforce Chinese custom or customary rights affecting the land covered by that Ordinance in any proceedings (except proceedings in relation to the general laws of inheritance in Hong Kong). The terms "Chinese custom" and "customary rights" were not defined in the Ordinance. However, when read together with the legislation, these would encompass, for example, customary succession. Where an owner of rural land was himself registered as owner other than as a manager under the Ordinance and died intestate before 24 June 1994, succession to the land concerned was dealt with in accordance with Chinese customary law.

34. In reply to Members' enquiries on rural elections, the Administration pointed out that rural elections were not related to the Ordinance as such and the Secretary for Home Affairs would not accept representatives which were not elected from a "one-person-one-vote" voting system. It would urge rural villages to adopt the voting system through administrative means and exhortation.

35. As regards the Small House Policy, a Member suggested a time limit of, say, a year for the review of the Policy. The Administration hoped that the review, which was under way, would not be constrained by any time limit.

III. Date of next meeting

36. The next meeting was scheduled to be held on 19 May 1995 at 10:45 a.m. in the Chamber of the Legislative Council Building

37. The meeting ended at 11:15 a.m.

LegCo Secretariat
21 June 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 19 May 1995 at 10:45 a.m.
in Chamber of the Legislative Council Building**

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon J D McGregor, OBE, ISO, JP
Rev Hon FUNG Chi-wood
Dr Hon Conrad LAM Kui-shing, JP
Hon Emily LAU Wai-hing
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan
- Absent with : Hon Mrs Selina CHOW, OBE, JP)
apologies Hon HUI Yin-fat, OBE, JP)
Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP) Other
Hon Mrs Peggy LAM, OBE, JP) commitments
Hon Mrs Miriam LAU Kin-ye, OBE, JP)
Hon Moses CHENG Mo-chi)
Hon Simon IP Sik-on, OBE, JP)
Hon James TO Kun-sun)
Hon Roger LUK Koon-hoo)

By invitation :

Miss Susie HO
Principle Assistant Secretary for Home Affairs

Hon Anna WU's team

Mr Andrew Brynes, Consultant
Ms Carole Petersen, Consultant
Mr Adam Mayes
Ms Celie Nehmer
Ms Barbara Kvoske

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

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**I. Confirmation of notes of meetings held on 13 April 1995
(LegCo Paper No.HB 686/94-95)**

The draft notes of the captioned meeting were confirmed.

II. Meeting with the Administration

2. The Administration took Members through its papers No.SDB 10, 11, 12 and 13/95 (Appendix III(i)-(iv) to LegCo Paper No.HB 736/94-95). The salient points of discussion are in paragraphs 3 - 18 below.

Comments made by employer organisations on the Sex Discrimination Bill (SDB)(SDB Paper No. 10/95)

3. The Administration, after considering views expressed by employer organisations, maintained that the transitional period for business establishment to comply with the Code of Practice issued by the Equal Opportunities Commission (EOC) would only apply to business firms with an employment size of not more than 5 persons. In reply to a Member's concern on the length of five years, the Administration was considering to shorten the length of the transitional period and would revert to the Bills Committee in one to two weeks' time, nevertheless, under Clause 10(8) of the SDB, the Governor in Council could, by notice in the Gazette, amend the period of exemption.

Adm.

4. The Administration added that, after considering views expressed by some employer organisations, it agreed to put forward a CSA to explicitly include the Labour Advisory Board (LAB) as one of the organisations the EOC had to consult in preparing any Code of Practice because LAB was recognised as a representative body for both employers and employees.

5. Mr McGregor supported the Administration's proposal. Ms Anna WU stressed the need for the EOC to consult other relevant organizations, such as labour unions, as well and suggested the setting up of an advisory committee, similar to the one proposed to be established under the Personal Data (Privacy) Bill, which could include relevant non-governmental organizations including those that represented employers and workers respectively.

6. The Administration considered that the EOC was tasked to prepare and issue the Codes of Practice and hence the drafting procedure, including consultation with relevant organizations, should be left to the independent EOC to handle.

7. Members generally supported the Administration's proposal but requested the Administration to consider whether other relevant organizations should also be explicitly included in the SDB

Adm.

for consultation by the EOC in developing the Code of Practice.

Clause 2(1) - marital status (SDB Paper No.11/95)

8. The Administration recapitulated that in deliberating Ms Anna WU's proposed inclusion of de facto spouse under the definition of marital status in Clause 2(1) of the SDB, Members had raised whether couples of customary marriages were protected under the Bill. It had examined the issue and pointed out that under the Marriage Reform Ordinance (MRO), a marriage would constitute a "customary marriage" if it was celebrated in Hong Kong before 7 October 1971 in accordance with Chinese law and custom. A marriage celebrated in Hong Kong before 7 October 1971 by open ceremony and in the presence of two or more witnesses was regarded as a "modern marriage".

9. The Administration stated that the MRO provided that parties to a customary marriage or a modern marriage might apply to the Registrar of Marriages for the registration of their marriages provided that such marriage took place prior to 7 October 1971. Marriages entered into in Hong Kong on or after 7 October 1971 would imply the voluntary union of life of one man with one woman to the exclusion of all others (i.e. a monogamous relationship) and might be contracted only in accordance with the Marriage Ordinance (MO). No man might take a concubine and no woman might acquire the status of a concubine after 7 October 1971. Polygamous relationships after 7 October 1971 were no longer legally recognised.

10. The Administration said that upon the enactment of the MRO, arrangements had been in place for parties to customary marriages and modern marriages which occurred before 7 October 1971 to register their marriages. Parties to customary marriages and modern marriages who had registered were accorded the same legal status as parties contracted in accordance with the MO. For example, in relation to tax allowance available for married persons, tax return forms specified that the word "spouse" meant the lawful husband or wife under a valid marriage recognised by Hong Kong law. Therefore, registered customary marriages and modern marriages

would be treated in the same manner as marriages contracted under the MO. According to available records, as of 30 April 1995, there had been 3062 customary marriages and modern marriages registered under the MRO.

11. The Administration therefore did not see the need nor find it appropriate to include de facto spouse under the definition of marital status in the SDB.

12. A Member opined that couples of customary marriages and/or modern marriages which occurred before 7 October 1971 might not wish to register their marriages and was concerned about their status. She also questioned whether a concubine whose marriage took place prior to 7 October 1991 would be accepted as a spouse and counted as a family member for the purpose of, for example, application for public housing. She also enquired why the Administration did not add de facto spouse in the definition of marital status which concerned, for example, entitlement to housing benefit but did not affect the existing marriage system.

13. The Administration responded that, due to tax allowance available for married persons, most of the couples of customary marriages and/or modern marriages might have already registered under the MRO. It would revert to the Bills Committee on the status of the said concubines but was of the view that their number might be small. As regards the inclusion of de facto spouse in the definition of marital status, the Administration would reply to the Bills Committee shortly.

Adm.

Adm.

Clause 11(2)(g) - Exceptions for Protective Legislation (SDB Paper No. 12/95)

14. The Administration recapitulated that, at the Bills Committee meeting on 28 April 1995, Members had requested the Administration to review the protective legislation in respect of employment matters stipulated in Schedule 2 of the SDB. It agreed that, for those protective legislation concerning industrial safety, the direction should be to enhance the safety aspect so that the differential

treatment based on gender would be removed. In this connection, Miss Susie HO reiterated that the Secretary for Work had reviewed Regulation 36 of the Dangerous Goods (General) Regulations (para.5 of Schedule 2 of the SDB) which stipulated that, where 'work was being carried on in any danger building, there should be present on duty in the building at least one male supervisor'. The Administration was of the view that the reference to a male person in this Regulation should be deleted and would put forward a CSA to the SDB accordingly. It would undertake to conduct a review of the relevant legislative provisions set out in other paragraphs of Schedule 2 of the SDB. In the meantime, it was necessary to retain the exceptions provided in Schedule 2 so that the present protective provisions would not be rendered unlawful upon commencement of the SDB.

15. A Member suggested that the Administration should also review whether to extend the 1990 conventions and other recommendations and declarations of the International Labour Organisation to Hong Kong. Miss Susie HO undertook to convey the Member's suggestion to the Education and Manpower Branch responsible for the review.

Exceptions for Death or Retirement Benefits in Clause 10(4) (SDB Paper No. 13/95)

16. The Administration, after considering Members' request at the Bills Committee meeting on 5 May 1995, agreed to effect a CSA to Clause 10(4) of the Bill. The proposed amendment would limit the exception provided in the sub-clause to members of death or retirement schemes which were already in operation on the commencement of the sub-clause. All employees who obtained employment after the commencement of the Bill and those employees who were offered a scheme of retirement and benefits after such commencement would not be covered by the exception. In providing death or retirement benefits to these employees, the employer should not differentiate in the treatment of his/her employees on the ground of gender, unless such differential treatment fell within the ambit of Clause 43 of the Bill.

17. At a Member's request, the Administration would seek

legal advice on whether Clause 10 implied different retirement ages for males and females and revert to the Bills Committee.

Conclusion

18. The Administration would furnish the Bills Committee with a complete list of its proposed CSAs to the SDB at the next meeting. The Administration did not agree with the scope of the Equal Opportunities Bill and preferred a step-by-step approach. In this connection, the Administration would not put forward CSAs to the Equal Opportunities Bill (EOB). It would revert to the Bills Committee if government departments or branches had comments on the EOB.

Adm.

III. Hon Anna WU's proposed amendments to the EOB

19. Ms Anna WU went over her two letters to the Secretary for Home Affairs (SHA) on reorganization of the EOB and amendment to the Bill of Rights Ordinance (BORO) respectively (Appendix II(i) and (ii) to LegCo Paper No.HB 736/94-95). In the former letter, she informed SHA of the reorganisation of the EOB into the Racial Discrimination Bill, the Anti-Discrimination (No.1) Bill and the Anti-Discrimination (No.2) Bill and enclosed draft copies of the three bills for his reference. In the latter letter, she put forward a draft bill to amend the BORO to the effect that the BORO repealed inconsistent, pre-existing laws when they were relied upon by private citizens.

20. Ms WU briefed Members on the proposed CSAs to the EOB at Appendix IV(i) to LegCo Paper No.HB 736/94-95 (the Paper) and supplemented the following:

- (a) These CSAs would be the same as those to be put forward to the three EO bills with item numbers rearranged. The three bills had been forwarded to the Legal Department, the Legal Service Division of the LegCo Secretariat and SHA. The Chinese version of the bills was also under preparation;

- (b) Ms WU proposed to repeal exceptions for hiring domestic helpers (item 2 of the Paper) as they could be replaced by specifying job requirement. She explained that if an employer required, for example, a domestic helper who could speak English, the EOB would require the employer to specify English-speaking as the job requirement in recruiting the domestic helper instead of giving an exception for him/her to hire a person of a certain race such as a Filipino who could communicate in English; and
- (c) A new clause would be added to exempt age discriminatory laws and acts done under their authority, to expire in one year unless extended by LegCo resolution (item 7 of the Paper). In this connection, the Administration, in reply to Ms WU's request, said that a list of questions raised by the Administration in August 1994 on the EOB had been forwarded to the Clerk for circulation to Members. Ms WU stated that, in Australia, the EOC required each government department to provide it with age discriminatory laws under the department's purview so that the EOC could compile and publish a consolidated list. She suggested the Administration to adopt this method in compiling such a list.

(Post-meeting note: The list of questions raised by the Administration on the EOB was forwarded to Members vide LegCo Paper No.HB 231/94-95)

21. Members generally supported the proposed CSAs to the EOB.

IV. Hon Anna WU's proposed amendments to the SDB

22. Ms WU proceeded to take Members through a revised list

of proposed CSAs to the SDB at Appendix IV(ii) to LegCo Paper No.HB 736/94-95. The discussion between Members and the Administration is summarised in paragraphs 22 - 52.

Part I - Preliminary

Clause 1(2)

23. Ms WU proposed to amend Clause 1(2) to bring provisions of the Bill into operation on 1 January 1996, or any earlier dates as appointed by SHA. She pointed out that the date could be altered as wished by Members.

24. The Administration reiterated its objection to this inflexible approach which disregarded the operational realities of the implementation of the legislation.

Clauses 2(1) and 2(5)

25. Ms WU proposed to amend definition of "marital status" to include de facto spouse (Clause 2(1)). She also suggested to amend Clause 2(5) to include, in the definition of sexual harassment, sexual conduct that created a sexually hostile work environment in the employment field or substantially interfered with the victim's activities in other fields.

26. The Chairman said that the proposed amendments would be considered upon the Administration's reply.

Clauses 6 and 7

27. Ms WU suggested to amend definitions of marital status discrimination (Clause 6) and pregnancy discrimination (Clause 7) to apply to any provision in the SDB, rather than only to provisions relating to employment field.

28. The Administration undertook to revert to the Bills Committee on these proposals.

Part III - Employment Field

Clause 10(3)

29. Ms WU proposed, in relation to exemption for small employers, to repeal or amend to expire on the sooner of 1 January 1997 or one year after commencement of section.

30. The Administration undertook to address to the Bills Committee on the request to shorten the period of exemption. Ms WU also reiterated her request that the Administration should study whether European case law did not allow exemption for small employers and therefore outlaw any transitional period for them. If the European court permitted such exemption, the Administration was requested to check the length of the transitional period accepted by the court.

Adm.

Clauses 10(4), 14(4) and 15(4)

31. Ms WU stated that her proposed amendments to clause 10(4) would be withdrawn if the Administration, as undertaken at the meeting, put forward CSA to the captioned clauses (vide Appendix III(iv) to LegCo Paper No.HB 736/94-95)

Clauses 11(2)(g), 49-50, 52 and Schedule 2

32. Ms WU said that the captioned clauses and Schedule 2 related to exceptions permitting exclusion of women from jobs covered by Schedule 2 protective regulations, and exempting protective legislation and acts done for the protection of women. She suggested to amend these clauses and Schedule 2 to the effect that they would expire in one year, subject to extension by LegCo resolution.

33. The Administration reiterated that it would put forward a CSA to Regulation 36 of the Dangerous Goods (General) Regulations set out in paragraph 5 of Schedule 2 and undertook to conduct a review of the other relevant legislative provisions in Schedule 2. The Administration hoped that the review would not be constrained by any time limit.

34. Members generally supported a time limit for these exceptions.

Clause 11(2)(h)

35. Ms WU suggested to repeal Clause 11(2)(h) which provided an exception for work likely to involve duties outside Hong Kong where discriminatory laws or customs applied. She proposed to delete the sub-clause because it might be subject to abuse and this job requirement in the sub-clause could be covered by Clause 11 which provided exception where sex was a genuine occupational qualification (GOQ). She pointed out that the sub-clause included work likely to involve duties outside Hong Kong and would therefore include a job even though the employee did not work outside the territory. She also opined that this exception should only cover period of work outside Hong Kong instead of exempting the whole period regardless of places where the employee worked. She added that there would be difficulties in defining the word "effectively" in the sub-clause which required a person claiming the GOQ to show that the laws or customs of a foreign country which resulted in, for example, a woman being unable to perform the job duties effectively.

36. The Administration responded that the interpretation of the sub-clause was within the court's jurisdiction and reiterated that the burden of proof was on the employer. It also pointed out that there was equivalent provision in the UK Sex Discrimination Act. In reply to Ms WU's enquiries, the Administration stated that, under existing labour laws, an employee would be bound by laws of a foreign country during his/her period of work in that country. It added that existing labour laws did not deal with the situation when an employee, in addition to work in Hong Kong, had to perform his/her duties outside the territory.

37. Members generally supported Ms WU's proposed amendment. Ms WU opined that, as an alternative to her proposal, the Administration could amend the sub-clause in the light of the views expressed and put forward the CSAs to the Bills Committee for consideration.

38. The Administration undertook to consider the issue and revert to the Bills Committee on it.

Adm.

Clause 20

39. Ms WU proposed to amend prohibition of sexual harassment to include harassment of a women employed to perform domestic duties in the harasser's residence, whether or not the harasser was the employer. In this connection, she had prepared a note to Members on protection of domestic helper against sexual harassment (Appendix IV(iii) to LegCo Paper No.HB 736/94-95) and passed a copy of the note to the Administration for consideration.

Adm.

Part V - Other Unlawful Acts

Clauses 36 and 74

40. Ms WU suggested to amend Clauses 36 and 74 to make unlawfully discriminatory advertisements an offence, subject to a statutory fine of \$30,000 for a first offence and \$100,000 for a second offence. Members noted that the Administration did not agree with the proposal.

Part VI - General Exceptions

Clause 51

41. Ms WU proposed to repeal Clause 51 so as to remove the exemption for acts done to safeguard the security of Hong Kong. Members noted that the Administration did not support the proposal.

Clause 54 and Schedule 4

42. Ms WU proposed to amend Clause 54 and Schedule 4 to the effect that the exemption of certain discrimination within the disciplinary services; of the Small House Policy; and of marital status discrimination in employment benefits and civil service benefits would expire in one year, subject to extension by LegCo resolution. She added that the Administration agreed, at the meeting held between her and the Administration together with Assistant Legal Adviser 4, that differential treatment in the definition of sex discrimination under the SDB included an element of reasonableness. Should reasonableness be taken into account, differential treatments in Clause 54 and Schedule 4 would be lawful if they were reasonable and exemptions now proposed in Clause 54 and Schedule 4 would be unnecessary. By providing exemption in the Bill regardless of the reasonableness of these differential treatments, these exemption clauses would create loopholes and would be subject to abuse. She also suggested, as an alternative to repeal Schedule 4, to amend the schedule to the effect that such exceptions would only apply when there were reasonable grounds.

43. The Administration reiterated that the review of the Small House Policy was under way which should not be constrained by a time limit. It pointed out that the exemptions were necessary without which there would be uncertainty as to whether the differential treatments were unlawful. The exemptions would only create duplications if they were considered reasonable differential treatments. The Administration stated that it was considering the issues of reasonableness in the definition of sex discrimination and would revert to the Bills Committee shortly.

Adm.

44. Ms WU stressed that there was no exception to Small House Policy under the BORO and thus there should be no such exception under the SDB. She would prefer to remove this exception in the SDB and, failing that, would propose a one-year time limit for this exception.

Part VIII - Enforcement

Clause 78

45. Ms WU proposed to provide an additional period, within which proceedings under the SDB might be brought, of one year following publication of a formal investigation report that found unlawful discrimination, for person who claimed to have suffered from the reported discrimination.

46. Noting that a period of two years (within which proceedings could be brought) was adopted for cases of personal injuries during work, the Administration, after considering views expressed at the Bills Committee Meeting on 12 May 1995, accepted the same period to be adopted for sex discrimination cases. It also agreed to permit proceedings to be brought under the Bill for a period of two years from the act complained of.

47. Ms WU was agreeable to a period of two years. She suggested the same time limit be provided to an aggrieved person so that he/she could institute proceedings within two years after the conclusion of an unsuccessful conciliation process. The Administration undertook to consider her suggestion and would revert to the Bills Committee shortly.

Adm.

Part IX - Miscellaneous

Clause 82(2) and Schedule 7

48. Ms WU suggested to consequentially amend Section 5AA of the Legal Aid Ordinance to allow the Director of Legal Aid to waive the means test for proceedings involving claims of discrimination under the SDB (as for proceedings involving claims under the BORO).

49. Miss Susie HO stated that the Administration had decided not to include sex discrimination cases in the proposed waiver of means test under the Legal Aid (Amendment) Bill at this point in

time, but the Director of Administration indicated that he would conduct a review on the Legal Aid Ordinance to see, inter alia, whether the waiver should be extended to sex discrimination cases.

50. Some Members were concerned that the exclusion of sex discrimination cases from the proposed waiver of means test might render low-income people unable to institute proceedings against discriminators and would request the Bills Committee studying the Legal Aid (Amendment) Bill 1995 to examine the issue.

Conclusion

51. Members generally supported Ms WU's proposed CSAs to the SDB with which the Administration did not agree. Assistant Legal Adviser 4 was therefore requested to draft these CSAs for consideration by the Bills Committee. The Administration confirmed that it would put forward CSAs agreed by the Administration.

Adm.

52. In this connection, Ms WU requested the Administration to respond urgently to her other proposed CSAs. This was necessary to allow adequate time for Assistant Adviser 4 to draft those CSAs which the Administration did not support but endorsed by the Bills Committee, before resumption of Second Reading debate of the Bill.

Adm.

V. Date of next meeting

53. The next meeting was scheduled to be held on 26 May 1995 at 10:45 a.m. in the Chamber.

54. The meeting ended at 12:56 p.m.

LegCo Secretariat
21 June 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Friday, 26 May 1995 at 10:45 a.m.
in Chamber of the Legislative Council Building**

- Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon HUI Yin-fat, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Rev Hon FUNG Chi-wood
Dr Hon Conrad LAM Kui-shing, JP
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Roger LUK Koon-hoo
Hon Anna WU Hung-yuk
- Absent with : Hon TAM Yiu-chung)
apologies Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP) Other
Hon Mrs Peggy LAM, OBE, JP) commitments
Hon Moses CHENG Mo-chi)
Hon Simon IP Sik-on, OBE, JP)
Hon James TO Kun-sun)
Hon LEE Cheuk-yan)
- Hon Mrs Selina CHOW, OBE, JP) out of town
Hon Emily LAU Wai-hing)

By invitation :

Mr Michael SUEN
Secretary for Home Affairs

Mrs Stella HUNG
Deputy Secretary for Home Affairs

Miss Susie HO
Principle Assistant Secretary for Home Affairs

Mr J A Fox
Senior Assistant Law Draftsman

Hon Anna WU's team

Mr Andrew Brynes, Consultant
Ms Carole Petersen, Consultant
Mr Adam Mayes
Ms Celie Nehmer
Ms Barbara Kvoske

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

**I. Confirmation of notes of meeting held on 21 April 1995
(LegCo Paper No.HB 726/94-95)**

The draft notes of the captioned meeting were confirmed.

II. Meeting with the Administration on the Sex Discrimination Bill (SDB)

2. Mr SUEN drew Members' attention to the Administration's CSAs forwarded to Members vide LegCo Paper No.HB 794/94-95. He said that proposals not included in the CSAs were not supported by the Administration. He would clarify Members' enquiries on these CSAs, in writing if necessary, but did not wish to further debate on these CSAs as they had been discussed in previous Bills Committee meetings.

3. The Bills Committee proceeded to examine the proposed CSAs accepted by the Administration and the discussion between Members and the Administration is summarized in paragraphs 4 - 19.

Part II - Discrimination

Clause 6

4. The Administration agreed to amend the definition of marital status discrimination to apply to all other activities covered in the SDB rather than only to the employment field. There would, however, be exceptions to cover, for example, Home Ownership Scheme applications; and provision of reproductive technology services. In response to Ms WU's enquiry, Miss Susie HO said that, due to resource constraints, exception to cover Home Ownership Scheme applications was to cater for the existing policy not to accept applications from one single person. She pointed out that, notwithstanding the exception, an application by two single persons who were related to each other (e.g. a woman and her daughter) would be accepted as it satisfied the household size requirement.

Part III - Employment

Clause 10(4)

5. The Administration recapitulated that, at the Bills Committee meeting on 19 May 1995, it agreed to "grandfather" the exception for death or retirement benefits.

6. Ms WU pointed out that the Administration's proposed CSA would create exception on top of the existing exception in the SDB. She requested to have the detailed provisions in Part I of Schedule 1A, to which the new Clause 10(4A) referred. She also enquired, since Clause 10(4) allowed, for example a female employee with a retirement age at 50 to obtain a sum of \$10,000 while a male employee with a retirement age at 60 to have an amount of \$12,000, whether an employer could impose different compulsory retirement ages for females and males.

7. The Administration responded that it would need to discuss with the insurance companies which managed such insurance or retirement schemes on the detailed provisions in Part I of Schedule 1A and stressed that this Schedule could be amended by LegCo resolution. It also stated that, according to case law in other jurisdictions, dismissal included compulsory retirement at specific age which would therefore be unlawful under Clause 10(4)(C).

8. Ms WU maintained that the exceptions relating to death and retirement should be reviewed in one year's time.

New Clause 18B - Administration of laws and Government programmes

9. The Administration agreed to make provisions covering the administration of laws and Government programmes. Under these new provisions, the Government would not discriminate in the performance of its functions and the exercise of its powers. Clause 18B(2)(b) and 31B(2)(b) exempted, for example, protective legislation in employment field under Schedule 2 of the SDB.

10. The Administration added that it had completed review of the implications of the BORO on the Bill and was of the view that these sub-clauses were not inconsistent with the BORO.

11. Ms WU considered it inappropriate to have the sub-clauses which created exceptions to prohibition of discrimination in the administration of laws and Government programmes. In this connection, she drew Members' attention to a paper (at Appendix I to LegCo Paper No.HB 782/94-95), on her proposed amendment to the Bill in this respect.

Part VII - Equal Opportunities Commission (EOC)

EOC's power relating to court proceedings

12. The Administration agreed in principle to empower the EOC to bring proceedings in its own name. In this connection, provisions would be made to empower the Secretary for Home Affairs (SHA) to make regulations, subject to LegCo approval.

13. The Administration stated that it had to sort out with the Judiciary on the implications of the proposed amendment on enforcement provisions of the Bill and on the District Court to cater for the situation when a case was brought to it by the EOC without any claimant. The Administration would also examine what remedies would be available for these cases where there were no claimants. It therefore did not have sufficient time to make these regulations before the enactment of the Bill. In reply to a Member's enquiry, the Administration pointed out that the new Clause 80A provided the EOC with full powers to bring proceedings in its own name instead of restricting its powers.

14. Ms WU opined that the EOC should be able to seek declamatory judgements (e.g., concerning the legality of discriminatory rules of law). She pointed out that, where an individual was litigating an important test case under the SDB, the EOC should be able to participate (to the extent permitted by court) in order to assist in shaping the law's development. Similar provisions existed in Australian equal opportunity laws. She added that the EOC, under the existing provisions of the Bill, was not permitted to take over proceedings initiated by an individual even if he/she withdrew.

Part VIII - Enforcement

District Court's powers

15. The Administration agreed to empower the District Court, in proceedings under the Bill, to relax the rules of evidence and vary the rule of costs, with no award of costs as the general rule. Moreover, it could consider a Member's suggestion to extend these powers to higher courts in appeal proceedings.

Clause 69(2)

16. The Administration agreed to amend the clause to authorize enforcement notices to include, in addition to a requirement that the person ceased an act of unlawful discrimination, a requirement that the person ceased specific practices that led to the unlawful discrimination.

17. In reply to a Member's enquiry, it stated that Clause 70 of the Bill, which was on appeal against enforcement notice, was not inconsistent with the BORO and ICCPR in the context of the OTIS Elevator case.

Clause 78

18. The Administration agreed to amend Clause 78 to permit proceedings to be brought under the Bill for a period of two years from the act complained of. It did not accept Ms WU's proposal to allow proceedings to be brought for the same time limit after the conclusion of an unsuccessful conciliation process.

Schedule 5, proposed Section 19(1)

19. The Administration proposed to expand the scope of the Director of Audit's power to examine the 'effectiveness' with which the EOC had expended its resources in performing its functions and exercising its powers. It explained that this was a standard provision

which applied to all new statutory bodies funded by the Government. In this regard, the Administration was requested to explain the meaning of 'effectiveness' in the clause.

Adm.

Proposed CSAs rejected by the Administration

20. The Administration explained to Members the rationale for rejecting the other CSAs proposed by Ms WU. The salient points of discussions are in paragraphs 21 to 35.

Part I - Preliminary

Clause 1(2)

21. Mr SUEN was opposed to Ms WU's proposal to bring provisions of the Bill into operation on 1 January 1996 or any earlier dates to be appointed by the SHA. He explained that commencement dates of legislation should tie-in with the operational set up. It was necessary to set up the EOC first and the commencement of the Bill would depend upon whether the EOC considered itself ready to enforce the provisions in the Bill. Stipulating a commencement date pre-empted the discretion of the EOC. It was also necessary to allow time for the EOC to develop the Code of Practice in employment (without which all EOC's advice would have to be made on an ad hoc basis). He reiterated that it would take about nine months (from the establishment of the EOC) for such a code to be developed. He therefore objected to such an inflexible approach which was unrealistic and disregarded the operational realities in the implementation of the legislation.

Clause 2(1)

22. The Administration was not agreeable to include 'de facto spouse' in the definition of 'marital status'. Such a provision would have the effect of giving recognition to 'de facto spouse' relationship, e.g. extra-marital relationships, concubines. This departed from Government's policy of recognising the principle of monogamous marriages only. The Administration did not think that the community was ready to give recognition to 'de facto spouse'

relationships which covered those between persons of the same sex.

Clause to give effect to relevant international obligations

23. Mr SUEN did not agree to the proposed new clause directing the Bill to be interpreted to give effect to relevant international obligations (including the ICCPR, ICESCR and CEDAW). He said that these international treaties were not justiciable in the courts of Hong Kong. The SDB was a self-contained piece of legislation, the terms of which were clear and certain. There was no need to refer to other instruments for interpretation of the SDB.

Part II - Discrimination

24. The Administration did not support amending discrimination to include practice with a disproportionately adverse impact on one sex. It pointed out that definition of discrimination in the Bill followed that in overseas jurisdiction (UK) which had been established for nearly 20 years. It was undesirable to deviate from the established definition which had been tested in the UK courts. Although this proposal was initially put forward by the UKEOC, the UK Government and parliament had not accepted this proposal. In the HK context, the EOC could review the adequacy of the definition in the light of its operational experience.

Part III - Employment

Clause 10(2)

25. The Administration did not agree with the proposed amendment to expressly prohibit discrimination in terms and conditions of employment, and add a new subclause to clarify for avoidance of doubt whether such discrimination included unequal pay for work of equal value. It pointed out that the principle of equal pay for work of equal value would be addressed in the context of the codes of practice to be developed by the EOC.

Part IV - Other Fields

Discrimination in public elections and appointments

26. The Administration did not agree with the proposed new clause prohibiting discrimination in public elections and appointments. It was considered more appropriate to rely on persuasion and administrative measures to foster the principle of one person one vote in village elections. On public appointments, the CSA covering the administration of laws and Government programmes provided that the Government could not discriminate on a prohibited ground (e.g. sex) in the performance of its functions and exercise of its powers. Such a provision would cover public appointments.

Part VI - General Exceptions

Clause 54 and Schedule 4

27. Ms SUEN did not support amending the exemption of certain discrimination within the disciplinary services, the small house policy and of marital status discrimination in employment benefits and civil service benefits to expire in one year, subject to extension by LegCo resolution. He was of the view that all these were reasonable and necessary exceptions. For example, if the exception for employment benefits were to expire at the end of one year, all employers would no longer be able to provide different levels of housing benefits to employees of different marital status. Employees might lose out because everybody would then receive a flat rate.

28. Ms WU said that the Small House Policy might be inconsistent with the BORO and the ICCPR and enquired the timeframe for the review of the Policy.

29. Ms SUEN responded that the review had already started and was scheduled to be completed in 3 years.

Part VII - EOC

Clause 63(4)

30. The Administration did not agree with the proposed amendment to enable the EOC to carry out an investigation into named persons or organisations for any purpose connected with its functions (irrespective of whether it believed unlawful acts had occurred.) It reiterated that to be named the subject of a formal investigation was a serious matter. Before naming a person in an investigation, the EOC, like any other regulatory bodies in HK, should have some grounds (i.e. formed a belief that the person named had committed unlawful acts) for singling out that person. It would be extremely unfair upon the person named if the EOC named a person in a formal investigation without any grounds.

Part VIII - Enforcement

Clause 68(3)-(4)

Power of Reinstatement

31. The Administration did not object in principle to the proposed CSA to empower District Court to order appropriate remedy including reinstatement. It also stated that the Education and Manpower Branch was conducting a general review of labour relations which would be completed within this year.

32. Ms WU said that the Administration had, in writing, agreed in principle to her proposed CSA and was therefore surprised by its change of position.

Part IX - Miscellaneous

Clause 82(2) and Schedule 7

33. Ms WU proposed amendment to permit waiver of the means test in relation to claims of unlawful discrimination and drew Members' attention to her paper on the same subject at Appendix II to

LegCo Paper No.HB 782/94-95.

34. Mr SUEN responded that the proposal would be studied by the Bills Committee on the Legal Aid (Amendment) Bill 1995.

Consequential amendment to BORO

35. In reply to Ms WU's question, the Administration reiterated that it did not support her proposed CSA to amend the BORO to clarify its application to all pre-existing legislation whether relied upon by public authorities or others (reversing the effect of TAM Hing-yee V WU Tai-wai) as the issue was foreign to the subject matter of the Bill.

III. Way Forward

36. Since the Bill had been studied by the Bills Committee for a long period of 7 months or so, Mr SUEN planned to resume Second Reading debate of the Bill on 14 June 1995 so that it could be enacted as early as possible.

37. Members were concerned that the Administration's plan would render the Legal Service Division unable to finalize the CSAs proposed by the Bills Committee which might also not have sufficient time to consider them. In this connection, the Chairman undertook to convey Members' concerns to the House Committee meeting held in the afternoon on the same day. In reply to a Member's enquiry, Assistant Legal Adviser 4 said that, under the Standing Order, the Member-in-charge had the prerogative to fix a date on resumption of Second Reading debate of a bill, but Members could move a motion to defer the resumption.

IV. Date of next meeting

38. The next meeting was scheduled to be held on 1 June

1995 at 3:45 p.m. in Room A of the Legislative Council Building.

39. The meeting ended at 12:46 p.m.

LegCo Secretariat
5 July 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill and
the Sex Discrimination Bill**

**Notes of Meeting held on
Thursday, 1 June 1995 at 3:45 p.m.
in Conference Room A of the Legislative Council Building**

Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai (Deputy Chairman)
Hon Mrs Peggy LAM, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Rev Hon FUNG Chi-wood
Dr Hon Conrad LAM Kui-shing, JP
Hon James TO Kun-sun
Dr Hon YEUNG Sum
Hon Zachary WONG Wai-yin
Hon Roger LUK Koon-hoo
Hon Anna WU Hung-yuk

Absent with : Hon HUI Yin-fat, OBE, JP)
apologies Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP) Other
Hon Moses CHENG Mo-chi) commitments
Hon Simon IP Sik-on, OBE, JP)
Hon Emily LAU Wai-hing)
Hon LEE Cheuk-yan)

Hon Mrs Selina CHOW, OBE, JP - out of town

By invitation :

Hon Anna WU's team

Mr Andrew Brynes, Consultant
Ms Carole Petersen, Consultant
Mr Adam Mayes

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)²
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)²

**I. Confirmation of notes of meeting held on 28 April 1995
(LegCo Paper No.HB 769/94-95)**

The notes of the captioned meeting were confirmed.

**II. Hon Anna WU's proposed amendments to Sex
Discrimination Bill (SDB)**

2. Ms Anna WU briefed Members on her proposed Committee stage amendments (CSAs) to the SDB at Appendix I to LegCo Paper No.HB 844/94-95. The salient points of discussion are in paragraphs 3 - 39.

3. Ms WU pointed out that, in her list of proposed CSAs at Appendix I to the said paper, amendments struck out had been fully accepted by the Administration. She added that the proposed CSAs with a tick against it had been endorsed by the Bills Committee but

not supported by the Government. As regards proposed CSAs with handwritten remarks, these were CSAs to which the Administration had put forward amendments different from her proposals. Proposed CSAs without any remarks were not accepted by the Administration.

Proposed CSAs fully accepted by the Administration

4. The Bills Committee was agreeable to the proposed CSAs which were accepted by the Administration (i.e. amendments struck out in the list).

Proposed CSAs rejected by the Administration

Part I - Preliminary

New clause relating to international obligations

5. Ms WU proposed to put forward a new clause directing the Bill to be interpreted to give effect to relevant international obligations (including the ICCPR, ICESCR and CEDAW). She said that one of the purposes of the Bill was to fulfil in part certain international obligations, such as the obligation under CEDAW to legislate against discrimination. The new clause directed the courts to have regard to this purpose, and to follow internationally-accepted interpretations of discrimination law to the extent the SDB itself allowed. Similar provisions existed in the equal opportunity laws of other Commonwealth jurisdictions, for example, in most such Australian laws.

6. A Member enquired if the authority for interpreting these international obligations rested with the organization making these international obligations (e.g. the United Nations). Should it be the case, he was concerned about the difficulties and uncertainties incurred in litigations since local legislation made on the basis of these international obligations could not stand by itself.

7. Ms WU responded that, in interpreting some existing laws, e.g., the maritime laws, international covenants as interpreted

by overseas countries had to be taken into account. Assistant Leg Adviser 4 pointed out that, in interpreting the BORO, the court would have regard to the interpretation of ICCPR. He would consult LegCo. At the same time, clarification should also be sought from the Administration on its views on this.

Clauses 10(4), 14(4) & 15(4)

8. Ms WU proposed to amend the exceptions for provision relating to death and retirement, in connection with employment partnership and trade unions, etc. She pointed out that the Administration's proposed CSAs to 'grandfather' the exception were unsatisfactorily complex, unclear in effect and contained additional exemptions. The proposed amendment allowed one year for review of death and retirement benefits, after which LegCo might decide, on advice from the Administration and the EOC, whether to renew the exception (or whether to substitute limited, permanent exceptions if needed).

Clauses 11(2)(g), 49 & Schedule 2

9. Ms WU reiterated that the regulations might be outdated and might have become inadvertent restrictions. Some regulation should apply equally to both men and women. A time-limit should be set for the Administration to review the exceptions; one year in the first instance, subject to extension by LegCo resolution.

Part IV - Other Fields

Administration of laws and government programmes

10. Ms WU pointed out that, although the Administration had agreed to the provision of a new clause prohibiting discrimination in administration of laws and government programmes, its proposed CSAs incorporated new and unnecessary exceptions. Ms WU proposed that the wording in Clause 27 of the EOB was better.

Public elections and appointments

11. Ms WU proposed a new clause prohibiting discrimination in public election and appointments. She preferred to adopt the express EOB clause (Clause 28) on "discrimination in eligibility to vote for and to be elected or appointed to advisory bodies". One of the key issues concerned village representatives and Heung Yee Kuk. These might not be covered by a clause that prohibited discrimination by Government in general terms, because the courts might hold that rural elections and the like were private activities, not Government activities.

Part V - Other Unlawful Acts

Clauses 36 & 74

12. Ms WU proposed to amend Clauses 36 & 74 to make unlawfully discriminatory advertisements an offence, subject to a maximum fine of \$30,000 for a first offence and \$100,000 for a second offence. She pointed out that under the Bill, no penalty was provided for unlawfully discriminatory advertisements. The EOC could only apply to the court for an injunction to restrain a person from publishing more unlawful advertisements (clause 74(4)). She suggested that, on application by the EOC, the court should also be able to impose a penalty as a deterrent.

13. In this connection, Members enquired on the liability of a publisher. They generally felt that the imposition of criminal liability and the proposed fine on publication of unlawfully discriminatory advertisements were too harsh on discriminators, in particular the first offenders. The Chairman pointed out that the Administration was opposed to make the publication of a discriminatory advertisement a criminal offence as it was a disproportionate penalty for this unlawful act.

14. Ms WU responded that a publisher would be liable for the unlawful act. He/She would, however, have a statutory defence under Clause 36(4) if he/she proved that it was reasonable for him to rely on a statement made by the person who caused the advertisement

to be published that the publication would not be unlawful.

15. In view of Members' concerns, she suggested amending the clauses to empower the court additionally to make an order imposing a non-criminal financial penalty of \$10,000 - \$30,000. Bills Committee agreed with this approach.

Part VI - General Exceptions

Clause 51

16. Ms WU proposed to remove exemption for acts done to safeguard the security of Hong Kong. She pointed out that this clause should have no bearing on sex discrimination. The examples of acts concerned given by the Administration related to security deployment within the disciplinary services, not to the security of Hong Kong as such. She also disagreed with the Administration's view that, unless excepted, any differential treatment would be regarded as discrimination. Under Clause 9 of the SDB, differential treatment would not be unlawful if justified by materially different circumstances.

Schedule 4, Section 2 - Exception for Small House Policy

17. Ms WU proposed to delete Schedule 4, Section 2 so that the exemption for Small House Policy (the Policy) would be removed. She pointed out that the Policy was totally against the spirit of the Bill. Moreover, the Policy might already be unlawful under the BORO and its legality should not be revived by the SDB.

18. In reply to a Member's concern on the retroactivity of the removal of this exception, Ms WU stated that the proposed removal of this exception would only take effect from the enactment of the Bill. As such, the Bill would not by itself outlaw a grant of land to indigenous villagers under the Policy if such grant was effected before the commencement of the Bill.

Clause 54 and Schedule 4

19. Ms WU proposed to amend the exemption of (i) certain discrimination within the disciplinary services and (ii) of marital status discrimination in employment benefits and civil service benefits to expire in one year, subject to extension by LegCo resolution.

20. Members noted that the Administration considered all these exemptions were reasonable and necessary exceptions. Exceptions for (i) were required whereby the operation of disciplinary forces would not be hampered. With regard to (ii), if the exception for employment benefits were to expire at the end of one year, all employers would no longer be able to provide different levels of housing to employees of different marital status. Employees might lose out because everybody would then receive a flat rate.

21. Ms WU was of the view that complete exemption of discrimination in these matters were unnecessary, unreasonable and subject to abuse. It was therefore proposed to allow one year, subject to extension by LegCo resolution, for necessary adjustments to be made before expiry of these exceptions. With regard to (ii), following expiry of the exception employers might still provide differential benefits based on non-discriminatory criteria, e.g. household size.

Part VII - EOC

Clause 56(1)

22. Ms WU proposed to put forward a new subclause giving EOC's function of promoting observation of relevant international obligations (including ICCPR, ICESCR and CEDAW) as they related to sex, marital status or pregnancy discrimination.

23. Members noted that the Administration considered that the EOC was already vested with the responsibility to work towards the elimination of discrimination and to promote equality of

opportunity between men and women generally. Reiteration of function was therefore not needed.

24. Ms. WU was of the view that, despite apparent breach the EOC's functions were limited to discrimination as defined in SDB. In its roles other than law-enforcement (such as research, promotion, and conciliation), the EOC should be clearly empowered to address any matters connected with discrimination under broad international non-discrimination standards.

25. Ms WU also suggested a new subclause giving the EOC the power to examine any proposed legislation that it considered might affect equality of opportunity and reporting results to the legislation's sponsor. Noting the Administration's view that the EOC could also examine proposed legislation and there was no need to provide explicit provisions in this regard, she pointed out that the subclause was to give the EOC a statutory advisory role. Similar provisions were provided in the Personal Data (Privacy) Bill.

Clause 55 & Schedule 5

Clauses 57(3)

26. Ms. WU proposed to repeal Clause 57(3) which obliged the EOC to seek SHA's approval before it could provide financial assistance to outside research and undertaking. She considered that the sub-clause unnecessarily restricted the EOC's independence. The Administration had adequate financial controls over the EOC (Schedule 5 (sections 15(2), 16(2) and 17(2) of that Schedule). On this basis, the Bills Committee agreed to accept these provisions in Schedule 5 which Ms WU originally proposed to repeal.

Clause 63(4)

27. Ms WU suggested to amend Clause 63(4) to enable EOC to carry out an investigation into named persons or organisations for any purpose connected with its functions (irrespective of whether it believed unlawful acts had occurred); and to give all named persons:

right to make pre-investigation representations to the EOC.

28. Members noted that the Administration considered that to be named the subject of a formal investigation was a serious matter. Before naming a person in an investigation, the EOC, like any other regulatory bodies in HK, should have some grounds (i.e. formed a belief that the person named had committed unlawful acts) for singling out that person. It would be extremely unfair upon the person named if the EOC named a person in a formal investigation without any grounds.

29. Ms WU was of the view that the proposed amendment was in line with the key recommendations of the UK EOC. The EOC was unlikely to investigate a person unless it believed the person had discriminated. Clause 63(4), however, required the EOC to incorporate that belief expressly in the investigation's terms of reference. This undesirably restricted investigations: if the investigation uncovered discrimination outside the EOC's initial belief, the EOC must redraft the terms of reference and restarted the investigation. This had caused unreasonable delay to the UK EOC's investigations.

EOC's power relating to court proceedings

30. Ms WU proposed two new clauses to empower the EOC to:

- (a) bring proceedings in its own name with respect to any act or practice made unlawful by the Bill; and
- (b) intervene by leave of court in any proceedings under the Bill respectively.

The Administration had agreed in principle to the provision in (a). It proposed to make provisions to empower SHA to make regulations, subject to LegCo approval. Ms WU, however, considered it more proper to make (a) in the principal Ordinance. (b) related to (a). Where an individual was litigating an important test case under the

SDB, the EOC should be able to participate (to the extent permitted by the court) in order to assist in shaping the law's development. Similar provisions existed in Australian equal opportunity laws.

Part VIII - Enforcement

Clause 68(3)-(4)

31. Ms WU suggested to empower the District Court to order appropriate remedy including reinstatement. She pointed out that the Administration had accepted the proposed amendment in principle but would deal with the proposal in the context of a general review of labour relations presently being conducted by the Educational and Manpower Branch. She proposed that the Bill should be amended accordingly without delay.

Clause 68(5)

32. Ms WU suggested to repeal the clause which provided that there should be no award of damages if the indirect discrimination was unintentional. She pointed out that similar provision in UK law had been invalidated. It was preferable to leave the court flexibility to take account of intentions by varying the size of awards.

Clause 76

33. Ms WU proposed to amend Clause 76 to enable the EOC to conciliate complaints of acts inconsistent with relevant international obligations (e.g. the ICCPR, ICESCR and CEDAW) which they related to sex, marital status or pregnancy discrimination. She stated that this CSA related to that at paras 19-22. The EOC should be able to provide a non-binding conciliation service for complaints concerning acts covered by international non-discrimination standards, though not actually unlawful under the SDB.

Clause 77

34. Ms WU suggested to amend Clause 77 to enable the EOC to take over proceedings in its own name if a claimant receiving EOC's assistance withdrew from proceedings. She pointed out that this CSA related to that at para 27(a). Where the EOC had already provided assistance to a person litigating an important case under the SDB, the EOC should be able to pursue in its own name even if the person withdrew.

Clause 78(4)

35. Ms WU suggested to amend the period within which proceedings under the Ordinance may be brought to provide that time in conciliation would not be taken into account. She stated that the SDB should clearly provide that time in conciliation did not count against the time allowed to bring legal proceedings. A complainant undergoing conciliation should not need to commence proceedings (possibly disrupting conciliation) merely to preserve the right of litigation if conciliation failed.

Part IX - Miscellaneous

Clause 82(2) & Schedule 7

36. Ms WU proposed to consequentially amend section 5AA of the Legal Aid Ordinance (Cap.91) to allow the Director of Legal Aid to waive the means test for proceedings involving claims of discrimination under the SDB (as for proceedings involving claims under the Bill of Rights).

37. Ms WU considered that the SDB restored important inter-citizen rights deleted from the original Bill of Rights Bill. In principle, therefore, provision should be made for the SDB on the same basis as for the BORO.

38. In this regard, the Chairman said that the Bills Committee studying the Legal Aid (Amendment) Bill 1995 took the

SDB, the EOC should be able to participate (to the extent permitted by the court) in order to assist in shaping the law's development. Similar provisions existed in Australian equal opportunity laws.

Part VIII - Enforcement

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32. Ms WU suggested to repeal the clause which provided that there should be no award of damages if the indirect discrimination was unintentional. She pointed out that a similar provision in UK law had been invalidated. It was preferable to leave the court flexibility to take account of intentions by varying the size of awards.

Clause 76

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Part IX - Miscellaneous

Clause 82(2) & Schedule 7

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37. Ms WU considered that the SDB restored important inter-citizen rights deleted from the original Bill of Rights Bill. In principle, therefore, provision should be made for the SDB on the same basis as for the BORO.

38. In this regard, the Chairman said that the Bills Committee studying the Legal Aid (Amendment) Bill 1995 took the

legal advice that, since the SDB had not been enacted, it would not be a proper exercise of legislative authority to debate/pass amendments to the Legal Aid Ordinance referring to the waiving of the means test in respect of statutory rights which did not yet exist. The Legal Aid (Amendment) Bill 1995 was therefore not the appropriate vehicle for attaching any amendment connected with the Sex Discrimination Bill.

39. The Bills Committee supported the CSAs proposed by Ms WU in paragraphs 2 - 38 above, but rejected by the Administration.

Proposed amendments to be deferred

40. Ms WU stated that, because of time constraints, she suggested to defer the amendments at P.4 of Appendix I to LegCo Paper No.HB 844/94-95 and forward them to the EOC for review. Members agreed with the suggestion.

Proposed CSA to be dropped

Part I - Preliminary

41. In addition, Ms WU suggested to delete the proposed new clause in Part I - Preliminary, repealing prior inconsistent law to the extent of inconsistency with Ordinance, effective from date of final judgement on inconsistency. She pointed out that it could be dealt with as a Bill of Rights issue.

IV. Proposed CSAs to EOB

42. Ms WU went over a list of proposed CSAs to the EOC in Appendix II to LegCo Paper No.HB 844/94-95. She pointed out that the list was based on the one agreed by the Bills Committee on 19 May 1995 (vide Appendix I(i) to LegCo Paper No.HB 736/94) with some new proposed amendments. These new proposals comprised technical amendments and CSAs corresponding to si

ones in the SDB (i.e. effective date of the Bill and consequential amendment to the LegCo Aid Ordinance (Cap.91) on waiver of means test). She pointed out that corresponding amendments to the EOB would be put forward should equivalent CSAs to the SDB, for example, financial penalty for discriminatory advertisement, be revised.

43. As regards amendments on indirect discrimination provisions to cover any practice with a disproportionately adverse impact on persons of the relevant status, Ms. WU proposed to defer these for later review by the EOC.

44. Ms. WU added that, after introduction of the EO bills into LegCo, the clause number of these CSAs would be revised to fit in with those of the three bills.

45. Members were agreeable to Ms WU's proposals.

V. Way Forward

SDB

46. The Chairman said that the Administration had now agreed to resume Second Reading debate of the SDB on 28 June 1995.

EOB

47. Ms WU said that the Legal Department was still examining the three new EO bills to see that the drafting of the bills was in order. She had also written to request SHA to certify that the three bills had no charging effect.

48. The Chairman reminded Ms WU that time was very tight. Working on the basis of resumption of Second Reading debate

on 26 July 1995 (the last LegCo sitting), the timetable would be follows:

30 June	Gazette
5 July	First Reading
7 July	Go back to Bills Committee
14 July	Report to House Committee
26 July	Resumption of Second Reading debate

49. If there were problems in introducing all three new EC bills to LegCo, Ms WU suggested to resume Second Reading debate of the EOB and put forwards CSAs to:

- (a) remove the two parts of the EOB relating to sex and disability discrimination; and
- (b) make it possible for Members to delete any other parts of the EOB, which managed to be re-introduced into the LegCo, to facilitate voting on the different matters covered by the Bill.

The Bills Committee endorsed this suggestion.

DDB

50. The Chairman pointed out that upon conclusion of scrutiny on the SDB and EOB, study of the Disability Discrimination Bill (DDB) would commence at the next meeting. The Bills Committee would meet deputation on 16 June 1995 to solicit views from the public and interested groups. Two new members (Mr Eric LI and Mr Vincent CHENG) had indicated to join the Bills Committee. With regard to the existing 21 members on the Bills Committee, Ms Christine LOH had verbally indicated withdrawal. In this regard, The Chairman said that a new chairman and deputy chairman would be elected at the first meeting of the reconstituted Bills Committee.

VI. Vote of thanks

51. The Chairman thanked Members, Miss Susie HO of the Home Affairs Branch, Assistant Legal Adviser 4 and the Clerk for their hard work in the study of the SDB and EOB.

VII. Date of next meeting

52. The next meeting would be held on 9 June 1995 at 10:45 a.m. in the Chamber of the Legislative Council Building.

53. The meeting ended at 6:00 p.m.

LegCo Secretariat
27 June 1995

Ref : HB/C/61/1

**Bills Committee to study
the Equal Opportunities Bill,
Sex Discrimination Bill and
Disability Discrimination Bill**

**Notes of Meeting held on
Friday, 9 June 1995 at 10:45 a.m.
in Chamber of the Legislative Council Building**

Present

Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Dr Hon YEUNG Sum (Deputy Chairman)
Hon J D McGregor, OBE, ISO, JP
Rev Hon FUNG Chi-wood
Dr Hon Conrad LAM Kui-shing, JP
Hon Emily LAU Wai-hing
Hon Eric LI Ka-cheung
Hon James TO Kun-sun
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan

Absent with
apologies

: Hon Mrs Selina CHOW, OBE, JP)
Hon HUI Yin-fat, OBE, JP)
Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP)
Hon Mrs Miriam LAU Kin-ye, OBE, JP) Other
Hon Simon IP Sik-on, OBE, JP) commitments
Hon Moses CHENG Mo-chi)
Hon LI Wah-ming)
Hon Zachary WONG Wai-yin)
Hon Roger LUK Koon-hoo)

Hon Vincent CHENG Hoi-chuen, OBE, JP - out of town

By invitation :

Mr R Wilson
Deputy Secretary for Health & Welfare

Ms A E Shepherd
Principal Assistant Secretary (Health & Welfare)

Mr R Griffey
Deputy Law Draftsman

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

Action
Required

I. Election of Chairman and Deputy Chairman

Dr LEONG Che-hung and Dr YEUNG Sum were elected Chairman and Deputy Chairman respectively.

II. Change of membership

2. The Chairman informed Members that Mr Eric LI, Mr Vincent CHENG and Mr Fred LI had indicated to join the Bills Committee while Ms Christine LOH and Mrs Peggy LAM had notified the Clerk of their withdrawal. The membership of the re-constituted BC is 22 and the quorum for meeting is 7.

III. Matters relating to the Sex Discrimination Bill (SDB)

3. Ms Anna WU drew Members' attention to her letter tabled at the meeting (copy at Appendix I) on the following three outstanding matters relating to amendments to the SDB:

Financial penalties for unlawful advertisement

- (a) Ms WU, after considering Members' view at the last meeting, suggested to amend Clause 74 to empower the court additionally to make an order imposing a non-criminal financial penalty. The penalty imposed would be in the range of \$10,000 - \$30,000 as agreed by Members, and would be civil in nature. The proposed power was similar to that presently exercised by the Insider Dealing Tribunal;

EOC functions with reference to the Bill of Rights Ordinance (BORO)

- (b) Ms WU recapitulated that she had, at the last meeting, withdrawn the proposal to add a new clause into the SDB repealing inconsistent laws. The withdrawal of the proposal, however, would render the EOC unable to challenge discriminatory laws itself because its functions made no reference to the BORO;
- (c) Ms WU pointed out that the Bills Committee had already agreed to amend the EOC functions (Clause 56(1)) to incorporate reference to relevant international obligations, including the ICCPR from which the BORO was derived. She suggested that the EOC's functions should be further amended to add a direct reference to the BORO, insofar as it related to sex, marital status and pregnancy discrimination; and

Requests for information

- (d) Ms WU said that she would withdraw her proposal to insert a clause prohibiting discriminatory requests for information into the SDB.

4. The Bills Committee supported Ms WU's proposal at paragraph 3.

5. In reply to the Chairman's enquiry on the three new EO bills, Ms WU said that the Legal Department was still examining them. A reply was expected in the following week. She was also awaiting SHA's certification on charging effect. She aimed to gazette the three bills on 16 June 1995 and resume Second Reading debate on these bills by mid-July. If gazettal of three bills together was not possible, she hoped to be able to gazette the bill on age discrimination first. If the remaining two new bills were unable to be introduced into the LegCo before this legislative session, she would resume Second Reading debate on the EOB, deleting the three parts relating to sex, disability and age discrimination.

IV. Briefing by the Administration

6. The Administration took Members through the LegCo Brief (ref: HW CR2/5091/94(95) Pt.15). The discussion between Members and the Administration is summarized below:

Chinese Terminology

7. Some Members shared the views of the Joint Council for the Physically and Mentally Disabled (its written submission tabled at the meeting) that the Chinese term " ", which was used for "disability" in the Bill, appeared rather negative as it implied that people with disabilities were generally weaker and less capable. Ms WU suggested to adopt the term " " instead. The Administration said that they were already discussing this issue

Adm

with disability groups and were happy to amend the term to meet the groups' concerns.

Definition of Disability

8. In reply to a Member's enquiry, the Administration stated that the definition of disability included, inter alia, autistic persons. People with HIV/AIDS would also be covered by the Bill, but where their condition could pose a direct threat to the health of others, it would not be unlawful to discriminate against them. In this connection, the Chairman considered that a virus such as HIV might not be considered an organism and requested the Administration to check so as to ensure that people with HIV/AIDS were covered in the Bill.

Adm.

General Occupational Qualification (GOQ) (clause 12)

9. Mr LEE Cheuk-yan was against the exemption for GOQ as it would be covered by the exemption for unjustifiable hardship.

"Unjustifiable hardship" (Clause 4)

10. The Administration stated that a discriminator might defeat a claim of discrimination by proving that it would cause them "unjustifiable hardship" to make necessary changes to meet the needs of the person with a disability.

11. The Administration added that , on the burden of proof, it was for the discriminator relying on this statutory exception to bring him/her within it. A discriminator, for example a broadcaster, might defeat a claim of discrimination by proving that it would cause them "unjustifiable hardship" to caption live programmes or to increase T.V. captioning to a certain level.

Code of Practice

12. The Administration pointed out that Part III of the Bill,

which was on discrimination and harassment in the employment field, would only come into effect after the relevant Code of Practice had been developed and issued by the EOC. It was estimated that the EOC would take around nine months to develop the Code of Practice.

13. A Member suggested that a working group be set up to prepare the Code of Practice so that the code would be issued soon after the setting up of the EOC. The Administration did not support the proposal as it did not wish to pre-empt the independence of the EOC in undertaking this task.

14. In reply to a Member's question, the Administration pointed out that, in line with the revised proposal in the SDB, it was proposed to provide small employers a grace period of three years, instead of five years, to comply with the provisions relating to discrimination by employers (Clauses 11 - 14 and 15).

Access to premises

15. The Administration pointed out that Clauses 23 - 28 of the Bill outlawed discrimination against a person with a disability by refusing to:

- (a) allow him access to or use of premises;
- (b) dispose of premise to him; and
- (c) provide him with goods, services or facilities.

Under Clause 82 of the Bill, plans for new buildings, and for alterations or additions to existing buildings, would not be approved by the relevant authority unless it was satisfied that reasonable access would be provided for people with a disability. A revised "Design Manual - Access for the Disabled 1984" would be issued to help the building sector to comply with the Bill.

16. The Administration said that existing buildings would

be exempted under Clause 23(2), from providing access if:

- (a) the premises were so designed or constructed as to be inaccessible to a disabled person; and
- (b) any alteration to the premises to provide such access would impose unjustifiable hardship on the discriminator.

It added that most premises built after 1984 should have access for the disabled as the said Manual already stipulated such a requirement. As for existing government premises without access for the disabled person, the Administration would consider modifying them to provide such access but pointed out that the alteration works might incur heavy financial expenditure. When asked if financial assistance could be provided to owners of existing premises to provide such access, the Administration stated that it would be an open-ended financial commitment which the Government was unable to make. The Administration was also requested to remove the exception for a hospital in Clause 30 as there might be disabled people visiting a hospital even though it did not cater for patients with a disability.

Adm.

Access to transport facilities

14. Members were concerned about access for a disabled person to public transport facilities and enquired if the Administration would put forward, in the Bill, requirements that improvements should be made within a specific timeframe, such as a few provisions in the Americans with Disabilities Act (ref: para.27 of the LegCo Brief on this Bill).

15. The Administration did not propose to follow this approach because it believed that in Hong Kong, it was more appropriate to continue to work with transport operators to improve their services for people with a disability through, for example, the Governor's summits on transport for people with a disability. It would discuss with the transport operators what reasonable, and practicable plans could be drawn up for future improvements. In this connection, the Administration would prepare a paper on the existing

Adm.

measures and future plans to provide access to transport facilities for people with a disability by the Mass Transit Railway Corporation.

Blank Schedules

16. In reply to a Member's enquiry on the blank schedules, the Administration pointed out that the blank schedules were not filled at this point in time in order to cater for unexpected circumstances. It emphasized that amendments of these schedules were subject to the negative approval procedure whereby the LegCo could raise objection to any proposed amendment.

17. A Member raised the following questions:

- (a) the relevancy of Clause 56, which concerned acts safeguarding security of Hong Kong, to a person with disability;
- (b) whether the District Court would be empowered to reinstate a person with a disability; and
- (c) whether the Administration would, as it had done in the course of studying the SDB, prepare two lists of amendments, accepted and rejected by it respectively, so that the Bills Committee could understand the Administration's position on the parallel provisions of the Bill vis-a-vis the SDB.

18. The Administration undertook to revert to the Bills Committee on these points. In this connection, it was also requested to discuss with Ms WU and her team to sort out issues with a view to expediting scrutiny of the Bill.

Adr

19. The Chairman said that, working on the basis of resumption of Second Reading debate at the last LegCo sitting (26 July 1995) in this session, study of this Bill had to wrap up around the end of June. The timetable was as follows:

Action
Required

9 June	Briefing by Administration
16 June	Meeting with deputations
23 June	Continuation of discussion with the Administration
30 June	Wrap up of Bills Committee
14 July	Report to House Committee
26 July	Resumption of Second Reading debate

V. Date of next meeting

20. The next meeting was scheduled to be held on 16 June 1995 (Friday) at 10:45 a.m. in the Chamber of the Legislative Council Building.

21. The meeting ended at 12:48 p.m.

LegCo Secretariat
11 July 1995

**Bills Committee to study
the Equal Opportunities Bill,
Sex Discrimination Bill and
Disability Discrimination Bill**

**Notes of Meeting held on
Friday, 16 June 1995 at 10:45 a.m.
in Chamber of the Legislative Council Building**

Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Dr Hon YEUNG Sum (Deputy Chairman)
Dr Hon Conrad LAM Kui-shing, JP
Hon LI Wah-ming
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan

Absent with : Hon Mrs Selina CHOW, OBE, JP)
apologies Hon HUI Yin-fat, OBE, JP)
Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP)
Hon Mrs Miriam LAU Kin-ye, OBE, JP) Other
Hon J D McGregor, OBE, ISO, JP) commitments
Hon Vincent CHENG Hoi-chuen, OBE, JP)
Hon Moses CHENG Mo-chi)
Rev Hon FUNG Chi-wood)
Hon Simon IP Sik-on, OBE, JP)
Hon Eric LI Ka-cheung)
Hon James TO Kun-sun)
Hon Roger LUK Koon-hoo)

Hon Emily LAU Wai-hing - out of town

By invitation :

The Administration

Ms A E Shepherd
Principal Assistant Secretary (Health & Welfare)

Mr Donald CHEN
Assistant Secretary (Health & Welfare)

Joint Council for the Physically and Mentally Disabled

Mr CHONG Chan-yau

Mr KONG Siu-hong

Miss LAW Lai-chun

Mr LEE Koon-hung

Miss Iris CHAN

Mr CHUA Hoi-wai

Miss Stella HO

Miss CHAN Suk-yan

Coalition of AIDS Organisations Against Discrimination

Mr Frederick TONG
Hong Kong AIDS Foundation

Mr Graham Smith
AIDS Concern

Sr Maureen McGinley
The Society for AIDS Care

Ms Elijah FUNG
St John's Cathedral

Miss Bella LUK

ReHabAid

Mr Joseph KWAN
Director
Environmental Advisory Service

Miss Rhena S Pattillo
Architectural Assistant
Environmental Advisory Service

Movement Against Discrimination (MAD)

Mr MAK Hoi-wah
Chairperson of MAD

Mr John TSE Wing-ling
Vice-Chairperson of MAD

Hong Kong & Yaumatei Ferry Co

Mr David C S HO

Mr C K YU

Mr Rayman YUEN

Miss Rosita LAU

In attendance : Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

Before each deputation presented its views on the Disability Discrimination Bill (DDB), the Chairman brought the representatives' attention that they were not covered by the Legislative Council (Powers and Privileges) Ordinance.

I. Meeting with Joint Council for the Physically and Mentally Disabled

2. The representatives went over their written submission at Appendix I to LegCo Paper No.HB 936/94-95. The discussion between Members and the deputation is summarized below:

(a) The Joint Council supported the DDB subject to the proposed amendments stated in its written submission; and

(b) The Joint Council highlighted the following proposed amendments.

(i) The Chinese term " " for "disability" should be replaced by " ", " " or " ";

(ii) Proceedings could be brought under the Bill for a period of six years, instead of 12 months according to the Bill, from the act complained. It noted that the Administration agreed to amend similar provision in the SDB to the effect that a period of two years would be allowed for proceedings to be brought under the SDB;

(iii) The 5-year grace period for small employers should be removed. Ms Anna WU pointed out that the Administration, in the context of the SDB, proposed to shorten the grace period to three years. Nevertheless, the Bills Committee had put forward a CSA to the

SDB to amend the grace period to expire in one year after enactment of the Bill, subject to extension by LegCo resolution for another year. The Governor's power to vary the date of expiry was also proposed to be deleted;

- (iv) The procedures involving the Chief Secretary should be simplified or removed so as to avoid procedural obstacles. It noted that, in the context of conducting formal investigations, the Bills Committee proposed to amend the SDB to enable the EOC to carry out an investigation into named persons or organisations for any purpose connected with its functions (irrespective of whether it believed unlawful acts had occurred); and
- (v) The EOC should be allowed to disclose relevant information of conciliation cases it handled for public educational purposes and to increase transparency. For the sake of sanction and public education, the EOC should also be empowered to publish the identity of discriminators when it believed the latter had discriminated against people with disabilities on the ground of their disabilities and when conciliation failed.

II. Meeting with Coalition of AIDS Organisations Against Discrimination

3. The Chairman declared interest as the Chairman of the Hong Kong AIDS Foundation which was one of the member organisation of the Coalition.

4. The Coalition (comprising Hong Kong AIDS Foundations, AIDS Concern, the Society for AIDS Care and St.

John's Cathedral) took Members through their written submissions at Appendix I to LegCo Paper No.HB 950/94-95 and tabled at the meeting (Copy at Appendix I to these notes). In response to Members' enquiries, the Coalition gave the following comments:-

- (a) The Coalition hoped that the Bill would be passed in the current legislative session, with the amendments suggested in their written submissions; and
- (b) The Coalition's concerns were on the following:
 - (i) inclusion of HIV infection in the definition of disability;
 - (ii) the Chinese terminology for disability;
 - (iii) protection of family members and carers;
 - (iv) exemption for small employers;
 - (v) exemption on the ground of "unjustifiable hardship";
 - (vi) requests for information and HIV testing;
 - (vii) insurance;
 - (viii) composition of the EOC;
 - (ix) litigation power of EOC and court procedures;
 - (x) reinstatement as a remedy; and
 - (xi) people with HIV/AIDS as a direct threat to the health of others.

5. The Chairman pointed out that, with respect to (xi), the Administration's view was that the DDB would not outlaw

discrimination against people with HIV/AIDS if they had, for example, cholera which posed a direct threat to the health of others. Nevertheless, the Coalition's concerns would be taken into consideration in the scrutiny of the Bill.

III. Meeting with ReHabAid

6. The deputation briefed Members on its written submission at Appendix II to LegCo Paper No.HB 936/94-95. It supplemented the following points:

- (a) The deputation considered that the DDB and the revised "Design Manual - Access for the Disabled 1984" could ensure that access and barrier-free facilities would be provided to both the able-bodied and disabled alike. The provision of such access and barrier-free facilities, even if they were at a desirable standard, would not entail a great deal of costs as against the land costs;
- (b) In respect of access to transport facilities, the deputation supported improvement works to be made within a workable timeframe; and
- (c) As a related issue, a Member requested the Administration to write to the Bills Committee on the provision of access for people with a disability to premises and facilities, in particular transport facilities in the New Airport projects.

Adm.

IV. Meeting with the Movement Against Discrimination(MAD)

7. The MAD went over their written submission tabled at the meeting (copy at Appendix II to these notes). In response to Member' enquiries, it supplemented the following views:

- (a) The MAD considered that the Bill could protect people with a disability from being discriminated

but could not secure equal opportunities for them. In this connection, it hoped that more proactive legislation/measures such as Affirmative Action Programme and Employment Quota System could be introduced; and

- (b) The MAD opined that subsidiary legislation or guidelines regarding the exemption on the ground of "unjustifiable hardship" should be provided so that people/companies concerned could better understand under what circumstances it could be invoked.

V. Meeting with Hong Kong & Yamatei Ferry Co

8. The deputation took Members through its written submission at Appendix II to LegCo Paper No.HB 950/94-95. It highlighted/supplemented the following points:

- (a) The deputation fully supported the principle that disabled persons should be given the chances to be integrated into the community as far as possible and was agreeable to the intention behind the introduction of the Bill;
- (b) The deputation pointed out that its provision of access and facilities for the disabled was consistent with that provided by the other ferry service operators in Hong Kong. Although the Company had not visited overseas ferry service operators to learn from their experience, the Transport Branch provided useful information to it in this regard.

9. The Chairman thanked the representatives of the Administration for attending the meeting and hoped that the Administration could respond to the deputations' views at the next meeting.

VI. Date of next meeting

10. The next meeting was scheduled to be held on 23 June 1995 in the Chamber of the Legislative Council Building.

11. The meeting ended at 1:05 p.m.

LegCo Secretariat
3 July 1995

Ref: HB/C/61

**Bills Committee to study
the Equal Opportunities bill.
the Sex Discrimination Bill and
the Disability Discrimination Bill**

**Notes of Meeting held on
Friday, 23 June 1995 at 10:45 a.m.
in Chamber of the Legislative Council Building**

Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Dr Hon YEUNG Sum (Deputy Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon J D McGregor, OBE, ISO, JP
Rev Hon FUNG Chi-wood
Dr Hon Conrad LAM Kui-shing, JP
Hon LI Wah-ming
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan

Absent with: Hon HUI Yin-fat, OBE, JP)
apologies Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP) Other
Hon Vincent CHENG Hoi-chuen, OBE, JP) commitments
Hon Moses CHENG Mo-chi)
Hon Simon IP Sik-on, OBE, JP)
Hon Eric LI Ka-cheung, JP)
Hon James TO Kun-sun)
Hon Roger LUK koon-hoo)

Ms Emily LAU - out of town

By invitation :

The Administration

Ms A E Shepherd
Principal Assistant Secretary for Health & Welfare

Mr Donald CHEN
Assistant Secretary for Health & Welfare

Mr R Griffey
Deputy Law Draftsman

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees) 2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

Action
Required

I. Meeting with the Administration

Service improvements by MTRC for people with a disability

The Administration took Members through a note on what the MTRC had done to improve its service for people with a disability (Appendix I to LegCo Paper No. HB 1000/94-95). In response to a Member's suggestion for the MTRC to provide assistance for people with a disability at all stations, the Administration undertook to request MTRC to consider the proposal but stressed that sufficient time and resources would be required if MTRC were to implement it. The Administration would, in view of a Member's concern on the assistance provided to the mobility handicapped to board and alight from the train, discuss with the MTRC on any improvement measures required.

Adm.

Action
Required

Administration's response to views of the Joint Council for the
Physically and Mentally Disabled (the Joint Council)
(Appendix I to LegCo Paper No. HB 936/94-95)

Chinese terminology

2. Regarding the deputation's proposal on the Chinese terminology, the Administration suggested to replace the Chinese term "弱能" for "disability" by "殘疾". Members were agreeable to this suggestion.

Interpretation of terms

3. The Administration would, in consultation with disability groups and the Hong Kong Council of Social Service, specify in Schedule 1 the persons within the meaning of "carers" in the Bill. Adm.

Grace period for small employers

4. The Administration would, in line with the provision in the Sex Discrimination Ordinance, propose a 3-year grace period for small employers. Adm.

Genuine occupational qualification

5. The Administration had taken into account the deputation's views in drawing up its CSAs in this regard. A discussion on this subject had also been made at the two meetings held between the Administration and Ms Anna WU on her proposed amendments to the Bill.

Public examinations

6. The Administration would ensure that services offered by the Examination Authority, which included running public examinations, would be covered in the Bill.

Action
Required

Exemptions for non-profit making bodies (clause 29)

7. The Administration would put forward a CSA to the effect that non-profit making bodies could not make use of the exception to discriminate people with a disability.

Adm.

Acts safeguarding security of Hong Kong (clause 56)

8. Ms Anne Shepherd stated that she was awaiting comments from the Security Branch (SB) on the suggestion to remove clause 56 from the Bill. She undertook to bring along representative(s) from the Security Branch to explain the Administration's position at the next meeting.

Codes of practice

9. The Administration undertook to expressly provide in clause 63(3) that disability groups would be consulted in the preparation of any code of practice to be issued by the EOC.

Adm.

10. Ms Anna WU opined that there were two approaches to developing the codes of practice, viz., the minimalist approach and the desirable approach. She suggested the EOC to take the latter approach. The Administration pointed out that the codes of practice would be subject to the approval of the Legislative Council which could amend it if deemed necessary.

Response to views of Movement Against Discrimination (MAD) (Appendix II to LegCo Paper No. HB 1099/94-95)

Employment quota system

11. The Administration stated that it was decided in the white paper on Rehabilitation that employment quota system should not be instituted in Hong Kong. Disability groups considered that employment of people with a disability should be based upon their abilities rather than their

disabilities. It pointed out that the United Kingdom Government, from the experience of administering such a system, considered it unworkable. The Administration maintained that the existing provisions in the Bill which aimed to eliminate disability discrimination in the employment field was a better approach to deal with the problem.

Response to views of Hong Kong and Yaumatei Ferry Co
(Appendix II to LegCo paper No. HB 950/94-95)

Meaning of "less favourably" (clause 6(a))

12. The Administration recapitulated the deputation's request to have some sort of guidelines so that it did not have to guess the meaning of and the situation caught by the expression "less favourably". The Administration stated that guidelines would be set in the code of practice rather than in the Bill. In response to a Member's enquiry on the burden of proof, the Administration stated that a person who claimed to have been treated less favourably on the ground of his/her disability had the onus of proof in making the claim while the burden of proof would rest with an alleged discriminator who sought to rely on the exemptions provided in the Bill.

Clause 11(2)(a)

13. The Administration recalled the deputation's concern that clause 11(2)(a) was so ambiguous that an employer who assigned less duties to a disabled employee in order to accommodate him (which, naturally and correspondingly, would result in his reduced opportunities for promotion) could run the risk of infringing the law and be complained of that they treated their disabled employees "less favourably". The Administration was of the view that it would not be discriminatory for an employer to do so because

the employees with a disability did not do exactly the same job as the employees without a disability. They were not treated "less favourably" on the ground of disability but on the ground of the duties that they performed. As such, the Bill could provide an employer with flexibility to employ people with a disability.

Clause 13

14. The Administration recapitulated the deputation's concern that clause 13 required a principal to treat his/her contract workers more or less like an employee so far as the provision of benefits, services or facilities to them was concerned. The deputation considered this too onerous a burden on the principal or sub-principal since the main purpose of contracting out was to have someone to take up the responsibility for the principal and a contractor should look after the contractor's own employees so far as the provision of benefit and welfare was concerned. The Administration pointed out that, without this clause to tackle discrimination against contract workers, there would be a loophole through which an employer might set up a shadow or smaller company to act as a contractor in order to get around the provisions in the Bill.

Discriminatory advertisement (clause 40)

15. The Administration recapitulated that the deputation had asked whether it was unlawful to state in a recruitment advertisement that the applicants of a post must not be disabled persons. The Administration's legal advice was that it would not be unlawful if the skills required for the job, as stated in the advertisement, might have the effect of rendering people with a disability ineligible for the post. It would not infringe the law if, for example, an advertisement stated that the post required people with an eyesight in accordance with the International Civil Aviation Organization standards rather than stating that applicants must not be people with sight impairment.

Clause 45(3)

16. The Administration recalled the deputation's concern about the level of detail and how regular the guidance should be given by an employer to his/her employees under clause 45(3) so that he/she would not be liable for any discriminatory act done by his/her employees. The Administration was of the view that the guidance could be spelt out in the codes of practice to be issued by the Equal Opportunities Commission so as to let an employer know what sort of guidance he/she would need to set out to his/her employees.

Administration's response to views of Coalition of AIDS Organizations Against Discrimination (Appendix I to LegCo Paper No. HB 950/94-95 and LegCo Paper No. HB 1099/94-95)

Definition of disability (clause 2)

17. In response to the concern of the AIDS concern, the Administration clarified that the sentence on page 3 of the LegCo Brief (Ref.: HW CR 2/5091/94(95) pt. 15), i.e. "people with HIV/AIDS will also be covered by the Bill, but where their condition could pose a direct threat to the health of others it will not be unlawful to discriminate against them", related to clause 59 which exempted a person from discriminating against another person with a disability if -

- (a) that person's disability was an infectious disease; and
- (b) the discriminatory act was reasonably necessary to protect public health.

Whilst acknowledging that the above quoted sentence should be better worded, the Administration pointed out that clause 59(2) expressly provided that the exemption in clause 59(1) was not applicable to discrimination against people with HIV or AIDS merely because of the fact that they had such a condition.

Education (clause 22)

18. The Administration recalled the deputation's concern that a school might, by virtue of clause 22(5)(a), use a student's ability as an excuse for discriminating against him/her. The deputation said that a child with HIV had been refused admission to a school on the ground that he was too ill to be educated, when in fact the child had been relatively healthy and keen to go to school. The deputation suggested that the child's view of his health needed to be taken into account; and it should not be left up to the school to decide whether or not the child was well enough to attend school. The Administration stated that it would be unlawful to discriminate a child with AIDS on the ground of his/her disability and pointed out that the Bill allowed an aggrieved person to air his/her grievances to the EOC and/or take legal action against the alleged discriminator.

Clause 25

19. The Administration undertook to discuss further with the AIDS Concern regarding its suggestion to add non-governmental social services to the list of examples of service and facilities at clause 25.

Adm.

Requests for information (clause 39)

20. The Administration recapitulated that the deputation suggested to outlaw a requirement or condition which -

- (a) aimed to identify persons with a disability; and

- (b) was not reasonable having regard to the circumstances of the case.

The Administration stated that, under clause 39, it would constitute discrimination and therefore be unlawful if a person singled out another person for different treatment which included provision of information. It would therefore not infringe the law if, for example, all job applicants were required to take an HIV antibody test as nobody was singled out for a different treatment in these circumstances. In response to a Member's enquiry, the Administration supplemented that an employer would infringe the law if a person with a disability was discriminated on the basis of the result of the test.

Court procedures

21. The Administration stated that court procedures would be able to ensure the confidentiality of the complainant who brought a case to the court under the Bill so as to encourage people with a disability to seek justice.

Administration's response to areas of concerns raised by two or more deputations

Unjustifiable hardship (clause 4).

22. The Administration recapitulated that the Hong Kong and Yaumatei Ferry Co and the Coalition of AIDS Organizations Against Discrimination had the following concerns respectively:

- (a) The defence of "unjustifiable hardship" should be elaborated and clarified. In this connection, the Administration was requested to prescribe in the Bill a set of procedures setting out how a defendant could establish the defence.

- (b) The EOC and the court should be empowered to recommend to the government either to provide assistance to a person/an organization committing the discriminatory act to rectify the situation or to rectify the situation by itself directly rather than the present proposal to exempt the person/organization on the ground of "unjustifiable hardship".

23. The Administration responded that -

- (a) The set of procedure should be stated in the codes of practice to be developed and issued by the EOC rather than in the Bill.
- (b) All members of the community had a responsibility not to discriminate against people with a disability which meant that a discriminator (be it the government or any person/organization) had to bear the costs unless the rectification of the situation would bring about "unjustifiable hardship" .

24. A Member enquired whether it would be unlawful if a service provider rejected to provide hospice care to an AIDS patient. The Administration responded that the service provider would be in breach of the Bill unless he/she had a defence on the ground of "unjustifiable hardship".

Access to premises (clause 23)

25. The Administration recapitulated two deputations' concerns as follows: -

- (a) MAD was not agreeable to the exemption under clause 23(2).

- (b) The Hong Kong and Yaumatei Ferry Co. enquired whether the Administration intended to introduce compulsory requirements within a short period of time that all special facilities must exist in places like ferry piers.

26. The Administration stated that:

- (a) The Bill would not exempt a discriminator on the ground of clause 23(2)(a) alone. He/she also had to show that making alteration to premises to provide access to people with a disability would impose "unjustifiable hardship" on him/her.
- (b) The Administration had no intention to impose mandatory requirements on transport service operators to make all the existing facilities accessible to people with a disability. In any case, the ferry company could seek the exemption of unjustifiable hardship. As regards new building, clause 82 stipulated, inter alia, that plans for new building would not be approved by the relevant authority unless it was satisfied that reasonable access would be provided for people with a disability. In deciding what was reasonable the authority would take into account whether the provision of such access would be practicable and whether it would impose "unjustifiable hardship" on the developer.

Insurance (clause 49)

27. The Administration recapitulated that the AIDS foundation and the Joint Council suggested that the relevant code of practice should address the following in respect of insurance:

- (a) Interpretation of what was regarded as reasonable under clause 49(b).
- (b) People with HIV or AIDS were declined of almost all insurance packages.

28. The Administration stated that it was preparing, in consultation with the insurance sector, guidelines on medical and life insurance policies in relation to people with AIDS or HIV.

Consultation with Department of Health

29. In reply to a Member's enquiry, Ms Anne Shepherd stated that the Department of Health had been consulted in the drafting of the clauses relating to AIDS/HIV and infectious diseases.

II. CSAs to DDB

30. Members proceeded to examine a list of possible amendments to the DDB at Appendix II to LegCo Paper No. HB1000/04-95 prepared by Ms Anna WU who had discussed them with the Administration on 15 and 22 June 1995. In reply to the Chairman's enquiry, the Administration stated that it would put forward CSAs parallel to those to the SDB which were passed by the LegCo on 28 June 1995.

CSAs accepted by the Administration

31. The Administration stated that the following amendments as numbered in the list were accepted by the Administration: 3-5, 7-10, 12, 13, 17, 24, 25, 28, 29, 35 and 37.

Other proposed CSAs

Clause 1(2) (ref. no. 1)

32. In response to Ms WU's proposal to bring provisions of the Bill into operation on 1.1.1996 or any earlier dates as appointed by the SHW, the Administration responded that stipulating a commencement date pre-empted the discretion of the EOC. It was not agreeable to this inflexible approach which was unrealistic and disregarded the operational realities of the implementation of the legislation. It would revert to the Bills Committee after the result of parallel amendment to the SDB was known.

New clause (ref. no. 2)

33. As regards Ms WU's proposed new clause directing the Bill to be interpreted to give effect to relevant international instruments and obligation, the Administration pointed out that international treaties were outside the jurisdiction of the courts in Hong Kong. The Bill was a self-contained piece of legislation, the aims of which were clear and certain. There was no need to refer to other instruments for interpretation of the Bill. It would revert to the Bills Committee after the result of parallel amendment to the SDB was available.

Clause 11(3), (5), (7)(ref. No. 6)

34. Ms Anna WU stated that the proposed amendment, which was in line with that in the SDB, provided a grace period of one year that could be extended annually by LegCo to a maximum of three years. The Administration would revert to the Bills Committee after the voting result of a parallel amendment to the SDB proposing a 3-year grace period was known.

Clauses 12(3)(e), 54-5 and Schedule 3 (ref. no. 11)

35. Noting Ms WU's proposal to delete GOQ and other exceptions in relation to Schedule 3 on protective regulations to expire in one year, subject to extension by LegCo resolution, the Administration maintained that Schedule 3 was not filled at this point of time in order to cater for unexpected circumstances and emphasized that amendment of this schedule was subject to the negative approval procedure whereby the LegCo could raise objection to any proposed amendment.

New clause (ref. no. 14)

36. As regards Ms WU's proposed new clause to prohibit discrimination in administration of laws and government programmes, the Administration pointed out that its amendment would depend on which of the two parallel amendments to the SDB, i.e. its version or the Bills Committee's, was accepted by the LegCo on 28 June 1995.

Clause 29(3)(4) (ref. no. 15)

37. Regarding Ms WU's proposed amendment to delete exception for voluntary bodies' discrimination in the provision of service to the public, the Administration reiterated that it would, in response to the Joint Council's suggestion, put forward a CSA as stated in para. 7.

Clause 30(1) (ref. no. 16)

38. As regards Ms WU's proposal to delete clause 30(1) which provided facilities for special care in hospital, Ms Shepherd undertook to consult her medical colleagues on this proposal and revert to the Bills Committee at the next meeting.

Adm.

Clauses 40 and 76 (ref. no. 18)

39. The Administration pointed out that Ms Wu's proposed amendment to impose civil penalty on unlawfully discriminatory advertisements was unusual and created some sort of hybrid from civil and criminal sanctions.

Clause 56 (ref. no. 19)

40. The Administration, as stated at para.8, would revert to the Bills Committee regarding the proposal to delete exemption for acts done to safeguard the security of Hong Kong.

Clause 58 and Schedule 5 (ref. no. 20)

41. In response to Ms WU's proposal to amend further exceptions in Schedule 5 to expire in one year, subject to extension by LegCo resolution, the Administration intended to retain the Schedule which was currently empty as any amendment to the Schedule would be subject to approval of the LegCo.

*Clauses 60(1), 65(4), 70(3)-(4) and 70(5)
(ref. no. 21-23, 26 and 27)*

42. The Administration would revert to the Bills Committee regarding its position on these amendments after the resumption of the Second Reading debate of the SDB on 28 June 1995.

New clause (ref. no. 30)

43. The Administration accepted parallel provision in the SDB, which empowered EOC to bring proceedings in its own name with respect to any act or practice made unlawful by Ordinance. The Administration, however, considered that such power should be provided by subsidiary legislation whereas the Bills Committee's CSA proposed to provide the power in the principal ordinance. The Administration would examine this issue having regard to the result of the parallel amendment to the SDB at the LegCo sitting on 28 June 1995.

New clause (ref. no. 31)

Clause 78 (ref. no. 33)

44. The Administration undertook to revert to the Bills Committee on Ms WU's proposed CSAs after the result of the parallel amendment to the SDB was known.

New clause (ref. no. 32)

Clause 79 (ref. no. 34)

45. The Administration noted that these two amendments, which empowered the EOC to intervene by leave of court in any proceedings under the Bill and take over proceedings in own name if a claimant withdrew respectively, linked to each other. The purpose of these amendments was to allow an important test case, which might affect the public, to be adjudicated in court so as to assist in shaping the law's development. The Administration considered the CSA to clause 34 unacceptable as the "take over" power might not be in the interest of the claimants who decided not to pursue the case further.

Clause 80(4) (ref. no. 36)

46. Ms Anna WU proposed to amend the period within which proceedings under the Bill might be brought and to provide that time in conciliation would not be taken into account. The Administration considered the CSA unnecessary as clause 80(3) already empowered the District Court to consider any claim which was out of time if, in all the circumstances of the case as listed in clause 80(4), it was just and equitable to do so.

47. Ms WU pointed out that the Bill should clearly provide that time in conciliation did not count against the time allowed to bring legal proceedings. In the absence of the proposed CSA, the complainant in conciliation might, notwithstanding clause 80(3), commence proceedings (possibly disrupting conciliation) merely to be certain of preserving the right to litigate if conciliation failed.

Clause 82(2) and Schedule 7 (ref. no. 38)

48. Regarding Ms WU's proposed amendment on the waiver of means test for claims under the Bill, the Administration undertook to revert to the Bills Committee after the result of the parallel amendment to the SDB was known.

III Way forward

49. Mr J D McGregor did not support some of the CSAs in the list of amendments put forward by Ms Anna WU. The majority of Members were agreeable to Ms WU's proposed amendments which would be reviewed in the light of the results of parallel amendments to the SDB. The Chairman undertook to stress, in his speech in the Second Reading debate on the Bill, that the CSAs to be put forward by the Bills Committee were the majority view rather than a unanimous view.

50. With regard to the new Equal Opportunity Bills, Ms Anna WU said that she was awaiting the President of the LegCo's ruling on charging effect. She hoped to have them gazetted on 30 June 1995 and aimed to resume Second Reading debate of the Bills on 19 July 1995. The CSAs to the three EO Bills would be the same as those on the EOB which were already agreed by the Bills Committee. The Chairman said that the CSAs would be considered by the Bills Committee after the gazettal of the new Bills.

IV. Date of next meeting

51. The next meeting was scheduled to be held on 30 June 1995 at 10:45 a.m. in the Chamber of the Legislative Council Building.

52. The meeting ended at 12:35 p.m.

LegCo Secretariat
9 September 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill,
the Sex Discrimination Bill and
Disability Discrimination Bill**

**Notes of Meeting held on
Friday, 30 June 1995 at 10:45 a.m.
in Chamber of the Legislative Council Building**

Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Dr Hon YEUNG Sum (Deputy Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon HUI Yin-fat, OBE, JP
Rev Hon FUNG Chi-wood
Dr Hon Conrad LAM Kui-shing, JP
Hon Emily LAU Wai-hing
Hon LI Wah-ming
Hon Eric LI Ka-cheung, JP
Hon Zachary WONG Wai-yin
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan

Absent with : Hon TAM Yiu-chung)
apologies Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP) Other
Hon Mrs Miriam LAU Kin-ye, OBE, JP) commitments
Hon J D McGregor, OBE, ISO, JP)
Hon Vincent CHENG Hoi-chuen, OBE, JP)
Hon Moses CHENG Mo-chi)
Hon Simon IP Sik-on, OBE, JP)
Hon James TO Kun-sun)
Hon Roger LUK Koon-hoo)

By invitation :

The Administration

Ms A E Shepherd
Principal Assistant Secretary for Health & Welfare

Mr R Griffey
Deputy Law Draftsman

Miss Ingrid HO Poi-yan
Principal Assistant Secretary (Security)

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

Action
Required

I. Meeting with the Administration

Matters Arising

The Administration reported on the following outstanding items arising from consideration of the list of “possible amendments to the DDB” at Appendix II to LegCo Paper No. HB 1000/94-95 and from discussion with Members at the last meeting.

Clause 2(1)

2. The Administration stated that “organisms” in the definition of “disability” in clause 2 included HIV.

Clause 30 (ref. no. 16)

Clauses 40 & 76 (ref. no. 18)

3. The Administration was agreeable to these two proposed amendments by the Bills Committee as parallel amendments to the SDB were passed by the Legislative Council on 28 June 1995.

Clause 56 (ref. no. 19)

4. The Administration stated that clause 56 which provided exemption for acts done to safeguard the security of Hong Kong could only be invoked during times of emergency when Hong Kong were under serious threats. The purpose of the clause was to allow the Administration to have, at times of emergency, unfettered power, which would not be undermined by concerns of disability discrimination, to deal with the situations.

5. Members considered that such an exemption was unnecessary in relation to disability discrimination if the clause was to cater for emergencies. They doubted why the Administration was given a greater flexibility without any check and balance under this clause than that in the Emergency Ordinance under which any regulations made by the government to deal with emergencies would be subject to approval of LegCo.

6. The Administration undertook to consider the points raised by Members.

Adm.

II. CSAs on the DDB

7. The Administration took Members through a list of its proposed amendments tabled at the meeting (copy at Appendix I). It pointed out the list of amendments was in addition to the CSAs accepted by the Administration in the list referred to in para. 1. The salient points of discussion are stated below:

Clause 2(1) (item no. 1)

8. The Administration proposed to amend the subclause to define "infectious disease" to include diseases referred to in the First Schedule of the Quarantine and Control of Diseases Ordinance (Cap 141) and other communicable disease, e.g. AIDS. It pointed out that

the amendment arose from concern on general control of public health and the Administration would specify the communicable diseases by notice in the Gazette.

Clause 82(2)(a) (item no. 6)

9. The Administration suggested to amend the subclause to ensure that such factors as the location of the building (e.g. whether it was located in a stepped street) would be taken into account in considering whether reasonable access would be provided under clause 82(2)(1). In response to a Member's enquiry, the Administration also undertook to revert to the Bills Committee as to which clause(s) in the Bill covered government roads.

Adm.

Review of list of Bills Committee's proposed amendments (Appendix II to LegCo Paper No. HB 1000/94-95)

10. The Chairman suggested to go over again the list referred to in para. 1 in the light of the results of the parallel amendments to the SDB on 28 June 1995.

Clause 1(2) (ref. no. 1)

New clause (ref. no. 2)

Clause 11(3), (5), (7) (ref. no. 6)

11. Noting that parallel amendments to the SDB were voted down in the LegCo, the Bills Committee agreed to drop these three proposed CSAs.

Clauses (2)(3)(e), 54-5 and Schedule 3 (ref. no. 11)

12. As parallel amendment in the SDB had been approved by the LegCo, the Administration was agreeable to the proposed amendment.

New clause (ref. no. 14)

13. As regards the Bills Committee's proposed new clause to prohibit discrimination in administration of laws and government programmes, Members noted that the LegCo had voted down the Bills Committee's parallel amendment to the SDB but approved the Administration's version. As the Administration undertook to improve the drafting of its CSA, the Bills Committee agreed to examine the Administration's version to see if it met the Bills

Adm.

Committee's requirements.

Clause 29(3)-(4) (ref. no. 15)

14. The Administration undertook to propose a CSA to this clause to delete exception for subverted non-governmental organisations discrimination in the provision of services to the public.

Clause 60(1) (ref. nos. 21 & 22)

15. The Chairman said that the two parallel amendments to the SDB were not put to the LegCo due to charging effect. As such, the Administration did not support them.

16. Ms WU considered that the charging effect was a technical point which was not insurmountable. Regarding the former proposed amendment to expressly authorise EOC to promote observation of relevant international instruments and obligations as they related to disability discrimination, she stated that despite apparent breadth, the EOC's functions were limited to discrimination as defined in the DDB. In its roles other than law-enforcement (such as research, promoting, and conciliation), the EOC should be clearly empowered to address any matters connected with discrimination under broad, international non-discrimination standards. As for the latter proposal to expressly authorise EOC to examine any proposed legislation that it considered might affect equality of opportunity in relation to disability and reporting results to legislation's sponsor, she pointed out that the proposed subclause gave the EOC an express, statutory role in respect of proposed legislation. A similar role was conferred on the Privacy Commissioner under cl.8(1)(d) of the Personal Data (Privacy) Bill. She recalled that the Administration, in responding to the parallel amendment to the SDB, pointed out that the EOC already had a general function to promote equality of opportunity between men and women. In this connection, the EOC could also examine proposed legislation. The Administration therefore did not see the need to provide explicit provisions in this regard.

17. The Bills Committee agreed to put forward the two CSAs but would redraft it to avoid charging effect.

Clause 65(4) (ref. no. 23)

18. The Administration undertook to discuss with Ms Anna

Adm.

WU on the proposed amendment to enable EOC to carry out an investigation into named persons or organisations for any purpose connected with its functions, irrespective of whether it believed unlawful acts had occurred. The Bills Committee therefore agreed to hold the proposed CSA pending the outcome of discussion, but would move the CSA if the Administration did not accept it.

Clause 70(3)-(4) (ref. no. 26)

19. Regarding the proposed amendment to empower a court in proceedings and the Bill to order any remedy the court considered just and appropriate, including reinstatement, Ms WU opined that, because of the scarcity of jobs available for people with a disability reinstatement was particularly important for the DDB. The remedy should therefore be made available now at the discretion of the court. The Administration undertook to consider the proposal in view of the special circumstances for people with a disability.

Adm.

New clause - "cap" on damages

20. The Administration stated that it would move a CSA to propose a \$150,000 "cap" on damages to tie in with what had been passed by the LegCo for the SDB.

Adm.

21. Members were concerned about the lack of policy justifications on the "cap" on damages and requested the Administration to consult disability groups on the proposal. At a Member's request, the Administration undertook to seek legal advice as to whether the proposed cap would be inconsistent with the Hong Kong Bill of Rights Ordinance (BORO). It was also requested to furnish the Bills Committee with the legal advice on this subject in relation to the SDB.

Adm.

Clause 70(5) (ref. no. 27)

22. Members noted that parallel amendment to the SDB had been voted down by the LegCo. Ms WU, however, considered the proposed amendment to delete bar against damage awards for indirect discrimination in cases of unintentional discrimination necessary as similar provisions in UK law had been repealed after being found inconsistent with European human rights standards. The Bills Committee supported this proposed amendment.

Three new clauses, clauses 78 and 79 (ref. no. 30-34)

23. Ms WU said that the proposed amendments related to the following three EOC's powers -

- (a) Power to bring proceedings in its own name.
She said that the Administration accepted this power for the SDB but its CSA empowered SHA to provide by subsidiary legislation rather than providing this power in the principal ordinance. This power, however, did not cover situations where there were inconsistencies with the BORO as it related to sex discrimination. The Administration considered the Bills Committee's parallel amendment to the SDB to have charging effect, but the President of LegCo ruled to the contrary in view of a court case decision that the UK EOC's implied power to bring judicial review proceedings would flow from its duty to work towards the elimination of discrimination, which was also one of the EOC's duties according to the SDB and the DDB.
- (b) Power to conciliate complainants inconsistent with relevant international instruments and obligations as they related to disability discrimination; and
- (c) Power to take over proceedings in its own name.

24. Despite the defeat of parallel amendments to the SDB, the Bills Committee supported these proposed amendments to the DDB.

Clause 80(4) (ref. no. 36)

25. Although parallel amendment to the SDB had been voted down by the LegCo, Ms WU considered the proposed amendment, i.e. time in conciliation did not count against the time allowed to bring legal proceedings, necessary so as to provide an aggrieved person adequate time for conciliation and not to flood the court with cases. She recalled that a disability group suggested that a period of six years from the act complained of should be allowed for a person to bring legal proceedings. The Administration was therefore requested to accept this proposal having regard to the special needs of

people with a mental impairment or people who could not be able to help himself or herself. She pointed out that a complainant in conciliation should not need to commence proceedings (possibly disrupting conciliation) merely to be certain of preserving the right to litigate if conciliation failed.

26. The Administration did not support the disability group's suggestion. It pointed out that, in line with the Administration's parallel amendment in the SDB which had been approved by LegCo, a CSA would be put forward to extend the period to two years and the District Court was empowered under clause 80(3) to consider any claim or application which was out of time if, having regard to the circumstances stated in clause 80(4), the court considered it to be just and equitable to do so. The Administration believed that the District Court, though not duty bound to consider any such claims or applications, would not act unreasonably in the exercise of the power under clause 80(3).

Clause 82(2) and schedule 7 (ref. no. 38)

27. Noting that parallel amendment in the SDB had not been considered by the LegCo due to charging effect, the Bills Committee agreed to drop the proposed amendment.

Legislative Timetable

28. The Chairman reminded Members and the Administration that the deadline for giving formal notice of CSAs was 17 July 1995 if the Bill resumed Second Reading debate on 26 July 1995. He requested the final draft CSAs to be ready latest by 12 July 1995 so that they could be submitted with the report of the Bills Committee to the House Committee meeting on 14 July 1995.

III. CSAs on the three new EOBs

29. Ms Anna WU proposed the following changes to the amendments to the new EOBs:

- (a) The clauses on waiver of means test in relation to application for legal aid would be withdrawn due to the likely charging effect.
- (b) The clauses on the effective date of the new EOB would be deleted.

- (c) Since the Bills Committee's proposal to impose a time-limit for the Administration to review exception in the Bill (one year in the first instance, subject to extension by LegCo resolution) was defeated in LegCo, Ms WU suggested, in relation to the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, a new clause exempting age discriminatory laws and acts done under their authority, to expire in two years, and might be extended up to another two years, subject to LegCo resolution. The purpose of this temporary exemption was to give Government time for orderly review and revisions.

30. The Chairman drew Member's attention to the CSAs to the new EOBs tabled at the meeting (copy at Appendix II). He reminded Members that the deadline for formal notice of CSAs to the new EOBs was 10 July 1995. He pointed out the Administration had not made any specific comments on the Bills so far nor had it indicated that it would move any amendments.

IV. Date of next meeting

31. The next meeting was scheduled to be held on 7 July 1995 at 10:45 a.m. in the Chamber of the Legislative Council Building.

32. The meeting ended at 12:55 p.m.

LegCo Secretariat
8 September 1995

Ref : HB/C/61

**Bills Committee to study
the Equal Opportunities Bill,
the Sex Discrimination Bill and
Disability Discrimination Bill**

**Notes of Meeting held on
Friday, 7 July 1995 at 10:45 a.m.
in Chamber of the Legislative Council Building**

Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Dr Hon YEUNG Sum (Deputy Chairman)
Hon HUI Yin-fat, OBE, JP
Dr Hon Conrad LAM Kui-shing, JP
Hon Emily LAU Wai-hing
Hon Zachary WONG Wai-yin
Hon Roger LUK Koon-hoo
Hon Anna WU Hung-yuk
Hon LEE Cheuk-yan

Absent with : Hon Mrs Selina CHOW, OBE, JP)
apologies Hon TAM Yiu-chung)
Hon Andrew WONG, OBE, JP)
Hon Ronald Arculli, OBE, JP) Other
Hon Mrs Miriam LAU Kin-yee, OBE, JP) commitments
Hon J D McGregor, OBE, ISO, JP)
Hon Moses CHENG Mo-chi)
Rev Hon FUNG Chi-wood)
Hon Simon IP Sik-on, OBE, JP)
Hon Eric LI Ka-cheung, JP)
Hon LI Wah-ming)
Hon James TO Kun-sun)

By invitation :

The Administration

Ms A E Shepherd
Principal Assistant Secretary for Health & Welfare

In attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Anna LO
Chief Assistant Secretary (Bills Committees)2
Clerk to the Bills Committee

Mr Colin CHUI
Senior Assistant Secretary (Bills Committees)2

Action
Required

**I. Confirmation of notes of meeting held on 16 June 1995
(LegCo Paper No. HB 1099/94-95)**

The captioned notes of meeting were confirmed.

II. CSAs to the new Equal Opportunities Bills

2. Ms Anna WU said that she was considering moving CSAs to empower the Secretary for Home Affairs (SHA) to make regulations, which would be subject to the approval of the LegCo, to provide transitional exceptions from the Bills' employment provisions for different categories of businesses. SHA would have considerable flexibility in defining the categories of businesses covered and in determining the scope and duration of the temporary exemptions created. Noting that the deadline for formal notice of CSAs was 10 July 1995, the Chairman said that the Administration had not provided any specific comments on the Bills nor had it indicated that it would move any CSAs.

III. Meeting with the Administration

3. The Chairman drew Members' attention to the

following papers: (the first three papers had been tabled at the meeting and copy of them were at Appendices I - III to these notes)

- (a) a written submission dated 6 July 1995 from the Hong Kong Council of Social Service (Paper (a));
- (b) letter from the Advisory Council on AIDS of the same date on the provisions relating to requests for information and Dr Conrad LAM's proposed CSAs in this regard (Paper (b));
- (c) the Administration's letter of the same date regarding points raised at the last meeting (Paper (c)); and
- (d) list of possible amendments to the DDB at Appendix II to LegCo Paper No. HB 1000/94-95. (Paper (d))

The salient points of discussion between Members and the Administration are stated below:

Matter Arising

New clause: Government (ref. no. 14 of Paper (d))

4. Having taken legal advice, the Administration decided to adopt the same amendment as passed by the Legislative Council for the SDB, on 28 June, prohibiting discrimination on the part of Government in the performance of its functions or the exercise of its powers. In response to the Chairman's enquiry, the Administration pointed out that construction of government roads was covered under this new clause.

5. Ms Anna WU pointed out that the Administration's parallel amendment to the SDB provided exceptions for any act done under immigration legislation and any act done to comply with a existing statutory provisions. She considered these exceptions unnecessary and preferred the wording in EOB (cl. 27).

6. Although a similar CSA by the Bills Committee to the SDB was not supported, the Bills Committee considered that it

should be viewed from a different perspective when applied to disability discrimination and therefore agreed to move its own CSA in this regard.

Clause 56 (ref. no. 19 of Paper (d))

7. The Administration decided to delete this clause from the Bill as requested by the Bills Committee.

Clause 58 (ref. no. 20 of Paper (d))

8. The Administration decided to retain clause 58 and pointed out that amendment to the currently empty schedule 5 referred to in clause 58 would be subject to the approval of the Legislative Council.

9. In the light of the LegCo's power of approval, the Bills Committee agreed to drop the proposed amendment.

Clause 70 (3)-(4) (ref. no. 26 of Paper (d))

10. The Administration stated that although reinstatement as a remedy was provided in the United Kingdom against unfair dismissal of employees, experience there had shown that there were many enforcement problems. In general, where a case of alleged unfair dismissal was brought to the court, the relations between the employee and the employer would have broken down to such an extent that reinstatement would not be a welcome remedy to either party. Compensation should therefore be the appropriate remedy. Moreover, the question of reinstatement had been addressed in a review of labour relations conducted by Secretary for Education and Manpower and legislative proposals to take forward the review would be introduced into the Legislative Council in the next session.

11. The Bills Committee considered that, because of the scarcity of jobs available for people with a disability, reinstatement was particularly important for the DDB. The remedy should therefore be made available now at the discretion of the court. The Bills Committee was therefore agreeable to put forward the CSA in question.

New clause: "cap" on damages (Paper (c))

12. In response to a Member's enquiry at the last meeting,

the Administration pointed out that an amendment to provide a “cap” on damages would not be inconsistent with the ICCPR.

13. Noting that an amendment regarding “cap” on damages moved by a Member had been passed for the SDB, the Administration stated that it was reconsidering whether to put forward those CSAs whose parallel amendments to the SDB were not moved by the Administration but passed by the LegCo. In reply to Members’ concern, the Administration would, if it supported a “cap” on damages, justify its position in writing before the resumption of Second Reading debate of the Bill.

(Post-meeting note: The Administration decided not to move the CSAs mentioned in para. 13)

Clause 39 (Paper (c))

14. The Administration undertook to amend the clause in the light of the points raised by disability groups including Papers (a) and (b). The amendment would state that where it would be unlawful for an employer to discriminate against an applicant for a job with a disability e.g. by refusing him or her employment, it would be unlawful for the employer to request medical information, unless it were necessary to determine whether they could carry out the inherent requirements of the job.

Clause 49 - Insurance

15. In reply to the Chairman enquiry as to whether a person with a disability, such as a person who was HIV-positive, would not be discriminated in seeking insurance coverage, the Administration stated that, under clause 49, it would not be unlawful if an insurer discriminated (i.e. effected differential treatment) against a person with a disability regarding his insurance coverage, should the treatment be reasonable and effected by reference to actuarial data.

Clause 65(4) (ref. no. 23 of Paper (d))

16. The Administration would examine the clause to see if amendment would be required to cater for the concern that people with a disability (such as those with a mental impairment), in giving information or evidence in connection with a formal investigation, could be particularly vulnerable in the circumstances.

Adm.

those supported by the Bills Committee but rejected by the Administration.

24. The Chairman said that the Bill was to resume Second Reading debate on 26 July 1995 and the formal deadline for CSAs was 17 July 1995. He added that the final draft CSAs would have to be ready by 12 July 1995 for them to be submitted together with the Bills Committee report for consideration by the House Committee on 14 July 1995.

V. Vote of thanks

25. The Chairman thanked Members, Assistant Legal Adviser 4, and the LegCo Secretariat for their contribution to the work of the Bills Committee.

26. The meeting ended at 11:55 a.m.

LegCo Secretariat
8 September 1995

Clause 70(5) (ref. no. 27 of Paper (d))

17. The Bills Committee agreed to put forward the CSA in question.

New clause (ref. nos 30&31 of Paper (d))

18. In response to a Member's enquiry, the Administration reiterated that it would, in line with the parallel amendment to the SDB as approved by LegCo, put forward a CSA to empower EOC to bring proceeding in its own name with respect to any act or practice made unlawful by the Bill but details of the power would be specified by SHA by means of subsidiary legislation (ref. no. 30). To facilitate its consideration of the Bills Committee's proposed amendments, the Administration requested the Bills Committee to provide it with any relevant information, such as the wording of the Bills Committee's parallel amendments to the SDB and the UK case referred to in the deliberation of charging effect of the parallel amendment to the SDB.

19. Members agreed to put forward the CSAs parallel to those to the SDB if the Administration did not support them.

New clause (ref. no. 32 of Paper (d))

20. Noting that the charging effect of the parallel amendment to the SDB was a technical point and might not be insurmountable, the Bills Committee agreed to put forward a new clause empowering the EOC to intervene by leave of court in any proceedings under the Bill.

Clause 78 (ref. no. 33 of Paper (d))

21. Members agreed to drop the two proposed amendment in view of the charging effect of parallel amendments to the SDB.

Clause 79 & 80 (ref. nos 34 and 36 of Paper (d))

22. The Bills Committee agreed to move the proposed amendments if the Administration did not support them.

IV. Conclusion

23. Noting that the Administration would move those CSAs proposed/accepted by it, the Bills Committee agreed to move

Ref : CB2/BC/55/95

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill and
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

**Minutes of Meeting
held on Wednesday, 15 January 1997 at 2:15 pm
in Conference Room B of the Legislative Council Building**

- Members Present** : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Dr Hon John TSE Wing-ling (Deputy Chairman)
Hon LAU Wong-fat, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon Emily LAU Wai-hing
Hon Zachary WONG Wai-yin
Hon LEE Cheuk-yan
Hon CHEUNG Hon-chung
Hon Albert HO Chun-yan
Hon LAU Chin-shek
Hon LEUNG Yiu-chung
Hon NGAN Kam-chuen
- Members Absent** : Hon Christine LOH Kung-wai
Hon CHAN Yuen-han
Hon Bruce LIU Sing-lee
Hon LO Suk-ching
- Clerk in Attendance** : Mrs Anna LO
Chief Assistant Secretary (2) 2
- Staff in Attendance** : Mrs Eleanor CHOW
Senior Assistant Secretary (HC)
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I. Election of Chairman

Dr LEONG Che-hung and Dr TSE Wing-ling were respectively elected Chairman and Deputy Chairman of the Bills Committee.

II. Invitation of representations

2. The Chairman suggested and Members agreed that the following parties be invited to give views on the three Members' Bills -

a) The Administration;

b) The Equal Opportunities Commission; and

Clerk

c) Organisations and individuals who had sent in written submissions on the Equal Opportunities Bill, the Sex Discrimination Bill and the Disability Discrimination Bill be invited to give new/additional views, if any.

3. Members also agreed that previous submissions together with new submissions be circulated to members for information.

III. Date of next meeting

4. The Chairman anticipated that the Bills Committee could be activated in the near future. He suggested that the three Members in charge of the Bills, the Administration and the Equal Opportunities Commission be invited to attend the next meeting. Members would be informed of the date of the next meeting in due course.

5. The meeting ended at 2:22 p.m.

LegCo Secretariat

31 January 1997

Ref : CB2/BC/55/95

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill and
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

**Minutes of the 2nd Meeting
held on Monday, 3 March 1997 at 2:30 pm
in the Chamber of the Legislative Council Building**

Members Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Dr Hon John TSE Wing-ling (Deputy Chairman)
Hon Emily LAU Wai-hing
Hon Zachary WONG Wai-yin
Hon Christine LOH Kung-wai
Hon LEE Cheuk-yan
Hon CHAN Yuen-han
Hon LAU Chin-shek
Hon LEUNG Yiu-chung
Hon Bruce LIU Sing-lee

Members Absent : Hon LAU Wong-fat, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon CHEUNG Hon-chung
Hon Albert HO Chun-yan
Hon LO Suk-ching
Hon NGAN Kam-chuen

Public Officers Attending : Mrs Stella HUNG
Deputy Secretary for Home Affairs

Mr Matthew CHEUNG
Deputy Secretary for Education and Manpower Branch (1)

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Mr NG Hon-wah
Principal Assistant Secretary for Home Affairs (2)

Mr Augustine CHOI
Commissioner for Rehabilitation

Miss Helen TANG
Principal Assistant Secretary for Home Affairs (3)

Ms Esther LEUNG
Principal Assistant Secretary for Education and Manpower

Mrs Clare SIU
Assistant Commissioner for Labour

Attendance : Mr Adam MAYES
by Invitation Personal Assistant to Hon Christine LOH

Ms CHEUNG Yuet-fung
Personal Assistant to Hon LAU Chin-shek

Clerk in : Mrs Anna LO
Attendance Chief Assistant Secretary (2) 2

Staff in : Mr Stephen LAM
Attendance Assistant Legal Adviser 4

Mr Colin CHUI
Senior Assistant Secretary (2) 2

**I. Confirmation of minutes of last meeting and matters arising
(LegCo Paper No. CB(2)1125/96-97)**

The minutes of meeting held on 25 January 1997 were confirmed.

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II. Briefing by Mr LAU Chin-shek on the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and response of the Administration
(Paper No. CB(2)1393/96-97 tabled by Mr LAU Chin-shek)
(Paper No. CB(2)1258/96-97 provided by the Administration)
(Paper No. CB(2)1377/96-97(01) provided by the Equal Opportunities Commission (EOC))

2. Referring to his paper, Mr LAU Chin-shek briefed members on the main provisions of the Bill and his response to the Administration's position on it.

3. The Administration supported the elimination of all kinds of discrimination. However, having conducted studies into and consulted the public regarding discrimination on the grounds of family responsibility, sexuality and age, the Administration did not believe the enactment of Mr LAU's Bill was appropriate.

Family responsibility

4. Mr LAU Chin-shek said that the Domestic Violence Ordinance, Wills Ordinance and Employees' Compensation Ordinance covered non-matrimonial relationship. The Administration, however, objected to inclusion of co-habitation and de-facto spouse in the definition of family responsibility. The reason for the objection was that the Administration only recognised husband-and-wife relationship under the marital system, and relationships by consanguinity and affinity. To make an absolute distinction between matrimonial and co-habiting relationships was not only unjustified, but also against the spirit of the existing laws. The protection provided by the Bill to an individual was subject to a genuine discharge of his or her family responsibility on the basis of a truthful family life. As such, persons with matrimonial and co-habiting relationships should be equally protected under the Bill.

5. The Administration pointed out that, in view of clear public support for legislation, it planned to introduce into the Legislative Council (LegCo) a bill to eliminate discrimination on the ground of family status by April 1997. Like the Sex Discrimination Ordinance (SDO), the bill would outlaw discrimination in the areas of employment, education, disposal and management of premises, provisions of goods and services as well as activities of clubs and government. The Administration stated that, according to its public consultation exercise carried out in early 1996, an overwhelming majority of respondents (over 90% of the 8,000 submissions received) had expressed strong reservation and disapproval to giving legal recognition to co-habitation and de-facto spouse respectively. As such, co-habitation and de-facto spouse would not be covered in the bill.

Sexuality

6. Mr LAU Chin-shek said that legislators of the current and the last terms had noted the concern among some members of the public that the Bill, once passed, might encourage homosexual behaviours. He considered that sexuality was not the result of nurture, encouragement or moulding. The enactment of legislation on the subject would establish a moral standard for the community, penalise and deter discriminatory acts and prompt the Administration to implement relevant policies for the protection of rights of the public. To protect homosexuals from discrimination through legislation would not encourage homosexuality. Similarly, legislation on divorce was not enacted for the purpose of advocating divorce. Rather, it aimed at relieving the pain of couples who were unable to maintain matrimonial relationship. If some members of the community were concerned about the sexuality aspect of the Bill, legislators should enlighten them rather than taking the public's misconception as the basis for casting votes.

7. Mr LAU Chin-shek added that the Administration intended to use the rate of response to its consultation paper as an indicator of the need for legislation against discrimination on the grounds of sexuality and age. It, however, did not take into consideration the spirit of anti-discrimination legislation to protect the aggrieved persons. It was immoral and unjust for those who were not victims of discrimination to decide not to pass legislation to protect the aggrieved persons. Every one had a right not to be discriminated. Both public education and anti-discrimination legislation were important in eliminating discrimination.

8. Representatives of the Administration said that the Administration conducted a study and public consultations on this issue in 1995/96, and announced its findings in June 1996. In the course of the study and consultations, the Administration kept an open mind on the merits of legislation and other options. More than 10,000 submissions were received and an overwhelming majority (85%) opposed legislation. Instead, they supported administrative measures such as public education to promote the principle of equal opportunities and enhanced support services for sexual minorities. The Government therefore would neither put forward nor support anti-discrimination legislation in this area. Referring to para 5 of the Administration's paper, representatives of the Administration briefed members on the administrative measures the Administration had taken and stated that all these efforts would continue.

9. On the question of whether respondents opposing legislation considered that discrimination on the ground of sexuality existed in Hong Kong, the Administration pointed out that there were divergent views on this issue. A member held the view that since such discrimination existed in the territory, anti-discrimination legislation,

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as well as other administrative measures, was necessary to tackle the problem as soon as possible.

10. Some members considered that the findings of the public consultation exercise, including those of a questionnaire on homosexuality, were misleading. The Administration should take into account protection of rights of the sexual minorities, which was consistent with the principles of democracy, in determining the necessity of legislation against discrimination in this area.

11. The Administration did not consider the findings misleading. In fact, the submissions received as well as the findings were set out in detail in a compendium. The 1996 consultations indicated strong public opposition to anti-discrimination legislation in this area; its introduction at the present time would therefore be premature. It hoped that members would wait and see the result of the measures that the Administration was taking to address this area of discrimination before considering the necessity of legislation. In reply to the Chairman, the Administration pointed out that it had not set any particular percentage as an indicator of clear public support for legislation.

12. Some members considered that public perception of the sexual minorities might not change and there might still be about 70% of the public opposing legislation in this area some years after. Representatives of the Administration believed that public education could address common misunderstanding about the sexual minorities and gain better acceptance of their right to equal opportunities.

13. A member enquired whether sexuality was, as suggested by Mr LAU Chin-shek, not the result of nurture, encouragement or moulding. The Administration responded that there was no conclusive medical view on whether sexuality was by nature or by nurture.

Adm 14. On the question of the number and sources of the pre-printed opinion forms in response to the consultative paper on sexuality, the Administration pointed out that a total of 9,829 pre-printed opinion forms were received. 85 % of these submissions indicated strong opposition to legislation in respect of sexual orientation. It would provide members with the compendium of submissions in respect of the consultation paper.

(Post-meeting note: The compendium of submissions in respect of the consultative documents on discrimination on the grounds of family status and sexual orientation was circulated to members vide LegCo Paper No.CB(2)1536/96-97.)

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Age

15. Mr LAU Chin-shek said that the Administration only stressed on the low response rate to the public consultation paper on age discrimination in deciding not to introduce age discrimination legislation. But a survey commissioned by the Administration revealed a higher unemployment rate of people aged 45 or above. People of this age group had a lower pay increase and a higher chance of dismissal. Very few of them were in posts with promotion prospects. For each of the three surveys on job advertisements conducted by the Labour Department, there were over 3,000 advertisements with age requirements. In determining whether legislation against age discrimination should be introduced, the Administration did not take into consideration evidence and information on age discrimination revealed in the surveys conducted by academics, women organisations and labour unions. He reiterated the points in para 7 and stressed that both public education and anti-discrimination were important in eliminating discrimination.

16. Representatives of the Administration pointed out that the low response rate to the public consultation paper (with only 68 submissions received by the end of the two-month consultation period) indicated that discrimination in employment on the ground of age was not a pressing issue to the community. There were also divergent views as to whether age discrimination legislation should be introduced. Based on the outcome of public consultation conducted by the Administration last year, it had informed Members of its view that a sustained programme of public education, publicity and self-regulation would be the most appropriate way to deal with discrimination in employment on the ground of age. They should be more effective in changing attitudes than legislative sanctions; and the purpose of the relevant clauses in the Bill could be achieved by strengthening the Administration's current and planned activities in the following areas - (a) publicity and public education measures; (b) practical guidelines for employers; (c) employment services; and (d) retraining.

(Post-meeting note: Strengthening of the Government's current and planned activities in the four areas was described in detail in a letter of 3 March 1997 from the Secretary for Education and Manpower to all LegCo Members.)

17. The Administration pointed out that it would review the situation after the public education programme had been running for a period of time, say, one year. If there was no improvement, it would seriously consider the need for legislation.

18. Representatives of the Administration added that in the consultation exercise, members of the public were also invited to comment on any other areas where they believed age discrimination was an issue. Very few comments were received.

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Age requirements in job advertisements

19. On the question of age requirements in job advertisements, the Administration pointed out that employers placing vacancy orders with the Labour Department's Local Employment Service were not allowed to specify any age requirements. The Administration would continue to call on employers to consider ability, not age, in employment situations.

20 A member enquired the criteria to justify legislation against age discrimination. The Administration responded that opinion polls on the necessity for a legislative approach would be conducted some time after the launch of the sustained programme of public education, publicity and self-regulation. The Administration would take into account these views in deciding the way forward.

Overseas experience

21. A member said that, when a LegCo delegation visited Australia and New Zealand in 1996, representatives of the two governments said that they had difficulties in enforcing legislation in this area. Nevertheless, they considered that both anti-discrimination legislation and public education were required to eliminate discrimination in this area. The Administration pointed out that a large number of countries such as those in the European Union did not have legislation on age discrimination. As stated in the Administration's consultation paper on discrimination in employment on the ground of age, the European Union had non-binding resolutions which, among other things, called for the strict application of the principle of equal opportunities and equal treatment for older workers. At a member's request, the Administration undertook to check whether European Union countries had specific age discrimination legislation. The Administration reiterated its decision to launch a sustained programme of public education, publicity and self-regulation and its undertaking to review the situation as set out in para 16 and 17 of the minutes.

Adm

Involvement of EOC

22. Regarding the resource implications on the implementation of the Bill if it were passed by LegCo, the Administration pointed out that as no resources were earmarked to implement the Bill, EOC would not be involved in the implementation of the Bill. Indeed, to involve EOC would have a charging effect. Mr LEE Cheuk-yan said that the Hong Kong Confederation of Trade Unions agreed with EOC that it would be desirable for the Commission to be charged with the function of implementing the Bill. In response to Mr LEE's enquiry, ALA4 advised that, under Standing Order (SO) No. 45(6)(c), the Governor could expressly authorise or permit a Member to put

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Adm forward an amendment which may have a charging effect. The Administration undertook to seek the Attorney General's Chambers' advice on the issue.

23. A member opined that the Administration should show its sincerity in eliminating age discrimination by allowing EOC to be involved in implementing the Bill. The Administration responded that its sincerity was simply demonstrated by the strengthening of its current and planned promotional and educational activities such as its first Announcement of Public Interest calling on employers to consider ability (not age) in employment situations, \$2 million earmarked each year for a sustained public education and promotion campaign and the practical guidelines for employers on how to eliminate age discrimination in employment. The Administration would take the lead in involving the employers' associations, trade unions, employee groups and LegCo Members in the exercise.

Consequential amendments to section 3 of the Bill of Rights Ordinance (BORO)

Adm 24. In reply to the Chairman, the Administration pointed out that the provision in clause 103 of the Bill (proposed amendment to section 3 of the Hong Kong Bill of Rights Ordinance) was not consequential to the Bill and its long title. In this respect, it offended clause XXV of the Royal Instructions on intermixing in the same ordinance subject matters that "have no proper relation to each other". It supplemented that the Law Draftsman's certificate was only on the format of a Member's bill rather than its content. ALA4 advised that the certificate was issued pursuant to SO 39(1A) if the Law Draftsman was satisfied that a Member's bill conformed to the requirements of SO 38 (Form of Bills) and the general form of Hong Kong legislation. The phrase "general form of Hong Kong legislation" had a wide meaning and clause XXV of the Royal Instructions only required the Governor and the Legislative Council (LegCo) to observe, "as far as practicable", Rules set out in the clause. The Administration undertook to seek legal advice on the issue.

(Post-meeting note : The Administration's legal advice on the issue was set out in its letter to the President of LegCo which was tabled at the Bills Committee meeting on 17 March 1997 (LegCo Paper No. CB(2)1570/96-97 referred).)

III. Briefing on the Equal Opportunities (Race) Bill and response of the Administration

(Paper No. CB(2)1369/96-97(02) provided by Mrs Elizabeth WONG)

(Paper No. LS206/95-96 provided by the Legal Service Division of the LegCo Secretariat)

(Paper No. CB(2)1258/96-97 provided by the Administration)

(Paper No. CB(2)1377/96-97(01) provided by EOC)

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25. As Mrs Elizabeth WONG who was the Member in charge of the Bill was out of town, the Chairman invited ALA4 to brief members on the Bill. Referring to Mrs WONG's paper and the Legal Service Division report, ALA4 took members through the main provisions of the Bill.

26. Representatives of the Administration said that a consultation paper "Equal Opportunities : a study on Discrimination on the Ground of Race" was published on 19 February 1997 to solicit public views on the subject. On the question of international obligation to have legislation against racial discrimination, the Administration pointed out that its study on racial discrimination had the support of the United Nations Committee on the Elimination of Racial Discrimination (CERD) which considered that, where racial discrimination was found to exist, the study could serve as an important basis for the development of solutions. The Administration maintained an open mind on the merits of legislation and other options. It hoped that members would take account of CERD's view and await the outcome of the consultation exercise before deciding whether legislation was required. While the time required to analyse the public views depended on the number of submissions received, the Administration had undertaken to report back to LegCo within the current session. A member said that there was an international obligation to enact laws against discrimination and the United Nations Human Rights Committee which was responsible for the implementation of the International Covenant on Civil and Political Rights (ICCPR) did encourage and remind the Hong Kong Government to do so.

Impact on immigration law and policy

Adm

27. In reply to the Chairman, the Administration undertook to provide more information and examples on the impact of the Bill on immigration law and policy set out in para 5 of its paper.

Consequential amendments to section 3 of BORO

28. The Administration reiterated its undertaking in para 24 that it would seek legal advice on the issue.

(Post-meeting note : The Administration's legal advice on the issue was set out in its letter to the President of LegCo which was tabled at the Bills Committee meeting on 17 March 1997 (LegCo Paper No. CB(2)1570/96-97 referred).)

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IV. Briefing by Miss Christine LOH on the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and response of the Administration (Paper No. CB(2)1369/96-97(01) provided by Miss Christine LOH) (Paper No. CB(2)1258/96-97 provided by the Administration) (Paper No. CB(2)1377/96-97(01) provided by EOC)

29. Miss Christine LOH briefed members on the main provisions of the Bill. She was disappointed that EOC did not comment on the provisions of the Bill. She considered that EOC evaded its responsibility, by taking the view that it was premature to consider amending any of the existing provisions of SDO and the Disability Discrimination Ordinance (DDO) without local operational experience and that changes to the two Ordinances should only be made after the development of local experience and after comprehensive review by EOC proposed to be conducted in December 1997.

30. Miss LOH's response to the comments by the Administration and EOC on the Bill was as follows -

- (i) While some of the international instruments and international obligations the Bill sought to introduce were not binding on Hong Kong, the Administration agreed that it was an implied position that they were related to Hong Kong. The Bill provided an express option to allow EOC to promote international standards relevant to the two Ordinances when it considered necessary.
- (ii) With the introduction of a new definition for "indirect discrimination", the existing test used to identify indirect discrimination would be replaced by a simplified test used in recent Australian legislation. The reasons for changing the existing test, which was copied from legislation of the United Kingdom (UK) and had been criticised by UK EOC, was explained in para 7 of her paper.
- (iii) One of the proposed deletions of exceptions was in clause 11 which sought to remove the exception for acts safeguarding security of Hong Kong. The Administration had not made clear what acts the exception was intended to authorise, but an act done for the purpose of "safeguarding security" fell within its scope regardless of whether that act was reasonable or was necessary to achieve the purpose. She hoped that the Administration would provide more information and examples to explain the exception.

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- (iv) She requested the Administration to explain in detail the reasons for opposing to the proposed expiry of the existing exception provisions after a maximum of two years following the enactment of the Bill.
 - (v) As it was anticipated that the grace period for small employers would expire in a year or so when the Second Reading of the Bill was resumed, members might decide whether the proposed shortening of the grace period for small employers under the Bill would still be required.
 - (vi) The re-definition of remedies available to civil claimants under SDO included, inter alia, the addition of reinstatement and removal of \$150,000 cap on damages.

31. The Administration stated that it did not support the Bill. As SDO and DDO were only fully commenced on 20 December 1996, the Administration firmly believed that it would be desirable to wait for some practical experience of their operation before coming to a view as to whether any amendments to these Ordinances were appropriate. Besides, EOC had just started to introduce and promote provisions in the two Ordinances to the community. It would certainly cause confusion to the public if a bill was put forward to amend the Ordinances. It was one of the duties of EOC, which was established to implement and promote the two Ordinances, to put forward necessary or desirable amendments to the Ordinances. As EOC had undertaken to conduct a review of the Ordinances one year after their full operation, the Administration hoped that members would wait until the outcome of EOC's review was available. The Administration would explain its position on the individual clauses of the Bill at later meetings of the Bill Committee.

32. Given that EOC undertook to review the Ordinances one year after their operation, a member would like to know which of the proposed amendments were on matters of principle and would not be withdrawn notwithstanding the outcome of the review. Miss LOH pointed out that the clause on indirect discrimination was an example of such amendments. As explained in para 6-7 of her paper, the UK experience indicated that the existing test used to identify indirect discrimination, which was copied from UK law, should be changed. Clauses on removal of exception for security in Hong Kong, removal of \$150,000 cap on damages and addition of reinstatement as a civil remedy under SDO were other examples of such amendments.

33. On the question of \$150,000 cap on damages under SDO, representatives of the Administration said that addition of the cap in the Sex Discrimination Bill was put forward by a Member rather than the Administration and passed in LegCo in 1995. Regarding the availability of remedy of reinstatement under DDO but not SDO, it pointed out that the two Ordinances handled different issues. The Administration

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reiterated that it would explain in detail its position on the individual clauses during the clause-by-clause examination of the Bill.

V. Way Forward

34. Members agreed that the three Bills would be studied in the following order -

- (a) Equal Opportunities (Family Responsibility, Sexuality & Age) Bill.
- (b) Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996.
- (c) Equal Opportunities (Race) Bill.

VI. Date of next meeting(s)

35. The Bills Committee decided that the coming meetings would be held as follows -

<u>Date and Time</u>	<u>Venue</u>	<u>Purpose</u>
Tuesday, 11 March 1997 (4:30 pm)	Chamber	Meeting with deputations
Monday, 17 March 1997 (4:30 pm)	Chamber	Examination of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

36. The meeting ended at 4:43 pm.

LegCo Secretariat

4 April 1997

Ref : CB2/BC/55/95

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill and
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

**Minutes of the 3rd Meeting
held on Tuesday, 11 March 1997 at 4:30 pm
in the Chamber of the Legislative Council Building**

Members Present : Dr Hon John TSE Wing-ling (Deputy Chairman)
Hon Emily LAU Wai-hing
Hon LEE Cheuk-yan
Hon CHAN Yuen-han
Hon Albert HO Chun-yan
Hon LAU Chin-shek
Hon LEUNG Yiu-chung
Hon Bruce LIU Sing-lee

Members Absent : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon LAU Wong-fat, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon Zachary WONG Wai-yin
Hon Christine LOH Kung-wai
Hon CHEUNG Hon-chung
Hon NGAN Kam-chuen

Attendance by Invitation : The British Chamber of Commerce in Hong Kong

Mr Brigadier Christopher Hammerbeck CB
Executive Director

Federation of Hong Kong Industries

Mr Roger TAM
Administrative Officer

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Hong Kong Council of Social Service

Mr CHONG Chan-yau
Representative of the Committee on Disability
Discrimination Ordinance

Mrs Julie LEE
Representative of the Committee on Disability
Discrimination Ordinance

Mrs TSANG WONG Wai-kuen
Representative of the Committee on Disability
Discrimination Ordinance

Miss Stella HO
Representative of the Committee on Disability
Discrimination Ordinance

The Hong Kong Association of Business and Professional
Women (BPW)

Ms Carole PETERSEN
Member of Hong Kong BPW's Public Affairs Committee

Ms Anne GODFREY
Past President of Hong Kong BPW and Member of BPW's Public
Affairs Committee

Hong Kong Women's Coalition on Equal Opportunities

Ms Rose WU
General Secretary
Hong Kong Women Christian Council

Ms LAM Wai-ha
Representative of the Association for the Advancement of
Feminism

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Movement Against Discrimination

Mr MAK Hoi-wah
Chairman

Mr Robin ADAMS

Mr Adam MAYES
Personal Assistant to Hon Christine LOH

Ms CHEUNG Yuet-fung
Personal Assistant to Hon LAU Chin-shek

Clerk in Attendance : Mrs Anna LO
Chief Assistant Secretary (2) 2

Staff in Attendance : Mr Colin CHUI
Senior Assistant Secretary (2) 2

As the Chairman was not available for the meeting due to other commitments, the Deputy Chairman took the chair. He informed members that Mr LO Suk-ching had withdrawn from the Bills Committee with immediate effect.

I. Meeting with deputations

The British Chamber of Commerce in Hong Kong (the Chamber)
(LegCo Paper No.CB(2) 1382/96-97(03))

2. Representative of the Chamber highlighted the following points -

- (a) Public education was important in eliminating discrimination in areas covered in the three Bills.
- (b) The Chamber was concerned about the lack of facilities for people with a disability to have access to premises.

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- (c) Companies with less than 20 employees should be exempted from any form of discrimination on the ground of family status.

3. On the question of the Chamber's position regarding discrimination on the ground of sexual orientation, representative of the Chamber said that the figures at tables 1-17 of the Administration's consultation paper on discrimination on the ground of sexual orientation clearly demonstrated a high degree of hostility towards the employment of homosexuals in Hong Kong. It ought to be illegal to discriminate against anyone on the ground of sexual orientation. There was, however, no justification to introduce legislation to force employers to employ anyone with a different sexual orientation or to accept a specific quota of homosexuals or lesbians. Mr LAU Chin-shek pointed out that the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill did not seek to force employers to do so.

Federation of Hong Kong Industries (the Federation)

(LegCo Paper No.CB(2)1471/96-97(01))

4. Representative of the Federation took members through the Federation's submission which explained the reasons for its objection to the three Bills.

5. On the question of existence of discrimination in Hong Kong, representative of the Federation said that, as pointed out in the Federation's submission, the Federation had not found any concrete evidence to substantiate the claim that there was a significant discrimination problem in employment or other social aspects in the community. It firmly believed that legislating against a phoney problem was both illogical and wasteful. There was no need for Hong Kong to have more anti-discrimination legislation.

6. A member asked whether anti-discrimination legislation, which set a standard for people to meet, could also educate the public on anti-discrimination. Whilst maintaining that the better and more effective way to eliminate discrimination was through civic education and public campaign, representative of the Federation did not accept anti-discrimination legislation as a means of public education.

7. Regarding the difficulties faced by employers in implementing anti-discrimination legislation, representative of the Federation said that small employers, who were the majority of employers in Hong Kong, might not have resources and experience to comply with the legislative provisions such as formulating a policy to deal with discrimination.

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8. Noting that the Federation supported the two codes of practices issued pursuant to the Sex Discrimination Ordinance and Disability Discrimination Ordinance for promoting equal opportunities in employment, a member asked whether it would also support other anti-discrimination legislative proposals under which similar codes of practice would be issued for the same purpose. Representative of the Federation believed that, when employers adjusted their employment practices in complying with the two codes of practice, other forms of discrimination, if existed in the employment field, would also be reduced.

Hong Kong Council of Social Service (the Council)

9. Representatives of the Council's Committee on Disability Discrimination Ordinance supported in principle the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and briefed members on the Committee's comments set out in a table attached to the letter of 14 February 1997 from the Council to the Bills Committee (LegCo Paper No. CB(2)1382/96-97(02) referred). Whilst supporting other clauses of the Bill listed in the table, the Committee's position on clauses 28, 32 and 33 was as follows -

<u>Clause</u>	<u>The Committee's stance</u>
28	As small employers needed time to adjust their employment practices in complying with the provisions of the two Ordinances, a grace period of three years for them, which would expire in July 1998, was acceptable to the Committee. It therefore had no specific views on the clause which sought to shorten the grace period to 18 months.
32	The Committee objected to the clause which sought to set a time limit of 28 days during which the persons might make representations to EOC in regard to the terms of reference before launching the formal investigation. There was no need to seek the consent of the accused party on the terms of reference before launching the formal investigation. There was no such consent requirement for formal investigations carried out by other law enforcement agencies. The United Kingdom experience indicated that, with such consent requirement, the formal investigation would be delayed if the accused party did not accept the terms of reference.
33	The Committee had no specific views on the clause.

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Hong Kong Association of Business and Professional Women (BPW)
(LegCo Paper No.CB(2)1382/96-97(01))

10. Representatives of BPW went over their submission and highlighted the following -

- (a) BPW supported the three Bills.
- (b) BPW was particularly concerned about the existing cap on damages in SDO and supported the proposed amendment to remove the cap under the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996. It also supported the proposed amendment to include reinstatement as a civil remedy under SDO.

11. Representatives of BPW considered that public education without anti-discrimination legislation had very little effect on eliminating discrimination.

12. On the question of whether the court order of reinstatement should be subject to the consent of both the employer and the aggrieved person, representatives of BPW responded that the remedy of reinstatement would not require court order if consent could be obtained from the parties concerned (particularly the employer).

13. A member asked whether removal of the cap on damages might bring about abuse of litigation. Representatives of BPW said that such abuse, which usually arose from the enormous amount of claims, might occur in the United States of America with trial by a jury but not in Hong Kong which adopted trial by a judge for cases under SDO. The member asked whether damages could be divided into two parts, the actual measurable damages and the non-measurable damages (such as injury to feelings) which should have a cap. Representatives of BPW responded that, in view of the envisaged high legal costs, damages (in particular the actual expenditure incurred) should be awarded to the aggrieved person. BPW reiterated that there should not be a cap on damages under SDO.

Hong Kong Women's Coalition on Equal Opportunities (the Coalition)
(LegCo Paper No.CB(2)1503/96-97(01) tabled at the meeting)

14. Representatives of the Coalition briefed members on their submission. The Coalition was in support of the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill. It supported the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and agreed with BPW's submission on the Bill. It also supported the Equal Opportunities (Race) Bill and would send in its submission on the Bill later.

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15. On the question of the existence/seriousness of discrimination on the ground of sexuality, the Coalition considered that the majority of the public was biased against and even hostile to the homosexuals. Homosexuals were adversely affected by such discrimination. Many homosexuals were unwilling to disclose their sexuality in view of such discrimination and some of them even had the intention to commit suicide. Anti-discrimination legislation could help to eliminate discrimination in this regard. The Deputy Chairman said that about 5% of Hong Kong people were homosexuals. His study revealed that about 25% of Hong Kong people supported the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill and the remaining 75% opposed it.

Movement Against Discrimination (MAD)

(LegCo Paper No.CB(2)1503/96-97(02) tabled at the meeting)

16. Representative of MAD presented his submission and stated that MAD was in support of the move to eliminate all forms of discrimination in Hong Kong and hence urged all LegCo Members to vote for the three Bills in totality.

17. On the question of the effect of decriminalisation of homosexuality on homosexuals, representative of MAD said that homosexual groups now gained a better public understanding and could face the public in fighting for their rights.

Mr Robin ADAMS

(LegCo Paper No.CB(2)1471/96-97(02))

18. Mr Robin ADAMS went over his submission regarding discrimination on the ground of sexuality. He supported the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill which aimed to eliminate, inter alia, discrimination in the area of sexuality. He considered that legislation was a way to educate the public. A better public understanding of the homosexuals brought about by the decriminalisation of homosexuality demonstrated the educational effect of legislation.

19. On the question of the use of the \$400,000 awarded by the Chinese Permanent Cemeteries Fund to three lesbian groups in Hong Kong referred to in his submission, Mr ADAMS explained that the sum of money was earmarked for supporting services such as counselling service, payment of office rental and housekeeping charges etc., but not for education. Regarding the question of incorporating education on sexuality in the school curriculum, he considered that openness, acceptance and tolerance towards the homosexual community should be taught in the education system in Hong Kong. A member opined that the Administration should provide more funds to

Action

eradicate discrimination in the area of sexuality such as publishing pamphlets with the right message in place of those mentioned in Mr ADAMS' submission.

20. In reply to a member, Mr ADAMS said that some big companies, like the Economist and Dow Jones, had formulated human resources policies against discrimination on the ground of sexuality for their employees in Hong Kong. He believed that Levi's and Microsoft, which had formulated such policies for their employees in the United States of America, extended such policies to their employees over the world.

21. The Deputy Chairman opined that the Administration was not supportive of equal opportunities in employment. As an example, the Administration employed some 4,000 people with a disability (including 1,000 colour-blind persons) which constituted only a small percentage of the 190,000 - strong civil service. Such percentage, far below that of people with a disability in Hong Kong, showed that the Administration was unwilling to implement equal opportunities in employment.

22. On the question of the impact on homosexuals if the Bill could not get through LegCo, Mr ADAMS maintained that legislation was an effective way to eliminate discrimination in this area. Nevertheless, the homosexual community was patient to see the enactment of legislation even if it did not occur in the current session.

23. Representatives of the Coalition said that some homosexual groups did not attend the meeting as they were pessimistic that the anti-discrimination legislative proposal in this area could be enacted. If the proposal did not get through LegCo, the Administration should encourage large employers to formulate policy against discrimination on the ground of sexuality and provide more funds to assist homosexual groups. Mr ADAMS suggested the establishment of a community centre for gays and lesbians.

24. Mr LAU Chin-shek said that homosexual groups should not be pessimistic about enactment of the legislative proposal in respect of discrimination in the area of sexuality. Whilst the legislative proposal, unlike the other two proposals on family status and age, did not have a clear majority support from LegCo Members at this stage, the proposal might not be defeated.

II. Date of next meeting

25. The Deputy Chairman said that the next meeting would be held on 17 March 1997 at 4:30 pm in the Chamber of the Legislative Council Building.

Ref : CB2/BC/55/95

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill and
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

**Minutes of the 4th Meeting
held on Monday, 17 March 1997 at 4:30 pm
in the Chamber of the Legislative Council Building**

Members Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Dr Hon John TSE Wing-ling (Deputy Chairman)
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon Zachary WONG Wai-yin
Hon LEE Cheuk-yan
Hon Albert HO Chun-yan
Hon LAU Chin-shek
Hon LEUNG Yiu-chung
Hon Bruce LIU Sing-lee
Hon NGAN Kam-chuen

Members Absent : Hon LAU Wong-fat, OBE, JP
Hon Emily LAU Wai-hing
Hon Christine LOH Kung-wai
Hon CHAN Yuen-han
Hon CHEUNG Hon-chung

Public Officers Attending : Mr NG Hon-wah
Deputy Secretary for Home Affairs (Atg.)

Miss Helen TANG
Principal Assistant Secretary for Home Affairs

Action

26. The meeting ended at 6:34 pm.

LegCo Secretariat

27 March 1997

Ms Esther LEUNG
Principal Assistant Secretary for Education and Manpower

Mrs Jennie CHOR
Assistant Commissioner for Labour

Mr SO Chi-keung
Chief Executive Officer
Civil Service Branch

Mr Vincent FUNG
Assistant Secretary for Financial Services

Mr David YIP
Assistant Secretary for Security

Mr K Y MAK
Assistant Director of Immigration

Mr Francis CHENG
Assistant Secretary for Education and Manpower

Attendance
by Invitation: Ms CHEUNG Yuet-fung
Personal Assistant to Hon LAU Chin-shek

Mr Adam MAYES
Personal Assistant to Hon Christine LOH

Clerk in : Mrs Anna LO
Attendance Chief Assistant Secretary (2) 2

Staff in : Mr Stephen LAM
Attendance Assistant Legal Adviser 4

Mr Colin CHUI
Senior Assistant Secretary (2) 2

Action

I. Examination of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

Matters arising from the meeting on 3 March 1997

The Administration's response to the matters arising from the meeting held on 3 March 1997 was as follows -

Details of pre-printed opinion forms

2. In response to a member's request for details of the pre-printed opinion forms on discrimination in the area of sexuality, representatives of the Administration said that samples of the pre-printed opinion forms received on the areas of family status and sexual orientation were displayed in Section E of the compendium of submissions in respect of the consultative documents on discrimination on the grounds of family status and sexual orientation. Of the 9,829 pre-printed opinion forms received, 8,329 were in the form displayed in section E10 including those with minor variations. In collating public views, the Administration had taken into account the content of the submissions and their representativeness, not just the number of submissions.

Specific age discrimination legislation in European Union countries

3. The Administration pointed out that it was still checking whether France had specific age discrimination legislation; other European Union countries did not have such legislation.

Committee stage amendment (CSA) to empower the Equal Opportunities Commission (EOC) to deal with other areas of discrimination in addition to sex and disability

4. The Administration stated that it was not in a position at this stage, when no CSA had been proposed, to comment on whether a CSA empowering EOC to deal with areas of discrimination in addition to sex and disability would have a charging effect. The Administration would consider any CSA after notice to move it had been given. In this connection, the Administration confirmed that its proposed public bill to outlaw discrimination on the ground of family status empowered EOC to deal with such discrimination.

The "consequential amendment" provisions in Equal Opportunities (Family Responsibility, Sexuality & Age) Bill and Equal Opportunities (Race) Bill

Action

5. Representatives of the Administration briefed members on its letter to the President of the Legislative Council (LegCo) tabled at the meeting (LegCo Paper No. CB(2)1570/96-97 referred) which stated that the two "consequential amendment" provisions in clause 103 of the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill and clause 55 of the Equal Opportunities (Race) Bill were neither consequential to the two Bills nor relevant to their long titles. As such, they offended the prohibition on intermixing of subject-matters in clause XXV(3) of the Royal Instructions. There was no precedent on the issue. The Administration would like to have views of the President of LegCo and the Bills Committee on how to deal with the two clauses. Without commenting on this particular case which would be ruled by the President, ALA4 point out that, in general, the Standing Orders of LegCo did not empower the President to rule, after gazettal of a bill, whether a clause of a bill was in order. It would be for members to move amendments to a bill.

Difficulties in implementing Mr Lau's Bill

6. A member asked whether the Administration envisaged any difficulties in implementing the Bill immediately after its enactment. Representatives of the Administration said that the Bill, if enacted, would cause difficulties. Whether the difficulties could be reduced by deferring the full implementation of the Bill would depend on the duration of the deferral. For example, if it were to be implemented some years after enactment, the difficulties might be marginally less. In particular, small employers required some time to adjust their employment practices in order to comply with the provisions of the Bill.

7. In reply to a question on examples of any practical difficulties, representatives of the Administration said that the Bill did not provide exceptions for some existing practices or policies. Examples of these practices or policies were the Double Benefits Rules which allowed only one of a married couple, one or both of whom were civil servants, to be eligible for fringe benefits related to housing, education or passage; the provision of different rates of the Private Tenancy Allowance to officers of different family status; and the rule that single civil servants were not eligible for applying for Housing Authority flats under the Civil Service Public Housing Quota. Mr LAU Chin-shek responded that such exceptions also related to clause 10 of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996. He would consider whether amendments to the relevant clauses of the Bills were necessary.

LAU
Chin-shek

Timetable for the public bill on discrimination in the area of family status

8. In reply to the Chairman, representatives of the Administration said that its bill to outlaw discrimination on the ground of family status was planned for First Reading in LegCo on 23 or 30 April 1997. As higher priorities had to be given to other bills, the bill could not be introduced into LegCo earlier.

Action

9. On a member's suggestion to hold the scrutiny of Mr LAU's Bill in the area of family status pending the introduction of the corresponding public bill into LegCo, Mr LAU Chin-shek said that, as already indicated to the Secretary for Home Affairs, he would not do so as the Bill was already long overdue. In this connection, he would however, consider breaking his Bill into three different parts for voting in LegCo.

10. On the question of the reasons for not taking a step-by-step approach to eliminate discrimination, Mr LAU Chin-shek reiterated that some members of the public supported comprehensive anti-discrimination legislation which was less confusing.

Differences between Mr LAU's Bill and the public bill in the area of family status

11. In reply to a member, the Administration pointed out that Mr LAU's Bill, in so far as it related to family status, differed from the public bill in several areas. The main differences were as follows -

- (a) The Administration proposed to define family status by making reference to the status of having responsibility for the care of any immediate family member. An immediate family member must be related to the person concerned by blood, marriage, adoption or affinity. The definition proposed in Mr LAU's Bill was loose and appeared to include co-habitation, de-facto spouse and even co-habitants of the same sex.
- (b) The public bill empowered EOC to deal with discrimination in the area of family status but EOC was not involved in the implementation of Mr LAU's Bill.
- (c) Clause 7 of Mr Lau's Bill sought to link the interpretation of the Bill with international instruments and obligations including the following which had not been extended to Hong Kong -
 - (i) Hong Kong had entered reservations on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted by the General Assembly of the United Nations on 18 December 1979 (referred to in clause 2(e) of the Bill) when it was extended to Hong Kong in October 1996. At a member's request, the Administration undertook to provide members with details of the reservations and declarations.

Adm

Action

- (ii) Under International Labour Conventions, International Labour Organisation (ILO) Recommendations were not binding on any member states of ILO. Therefore, both the ILO Recommendations No. 111 on Discrimination In Occupation and Employment and No. 165 on the Rights of Workers with Family Responsibilities (referred to in clause 2(f) of the Bill) were not binding on Hong Kong. Hong Kong would therefore not become legally obliged as a result of Clause 2(f) to follow these Recommendations. The court would not, as a matter of common law principle, interpret legislation with regard to these non-binding ILO Recommendations. Nevertheless, clause 2(f), which made it an object of the Bill to give effect to these Recommendations, might pose undue constraints on the court's flexibility in interpreting the provisions. ALA4 pointed out that clause 7(3) required the interpretation of the provisions of the Bill to be consistent with the standards contained in the international instruments referred to in clause 2(e) and (f). He requested the Administration's legal advice on the issue for consideration by the Bills Committee. Mr Adam MAYES said that, the reference to CEDAW could be amended to refer instead to CEDAW "as applied to Hong Kong" in order to reflect CEDAW's recent extension to Hong Kong. Clause 7(3) only came into play when the Ordinance was ambiguous, and the ambiguity could not be resolved by reference to relevant international obligations. In such circumstances, clause 7(3), required the interpretation of the Bill to be consistent so far as possible with the ILO Recommendations. The ILO Recommendations were not binding on Hong Kong or any other ILO member, but were rather general principles adopted by ILO for the guidance of all its members. Mr LAU Chin-shek undertook to consider putting forward amendments to clauses 2(e), (f) and 7(3) of the Bill.

Adm

LAU
Chin-shek

Clause-by-clause examination of the Bill

Clause 1

12. Mr LAU Chin-shek said that he would amend clause 1(3) to the effect that the Bill would come into operation with immediate effect.

Action

Clause 2

13. Mr LAU undertook to write to the Bills Committee on his proposed amendment to clause 2(e) and (f).

Clause 3

14. On the question of scope of the definition of "family responsibility or family status" under clause 3, Mr LAU said that the definition covered both matrimonial and co-habiting relationships irrespective of whether they were heterosexual or homosexual. The test of such matrimonial or co-habiting relationships was whether the couple lived a truthful family life. Only monogamy was intended to be recognised under the definition. On the question of whether mistresses fell within the scope of the definition, Mr Adam MAYES said that the word "mistress" provided too little information about the nature of a particular relationship. The word could indicate a wide variety of possible relationships, ranging from a relationship maintained only by cash transactions to a genuinely family-like relationship. Whether a particular relationship amounted to a "family status" for purposes of the Bill would have to be decided by the court on a case-by-case basis. In general, the courts of Hong Kong were likely to take a conservative view. A member was concerned whether a person's monogamous relationship(s) outside Hong Kong, irrespective of whether it was matrimonial or not, would be recognised under the definition. Mr LAU Chin-shek undertook to address the concerns raised and consider the implications of the definition on the issue of maintenance for a divorcee and his/her dependants.

15. Regarding Mr Lau's view that the Employees' Compensation Ordinance, Wills Ordinance and Domestic Violence Ordinance covered non-matrimonial relationship, the Administration's response was as follows -

- (a) The spirit of the relevant provision in the Employees' Compensation Ordinance was to provide protection for an individual, who depended substantially or mainly on the employee for a living.
- (b) The Wills Ordinance referred to by Mr LAU should appropriately be the Inheritance (Provision for Family and Dependants) Ordinance, which offered protection to an individual who depended substantially or mainly on the deceased for a living;
- (c) The Domestic Violence Ordinance was to bring within legislative control domestic violence to persons living together even though no matrimonial relationship existed.

Action

The aforesaid protection under these Ordinances was to cater for specific needs and did not imply that co-habiting relationship had been legally recognised.

16. A member opined that the spirit of the Bill was to eliminate discrimination. A person with matrimonial and/or non-matrimonial relationships (e.g. a mistress) should be equally protected from discrimination on the ground of family status.

17. Another member opined that there were problems in using truthful family life as a test of matrimonial or co-habiting relationships and in other definitions in the Bill e.g. the definition of "near relative". He said that Mr Lau's Bill adopted a broad definition of marital status while the definition under the public bill was based on legally recognised marital relationship and consistent with family law. As such, he suggested Mr Lau's Bill be examined together with the public bill so as to facilitate a comparison of the two legislative proposals. The Administration undertook to consult the Legal Department on providing the Bills Committee with the draft public bill before the next meeting.

Adm

18. Mr LAU Chin-shek undertook to re-examine the clause so as to provide clear and accurate definitions.

LAU
Chin-shek

II. Date of next meeting

19. Members agreed that the next meeting would be held on 1 April 1997 at 4:30 pm in the Chamber of the Legislative Council Building. As Mr LAU Chin-shek would be out of town on that date, the Bills Committee would begin to examine the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996. Upon the request of EOC and the Hong Kong Federation of Women, the Bills Committee would meet representatives of these two organisations at the next meeting.

20. The meeting ended at 6:18 pm.

LegCo Secretariat
21 April 1997

Ref : CB2/BC/55/95

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill and
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

**Minutes of the 5th Meeting
held on Tuesday, 1 April 1997 at 4:30 pm
in the Chamber of the Legislative Council Building**

Members Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Dr Hon John TSE Wing-ling (Deputy Chairman)
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon Christine LOH Kung-wai
Hon CHAN Yuen-han
Hon Albert HO Chun-yan
Hon Bruce LIU Sing-lee
Hon NGAN Kam-chuen

Members Absent : Hon LAU Wong-fat, OBE, JP
Hon Emily LAU Wai-hing
Hon Zachary WONG Wai-yin
Hon LEE Cheuk-yan
Hon CHEUNG Hon-chung
Hon LAU Chin-shek
Hon LEUNG Yiu-chung

Public Officers Attending : Item III
Mr NG Hon-wah
Deputy Secretary for Home Affairs (Atg.)

Miss Helen TANG
Principal Assistant Secretary for Home Affairs

Action

Ms Esther LEUNG
Principal Assistant Secretary for Education and Manpower

Mr CHOI Chi-wa
Commissioner for Rehabilitation

Mr Esmond LEE
Principal Assistant Secretary for Planning, Environment and Lands

Miss Agnes TSE
Assistant Secretary for Security

Mr Howard CHAN
Assistant Secretary for Security

**Attendance :
by Invitation**

Item II

Heung Yee Kuk New Territories

Mr LAM Kwok-yin
Vice-chairman

Mr LAM Wai-keung
Vice-chairman

Mr HO Sun-kuen
Ex-officio Executive Councillor

Mr CHUNG Yick-ming
Chairman of Tai Po rural committee

Mr TANG Sik-hung
Chairman of Ping Shan rural committee

Mr LAM Kwok-cheong
Co-opted Councillor

Mr TANG Siu-tong
Ex-officio Executive Councillor

Mr CHEUNG Fo-tai
Ex-officio Executive Councillor

Action

Mr HUI Chun-chui
Ex-officio Councillor

Mr WAN Ah-fat
Ex-officio Councillor

Mr WONG Hing-lung
Ex-officio Councillor

Mr LAM Chiu-kuen
Ex-officio Councillor

Mr LI Yiu-ban
Ordinary Executive Councillor

Mr TSANG Hin-keung
Ordinary Executive Councillor

Mr William H C WAN
Ex-officio Executive Councillor

Mr MA Hing-fung
Ordinary Executive Councillor

Ms LAU Fung-yee
Senior Secretary

Equal Opportunities Commission

Dr Fanny CHEUNG Mui-ching
Chairperson

Mrs Angela HO CHOI Wai-yee
Chief Executive

Alexandra PAPADOPOULOS
Legal Adviser

Mr Adam MAYES
Personal Assistant to Hon Christine LOH

Clerk in Attendance : Mrs Anna LO
Chief Assistant Secretary (2) 2

Action

Staff in Attendance : Ms Kitty CHENG
Assistant Legal Adviser 2

Mr Colin CHUI
Senior Assistant Secretary (2) 2

I. Confirmation of minutes of meeting
(LegCo Paper No.CB(2)1667/96-97)

The minutes of meeting held on 11 March 1997 were confirmed.

II. Meeting with Heung Yee Kuk New Territories (HYK)

2. Representatives of HYK went over HYK's revised submission on the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and an extract of a book entitled "基本法透視" (LegCo Paper No. CB(2)1697/96-97 referred) tabled at the meeting. HYK urged LegCo Members to vote down clause 12 of the Bill on expiry of the existing exception provision of the Sex Discrimination Ordinance (SDO) related to the Small House Policy. It also requested for early clearance of the huge backlog of small house applications.

3. Some members opined that applying the principle of equal rights for all citizens of Hong Kong, it would be unfair that only indigenous villagers had a right to build small houses in the New Territories. The Small House Policy was outdated at this time and age and should therefore be discontinued. As an interim measure, they suggested a cut-off date for the Small House Policy to facilitate better land utilisation and avoid continuous backlog of small house applications. Representatives of HYK gave a brief account of the background of the Small House Policy. Before the New Territories was leased to the British Government in 1898, indigenous inhabitants had a right to construct houses on their land without prior approval of the Manchurian Government of the Qing Dynasty. The Hong Kong Government took away the right through the Block Crown Lease in 1905. The small house policy was formulated in 1972 to restore part of this right. Since small houses could only be built within the perimeter of 300 feet from the indigenous villages concerned, indigenous inhabitants might not be able to build more small houses when the land within the boundary was fully utilised.

4. Miss Christine LOH said that inclusion of the exception provision on the small house policy in SDO indicated that the policy related to sex discrimination. Referring to

Action

para 2 of its submission, HYK considered that the policy was not related to sex discrimination because traditionally heads of families, who were usually males, were allowed to build houses for themselves. HYK would not object to extending the policy to cover both male and female indigenous inhabitants. The implications of removing the exception on the housing needs of the indigenous villagers who were not entitled to public housing benefits must be addressed before removing it.

5. A member was concerned whether the Small House Policy was consistent with the international covenants and the laws of the Hong Kong Special Administration Region referred to in Articles 39 and 40 of the Basic Law. HYK said that lawful traditional rights and interests of the indigenous inhabitants of the "New Territories" referred to in Article 40 of Basic Law were rights and interests consistent with Hong Kong laws.

III. Examination of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 introduced by Miss Christine LOH

6. The Chairman said that since Mr LAU Chin-shek was out of town, the Bills Committee would start to examine Miss Christine LOH's Bill.

Equal Opportunities Commission (EOC)'s position on the Bill

7. Referring to its paper (Paper No.CB(2)1377/96-97(01)), representatives of EOC briefed members on EOC's position in respect of Miss LOH's Bill. They highlighted that any changes to SDO and the Discrimination Disability Ordinance (DDO) should only be made after the development of local experience and comprehensive review of the two Ordinances by EOC to be conducted in December 1997.

8. Miss Christine LOH expressed her disappointment in EOC which was trying to evade its responsibility. For some issues of policy (e.g. the Small House Policy), it was not necessary to await the comprehensive review.

The Administration's position on the Bill

9. Representatives of the Administration took members through its position on the Bill set out in para 2 and 3 of its paper (Paper No.CB(2)1258/96-97 referred). They highlighted that the Administration did not support the Bill as amendments to SDO and DDO should only be considered after gaining actual experience of the implementation of these two Ordinances.

Action

Matters arising from the meeting on 3 March 1997

10. The Administration's response to the issues relating to Miss LOH's Bill raised at the meeting on 3 March 1997 was as follows -

*Proposed deletion of exception for acts safeguarding security of Hong Kong
(Clause 11)*

- (a) Miss LOH requested the Administration for detailed explanation and examples on why the proposed deletion of the exception clause for acts safeguarding security of Hong Kong (section 59 of SDO) could undermine security of the territory. The Administration pointed out that the exception was necessary for acts done for the purpose of safeguarding the security in Hong Kong. Such acts could only be authorised by the Chief Secretary. It could not provide examples of such acts in the absence of precedents. Noting that DDO did not have such an exception, Miss LOH asked the Administration for the reason of the inconsistency. She understood that similar provision(s) of the United Kingdom (UK) laws was struck down in the European Court. In this connection, the Administration was requested to revert to the Bills Committee on the background of similar provision(s) in UK laws and whether there were examples from UK experience.

Adm

Proposed expiry of existing exception provisions after a maximum of two years following enactment of the Bill

*Exception for sex discrimination in certain practices of the disciplined services
(Schedule 5 Part 2 item 1)*

- (b) Representatives of the Administration said that the Security Branch would review the exceptions set out in Schedule 5 Part 2 item 1 of SDO and forward its views to EOC for the latter's comprehensive review of SDO and DDO in December 1997. At Miss LOH's request, the Administration undertook to provide further information on certain practices of the disciplined services (including requirements relating to height, uniform, weight or equipment and firearms training etc) referred to in Schedule 5 Part 2 item 1(a) and (d) of SDO.

Adm

(Post-meeting note: Further information on certain practices of the disciplined services provided by the Administration was circulated to members vide LegCo Paper No.CB(2)1896/96-97.)

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Exception for sex discrimination in the Small House Policy (Schedule 5 Part 2 Item 2)

- (c) In response to the Chairman, the Administration pointed out that it was conducting a comprehensive review of the Small House Policy which included, among other things, the issues of land supply, adequacy of existing arrangements and options on the way forward. In view of the complexity of the issues involved in the Policy and the need for consultation, the Administration was unable to indicate when the review would be completed. Pending the result of the review, the Administration did not support the Bill's proposal to remove the exception in respect of the Small House Policy.
- (d) In reply to Miss LOH, representatives of the Administration said that the Small House Policy did not confer legal rights on the indigenous villagers. The purpose and effect of the exception in the Ordinance was to reserve the Government's right to continue to operate the present policy. At members' request, the Administration undertook to provide details of the background of the policy and revert to the Bills Committee on whether removal of the exception provision for the Small House Policy would result in a breach of Article 40 of the Basic Law.

Adm

(Post-meeting note : Further information on the Small House Policy provided by the Administration was circulated to members vide LegCo Paper No. CB(2)1920/96-97.)

Exception under Schedule 5 part 2 item 3 (b) (i)

- (e) The Administration pointed out that the removal of exceptions relating to housing under Schedule 5 part 2 item 3(b)(i) would make disciplined services quarters open to single officers also. This would result in significant increase in the demand for quarters which would aggravate the current shortage of quarters. Due to the limitation of resources, departments still need to prioritise the allocating of quarters to married officers. The Administration further added that although single officers in the disciplined services were not eligible for departmental quarters, they were not in any way deprived of other civil service housing benefits. In reply to a member, the Administration undertook to seek legal advice on whether section 48 of the SDO would be sufficient to avoid rendering the existing policy on quarters unlawful.

Adm

(Post-meeting note : Information on legal advice received by the Administration was circulated to members vide LegCo Paper No. CB(2)1920/96-97.)

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Exception under Schedule 5 part 2 item 6

- Adm (f) The Administration would review the exception under Schedule 5 part 2 item 6 relating to the Home Ownership Scheme or Private Sector Participation Scheme towards the end of 1997 after gaining experience in its operation.

Exception under Schedule 5 part 2 item 8

- (g) As the Royal Hong Kong Auxiliary Police Force (Pensions) Regulations (Cap 233 sub leg) referred to in the exception under Schedule 5 Part 2 item 8 had been repealed, the Administration did not object to but at the same time failed to see any urgent need for deleting the exception at present.

11. In response to the Chairman, representatives of the Administration said that as EOC would conduct a comprehensive review of the two Ordinances in December 1997, it was neither desirable nor appropriate to introduce amendments (such as the proposals to delete or set expiry date(s) on the existing exception provisions in SDO and DDO) to the two Ordinances before completion of the review. LegCo Member(s) putting forward such amendments before the completion of the review should justify the need and urgency of doing so.

Matters arising from the meeting on 17 March 1997

12. The Administration's response to the matters arising from the meeting on 17 March 1997 was as follows -

- (a) details of reservations entered by the Hong Kong Government on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which was referred to in clause 2(e) of the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill would be forwarded to the Bills Committee after the meeting.
- (b) the Administration's legal advice on the impact of linking the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill with International Labour Organisation Recommendations would be provided to the Bills Committee shortly.
- (c) the Government's Bill to outlaw family status discrimination would be available in two weeks' time.

(Post-meeting note : Information referred to in items (a) and (b) was circulated to members vide LegCo Paper Nos.CB(2) 1737/96-97(02) and 1822/96-97(01) respectively. The Government's Bill entitled "Family Status Discrimination

Action

Bill” was circulated to all LegCo Members vide LegCo Paper No.CB(3)811/96-97.)

IV. Date of next meeting

13. The next meeting would be held on 17 April 1997 at 10:30 am in Conference Room A of the Legislative Council Building to examine Miss LOH’s Bill clause-by-clause.

14. The meeting ended at 6:28 pm.

LegCo Secretariat
6 May 1997

Ref : CB2/BC/55/95

**Bill Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill and
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

**Minutes of the 6th Meeting
held on Thursday, 17 April 1997 at 10:30 am
in Conference Room A of the Legislative Council Building**

Members Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Dr Hon John TSE Wing-ling (Deputy Chairman)
Hon LAU Wong-fat, OBE, JP
Hon Zachary WONG Wai-yin
Hon Christine LOH Kung-wai
Hon LEE Cheuk-yan
Hon Albert HO Chun-yan
Hon LAU Chin-shek
Hon LEUNG Yiu-chung

Members Absent : Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon Emily LAU Wai-hing
Hon CHAN Yuen-han
Hon CHEUNG Hon-chung
Hon Bruce LIU Sing-lee
Hon NGAN Kam-chuen

Public Officers Attending : **Item III**

Mr NG Hon-wah
Deputy Secretary for Home Affairs (Ag)

Miss Helen TANG
Principal Assistant Secretary for Home Affairs

Action

Ms Esther LEUNG
Principal Assistant Secretary for Education and
Manpower

Mr CHOI Chi-wa
Commissioner for Rehabilitation

Mr Esmond LEE
Principal Assistant Secretary for Planning, Environment
and Lands

Miss Agnes TSE
Assistant Secretary for Security

Mr Howard CHAN
Assistant Secretary for Security

Attendance : Item II
by Invitation

Hong Kong Federation of Women

Mrs Peggy LAM
Chairman

Mrs Rita LIU
Vice Chairman

Ms Elle SHUM Mun-ling
General Committee Member

Ms IP Shun-hing
General Committee Member

Mrs Susan CHAN
General Committee Member

Ms LEE Kwai-chun
Founding Member

Ms Maggie KOONG
Member

Ms LAU Sau-lai
Member

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Mrs Susanna LAI
Member

Ms Louisa WONG
Member

Mrs Annette WU
Member

Ms Joyce KWAN
Member

Ms Shirley LOK Sik Yin
Chief Executive

Items II and III

Mr Adam MAYES
Personal Assistant to Hon Christine LOH

Mr CHEUNG Yuet-fung
Personal Assistant to Hon LAU Chin-shek

Clerk in Attendance : Mrs Anna LO
Chief Assistant Secretary (2) 2

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Colin CHUI
Senior Assistant Secretary (2) 2

**I. Confirmation of minutes of meeting held on 3 March 1997
(LegCo Paper No.CB(2)1708/96-97)**

The minutes of meeting held on 3 March 1997 were confirmed.

Action

II. Meeting with the Hong Kong Federation of Women (the Federation)
(Paper No. CB(2)1633/96-97 (01) - submission from the Federation)

2. Representatives of the Federation went over the submission and highlighted the following -

- (a) The Federation did not support the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill. It was in support of the public bill entitled "Family Status Discrimination Bill" gazetted on 11 April 1997.
- (b) The Federation did not support the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996. Any changes to the Sex Discrimination Ordinance (SDO) and Disability Discrimination Ordinance (DDO) should be considered after development of local experience in implementing the two Ordinances.
- (c) Regarding the Equal Opportunities (Race) Bill, the Federation did not consider racial discrimination a serious problem in Hong Kong. It took the view that civic education was the best method to eliminate racial discrimination. The Federation hoped LegCo Members to await outcome of the consultation exercise before considering whether anti-discrimination legislation in this area should be introduced to address the problem. The Bill should be put on hold in the mean time.

3. In reply to a member, representatives of the Federation stated that the Federation supported the principle of elimination of all forms of discrimination, but considered that not all forms of discrimination required anti-discrimination legislation. It was necessary to prioritize allocation of resources to meet different demands of the society. Local experience in implementing the two Ordinances had to be developed before considering whether the Equal Opportunities Commission (EOC) should be provided with additional powers and resources to deal with discrimination. The court might also require additional resources to deal with possible increase in litigation cases on discrimination after expiry of the grace period for small employers in July 1998.

III. Examination of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

Matters arising from the meeting on 1 April 1997

4. The Administration's response to the matters arising from the meeting held on 1 April 1997 was as follows -

Proposed deletion of exception for acts safeguarding security of Hong Kong (Clause 11)

5. Representatives of the Administration said that section 59 of SDO, which excluded acts safeguarding security of Hong Kong from being declared unlawful under the Ordinance, was similar to section 52 of the United Kingdom (UK) Sex Discrimination Act 1975. UK did not have any recent case law relating to the provision. Miss Christine LOH said that, as far as she knew, there was a UK 1986 case on sex discrimination relating to acts safeguarding national security. In the absence of example(s) of act(s) safeguarding security of Hong Kong she maintained that the exception should be removed. Representatives of the Administration said that the exception might have to be invoked in an emergency, which by its nature could not be forecast. The exception was also provided for in some other pieces of legislation in Hong Kong. The exception was not provided for in DDO because it was considered that such a provision would unlikely be used in the context of disability discrimination. Since the exception had been enacted, it would be up to those who proposed to delete it to justify the deletion. The onus should not be placed on the Administration to justify the retention of the provision by providing examples of acts safeguarding the security of Hong Kong.

Proposed expiry of exception for sex discrimination in the Small House Policy after a maximum of two years from enactment of the Bill

(Clause 12)

(Paper No. CB(2)1920/96-97 (01) provided by the Administration)

Pre-1972 practices

6. Mr LAU Wong-fat said that before the introduction of the Small House Policy in 1972, people of either sex, irrespective of whether they were indigenous villagers, who owned agricultural land in the New Territories could build houses to improve the low standard of housing in rural areas. These houses, vis-a-vis multi-storey buildings, could cater for the needs of indigenous villagers who had to carry bulky agricultural tools to and from work in their land. The Small House Policy restricted the right to build houses to male indigenous villagers. The Administration responded that the pre-1972 practices were that heads of families were allowed to build for himself and each son upon marriage a house within the

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village areas, either on their own agricultural land or on village building lots acquired through auctions restricted to villagers of a particular village. Under special circumstances female villagers, e.g. a widow whose husband died without building a house, were allowed to build houses. At the Chairman's request, the Administration undertook to provide details of the pre-1972 practices, in particular whether non-indigenous villagers were allowed to build village houses.

(Post-meeting note : The requested information was tabled at the meeting on 28 April 1997 vide Paper No. CB(2)2066/96-97 (01).)

Land supply for building small houses

7. Mr LAU Wong-fat said that since small houses could only be built within the perimeter of 300 feet from the indigenous village concerned under the Small House Policy and indigenous villagers were not eligible to apply for public housing, the Administration should ensure sufficient land supply to meet the demands of small house applicants. As the Policy, which aimed at improving the low standard of housing in rural areas and to preserve the cohesive pattern of indigenous communities in their villages, was not related to sex discrimination, he took the view that the exception for the Policy under SDO should be retained. Representatives of the Administration said that land supply was one of the issues covered by the ongoing review which was conducted by the Planning, Environment and Lands Branch in consultation with concerned departments such as the Home Affairs Department and Lands Department. Under the existing Policy, an applicant normally identified the site for the proposed small house. The Lands Department would post notices of small house applications to see if there were objections. In the event of objections, the Rural Committee or the Village Representative would be asked to help to resolve the dispute. The applicant might try to acquire land in a Village Expansion Area from the Administration for building the small house.

Adm

8. At members' request, the Administration undertook to revert to the Bills Committee on -

- (a) the number of claims pertaining to the Small House Policy;
- (b) information on land available for small house development; and
- (c) whether indigenous villagers were eligible to apply for public housing.

(Post-meeting note : The requested information was tabled at the meeting on 28 April 1997 vide Paper No. CB(2)2066/96-97 (01).)

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Meaning of lawful traditional rights and interests under Article 40 of the Basic Law

Adm

9. Members noted that, according to the Administration, whether the removal of the exemption in respect of the Small House Policy would result in a breach of Article 40 of the Basic Law would depend upon the Court's interpretation of whether the Policy conferred a "lawful traditional right and interest" for the purpose of the Article. Upon request, the Administration undertook to provide more detailed explanation on this issue, in particular the meaning of lawful traditional rights and interests of the indigenous villagers referred to in the Article.

(Post-meeting note : The requested information was tabled at the meeting on 28 April 1997 vide Paper No. CB(2)2066/96-97 (01).)

Review of the Small House Policy

Adm

10. In reply to the Chairman, the Administration pointed out that as a review of the Policy was underway, it was unable to comment on the impact of the proposed expiry of exception in respect of the Small House Policy after a maximum of two years from enactment of the Bill (Clause 12).

11. In reply to a member, the Administration undertook to revert to the Bills Committee on when the review commenced. In view of the complexity of the issues involved in the review and the need for consultation, the Administration was unable to indicate when the review would be completed.

(Post-meeting note : The requested information was tabled at the meeting on 28 April 1997 vide Paper No. CB(2)2066/96-97 (01).)

Quarters allocation in disciplined services

(Clause 12)

(Paper No. CB(2)1920/96-97 (01) provided by the Administration)

Miss
Christine
LOH

Adm

12. Members noted the Attorney General's Chamber's advice that section 48 of SDO would not save the Administration's existing policy of allocating quarters to married disciplined staff only from being declared unlawful under the Ordinance. Miss LOH said that after studying the departmental guidelines on the allocation of quarters for the disciplined services departments which the Administration undertook to provide, she might consider amending clause 12 to the effect that the exception under Schedule 5 part 2 item 3(b)(i) of SDO would be retained.

(Post-meeting note : The guidelines were circulated to members vide Paper No. CB(2)2033/96-97 (01))

Action

Firearms training

(Clause 12)

(Paper No. CB(2)1896/96-97 (01) provided by the Administration)

13. On the question of sex discrimination in respect of firearms training in the Correctional Services Department and Customs and Excise Department, the Administration responded that the differential treatment between male and female arose from operational requirements. It would provide members with details of the reason(s) for such an exception. The exception provision under Schedule 5 Part 2 item 1(d) was necessary so that such a differential treatment would not be declared unlawful under SDO. A member considered that such an exception should be removed on the ground of equal opportunities for male and female.

(Post-meeting note : The requested information was circulated to members vide Paper No. CB(2)2033/96-97 (02))

Administration's specific concerns on the Bill

14. In reply to Miss LOH, the Administration pointed out that its other specific concerns on the Bill were set out in its position paper (LegCo Paper No. CB(2)1258/96-97 referred). It would explain these concerns at later meetings when the Bills Committee examined the Bill clause-by-clause.

IV. Way forward

15. In reply to the Chairman, the Administration suggested that its "Family Status Discrimination Bill", which would be introduced into LegCo on 23 April 1997, should be discussed by the Bills Committee together with Mr LAU Chin-shek's Equal Opportunities (Family Responsibility, Sexuality & Age) Bill. Mr LAU Chin-shek did not object to the suggestion. Regarding the Equal Opportunities (Race) Bill, the Administration hoped that members would await the outcome of its consultation exercise on racial discrimination ending on 30 April 1997 before deciding on the need for legislation. Members agreed that the three Bills, and the Family Status Discrimination Bill (if committed to the Bills Committee) would be studied in the following order -

- (a) Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996.
- (b) Equal Opportunities (Family Responsibility, Sexuality & Age) Bill and Family Status Discrimination Bill.

Action

(c) Equal Opportunities (Race) Bill.

(Post-meeting note : At the House Committee meeting on 25 April 1997, Members decided that the Bills Committee should also study the Family Status Discrimination Bill.)

V. Date of next meeting

16. Members agreed that the next meeting would be held on Monday, 28 April 1997 at 10:30 am in Conference Room B of the Legislative Council Building to examine the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 clause-by-clause.

17. The meeting ended at 12:35 pm.

LegCo Secretariat

16 May 1997

Ref : CB2/BC/55/95

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill,
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and
Family Status Discrimination Bill**

**Minutes of the 7th meeting
held on Monday, 28 April 1997 at 10:30 am
in Conference Room B of the Legislative Council Building**

Members Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Dr Hon John TSE Wing-ling (Deputy Chairman)
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon Christine LOH Kung-wai
Hon LEE Cheuk-yan
Hon CHAN Yuen-han
Hon LAU Chin-shek
Hon LEUNG Yiu-chung
Hon Bruce LIU Sing-lee
Hon NGAN Kam-chuen

Members Absent : Hon LAU Wong-fat, OBE, JP
Hon Emily LAU Wai-hing
Hon Zachary WONG Wai-yin
Hon CHEUNG Hon-chung
Hon Albert HO Chun-yan

Public Officers Attending : Mr NG Hon-wah
Deputy Secretary for Home Affairs (Acting)

Miss Helen TANG
Principal Assistant Secretary for Home Affairs

Ms Esther LEUNG
Principal Assistant Secretary for Education and Manpower

Mr CHOI Chi-wa
Commissioner for Rehabilitation

Mr Esmond LEE
Principal Assistant Secretary for Planning, Environment and Lands

Mr Howard CHAN
Principal Assistant Secretary for Security (Acting)

Miss Agnes TSE
Assistant Secretary for Security

Miss Priscilla TO
Assistant Secretary for Health and Welfare

Attendance : **Mr Adam MAYES**
by Invitation **Personal Assistant to Hon Christine LOH**

Ms CHEUNG Yuet-fung
Personal Assistant to Hon LAU Chin-shek

Clerk in : **Mrs Anna LO**
Attendance **Chief Assistant Secretary (2) 2**

Staff in : **Mr Stephen LAM**
Attendance **Assistant Legal Adviser 4**

Mr Colin CHUI
Senior Assistant Secretary (2) 2

I. Confirmation of minutes of meeting held on 17 March 1997
(LegCo Paper No.CB(2)1957/96-97)

The minutes held on 17 March 1997 were confirmed.

II. Matters arising from the meeting held on 17 April 1997

(a) Small House Policy

(Clause 12 of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996)

(Paper No. CB(2)2066/96-97 (02) tabled by the Administration)

Indigenous villagers' eligibility for public housing

2. In reply to a member, the Administration pointed out that indigenous villagers could apply for public housing, provided that they satisfied the Housing Authority's requirements. Like other residential property owners, indigenous villagers who owned small houses under the Small House Policy were not eligible for flats in public housing estates or under the Home Ownership Scheme. At another member's request, the Administration undertook to check whether members of tso or tong could apply for public housing.

Adm

Pre-1972 practice

3. In reply to the Chairman, the Administration stated that there was no clear documentation on whether female indigenous villagers could apply for small houses before the introduction of the Small House Policy in 1972. However, it was quite likely that heads of families allowed to build houses within the village areas before 1972 were male indigenous villagers.

Review of Small House Policy

4. A member asked when the review of the Small House Policy, which started in August 1995, would be completed. The Administration pointed out that in view of the complexity of the issues involved and the need for consultation, it was unable to advise when the review would be completed.

5. Another member opined that a cut-off date should be imposed on the Policy. Nevertheless, existing indigenous villagers who were entitled to small houses should not be affected. Land utilisation (e.g. the plot ratio for small houses) should also be taken into account in the review.

6. In reply to Miss Christine LOH, representatives of the Administration said that land supply, adequacy of existing arrangements and options on the way forward were the key issues covered by the ongoing review. The Heung Yee Kuk would be consulted. Pending the result of the review, the Administration did not support the Bill's proposal to remove the exception in respect of the Small House Policy. Miss LOH pointed out that clause 12 of her Bill provided a one to two year transitional

period, and urged members to support the deletion of the exemption for the Small House Policy in SDO at the end of that period. The Administration would then consider the way forward for the Policy.

Outstanding small house applications

7. Members were concerned about the sufficiency of land for the approximately 13,300 outstanding small house applications. The Administration pointed out that these applications might include those which did not meet the eligibility criteria as well as those which might seek to build small houses on the same piece of Government land. The number of approved applications would therefore probably be smaller than the number of applications. The Administration then explained the application procedures for building small houses. While indigenous villagers could build small houses on their own land or Government land, most houses were built on the former. The Lands Department would post notices of small house applications to see if there were objections. In the event of objections, the Rural Committee or the Village Representative would be asked to help to resolve the dispute. Indigenous villagers might try to acquire land in a Village Expansion Area provided by the Administration for building a small house. Upon request, the Administration undertook to advise the proportion of private and Government land covered in the 13,300 outstanding applications for building small houses.

Adm

- (b) **Quarters allocation in disciplined services (Clause 12)**
 (Paper No. CB(2)2033/96-97 (01) - departmental guidelines on the allocation of quarters for the disciplined services departments)
 (Paper No. CB(2)2066/96-97 (02) - paper provided by Hon Christine LOH)

8. Referring to her paper, Miss Christine LOH said that, after consideration of the departmental guidelines on the allocation of quarters for the disciplined services departments, she saw no justification for retaining an exception in the Sex Discrimination Ordinance (SDO) to authorise discrimination against single officers under the guidelines. There was no apparent reason why a single officer with a child, or with a dependent parent, should be treated less favourably than a divorced or widowed officer with the same salary, service and number and type of dependents. The exception referred to in Schedule 5 Part 2 item 3(b)(i) should therefore be removed as proposed in clause 12. The departmental guidelines showed that most departments already used a points system to allocate quarters based on salary, years of service and number of dependants. Single officers should be allowed to compete for quarters under the points system, which would eliminate unfair treatment in the allocation of quarters without having any resource implications. The Administration responded that removal of the exception would mean single officers were also eligible for disciplined services quarters. This would result in significant increase in the demand for quarters which would aggravate the current shortage. Due to limitation of resources, departments still need to prioritise the allocation of quarters to married

officers. Although single officers in the disciplined services were not eligible for departmental quarters, they were not in any way deprived of other civil service housing benefits. In reply to a member, the Administration pointed out that widowed or divorced officers with dependant children residing with them were also eligible to apply for quarters.

Adm 9. In reply to Miss Christine LOH, the Administration undertook to confirm with the Attorney General's Chambers that the exception was not inconsistent with the Hong Kong Bill of Rights Ordinance.

(c) **Exceptions in Schedule 5 Part 2 Item 1 of SDO (Clause 12)**

10. Members noted the Administration's paper (Paper No. CB(2)2033/96-97 (02)) giving further information on firearms training in the Correctional Services Department and Customs and Excise Department.

11. The Administration pointed out that although the exception in respect of Police Tactical Unit referred to in Schedule 5 Part 2 item 1(c) of SDO was no longer necessary, the Administration failed to see any urgent need for removing the exception. It was reviewing other exceptions referred to in item 1 and would forward its views to EOC for its consideration in the comprehensive review of SDO and Discrimination Disability Ordinance (DDO) in December 1997.

12. Miss Christine LOH considered that the provisions on indirect discrimination under SDO would be sufficient to avoid rendering the differential treatments referred to in the item unlawful. It was therefore unnecessary to retain the exceptions. The Administration responded that if the exception was removed, the legality of these differential treatments might be open to question. If these treatments were considered reasonable, the exceptions should not be removed pending the result of EOC's review.

III. **Clause-by-clause examination of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996**

(Paper No. CB(2)1369/96-97 (01) - LegCo Brief on the Bill provided by Miss Christine LOH)

(Paper No. CB(2)1687/96-97 (01) - Miss LOH's paper entitled "Amendment to update the Bill")

(Paper No. CB(2)1902/96-97 (01) - Paper on Committee stage amendments (CSAs) proposed by Miss LOH)

(Paper No. CB(2)2066/96-97 (03) - Miss LOH's paper entitled "Amendments made by the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996")

Clause 2 - Commencement dates

13. As SDO and DDO had come into force, Miss LOH proposed a CSA to delete clause 2 which was now obsolete.

Clause 3 - Interpretation

14. Miss LOH said that clause 3 sought to give EOC an optional function of promoting standards set by binding and non-binding international instruments which were relevant to its work. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was listed as a non-binding instrument under the Bill. Since CEDAW was extended to Hong Kong in October 1996, an amendment to the clause was proposed to effect it as a binding international instrument. The Administration pointed out that the proposed optional function related to the functions and powers of EOC which was the subject matter of clause 13. It would therefore comment on the proposed function when clause 13 was examined. Referring to para 4 of its position paper in LegCo Paper No. CB(2)1258/96-97, the Administration said that on studying clause 3 further, it appeared that a comment in the paper was incorrect and the clause neither aimed at nor had the effect of linking the interpretation of SDO and DDO to international instruments.

Clause 4*Addition of the elements of "practice" and "policy" in the test of indirect discrimination*

15. Miss LOH said that clause 4 (together with clauses 5 and 6) sought to amend the existing test to identify indirect discrimination. The existing test provided that indirect discrimination might arise if a "requirement or condition", although applied equally, had a disproportionate impact on one sex (or on persons with a particular disability). It was copied from UK law but the UK EOC had proposed to change the test for the reasons set out in para 6-7 of her paper (Paper No. CB(2)1369/96-97 (01)). Indirect discrimination as amended by her Bill might include-

- (a) in addition to conditions and requirements that were indirectly discriminatory, practices and policies of that type as well; and
- (b) any practice, policy, condition or requirement that disadvantaged a person because of sex, marital status and pregnancy, regardless of whether the person could comply with it.

16. Representatives of the Administration said that the UK Government did not encounter any problem in implementing the relevant provision and therefore had not accepted the UK EOC's proposal. According to an authoritative publication on

Action

Australian and New Zealand equal opportunities laws, "requirement or condition" might take infinite variety of forms and generally included policies, practices, rules or stipulations which on their face might appear neutral but had a discriminatory effect in practice. As such there was no need to add the words "policies and practices". Miss Christine LOH said that the wording of the clause was copied from a simplified test used in the recent Australian legislation (in particular, in the federal Sex Discrimination Amendment Act 1995). The Administration undertook to check the updated position of the Australian law in this area.

Adm

Clause 4(a) - Addition of the word "imposes"

17. The Administration enquired the reason for the addition of "imposes" which was used in parallel with "applies" in the clause. Miss Christine LOH said that the wording of the clause was substantially copied from the Australian law which, vis-à-vis UK law, offered better protection against discrimination. In reply to the Administration, ALA4 advised that there was no difference in the meaning between "applies" and "imposes" referred to in the clause. The Administration considered that if so, the same word, instead of two different words, should be used.

Clause 4(a) - Addition of the words "proposes to impose" and "proposes to apply"

18. The Administration was concerned that addition of the words "proposes to impose" and "proposes to apply" would widen the scope of indirect discrimination. Miss Christine LOH undertook to provide members with background to the provision of the Australian law on which the clause was based.

Miss
LOH

Clause 4(b) - factors to consider in respect of indirect discrimination

19. Representatives of the Administration said that as there was UK case law for the court's interpretation of the meaning of indirect discrimination, the factors to consider in respect of indirect discrimination set out in clause 4(b) (proposed section 5(4)) were unnecessary. Under section 76(5) no award of damages would be made if an alleged discriminator proved that the requirement or condition concerned was not applied with the intention of treating the aggrieved person unfavourably on the ground of her/his sex, marital status or pregnancy, as the case might be. The proposed deletion of section 76(5) under clause 16 would remove such a defence. Clause 4(b) required an alleged discriminator to prove that the condition, requirement, practice or policy concerned was reasonable. In the absence of case law on the meaning of "reasonable" referred to in the clause, clause 4(b) might cause uncertainty in interpreting the meaning and bring about an increase in litigation cases. Upon request, the Administration undertook to provide members with the following UK Court judgements on indirect discrimination mentioned at the meeting -

- (a) Hillington London Borough Council v Commission for Racial Equality [1982] AC 779 - 794;
- (b) Commission for Racial Equality v Prestige Group PLC [1984] 1 W.L.R. 335 - 348; and
- (c) Bilka-kaufhaus GmbH v Weber von Hartz [1986] IRLR 317.

(Post-meeting note : The judgements were circulated to members vide LegCo Paper No. CB(2)2228/96-97.)

20. A member shared the Administration's view that the existing wording of the provision on indirect discrimination should be retained unless there were problems in implementing the provision. Since SDO and DDO were only in force for a short period of time and there was no case law on the new definition of indirect discrimination referred to in clause 4, adopting the new definition might cause confusion and difficulties in compliance.

Miss
LOH
Adm

21. To facilitate clause-by-clause examination of the Bill, the Bills Committee agreed to Miss Christine LOH's proposal to discuss with the Administration on the specific concerns set out in its position paper before the next meeting.

IV. Date of next meeting

22. Members agreed that the coming meetings of the Bills Committee would be held as follows -

<u>Date and Time</u>	<u>Venue</u>	<u>Purpose</u>
Thursday, 15 May 1997 (8:30 am)	Chamber	Continued examination of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
Monday, 19 May 1997 (8:30 am)	Chamber	Continued examination of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

23. The meeting ended at 12:45 pm.

LegCo Secretariat
27 May 1997

Ref : CB2/BC/55/95

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill,
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and
Family Status Discrimination Bill**

**Minutes of the 8th meeting
held on Thursday, 15 May 1997 at 8:30 am
in the Chamber of the Legislative Council Building**

Members Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon LAU Wong-fat, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon Emily LAU Wai-hing
Hon Zachary WONG Wai-yin
Hon Christine LOH Kung-wai
Hon LEE Cheuk-yan
Hon CHAN Yuen-han
Hon Albert HO Chun-yan
Hon Bruce LIU Sing-lee
Hon NGAN Kam-chuen

Members Absent : Dr Hon John TSE Wing-ling (Deputy Chairman)
Hon CHEUNG Hon-chung
Hon LAU Chin-shek
Hon LEUNG Yiu-chung

Public Officers Attending : Mr NG Hon-wah
Deputy Secretary for Home Affairs (Acting)

Miss Helen TANG
Principal Assistant Secretary for Home Affairs

Mr CHOI Chi-wa
Commissioner for Rehabilitation

Ms Esther LEUNG
Principal Assistant Secretary for Education and Manpower

Miss Priscilla TO
Assistant Secretary for Health and Welfare

Attendance : Mr Adam MAYES
by Invitation Personal Assistant to Hon Christine LOH

Clerk in : Mrs Anna LO
Attendance Chief Assistant Secretary (2) 2

Staff in : Mr Stephen LAM
Attendance Assistant Legal Adviser 4

Mr Colin CHUI
Senior Assistant Secretary (2) 2

I. Confirmation of minutes of meeting held on 1 April 1997
(LegCo Paper No. CB(2)2162/96-97)

The minutes of the meeting held on 1 April 1997 were confirmed.

II. Matters arising from the last meeting held on 28 April 1997

2. Members noted that the Administration's answers to questions relating to small house applications raised at the last meeting held on 28 April 1997 was still awaited.

(Post-meeting note : The Administration's answers were subsequently circulated to members vide LegCo Paper No. CB(2)2335/96-97.)

3. The Chairman recapitulated that in order to facilitate discussion of the Sex and Disability Discrimination (Miscellaneous provisions) Bill 1996, it was agreed at the last meeting that Miss Christine LOH would go over with the Administration its specific concerns on individual clauses of her Bill before the meeting. At the Chairman's request, Miss LOH briefed members on her discussion with the

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Administration. Taking into account the Administration's comments, she had revised the draft Committee stage amendments (CSAs) to her Bill (Paper No. CB(2)2263/96-97 (01)). After discussion with Miss LOH, the Administration had reinforced its belief that as the Sex Discrimination Ordinance (SDO) and Disability Discrimination Ordinance (DDO) were only fully operational in December 1996, amendments to the two Ordinances should only be considered after development of local operational experience and the comprehensive review of the two Ordinances by the Equal Opportunities Commission (EOC) in December 1997. Besides, the general public was not yet fully familiar with all the provisions of the two Ordinances. It would certainly cause confusion to the public if the Ordinances were amended at this stage, bearing in mind that they might be further amended after the EOC's review. Frequent amendments to the two Ordinances would also cause difficulties to the EOC's work in promoting the Ordinances and some members of the public would mistake the reasons why the EOC had told them different things at different times.

III. Continuation of clause-by-clause examination of the Bill

(Paper No. CB(2)2263/96-97 (01) - revised draft CSAs to the Bill prepared by Miss Christine LOH)

Clauses 4, 5, 6 and 27 - Indirect discrimination

4. Miss LOH pointed out that the wording of clauses 4, 5, 6 and 27 was copied from the test of indirect discrimination used in Australian legislation. In order to tie in with the wording of the relevant provisions in SDO and DDO which was based on United Kingdom (UK) legislation, she had proposed CSAs to the clauses. Members noted that the test of indirect discrimination now used in the two Ordinances provided that indirect discrimination might arise if a "requirement or condition," although applied equally, had a disproportionate impact on one sex (or on persons with a disability). The impact was assessed by comparing the proportions of men and women (or the proportions of persons with and without a disability) who could comply with the requirement or condition. Indirect discrimination as amended by the CSAs might include -

- (a) in addition to conditions and requirements that were indirectly discriminatory, practices of the type as well; and
- (b) any practice, condition or requirement that disadvantaged a person because of sex, marital status, pregnancy and disability regardless of whether the person could comply with it.

5. Representatives of the Administration said that the existing definition of "requirement or condition" was broad enough to include "practice". The Administration therefore did not see the rationale for the inclusion of "practice" in

Action

addition to “requirement or condition”. The Administration also failed to see the need to replace the words “comply with” in the existing legislation with the word “disadvantage”. The Administration was concerned that as a result of the changes to the wording of the relevant clauses the UK case law on indirect discrimination could no longer be relied upon in interpreting the key words of the clauses (e.g. ‘disadvantage’ referred to in the revised clause 4) which were copied from recent amendments to the Australian law and for which there probably had not been any judicial interpretation.

6. Representatives of the Administration said that according to the excerpt from the book entitled “Race and Sex Discrimination” (LegCo Paper No. CB(2)2277/96-97), a complainant might have difficulty in identifying the requirement or condition as a result of the court decision in *Perera v Civil Service Commission (1983) ICR 428*. In this case, the court held that a ‘requirement or condition’ could only be said to exist when it amounted to a complete bar if not met. This meant that practices which were decisive in a particular situation but which were not absolute bars could not form the basis of a claim. There was insufficient information to enable a decision to be taken on whether or not the court’s ruling should be reversed. Or, if the ruling should be reversed, it was not clear whether the clauses proposed by Miss LOH achieved the objective. Miss LOH said that she did not find any problem in the test proposed by her and she believed that the clauses would offer better protection against indirect discrimination.

Clauses 7(b) and (c) and 28 - exceptions for small employers

7. Miss LOH said that clause 7(b) and (c) and 28 sought to shorten the grace period for small employers, while enabling the Legislative Council (LegCo) to extend either exception for some additional time if necessary. As the specified dates that the Bill set for these purposes had passed and the grace period provided for in SDO and DDO would expire in July and August 1998 respectively, CSAs to delete the two clauses were proposed.

Clause 10

8. Miss LOH said that clause 10 sought to replace the following three exceptions in Schedule 5 with similar exceptions in the body of SDO. These exceptions authorised -

- (a) an employer to refuse double benefits to married employees (e.g. a housing allowance for an employee whose spouse already received a similar allowance);
- (b) marital status discrimination in access to reproductive technology (e.g. in vitro fertilisation, artificial insemination); and

- (c) marital status discrimination in access to facilities for adoption of children.

In reply to the Chairman, the Administration pointed out that it did not object to the clause as these exceptions were already provided for in SDO.

Clauses 13 and 30 - functions and powers of EOC

9. Miss LOH said that there was a basic difference of opinion between she and the Administration in respect of the functions and powers of EOC. She considered that EOC should be given express additional powers in order to play a more proactive role in the elimination of discrimination. She therefore proposed clauses 13 and 30 to give EOC express authority to carry out two optional functions -

- (a) to promote binding and non-binding international standards as defined in the Bill; and
- (b) to examine and report on proposed legislation.

She pointed out that the Privacy Commissioner for Personal Data was also tasked to perform similar functions under the Personal Data (Privacy) Ordinance. Whilst having reservations on promoting non-binding standards by EOC, the Administration took the view that many of these functions could be lawfully performed by EOC under SDO at present. As such, there was no need to list them out.

10. The Administration was concerned about the following -

- (a) According to legal advice, although Miss LOH intended these functions to be optional, EOC might be open to challenge if it did not perform them over a lengthy period;
- (b) Promotion of standards not yet applicable to Hong Kong might mislead the public into thinking that these standards applied in Hong Kong. EOC's political neutrality might be open to question if it had to promote these standards; and
- (c) Promotion of these standards might also adversely affect EOC's conciliation work. The parties concerned might be misled to consider that EOC would follow these standards in resolving the disputes.

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Clauses 14, 15, 32 and 33

11. Miss LOH agreed to delete these clauses after discussion with the Administration.

Clauses 16 and new 33A - remedies obtainable in civil proceedings

12. Miss LOH pointed out that clause 16 sought to remove arbitrary limits that SDO imposed on the remedies a court might order for unlawful sex discrimination, and instead bring these remedies in parallel with those available under DDO for disability discrimination.

Cap on damages

13. Miss LOH said that one of the three major proposals in clause 16 was to repeal the \$150,000 limit on damage awards for work-related sex discrimination or harassment, which significantly deterred any litigation in respect of those matters. In this connection, she had revised the CSA to clause 16 and added a new clause 33A in order to make clear that the \$120,000 limit ordinarily applicable to civil proceedings in the District Court did not apply to DDO or SDO proceedings.

Reinstatement

14. Miss LOH said that another major proposal in clause 16 was to empower the court to order an employer to reinstate a terminated employee if the court judged this to be the just and appropriate remedy in the circumstances.

15. The Administration stated that it did not agree to the provisions on reinstatement and others under clause 16 of Miss LOH's Bill. Under the Administration's Employment (Amendment) (No. 2) Bill 1997 which was being considered by LegCo, a reinstatement or re-engagement order was provided as one of the remedies for unreasonable termination of employment, unreasonable variation of contract and unlawful dismissals. However, unlike the provision under Miss LOH's Bill, this reinstatement order might be made only if it was agreed by both the employer and employee involved. The Administration's Bill also provided that where the employer failed to comply with the order by the court, the employee would be entitled to an award of terminal payments. These provisions which struck a reasonable balance between the interests of employers and employees were more appropriate than those under Miss LOH's Bill. Mutual consent was necessary to maintain good labour relations. The Employment (Amendment) No.2 Bill 1997 proposed that the employee concerned would be compensated if an order for reinstatement had not been made or complied with. In reply to Miss Christine LOH, the Administration pointed out that as sex and disability discrimination in employment field were dealt with in SDO and

Action

DDO respectively, unlawful dismissals on these grounds fell outside the scope of the Employment (Amendment) No.2 Bill 1997.

16. A member said that court order for reinstatement was already provided for in DDO. Mutual consent was, however, not a pre-requisite for the order. He was therefore concerned about the inconsistency between DDO and the Employment (Amendment) No. 2 Bill 1997 in this respect. The Administration pointed out that the provision on reinstatement in DDO was put forward by a Member in the form of a CSA to the Disability Discrimination Bill (DDB). Such a provision probably took account of the difficulty which a disabled person might have in finding an alternative employment. The Attorney General's Chambers advised that the court was generally obliged, as a matter of common law principle, to take into account circumstances of the case including the need to maintain good labour relations in deciding whether to make an order for reinstatement. Normally, it would not make the order under common law without the employer's and employee's consent. Another member opined that in view of this common law principle, it was unnecessary to incorporate the mutual consent requirement in the provisions on reinstatement in the Employment (Amendment) No. 2 Bill 1997 and Miss LOH's Bill. In reply to the Chairman, the Administration pointed out that no proceedings in respect of reinstatement under DDO had been instituted since its enactment in August 1995.

17. Mrs Miriam LAU recalled that the Liberal Party did not support the CSA to DDB in respect of reinstatement when it was put to LegCo in 1995. Reinstatement without mutual consent between employers and employees was not practical. She shared the Administration's view that mutual consent was necessary for maintaining good labour relations. This was particularly important in respect of small employers who, unlike large employers, could not transfer the reinstated employee to a different working environment. Other members said that if there was mutual consent, it was unnecessary for legislation on reinstatement. The proposal was to protect the employee by authorising the court to rule in case of disagreement. On the question of whether there was any existing labour legislation whose scope was confined to employers of varying sizes, the Administration responded that most of the existing labour legislation did not contain provisions excluding from its coverage certain groups of employers on the basis of their employment size. A member said that SDO and DDO provided a three-year grace period for small employers having five or less employees. The Mandatory Provident Fund Ordinance did not apply to employers of domestic workers.

Damages for unintentional sex discrimination

18. Miss LOH said that the third major proposal of clause 16 was to remove the bar against damages in cases where indirect sex discrimination was unintentional, giving the court the same discretion to award damages as in other types of cases.

Action

19. Representatives of the Administration briefed members on the updated position of the UK law. Only under certain conditions did the UK law allow damages to be awarded even in cases where indirect sex discrimination was unintentional. The Administration would revert to the Bills Committee on details of the updated position.

Adm

Clauses 17 and 34 - Binding undertakings

20. Miss LOH said that clause 17 added a new section that enabled persons to make, and EOC to accept, binding undertakings not to act unlawfully under SDO. A binding undertaking might be made voluntarily by a person at any time, might cover any of the same matters as an enforcement notice issued by EOC, and might be enforced by EOC in the same way. Clause 34 sought to make a parallel amendment to DDO.

21. The Administration pointed out that binding undertakings was a UK EOC recommendation. The UK Government undertook to discuss further with UK EOC on this subject in 1993. However, no revision on this subject had been made to the UK law so far. The Administration would check the latest position with the UK Government.

Adm

Clauses 18 and 35

22. Miss LOH said that clauses 18 and 35 as amended by the revised draft CSAs concerned made the following two proposals -

- (a) They sought to enable EOC to bring proceedings in its own name in claims under SDO and DDO. In this connection, the Administration pointed out that the EOC's power to litigate under SDO was governed by the regulations made by the Secretary for Home Affairs at present.
- (b) They sought to enable EOC to bring any judicial review proceedings that were relevant to its functions. The Administration pointed out that, according to the Attorney General's Chambers' advice, EOC was able to bring judicial review proceedings under the two Ordinances. It was therefore unnecessary to add this power to EOC. ALA4 advised that the proposed EOC's power to bring proceedings in its own name might adversely affect its current implicit power to bring judicial review proceedings. The clauses sought to give EOC the power explicitly. In fact UK EOC had such a statutory power to bring judicial review proceedings.

23. The Chairman said that the clauses would be further discussed at the next meeting.

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Clauses 20 and 37 - period within which proceedings to be brought

24. Miss LOH said that clauses 20 and 37 sought to ensure that any time during which EOC attempted to conciliate a person's complaint did not count against the time limit for the person to bring court proceedings on the complaint. The Administration pointed out that SDO and DDO allowed the court to consider any claim or application which was out of time if, in all the circumstances, the court considered that it was just and equitable to do so.

Clause 21

25. Miss LOH said that clause 21 sought to repeal section 89 of SDO which, as a consequence of clause 18, no longer served any purpose. Members agreed that the clause would be considered at the next meeting together with clause 18.

Clause 26

26. Members noted that clauses 3 and 26 had the same wording and sought to amend section 2 of SDO and DDO respectively.

Clause 31

27. Miss LOH said that clause 31 sought to repeal references to a Schedule that was repealed by clause 40. As she had put forward CSA to repeal clause 40, removal of the references was no longer necessary. She would therefore propose CSA to delete clause 31.

28. Mrs Miriam LAU said that the Liberal Party took the view that any changes to SDO and DDO should be considered after development of local experience in implementing the two Ordinances and a comprehensive review of them by EOC in December 1997. Moreover, the Bill's proposal to give EOC additional functions and powers was not supported by EOC itself. The Liberal Party therefore did not support the Bill.

IV. Date of next meeting

29. Members agreed to discuss the following at the next meeting to be held on 19 May 1997 at 8:30 am in the Chamber of the Legislative Council Building -

- (a) the outstanding points on Miss LOH's Bill (clauses 16, 17, 18 and 21);
- and

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- (b) clause-by-clause examination of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill.

30. The meeting ended at 10:00 am.

LegCo Secretariat

10 June 1997

PLC Paper No. CB(2)237
(These minutes have been seen
by the Administration and
cleared with the Chairman)
Ref : CB2/BC/55/95

Bills Committee on the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill, Equal Opportunities (Race) Bill, Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and Family Status Discrimination Bill

**Minutes of the 9th meeting
held on Monday, 19 May 1997 at 8:30 am
in the Chamber of the Legislative Council Building**

Members Present :

- ② Dr Hon LEONG Che-hung, OBE, JP (Chairman)
- ② Dr Hon John TSE Wing-ling (Deputy Chairman)
- ② Hon Mrs Miriam LAU Kin-ye, OBE, JP
- ② Hon Emily LAU Wai-hing
- ② Hon Zachary WONG Wai-yin
- ② Hon Christine LOH Kung-wai
- ② Hon LEE Cheuk-yan
- ② Hon CHAN Yuen-han
- ② Hon Albert HO Chun-yan
- ② Hon LAU Chin-shek
- ② Hon LEUNG Yiu-chung
- ② Hon Bruce LIU Sing-lee

Members Absent :

- ② Hon LAU Wong-fat, OBE, JP
- ② Hon CHEUNG Hon-chung
- ② Hon NGAN Kam-chuen

Public Officers Attending :

Item II

- ② Mr NG Hon-wah
Deputy Secretary for Home Affairs (Acting)
- ② Miss Helen TANG
Principal Assistant Secretary for Home Affairs
- ② Ms Cora HO
Assistant Secretary for Home Affairs
- ② Ms Esther LEUNG

- Principal Assistant Secretary for Education and Manpower
- ❶ Mr CHOI Chi-wa
Commissioner for Rehabilitation
- ❶ Miss Priscilla TO
Assistant Secretary for Health and Welfare

Item III

- ❶ Mr NG Hon-wah
Deputy Secretary for Home Affairs (Acting)
- ❶ Miss Helen TANG
Principal Assistant Secretary for Home Affairs
- ❶ Ms Cora HO
Assistant Secretary for Home Affairs
- ❶ Ms Esther LEUNG
Principal Assistant Secretary for Education and Manpower
- ❶ Mrs N DISSANYAKE
Senior Assistant Law Draftsman
- ❶ Mr Vincent FUNG
Assistant Secretary for Financial Services
- ❶ Mr Francis CHENG
Assistant Secretary for Education and Manpower
- ❶ Mr David YIP
Assistant Secretary for Security

Attendance by Invitation :

- ❶ Mr Adam MAYES
Personal Assistant to Hon Christine LOH
- ❶ Ms CHEUNG Yuet-fung
Personal Assistant to Hon LAU Chin-shek

Clerk in Attendance :

- ❶ Mrs Anna LO
Chief Assistant Secretary (2) 2

Staff in Attendance :

- ❶ Mr Stephen LAM
Assistant Legal Adviser 4
- ❶ Mr Colin CHUI
Senior Assistant Secretary (2) 2

❶ I. Outstanding points on the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

- ◆ Clause 12 - Small House Policy
- ◆ Clause 16 - Damages for unintentional sex discrimination
- ◆ Clauses 17 and 34 - binding undertakings
- ◆ Clause 21 - Regulations to empower Commission to bring certain proceedings
- ◆ Clause 24 - Further exceptions to this Ordinance

❶ II. Clause-by-clause examination of the Equal Opportunities (Family Responsibility, Sexuality, and Age) Bill

- ◆ Part I - Preliminary
 - Clause 2 - Objects
 - Clauses 3 - Interpretation
 - Clause 4 - Act done for 2 or more reasons

- Clause 5 - Ordinance binds the Crown
 - Clause 6 - Discrimination on the basis of the characteristics of an associate or relative of a person
 - Clause 7 - Relevance of international instruments
 - ◆ Part IV Discrimination on the ground of age
 - Administration's position on age discrimination legislation
 - Clause 54 - Discrimination on the ground of age
 - Clause 55 - Discrimination against applicants and employees
 - Clause 59 - Professional or trade organizations
 - Clause 61 - Employment agencies
 - Clause 62 - Education
 - Clause 63 - Access to places and vehicles
 - Clause 64 - Goods, services and facilities
 - Clause 65
 - Clause 70
 - ◆ Implications of age discrimination clauses in areas other than employment
- III. Date of next meeting

I. Outstanding points on the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

(Paper No. CB(2)2392/96-97 (01) - seventh draft of Miss Christine LOH's Committee stage amendments (CSAs) tabled at the meeting)

Clause 12 - Small House Policy

(Paper No. CB(2)2335/96-97 (01) - paper provided by the Administration)

At a member's request, the Administration undertook to revert to the Bills Committee on -

- a. the relationship between tso or tong and the Small House Policy; and
- b. whether male indigenous villagers could apply for public housing.

Admin

(*Post-meeting note* : The Administration's response was circulated to members vide LegCo Paper No. CB(2)2471/96-97.)

Clause 16 - Damages for unintentional sex discrimination

Representatives of the Administration said that the United Kingdom (UK) Government had advised that the UK Sex Discrimination and Equal Pay (Miscellaneous Amendments) Regulations 1996 provided, amongst other things, for industrial tribunals to award compensation to a person who had suffered indirect discrimination under Part II of the UK Sex Discrimination Act. The Regulations also allowed damages for indirect sex or marital status discrimination on where it would not be just and equitable to grant other remedies alone. The Administration pointed out that clause 16 did not stipulate such a condition in respect of damages for unintentional sex discrimination. As the UK sex discrimination legislation was amended to provide for the damages after 21 years of operational experience, a member doubted the appropriateness of introducing similar amendment to SDO which had only been fully implemented for a few months. Miss LOH responded that Hong Kong should learn from the UK experience and offer better protection against discrimination without further delay.

(*Post-meeting note* : The letter from the UK Government was circulated to members vide Paper No. CB(2)2387/96-97(01).)

Clauses 17 and 34 - binding undertakings

The Administration reported that, in response to the Administration's request, the UK's Department for Education and Employment had explained in writing its position in respect of binding undertakings. Binding undertakings were recommended by both the UK EOC and UK Commission for Racial Equality. The former body was responsible for implementing the UK Sex Discrimination Act while the latter was tasked with the enforcement of the Race Relations Act. The UK Home Office, which was the house-keeping department of the latter body, agreed to incorporate binding undertakings in the UK Race Relations Act. The Department for Education and Employment, which was the house-keeping department of UK EOC, decided not to proceed with the UK EOC proposal in parallel with the Home Office, but to wait and see whether the change was a success in the field of race relations. The decision whether to go ahead could then be taken in the light of the Home office's experience. However, owing to lack of legislative time it had not yet been possible for the Home Office to proceed and therefore the matter was currently on hold. Upon request, the Administration undertook to provide members with the UK Government's written explanation.

Admin

(Post-meeting note : The letter from the UK Department for Education and Employment was circulated to members vide Paper No. CB(2)2387/96-97 (02).)

Clause 21 - Regulations to empower Commission to bring certain proceedings

Miss Christine LOH said that the updated (seventh draft) CSA to clause 21 was proposed to address ALA4's concerns.

Clause 24 - Further exceptions to this Ordinance

Referring to the updated CSA to clause 24, Miss LOH said that she proposed to amend the clause to delete the exception under Schedule 5 Part 2 item 6. The exception was in respect of marital status discrimination arising from HOS/PSPS. The exception was no longer necessary as the existing housing policy did not discriminate single parent families.

Miss LOH said that she would prepare a paper setting out the relevant provisions of the Sex Discrimination Ordinance (SDO) and Disability Discrimination Ordinance (DDO) and her proposed amendments. *Miss LOH*

The Administration reiterated that it did not support the Bill. As the Sex Discrimination Ordinance (SDO) and Disability Discrimination Ordinance (DDO) were only fully operational in December 1996, amendments to the two Ordinances should only be considered after development of local operational experience and the comprehensive review of the two Ordinances by the Equal Opportunities Commission (EOC) in December 1997. Besides, the general public was not yet fully familiar with all the provisions of the two Ordinances. It would certainly cause confusion to the public if the Ordinances were amended at this stage, bearing in mind that they might be further amended after the EOC's review. Frequent amendments to the two Ordinances would also cause difficulties to the EOC's work in promoting the legislation.

Members noted that scrutiny of the Bill had been completed and Miss LOH intended to resume Second Reading debate of the Bill on 11 June 1997. A written report on the Bill would be submitted to the House Committee on 30 May 1997. The Chairman reminded Members that the deadline for giving notice of CSAs was 31 May 1997 because 9 June 1997 was a public holiday.

II. Clause-by-clause examination of the Equal Opportunities (Family Responsibility, Sexuality, and Age) Bill

(Paper No. CB(2)2327/96-97 (01) - draft CSAs provided by Mr LAU Chin-shek)

The Chairman recapitulated that the Bills Committee last discussed this Bill on 17 March 1997. Having gone through the policy issues, the Bills Committee had commenced the clause-by-clause examination up to clause 3. There were some points which Mr LAU Chin-shek had agreed to

consider. In this connection, the proposed amendments by him had been circulated to members vide LegCo Paper No. CB(2) 2327/96-97. Mr LAU Chin-shek proposed and members agreed to examine his Bill in the order of discrimination on the ground of age (Part IV), family status (Part II) and sexuality (Part III). The Bill would therefore be studied in the following order - Part I, Part IV, Part II together with the Family Status Discrimination Bill, and Part III.

Part I - Preliminary

Clause 2 - Objects

Representatives of the Administration said that they would discuss with the Attorney General's Chambers on Mr LAU Chin-shek's draft CSA to clause 2 and comment on it at later meetings of the Bills Committee. *Admin*

Clauses 3 - Interpretation

The Administration commented that the definition of "educational establishment" in SDO was more detailed and precise than those of "educational authority" and "educational institution" in clause 3. The two definitions in the clause should be revised for consistency with SDO. "Work under a contract for services" in the definition of employment under clause 3 might include services provided by an independent contractor. Scope of the definition would therefore extend beyond that in the relevant employment legislation. Mr LAU undertook to consider amending the definitions. *Mr LAU*

Clause 4 - Act done for 2 or more reasons

In reply to the Administration, Mr LAU agreed to consider amending the wording of clause 4 to tie in with similar provisions in SDO and DDO. *Mr LAU*

Clause 5 - Ordinance binds the Crown

The Administration pointed out that the word "Crown" in clause 5 should be replaced by "Government". Similar changes had been made to the laws of Hong Kong. Mr LAU agreed to do so. *Mr LAU*

Clause 6 - Discrimination on the basis of the characteristics of an associate or relative of a person

Members noted that clause 4 provided that a person (the discriminator) would be taken to discriminate the aggrieved person on the grounds of family responsibility, sexuality or age if the aggrieved person's associate or relative was discriminated by the discriminator on one of these grounds. The Administration pointed out that with the broad scope of the word "associate", clause 6 might be subject to abuse. In reply to Mr LAU, representatives of the Administration said that similar provision was provided for in DDO but not in SDO. The provision in DDO would less likely be subject to abuse as the characteristics of people with a disability were more apparent than those of people subjecting to discrimination on the grounds of sex, family responsibility, age or sexuality. They supplemented that in fact Ms Anna WU intended to remove similar clauses from her Equal Opportunities Bills. Mr LAU agreed to consider amending the clause.

Mr LAU

Clause 7 - Relevance of international instruments

Representatives of the Administration said that the Administration would seek legal advice on whether clause 7(2) was consistent with the common law principle on interpretation of *Admin* legislation. Mr LAU said that he had proposed a draft CSA to delete clause 7(3).

Part IV Discrimination on the ground of age

Administration's position on age discrimination legislation

The Administration stated that it did not support age discrimination legislation. Based on the outcome of public consultation conducted by the Administration last year, it had informed Members of its view that a sustained programme of public education, publicity and self-regulation would be the most appropriate way to deal with discrimination in employment on the ground of age. These activities should be more effective in changing attitudes than legislative sanctions; and the purpose of the relevant clauses in the Bill could be achieved by strengthening the current and planned activities in the following areas - (a) publicity and public education measures; (b) practical guidelines for employers; (c) employment services; and (d) retraining. The Administration would review the situation after the public education programme had been running for a period of time, say, one year. If there was no improvement, it would seriously consider the need for legislation.

Clause 54 - Discrimination on the ground of age

The Administration pointed out that the indirect discrimination provision under clause 54 was a parallel provision to clause 4 of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996. The problems of the latter clause had been pointed out when it was examined. The indirect discrimination provisions in SDO and DDO should therefore be retained. Miss LOH reiterated that she did not find any problems in the updated clause 4 of her Bill. She would provide members with a paper setting out justifications for the clause and her response to the Administration's comments. Mr LAU undertook to take account of the updated clause 4 of Miss LOH's Bill and the Administration's comments in considering amendments to clause 54 of his Bill.

Miss LOH

Clause 55 - Discrimination against applicants and employees

The Administration was concerned whether under clause 55(1)(c), 'the terms or conditions of employment' should be better than the minimum requirements stipulated in the Employment Ordinance. It also wondered whether the subclause would affect the calculation of employees' compensations (e.g. the Long Service Payment) under the Ordinance which were linked to the age of the employees. A member opined that employees' compensations fell outside the scope of the subclause. Mr LAU said that clause 77 provided a grace period in respect of the existing statutory provisions. Nevertheless, he would address the Administration's concerns.

Mr LAU

In reply to a member, Mr LAU said that "any other benefits" in clause 55(2)(b) referred to fringe benefits associated with employment. A member opined that the benefits might include, for example, employees' eligibility to use their employers' holiday accommodation, etc.

Mr LAU

On the question of the meaning and examples of "any other detriment" referred to in clause 55(2)(d), ALA4 advised that similar wording was used in SDO. Mr Adam MAYES said that the wording was also used in anti-discrimination legislation in UK. He would check how the wording had been interpreted there. A member requested the Administration to seek information from the UK Government regarding the case law on the wording.

Mr MAYES

Admin

Clause 59 - Professional or trade organizations

The Administration pointed out that the Trade Unions Ordinance prohibited -

- a. persons under the age of 16 to be voting members of registered trade unions; and
- b. persons under the age of 21 to be members of the executives of these trade unions.

Non-compliance with these age requirements was a criminal offence. These age requirements were imposed because of the need to have mature people to exercise the voting rights and discharge the duties of the executives of trade unions. If clause 59 applied to registered trade unions, it would be inconsistent with these statutory age requirements.

Mr LAU confirmed that the clause applied to registered trade unions. The Bill, however, provided a grace period of two to four years for existing statutory provisions. A member said that views of trade unions on the removal of these age requirements should be invited. Some other members opined that in line with the principle of elimination of age discrimination, the Bill should remove these age requirements now in the form of a consequential amendment to the Trade Unions Ordinance. Mr LAU would consider views expressed on this issue. *Mr LAU*

Clause 61 - Employment agencies

Given that any contracts with minors were unenforceable at common law, a member asked whether under clause 61, it was unlawful for employment agencies not to provide services to minors. Mr LAU responded that according to clause 75, it was not unlawful if employment agencies refused to enter into contracts with minors for providing employment services. Hence employment agencies would not violate the provisions of his Bill for not providing employment services to minors .

Clause 62 - Education

Mr LAU said that clause 62 sought to outlaw age discrimination in the area of education. Nevertheless, clauses 62(4) and 88 did not outlaw mature age admission schemes, the minimum age requirements for admission to primary and secondary schools or any admission scheme imposed by law. In view of these exemptions and the grace period for existing statutory provisions, some members raised the question of the immediate effect of the age discrimination clauses in the area of education. A member remarked that clause 62 might outlaw the existing cap on age in respect of compulsory school education.

Clause 63 - Access to places and vehicles

Clause 64 - Goods, services and facilities

Members noted that under clause 63(2), it would not be unlawful for the provision of bona fide benefits to persons of a particular age in respect of access to places and vehicles. Clause 64(2) provided similar exemption in the area of provision of goods, services and facilities. "Bona fide benefits" were, however, not defined in the Bill. A member was concerned that providers of benefits might refrain from doing so as they were unsure whether these benefits were "bona fide". She therefore enquired as to the meaning of the wording. ALA4 undertook to check whether the wording was used and, if so, its meaning in local and/or overseas legislation. Mr LAU would revert to the Bills Committee on the rationale for using the wording. *ALA4
Mr LAU*

Mr LAU said that clause 64(1) prohibited age discrimination in the area of provision of goods, services and facilities. Some members were concerned that the subclause might outlaw the statutory age requirements imposed in respect of film classification, the sale of cigarettes and indecent and obscene articles, access to video game centres and amusement facilities. Mr LAU would check whether clauses 74 and 79 could provide exemptions for these age requirements.

Clause 65

In reply to the Administration, Mr LAU undertook to revise "3" referred to in clause 65(3)(a)(ii) to "6". With the revision, the definition of small dwelling in the subclause would tie in with that in SDO. *Mr LAU*

Clause 70

The Administration raised whether clause 70 was consistent with the Long Service Payment (LSP) provisions in the Employment Ordinance. Mr LAU responded that like other existing statutory provisions, the LSP provisions were exempted from the Bill under clause 77. The clause also provided that the exemption would expire in two to four years. In reply to a member, ALA4 advised that, as a matter of principle, subsidiary legislation should be consistent with their principal Ordinances. In view of this principle and the need to cater for subsidiary legislation made on or after the Bill was enacted, clause 77(3)(b)(ii) sought to treat provisions of the subsidiary legislation as existing statutory provisions. The Chairman said that clause 77 would be examined in detail at later meetings.

Implications of age discrimination clauses in areas other than employment

A member expressed concern about the far-reaching implications on the community of the clauses relating to age discrimination in the areas other than employment. These areas included -

- a. education;
- b. access to places and vehicles;
- c. goods, services and facilities;
- d. accommodation;
- e. land;
- f. clubs;
- g. sports;
- h. application forms;
- i. superannuation schemes and provident funds; and
- j. administration of laws and government programmes.

Upon request, the Administration undertook to revert to the Bills Committee on the effect of the age discrimination clauses of the Bill on these areas. The member suggested that the Bills Committee should consider inviting representations on these provisions in the Bill from interested parties to ensure that all its aspects were given a full and proper airing. The Chairman said that the Bills Committee would consider the member's proposal at later meetings. *Admin*

III. Date of next meeting

Members agreed that the next meeting would be held on 29 May 1997 at 2:30 pm in the Chamber of the Legislative Council Building to continue clause-by-clause examination of Part IV of Mr LAU's Bill, followed by Part II in parallel with the Family Status Discrimination Bill.

The meeting ended at 10:30 am.

Provisional Legislative Council Secretariat
2 September 1997

Bills Committee on the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill, Equal Opportunities (Race) Bill, Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and Family Status Discrimination Bill

**Minutes of the 10th meeting
held on Thursday, 29 May 1997 at 2:30 pm
in the Chamber of the Legislative Council Building**

Members Present :

- ④ **Dr Hon LEONG Che-hung, OBE, JP (Chairman)**
- ④ Hon Mrs Miriam LAU Kin-ye, OBE, JP
- ④ Hon Emily LAU Wai-hing
- ④ Hon Zachary WONG Wai-yin
- ④ Hon Christine LOH Kung-wai
- ④ Hon LEE Cheuk-yan
- ④ Hon CHAN Yuen-han
- ④ Hon LAU Chin-shek
- ④ Hon LEUNG Yiu-chung

Members Absent :

- ④ Dr Hon John TSE Wing-ling (Deputy Chairman)
- ④ Hon LAU Wong-fat, OBE, JP
- ④ Hon CHEUNG Hon-chung
- ④ Hon Albert HO Chun-yan
- ④ Hon Bruce LIU Sing-lee
- ④ Hon NGAN Kam-chuen

Public Officers Attending :

- ④ Mr NG Hon-wah
Deputy Secretary for Home Affairs (Acting)
- ④ Miss Helen TANG
Principal Assistant Secretary for Home Affairs
- ④ Ms Cora HO
Assistant Secretary for Home Affairs
- ④ Ms Esther LEUNG
Principal Assistant Secretary for Education and Manpower

- ④ Mr Francis CHENG
Assistant Secretary for Education and Manpower
- ④ Mr Esmond LEE
Principal Assistant Secretary for Planning, Environment and Lands
- ④ Mrs Betty NEOH
Principal Executive Officer, Civil Service Branch
- ④ Mr Vincent FUNG
Assistant Secretary for Financial Services
- ④ Mr David YIP
Assistant Secretary for Security
- ④ Mr Gary YEUNG
Assistant Commissioner (Entertainment),
Television and Entertainment
Licensing Authority
- ④ Mr FUNG Ho-tong
Assistant Director (Applications and Home Ownership)
Housing Department
- ④ Mr Simon LEE
Assistant Director (Legal Advice)
Housing Department

Attendance by Invitation :

- ④ Mr Adam MAYES
Personal Assistant to Hon Christine LOH
- ④ Ms CHEUNG Yuet-fung
Personal Assistant to Hon LAU Chin-shek

Clerk in Attendance :

- ④ Mrs Anna LO
Chief Assistant Secretary (2) 2

Staff in Attendance :

- ④ Mr Stephen LAM
Assistant Legal Adviser 4
- ④ Mr Colin CHUI
Senior Assistant Secretary (2) 2

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- ④ I. Confirmation of minutes of meeting
 - ④ II. Matters arising from previous meetings on the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996
 - ◆ Quarters allocation in disciplined services
 - ◆ Small House Policy
 - ◆ Grace period for the insurance industry
 - ④ III. Matters arising from the last meeting on the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill
 - ◆ Representations on the age aspects of the Bill
 - ◆ Mr LAU Chin-shek's response to questions relating to his Bill
 - ◆ The Administration's assessment on the age aspects of the Bill
 - Clause 55 - Discrimination against applicants and employees
 - Clause 56 - Discrimination against commission agents
 - Clause 59 - Professional or trade organisations
 - Clause 62 - Education
 - Clause 64 - Goods, services and facilities

- Clause 65 - Accommodation
- Clause 66 - Land
- Clause 67 - Clubs
- Clause 68 - Discrimination in sport on the ground of age
- Clause 69 - Application forms, etc.
- Clause 71 - Discrimination in the administration of laws and government programmes

❶ IV. Continued examination of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

- ◆ Equal Opportunities (Family Responsibility, Sexuality and Age) Bill
 - Clause 72 - Compliance with reasonable health and safety considerations
 - Clause 74 - Acts done to protect the welfare of minors
 - Clause 76 - Laws relating to the welfare or legal capacity of minors
 - Clause 77 - Laws and acts done under statutory authority
 - Clause 80 - Genuine occupational qualification
- ◆ Part VI - General exception to the Bill
 - Clause 84 - Charities
 - Clause 85 - Voluntary bodies
 - Clause 86 - Religious bodies
 - Clause 87 - Educational bodies established for religious purposes
 - Clause 90 - Regulations to provide temporary exceptions
 - Clause 92 - Jurisdiction of District Court
 - Clause 94 - Remedies
 - Clause 100 - Vicarious liability
 - Clause 103 - Effect on pre-existing legislation

❷ V. Date of subsequent meetings

I. Confirmation of minutes of meeting

(LegCo Paper Nos. CB(2)2314 and 2457/96-97)

The minutes of meetings held on 17 and 28 April 1997 were confirmed.

II. Matters arising from previous meetings on the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

Quarters allocation in disciplined services

(Clause 12)

The Administration pointed out that according to legal advice, the exception for quarters allocation in disciplined services under the Sex Discrimination Ordinance (SDO) was not inconsistent with the Hong Kong Bill of Rights Ordinance.

Small House Policy

(Clause 12)

Members noted the Administration's answers (LegCo Paper No. CB(2)2471/96-97) to questions relating to the Small House Policy raised at the last meeting.

Grace period for the insurance industry

Representatives of the Administration said that the retirement schemes industry did not object to the Bill but requested for a grace period of two to six months to adapt to the requirements under the Bill. Miss Christine LOH agreed to consider moving a Committee stage amendment (CSA) to provide the grace period. *Miss LOH*

III. Matters arising from the last meeting on the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill

Representations on the age aspects of the Bill

The Chairman drew Members' and the Administration's attention to the following legislative timetable on the assumption that the bills were to resume Second Reading debate at the last sitting which was now to commence on 23 June 1997 -

Date of Bills Committee report to House Committee	Deadline for giving notice for resumption of Second Reading	Deadline for CSAs
6 June 1997	6 June 1997	13 June 1997

In view of the tight schedule for the Bill, members agreed that the Bills Committee would not invite representations on the age aspects of the Bill.

Mr LAU Chin-shek's response to questions relating to his Bill

(Paper No. CB(2)2514/96-97 (02) tabled at the meeting)

Members noted Mr LAU Chin-shek's response to question relating to his Bill raised at the last meeting.

The Administration's assessment on the age aspects of the Bill

(Paper No. CB(2)2514/96-97 (01) tabled at the meeting)

Referring to its paper, the Administration stated that its assessment on the age aspects of the Bill clearly indicated that the Bill would have far-reaching implications on the community and would lead to considerable problems in a wide-range of areas. For these reasons, it was undesirable for the Bill to be taken forward. It was important to note that this analysis focused mainly on Government policies and practices. It was likely that other private sector activities would also be adversely affected by the Bill. Mr LAU said that his Bill was substantially based on Ms Anna WU's Equal Opportunities Bills which were studied in detail by the Bills Committee in the 1994/95 session. The Administration's concerns should have been forwarded to that and this Bills Committee for consideration much earlier. With regard to the various concerns raised by the Administration in its paper, Mr LAU and some other members pointed out that these were indeed the areas of discrimination on the ground of age that needed to be rectified.

Representatives of the Administration then took members through their concerns listed in its paper. The salient points of discussion on individual clauses were set out in the following paragraphs.

Clause 55 - Discrimination against applicants and employees

The Administration was concerned that from the employers' point of view, training or promoting employees who would soon leave the company after retirement on account of age would not be an efficient use of training resources and would upset the manpower and succession planning of the company. The Bill should therefore provide exemption for this. Mr LAU shared a member's view that the problem arose from employees' retirement which should not be linked to age. Regarding the Administration's concern that the Bill might outlaw many current civil service practices, Mr LAU responded that the practices should relate to the civil servants' working experience rather than their age.

Clause 56 - Discrimination against commission agents

The Administration pointed out that the Hong Kong Federation of Insurers had administrative registration requirements for commission agents and brokers basing on inter alia, the "fit and proper" criterion. The minimum age requirements for registration as commission agents and brokers were 18 and 21 years respectively. As the age requirements were not statutory in nature, the Federation was concerned that the grace period for existing statutory provisions in clause 77 was not applicable to these requirements. Mr LAU agreed with a member that maturity, instead of age, of the persons should be one of the registration requirements. Clause 74 provided exemption if the age requirements sought to protect the welfare of minors.

Clause 59 - Professional or trade organisations

The Administration pointed out that, in addition to registered trade unions, professional bodies such as the Hong Kong Society of Accountants imposed statutory age requirements for their student members. For the reasons set out in its paper, the Administration objected to an amendment to the Trade Unions Ordinance (TUO) along the line of clause 59. Referring to Mr LAU's paper, it doubted whether clauses 74 and 76 provided exemption for the age requirements under section 17 of TUO. Mr LAU shared a member's view that if the minimum age requirement (16 years) for voting members or executive officers of registered trade unions related to the welfare or legal capacity of minors, clause 76 provided exemption for the requirement. Mr LEE Cheuk-yan's Trade Unions (Amendment) Bill 1997 sought to, among other things, revise the minimum age requirement for executive officers of registered trade unions from 21 years to 18 years. Moreover, Mr LAU's Bill provided a grace period of two to four years for existing statutory age requirements. Another member opined that registered trade unions would not object to removal of the age requirements.

Clause 62 - Education

The Administration said that under clause 62, the age limits imposed by certain tertiary institutions on student admission for specific types of courses constituted direct age discrimination. Unlike indirect age discrimination, the only way to save these requirements from being declared unlawful was to provide specific exemptions for them under the Bill. The Administration was therefore concerned that the general exception clauses 72-81 were not adequate to do so. A member opined that maturity and relevant working experience of students rather than their age should be taken into account in considering their applications for admission to the courses.

The Administration doubted whether removal of the age requirements in respect of the Sir Edward Youde Memorial Fellowship for Overseas Studies and the Sir Edward Youde Memorial Scholarship would be inconsistent with the donors' intent. Mr LAU shared a member's view that applicants should not be deprived of the award of scholarships due to age discrimination. Hence the age requirement should be removed.

Clause 64 - Goods, services and facilities

The Administration was concerned that, given the vagueness of the term "bona fide benefits" under clause 64(2), the provision of services to children and young people and the elderly might be affected by the Bill. Mr LAU explained the meaning of the term. He added that clause 79(b) provided an exemption for the provision of services in order to meet the special needs of these people.

Clause 65 - Accommodation

The Administration pointed out that clause 65 might affect the continuing operation of a number of Housing Authority policies and practices which involved age restrictions. These age restrictions were set out in the issues of concern under clause 71 in the Administration's paper.

Clause 66 - Land

The Administration said that clause 66 might outlaw the existing minimum age criterion (18 years) under the Small House Policy. The age criterion was justified on the ground that persons under 18

were likely to be living with their families and did not have separate housing needs. Given that an overall review of the policy was ongoing, it was not appropriate to amend or remove the age criterion at this stage. Mr LAU said that clause 76 provided an exemption for statutory age requirement relating to the legal entitlements of minors. The Administration pointed out that the Policy did not confer legal rights and the age requirement was not statutory. ALA4 advised that whether the eligibility to apply for a small house amounted to a legitimate expectation and hence a legal entitlement was subject to court ruling. Clause 76 provided an exemption for the age requirement if the court affirmed the villagers' legal entitlement to small houses.

Clause 67 - Clubs

The Administration pointed out that clubs holding a Private Recreational Lease might refuse membership of a person if he or she was too young to be a member of a club without adult supervision. Clause 67 however rendered this unlawful. Mr LAU said that clauses 74 or 76 provided an exemption for the age restriction.

Clause 68 - Discrimination in sport on the ground of age

The Administration pointed out that regulations laid down by international sports governing bodies might prohibit people of above a certain age from officiating as referees or umpires. Clause 68 however made this unlawful and put local sports association in a very difficult position when organizing internationally sanctioned events. Mr LAU opined that clause 72 might provide exemption for the age restriction which was imposed in order to comply with reasonable health and safety considerations.

Clause 69 - Application forms, etc.

The Administration pointed out that applicants for the Civil Aid Services (CAS) and the Auxiliary Medical Services (AMS) were required to provide in the application form information of their parents or guardians (e.g. names, HKID Card No., addresses) if they were under the age of 18. Clause 69 might render this unlawful. Mr LAU said that clauses 74 or 76 provided exemption for this age restriction.

Clause 71 - Discrimination in the administration of laws and government programmes

Regarding legality of the minimum age requirements (18 years) in respect of the application for an Amusement Games Centre licence and recruitment of Panel of Advisers of Film Censorship, a member said that clause 76(a) preserved laws relating to the legal entitlements, obligations or disqualifications of minors. It could therefore provide exemptions for these age requirements. The Administration was concerned whether the age requirements for the retraining courses offered by the Employees Retraining Board were regarded as unlawful under the Bill. The member said that they were permitted under clause 79(b) which exempted measures to meet special needs of persons of a particular age.

A member said that under the Security and Guarding Services Ordinance security personnel at or above the age of 65 were only permitted to work in single domestic buildings. She raised the question of legality of the age restriction under the Bill. ALA4 advised that clause 72 provided an exemption for age discrimination which was justified by health and safety considerations. The member opined that the exemption was not given across the board, but with regard to individual health and safety considerations. Hence the age restriction might not be exempted under the clause. She also raised the question whether the Bill outlawed the cap on age (55 years) in respect of application for a firearms licence. Mr LAU said that the provisions in clauses 77 and 90 applied to this age restriction.

IV. Continued examination of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

Clause 72 - Compliance with reasonable health and safety considerations

The Administration pointed out that age restrictions were imposed on certain practices of the Department of Health to meet the special needs of persons of a particular age. Minimum age requirements were also imposed in certain pieces of legislation relating to health. It doubted whether clause 72 or other exemption provisions in the Bill provided exemptions for these age restrictions. ALA4 advised that clauses 74 to 76 provided exemptions for age restrictions with respect to minors.

Clause 74 - Acts done to protect the welfare of minors

The Administration stated that special programmes were administered to suit young offenders or drug abusers. Two examples were the Against Substance Abuse Scheme operated by the Social Welfare Department and the Police Superintendent's Discretion Scheme. According to the Administration's legal advice, it was arguable whether these schemes could be exempted under clause 74. The Administration also pointed out that as the existing immigration policies imposed age restrictions on persons seeking to join their family members in Hong Kong as dependants, an exemption on immigration matters should be added to the Bill. Mr LAU agreed to consider the Administration's concern.

Representatives of the Administration said that the term "welfare" was not well defined in clause 74 and might be subject to interpretation. It was doubtful whether the exemptions under this clause and clause 76 were adequate for enabling the Administration to continue to administer age restrictions in certain necessary areas as those set out in its paper. As suggested by a member, Mr LAU agreed to seek legal advice on whether the scope of the term "welfare" referred to in clauses 74 and 76 was broad enough to address the Administration's concerns.

Mr. LAU

Clause 76 - Laws relating to the welfare or legal capacity of minors

Members noted the Administration's concerns relating to clause 76 set out in its paper.

Clause 77 - Laws and acts done under statutory authority

Unless permanently exempted, the Bill rendered discriminatory age requirements unlawful. Clause 77 provided a grace period of two to four years for existing statutory age requirements. The Administration saw no reason why the age restrictions imposed under certain pieces of labour legislation set out in its paper should be removed in two to four years' time. Permanent exemptions should be provided for these age restrictions. Mr LAU agreed to consider the Administration's concerns relating to the compensation legislation.

Mr. LAU

Clause 80 - Genuine occupational qualification

The Administration was concerned that, in addition to the three genuine occupational qualifications (GOQs) listed in clause 80 (a) to (c), there might be other GOQs requiring exemptions under the clause. A member opined that there should be no other GOQs requiring exemptions.

Part VI - General exception to the Bill

Clause 84 - Charities

Clause 85 - Voluntary bodies

Clause 86 - Religious bodies

The Administration pointed out that there was a host of private ordinances relating to the work of charitable and voluntary organisations, and religious bodies in Hong Kong which contained certain age-specific provisions. It was questionable whether the protection given to these bodies under clauses 84 to 86 were adequate to cover such provisions. Exemption provisions for charities and voluntary bodies clauses were provided for in the Sex Discrimination Ordinance (SDO). The wording of clauses 84 and 85 should be revised to tie in with that of SDO so that case law on the latter could be relied upon in interpreting the clauses. The Administration also failed to see the reason for exempting religious bodies in respect of age discrimination under clause 86. Mr LAU agreed to address the Administration's concerns. *Mr LAU*

Clause 87 - Educational bodies established for religious purposes

The Administration saw no reason for exempting educational bodies established for religious purposes in respect of age discrimination under clause 87. Mr LAU agreed to address the Administration's concern. *Mr LAU*

Clause 90 - Regulations to provide temporary exceptions

Mr LAU said that clause 90 empowered SHA to provide temporary exceptions to the Bill by way of regulations. The exceptions provided might be of a general or specific nature, and were subject to LegCo approval. Regulations might also provide for any person to apply to SHA for a temporary exemption. The Administration asked for the rationale for giving SHA the power to make regulations to provide temporary exemptions under clause 90. Although SHA was empowered to specify expiry date of the regulations, the Bill did not specify whether the validity period of the regulations could be extended. The clause did not specify the factors of consideration in making the regulations. SHA might therefore have extensive power on granting exemptions. In theory, he could exempt discriminatory acts or practices under the Bill for a long period of time.

The Administration also pointed out that it was inappropriate to give temporary exemptions for reasonable age requirements. Specific exemptions provisions should be provided for these age requirements so that they could be permanently exempted. As clause 77 only provided exemptions for existing statutory age requirements but not for non-statutory ones, the commencement date of clause 90 should be ahead of other clauses to give effect to the temporary exemptions for non-statutory age requirements.

Mr LAU reiterated that under clause 90(3) the regulations were subject to LegCo approval. The spirit of clause 90 was to empower SHA to provide temporary exceptions to the Bill by way of regulations. Permanent exceptions should be provided for in the Bill. Mr LAU agreed to address the Administration's concern. *Mr LAU*

Clause 92 - Jurisdiction of District Court

Members noted that discriminatory acts or practices made unlawful by the Bill were triable in the District Court under clause 92. In the absence of a conciliation mechanism, the Administration was concerned about the effect of the clause. On the one hand, as people were unfamiliar with the provisions of the Bill, they might incline to institute unnecessary legal proceedings against others in respect of alleged discrimination under the Bill. On the other hand, the high costs and lengthy procedure of litigation might preclude genuinely aggrieved persons from litigation to redress wrongs done to them. Mr LAU pointed out that the absence of a conciliation mechanism arose from the Administration's objection to his proposal to empower the Equal Opportunities Commission (EOC) to implement and enforce the provisions of his Bill.

Clause 94 - Remedies

Members noted that clause 94 empowered the court to make an order to provide remedies for aggrieved persons. The Administration pointed out that the court order included a reinstatement or re-engagement order which would be made without prior consent of the employer and employee involved. For the reasons explained to members when the Bills Committee studied a similar proposal

in the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996, the Administration objected to the clause.

Clause 100 - Vicarious liability

The Administration pointed out that, unlike similar provisions in SDO and the Disability Discrimination Ordinance (DDO), clause 100 did not provide an exemption for employers and principals in respect of crimes committed by their employees or agents. *Mr LAU* The clause therefore imposed unreasonable vicarious liability. Mr LAU agreed to consider providing the exemption.

Clause 103 - Effect on pre-existing legislation

Members noted the ruling of the President of LegCo that the Bill offended clause XXV(3) of the Royal Instructions through the inclusion of clause 103. In order to comply with the Royal Instructions, the President had directed the Clerk to LegCo to make the necessary procedural arrangement to ensure that clause 103 would not stand part of the Bill. Mr LAU said that he had proposed another Member's Bill to give effect to the consequential amendment.

Mr LAU informed the meeting that he was still awaiting the President's ruling on his CSA to the definition of "family status" in the Family Status Discrimination Bill. Pending the ruling, he proposed to study Part III of his Bill on sexuality discrimination. The Administration said that it would like to enact the Family Status Discrimination Bill in this legislative session. Members agreed to proceed with the examination of Family Status Discrimination Bill in parallel with Part II of Mr LAU's Bill on family status discrimination as originally scheduled. To facilitate scrutiny of the Administration's Bill, members were requested to forward their questions and views on the Bill to the Administration before the next Bills Committee meeting.

V. Date of subsequent meetings

Members agreed to the following schedule of meetings -

Date and Time	Venue	Purpose
Tuesday, 3 June 1997 (12:30 pm)	Chamber	Examination of the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill and Family Status Discrimination Bill
Thursday, 5 June 1997 (12:30 pm)	Chamber	Examination of the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill, Family Status Discrimination Bill and Equal Opportunities (Race) Bill

The meeting ended at 4:38 pm.

Provisional Legislative Council Secretariat
2 September 1997

PLC Paper No. CB(2)184
(These minutes have been seen
by the Administration and cleared
with the Chairman)

Ref : CB2/BC/55/95

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill,
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and
Family Status Discrimination Bill**

**Minutes of the 11th meeting
held on Tuesday, 3 June 1997 at 12:30 pm
in the Chamber of the Legislative Council Building**

Members Present : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon Christine LOH Kung-wai
Hon CHAN Yuen-han
Hon LAU Chin-shek, JP
Hon LEUNG Yiu-chung
Hon Bruce LIU Sing-lee

Members Absent : Dr Hon John TSE Wing-ling (Deputy Chairman)
Hon LAU Wong-fat, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon Emily LAU Wai-hing, JP
Hon Zachary WONG Wai-yin
Hon LEE Cheuk-yan
Hon CHEUNG Hon-chung
Hon Albert HO Chun-yan
Hon NGAN Kam-chuen

Public Officers Attending : Mr NG Hon-wah
Deputy Secretary for Home Affairs (Acting)

Miss Helen TANG
Principal Assistant Secretary for Home Affairs

Action

Ms Cora HO
Assistant Secretary for Home Affairs

Mrs N DISSANAYAKE
Senior Assistant Law Draftsman

Ms Esther LEUNG
Principal Assistant Secretary for Education and Manpower

Mr Francis CHENG
Assistant Secretary for Education and Manpower

Mrs Betty NEOH
Principal Executive Officer, Civil Service Branch

Mr Vincent FUNG
Assistant Secretary for Financial Services

Mr David YIP
Assistant Secretary for Security

Attendance : Mr Adam MAYES
by Invitation Personal Assistant to Hon Christine LOH

Ms CHEUNG Yuet-fung
Personal Assistant to Hon LAU Chin-shek

Clerk in : Mrs Anna LO
Attendance Chief Assistant Secretary (2) 2

Staff in : Mr Stephen LAM
Attendance Assistant Legal Adviser 4

Mr Colin CHUI
Senior Assistant Secretary (2) 2

Action

I. **Matters arising from the last meeting on the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill**

Mr LAU Chin-shek briefed members on his paper (Paper No. CB(2)2566/96-97(01)) responding to points raised at the last meeting. The salient points of discussion on the paper were set out in para 2 - para 5 below.

Part VI - General exceptions to the Bill

Clause 85 - Voluntary bodies

- Adm 2. The Administration pointed out that exemption provision for voluntary bodies was provided for under section 33 of the Sex Discrimination Ordinance (SDO). Mr LAU agreed to consider amending wording of clause 85 to tie in with that of the exemption provision in SDO.

Clause 90 - Regulations to provide temporary exceptions

3. The Administration asked for the rationale for giving SHA the power to make regulations to provide temporary exemptions under clause 90. Although SHA was empowered to specify expiry date of the regulations, the Bill did not specify whether the validity period of the regulations could be extended. The clause did not specify any limit in making the regulations. SHA might therefore have extensive power on granting exemptions. In theory, he could exempt discriminatory acts or practices under the Bill for a long period of time.

4. The Administration also pointed out that it was inappropriate to give temporary exemptions for reasonable age requirements. Specific exemption provisions should be provided for these age requirements so that they could be permanently exempted. As clause 77 only provided temporary exemptions (for a period of two to four years) for existing statutory age requirements but not for non-statutory ones, the commencement date of clause 90 should be ahead of other clauses giving effect to the temporary exemptions for non-statutory age requirements.

- Mr LAU 5. Mr LAU responded that regulations to provide temporary exemptions made under clause 90 were subject to LegCo approval. Nevertheless, he would consider the Administration's concerns.

Mr LAU's CSAs to his Bill

6. In reply to the Administration, Mr LAU said that he would table the whole set of his CSAs to his Bill at the next meeting.

II. Examination of the Family Status Discrimination Bill

7. Representatives of the Administration said that in line with its step-by-step approach in promoting equal opportunities for all, the Administration conducted a public consultation exercise last year to solicit public views on the extent of the problem of discrimination on the ground of family status and the measures which could be taken to enhance equal opportunities between persons of different family status. A total of 8,895 submissions were received with an overwhelming support for the legislative option.

8. The Administration pointed out that the present Bill was a direct response to these opinions of the community. When enacted, it would enhance equal opportunities for persons of different family status, for example, single parents and any persons who had responsibility for the care of an elderly or a disabled family member.

9. The Administration added that after SDO and the Disability Discrimination Ordinance (DDO), this was the third anti-discrimination Bill. As with the two Ordinances, its objective was to draw up a piece of legislation which best served the needs of Hong Kong and at the same time, was readily acceptable by the public.

10. The salient points of discussion on individual clauses of the Bill were set out in the ensuing paragraphs.

Clause 1 - Short title and commencement

11. In reply to Mr LAU, the Administration pointed out that under clause 1(2) the commencement date of the Bill would be appointed by SHA by notice in the Gazette. It planned to have the Bill come into operation by the end of 1997 or early 1998.

Clause 2 - Interpretation

Definitions of "family status" and "immediate family member"

12. The Administration pointed out that in view of the overwhelming support for legislation, but given the strong public objections to legal recognition for the "de-facto spouse relationship" as a form of family status, the Government proposed to define family status under clause 2 as the status of having responsibility for the care of an immediate family member. An immediate family member must be related to the person concerned by blood, marriage, adoption or affinity. This proposed definition would cover, inter alia, relationships between husband and wife, parent and child as well as near relatives. The proposal was modelled on SDO which rendered unlawful discrimination in the areas of employment, education, disposal and management of premises, provisions of goods, facilities and services, eligibility to vote for and be elected or appointed to advisory bodies, activities of clubs and Government activities.

Action

13. Mr LAU said that he had proposed CSAs to the definitions of ‘family status’ and “immediate family” in the Bill in order to tie in with the definition of “family responsibility or family status” in his Bill. Ruling of the President of LegCo on the CSAs was awaited.

14. A member was concerned whether the following persons fell within the definition of “immediate family member” -

- (a) old couples without completing legally recognised marriage registration procedures under the Marriage Ordinance;
- (b) couples who were married outside Hong Kong; and
- (c) children informally adopted or pending completion of legally recognised adoption procedures.

Adm She opined that the definition should be broad enough to avoid discrimination in this area. The Administration was of the view that the definition had to be precise to avoid confusion and uncertainty. It would revert to the Bills Committee on the questions.

Definition of “estate agent”

Adm 15. ALA4 suggested the Administration to check whether the definition of “estate agent” in clause 2 was consistent with that under the recently enacted Estate Agents Ordinance.

Clause 4 - Act done because of more than one reason

Adm 16. Mr LAU suggested that the heading of clause 4 should tie in with that of the parallel provision (clause 4) of his Bill. The Administration pointed out that the heading did not stand part of the Bill. Nevertheless, it would consider Mr LAU’s suggestion.

Clause 8 - Discrimination against applicants and employees

17. The Administration pointed out that clause 8 sought to, among other things, provide for a three-year grace period for business establishments with not more than five employees. Similar grace period had been provided for under SDO and DDO. With the grace period, small employers could have time to familiarise with the legislation and if necessary, to adapt their existing practices to comply with it.

Action

Clause 18 - Discrimination by responsible bodies for educational establishments

18. Members noted that clause 18(2) was a provision put in upon public request specially for among other things, the Secondary School Places Allocation System and the present scoring system under the Primary One Admission Scheme. A member was concerned that under the scoring system, some of the criteria where points were awarded (e.g. points awarded to applicants whose parents were graduates of the same school) were themselves discriminatory. Hence these criteria should not be exempted. The Administration pointed out that under the scoring system, points were given to prospective primary one pupils with parents and/or siblings who were graduates of the school concerned. Prospective pupils with siblings already in the school received a higher score for that school and thus had a better chance of admission. This might be considered discriminatory against those without siblings in the same school. However, the Scheme was considered beneficial as it was more convenient for parents if their children attended the same school. Educational bodies also considered that the Scheme should be retained because it helped to reduce the pressure on the school children concerned of having to face even keener competition over admission should the Scheme be discontinued.

Clause 20 - Discrimination in disposal and management of premises

Adm

19. Mr LAU asked whether premises referred to in clause 20 in this Bill included land under clause 20 of his Bill. The Administration would revert to the Bills Committee on the question at the next meeting.

Equal Opportunities Commission (EOC)

20. The Administration pointed out that clauses 44 to 52 related to the extension of the remit of EOC to handle complaints against family status discrimination. EOC would have similar powers and functions under this Bill as currently provided for under SDO. As in SDO, EOC was empowered to issue enforcement notices (clause 55) and to assist claimants and potential claimants (clauses 61-63). SHA might make regulations, inter alia, to enable EOC to bring proceedings in its own name (clause 67).

Parallel provision to clause 22 of Mr LAU's Bill on applications forms, etc.

Adm

21. Mr LAU asked whether there was a parallel provision to clause 22 of his Bill on applications forms, etc. The Administration undertook to respond to the question at the next meeting.

Action

Parallel issues in the Family Status Discrimination Bill and Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996

22. In reply to Miss LOH, representatives of the Administration said that the Administration had yet to decide whether to move parallel amendments to the Family Status Discrimination Bill set out in her paper (Paper No. CB(2)2514/96-97(04)) pending the voting results on her Bill on 11 June 1997. In view of the Administration's indecision and the deadline for notice of CSAs to the Bill, Miss LOH said that she would propose parallel amendments to the Bill.

III. Date of next meeting

23. Members noted that, as agreed the last meeting, the next meeting would be held on 5 June 1997 in the Chamber of LegCo Building. They agreed that pending result of the President's ruling, the Bills Committee would proceed with the scrutiny of the family responsibility (Part II) and sexuality (Part III) aspects of Mr LAU's Bill and the Equal Opportunities (Race) Bill at the next meeting. Mr LAU requested questions on the sexuality aspect of his Bill to be forwarded to him before the next meeting to facilitate his response at the meeting.

24. The meeting ended at 2:30 pm.

Provisional Legislative Council Secretariat
21 August 1997

**Bills Committee on the
Equal Opportunities (Family Responsibility,
Sexuality & Age) Bill,
Equal Opportunities (Race) Bill,
Sex and Disability Discrimination
(Miscellaneous Provisions) Bill 1996 and
Family Status Discrimination Bill**

**Minutes of the 12nd meeting
held on Thursday, 5 June 1997 at 12:30 pm
in the Chamber of the Legislative Council Building**

Members Present :

- ② Dr Hon LEONG Che-hung, OBE, JP (Chairman)
- ② Dr Hon John TSE Wing-ling (Deputy Chairman)
- ② Hon Zachary WONG Wai-yin
- ② Hon Christine LOH Kung-wai
- ② Hon LEE Cheuk-yan
- ② Hon CHAN Yuen-han
- ② Hon LAU Chin-shek
- ② Hon LEUNG Yiu-chung

Members Absent :

- ② Hon LAU Wong-fat, OBE, JP
- ② Hon Mrs Miriam LAU Kin-ye, OBE, JP
- ② Hon Emily LAU Wai-hing
- ② Hon CHEUNG Hon-chung
- ② Hon Albert HO Chun-yan
- ② Hon Bruce LIU Sing-lee
- ② Hon NGAN Kam-chuen

Member Attending :

- ② Hon Mrs Elizabeth WONG, CBE, ISO, JP

Public Officers Attending :

- ② Mr NG Hon-wah
Deputy Secretary for Home Affairs (Acting)
- ② Miss Helen TANG
Principal Assistant Secretary for Home Affairs

- ④ Ms Cora HO
Assistant Secretary for Home Affairs
- ④ Miss May CHAN
Assistant Secretary for Home Affairs
- ④ Mrs N DISSANAYAKE
Senior Assistant Law Draftsman
- ④ Ms Esther LEUNG
Principal Assistant Secretary for Education and Manpower
- ④ Mrs Betty NEOH
Principal Executive Officer, Civil Service Branch
- ④ Mr Vincent FUNG
Assistant Secretary for Financial Services
- ④ Mr David YIP
Assistant Secretary for Security

Attendance by Invitation :

- ④ Mr Adam MAYES
Personal Assistant to Hon Christine LOH
- ④ Ms CHEUNG Yuet-fung
Personal Assistant to Hon LAU Chin-shek

Clerk in Attendance :

- ④ Mrs Anna LO
Chief Assistant Secretary (2) 2

Staff in Attendance :

- ④ Mr Stephen LAM
Assistant Legal Adviser 4
- ④ Mr Colin CHUI
Senior Assistant Secretary (2) 2

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- ④ I. Matters arising from the last meeting
 - ◆ Equal Opportunities (Family Responsibility, Sexuality & Age) Bill
 - ◆ Family Status Discrimination Bill
 - Clause 2 - Interpretation
 - Revised CSAs to clause 2
 - Clause 4 - Act done because of more than one reason
 - Clause 18 - Discrimination by responsible bodies for educational establishments
 - Clause 20 - Discrimination in disposal and management of premises
 - Clause 44 - Functions and powers of FOC
 - Schedule 2 - Further exceptions to the Bill
 - Parallel provision to clause 22 of Mr LAU's Bill in relation to application forms, etc.
 - ④ II. Continued examination of the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill
 - ◆ Part III - Sexuality
 - The Administration's position
 - Clause 27 - Discrimination on the ground of sexuality
 - Clause 37 - Goods, services and facilities
 - Grace period for small employers
 - Exemptions for discrimination against domestic workers and teachers on the ground of their sexuality
 - ④ III. Examination of the Equal Opportunities (Race) Bill

- ◆ Clause 1 - Short title and commencement
 - ◆ Clause 3 - Interpretation
 - ◆ Clause 16 - Education
 - ◆ Clause 19 - Accommodation
 - ◆ Clause 40 - Compliance with school admission schemes
 - ◆ Exemptions for immigration law and policy
 - ◆ Parallel issues in the three Member's Bills studied by the Bills Committee
 - ◆ Compliance with nationality requirements in the Basic Law
 - ◆ Labour importation policy
- IV. Date of next meeting

I. Matters arising from the last meeting

Equal Opportunities (Family Responsibility, Sexuality & Age) Bill

With reference to his paper (Paper No. CB(2)2591/96-97(01)) tabled at the meeting, Mr LAU Chin-shek briefed members on his response to the Administration's questions raised at the last meeting.

Mr LAU drew members' attention to the whole set of his proposed CSAs to his Bill (Paper No. CB(2)2591/96-97(02)) tabled at the meeting. The CSAs sought to, among other things, remove part II of his Bill on family responsibility discrimination. Representatives of the Administration said that the Administration would revert to the Bills Committee on its views on these CSAs. *Admin*

Family Status Discrimination Bill

Clause 2 - Interpretation

The Administration's response to members' questions on the definitions of "family status" and "immediate family member" was as follows -

- a. According to legal advice, adopted children fell within the definition of "immediate family member" after completion of legally recognised adoption procedures.
- b. Before commencement of the Marriage Reform Ordinance on 7 October 1971, there were five types of valid marriages. One of the valid marriages was relevant to a member's question raised at the last meeting. This type of marriage catered for long-standing family relationship which was regarded by the couples, their relatives and neighbours as a marital relationship. Whilst not a legally recognised marriage, this relationship could be regarded as a publicly recognised marriage. In the circumstances, the co-habitation, being a publicly recognised marriage, was presumed to be a marital relationship under laws of the United Kingdom. The Administration was requested to provide details of the pre-1971 valid marriages in Hong Kong.

(Post-meeting note : Information on the pre-1971 valid marriages provided by the Administration was circulated to members vide Paper No. CB(2)2743/96-97(01).)

- c. Marriages celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed were legally recognised in Hong Kong.

Revised CSAs to clause 2

(Paper No. CB(2)2617/96-97(01))

Members noted the following President's ruling in relation to Mr LAU's CSAs to the definitions of "family status" and "immediate family member" in the Bill -

- a. The amendments carried a charging effect at least insofar as the new duties of the Equal Opportunities Commission (EOC) were concerned.
- b. The amendments were outside the scope of the Bill.

Referring to his revised CSAs tabled at the meeting, Mr LAU said that he had proposed alternative CSAs on the same subject and sought the President's ruling in respect of charging effect and relevance to the Bill. Under the revised CSAs, "family status", in relation to a person, meant -

- a. the status of having responsibility for the care of another person, whether or not that person was a dependant, other than in the course of paid employment;
- b. the status of being a particular relative; or
- c. the status of being a relative of a particular person.

Mr LAU pointed out that to get round the hurdle of charging effect, the new definitions of "family status" and "immediate family member" covered two broad categories of people -

- a. People covered in the existing definitions in the Bill. EOC was empowered to handle their complaints against family status discrimination. If EOC's conciliation could not redress their grievances, the aggrieved persons might institute legal proceedings against the alleged discriminators.
- b. Other people proposed to be included in the new definitions by Mr LAU. Since their complaints against family status discrimination were outside the scope of EOC, these cases would be dealt with by the court directly.

In reply to the Administration, Mr Adam MAYES said that relative referred to in Mr LAU's revised CSAs meant family members, including siblings, parents or children, of the aggrieved persons. The Primary One Admission System, which awarded extra points to applicants if their siblings attended the same school, would be covered under the revised CSAs. The word "household" referred to in the definition of "relative" included a dependant of the aggrieved person. The word was used in other laws of Hong Kong. It would include, for example, an informally adopted child. The Administration pointed out that the exemption provisions under the Bill were insufficient to cater for Mr LAU's revised definition of "family status". Mr LAU said that under clauses 43 and 68 the Administration could provide additional exemptions to cater for the revised definition.

Clause 4 - Act done because of more than one reason

The Administration did not object to amending the heading of clause 4 to tie in with that of *Admin* clause 4 of Mr LAU's Bill.

(Post-meeting note : The Administration's CSAs incorporating this amendment were circulated to all LegCo Members vide Appendix I to LegCo Paper No. CB(3)1210/96-97.)

Clause 18 - Discrimination by responsible bodies for educational establishments

The Administration pointed out that the Secondary School Places Allocation System referred to in clause 18(2)(b) did not have a scoring system. ALA4 agreed with the Administration that school students did not have the status of having responsibility for the care of an immediate family member. They therefore fell outside the scope of the definition of "family status" in the Bill. As such clause 18(1), which outlawed family status discrimination in the area of education, did not apply to the student admission schemes set out in clause 18(2) of the Bill.

Clause 20 - Discrimination in disposal and management of premises

The Administration pointed out that according to legal advice, premises under clause 20 included land referred to in clause 20 of Mr LAU's Bill.

Clause 44 - Functions and powers of EOC

In reply to Mr LAU, the Administration stated that EOC, established under SDO, was empowered

under the Ordinance to undertake or assist the undertaking by other persons of any research, and any educational activities, which appeared to EOC necessary or expedient for the performance of its functions. The functions included those provided for under SDO and any other enactments. As such DDO did not provide for the research and education work of EOC in the area of disability discrimination. In the same way, the Bill did not provide for this aspect of EOC's work.

Schedule 2 - Further exceptions to the Bill

Members noted that Miss LOH proposed to replace the exception for marital status discrimination in employment benefits referred to in Schedule 2 with exception permitting reasonable rules to prohibit double benefits (Paper No. CB(2)2514/96-97(04)). Representatives of the Administration said that, according to legal advice, Miss LOH's amendment would outlaw the Administration's existing practices on these benefits which were unrelated to the double benefits rule. An example of these practices was that better housing benefits were provided to civil servants with large families. This might be regarded as discrimination against civil servants with small families. As these established practices were accepted by the staff side of the civil service, exemptions for these practices in the Bill were necessary to put their legality beyond doubt.

Parallel provision to clause 22 of Mr LAU's Bill in relation to application forms, etc.

Representatives of the Administration said that according to legal advice, an alleged discriminator would be in breach of clause 22 of Mr LAU's Bill if he/she took into account the information referred to in the clause. Absence of a parallel provision to clause 22 of Mr LAU's Bill in relation to application forms, etc. therefore did not present any problem. *Admin* Nevertheless, Home Affairs Branch would consult other relevant government branches/departments on Mr LAU's suggestion of incorporating a parallel provision in the Bill.

(Post-meeting note: After careful consideration, the Administration decided not to accept Mr LAU's suggestion.)

II. Continued examination of the Equal Opportunities (Family Responsibility, Sexuality & Age) Bill

Part III - Sexuality

The Administration's position

Representatives of the Administration said that the Administration conducted a study and public consultation exercise on this issue in 1995/96 and announced its findings in June 1996. More than 10,000 submissions were received and an overwhelming majority (85%) opposed legislation. Instead, they supported administrative measures such as public education to promote the principle of equal opportunities and enhanced support services for sexual minorities. In this connection, the Administration had helped homosexual support groups to secure funds to enhance the services they provided. Additionally, the Administration published a pamphlet that sought to address common misunderstandings about the sexual minorities and to gain greater acceptance of their right to equal opportunities and a booklet to promote a better understanding of the issues within the community. All these efforts would continue.

As last year's consultation indicated strong public opposition to anti-discrimination legislation in this area and that its introduction at the present time would be premature, the Administration did not support the provisions in Part III of the Bill.

Clause 27 - Discrimination on the ground of sexuality

In reply to the Administration, Mr LAU said that he had proposed a CSA (Paper No. CB(2)2591/96-97(02)) to clause 27 so as to tie in with the indirect discrimination provision of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996.

Clause 37 - Goods, services and facilities

Members noted the request of the Federation of Insurers for exemption for the insurance industry from Part III of Mr LAU's Bill on sexuality discrimination (LegCo Paper No. CB(2)2063/96-97). Mr LAU said that he was considering the Federation's request having *Mr LAU* regard to the further information provided by the Federation (Paper No. CB(2)2515/96-97(01)).

Grace period for small employers

In reply to the Administration, Mr LAU said that the Bill did not provide a grace period for small employers.

Exemptions for discrimination against domestic workers and teachers on the ground of their sexuality

The Administration considered that, in line with the exemption provision in SDO, the Bill should provide exemption for sexuality discrimination against domestic workers. It also pointed out that Australian law provided exemption in respect of persons engaged in the care of minors. Mr LAU said that, like employees in other fields, employment of domestic workers or teachers should be based on ability rather than sexuality. The exemptions were therefore not acceptable to him. Upon request, the Administration agreed to provide the relevant provisions of the Australian law for Mr LAU's consideration. *Admin*

III. Examination of the Equal Opportunities (Race) Bill

Mrs Elizabeth WONG said that the purpose of this Bill was to render discrimination on the ground of race unlawful and to make provision for relevant remedies. The objective was to eliminate, as far as it was possible, all forms of racial discrimination in Hong Kong. In doing so, the Bill also intended to give effect to a variety of international obligations applicable to Hong Kong on the same subject. The Bill was substantially based on Ms Anna WU's Bill with the same title which was voted down by LegCo in 1995. Members noted that she had given notice to resume Second Reading debate of the Bill on 23 June 1997.

Representatives of the Administration said that to address the question of racial discrimination, the Administration had conducted a study to establish whether such discrimination existed in Hong Kong and, if so, its nature, extent and possible options for addressing such problems as might be found to exist. The findings of the study were released in a consultation document on racial discrimination. Following publication of the document, the Administration conducted a ten-week public consultation exercise ending on 30 April 1997. A total of 238 submission were received in the consultation period. Outcome of the consultation exercise would be released after discussion by the Executive Council. The Administration considered that it should await the outcome of the consultation exercise before proceeding further with the legislative proposal.

(Post-meeting note : The LegCo Brief on the outcome of the consultation exercise and the Government's future course of action to enhance equal opportunities for all races issued by the Home Affairs Branch (Ref. HAB CR/1/34/54 IV) dated 18 June 1997 had been circulated to all LegCo Members.)

Clause 1 - Short title and commencement

Mrs WONG said that she would propose a CSA to amend the commencement date of the Bill. *Mrs WONG*

Clause 3 - Interpretation

The Administration pointed out that, unlike that in the International Convention on the Elimination of All Forms of Racial Discrimination, the definition of "race" in the Bill included nationality. It therefore asked about the rationale for the inclusion. Mrs WONG said that she would consider amending the definition to tie in with that in the International Convention. *Mrs WONG*

Clause 16 - Education

The Administration said that according to legal advice, the Bill might outlaw the public sector schools' practice to refuse admission of aliens. Mrs WONG stated that, as a matter of principle, the Bill prohibited racial discrimination which was also applicable in the area of education.

Clause 19 - Accommodation

The Administration pointed out that quarters were provided to 38 single expatriate police officers but not to their local counterparts. It therefore was concerned whether the Bill would provide temporary exemption for this practice which might not be necessary by 2000. Mrs WONG agreed to consider this. *Mrs WONG*

Clause 40 - Compliance with school admission schemes

The Administration pointed out that according to legal advice, clause 40 did not exempt school admission schemes like the Junior Secondary Education Assessment and Secondary Six Admission Procedure. Wording of clause 40 should be revised in order to exempt all the existing and future school admission schemes from the Bill. Mrs WONG agreed to consider this. *Mrs WONG*

Exemptions for immigration law and policy

The Administration briefed members on the Bill's impact on immigration law and policy set out in para 5 of its paper (LegCo Paper No. CB(2)1258/96-97). The Bill should provide exemptions for the immigration law and policy. Mrs WONG agreed to consider this. *Mrs WONG*

Parallel issues in the three Member's Bills studied by the Bills Committee

Mrs WONG

On the question of parallel issues in the three Member's Bills studied by the Bills Committee, Mrs WONG said that she would put forward amendments to tie in with those in Miss LOH and Mr LAU's Bills.

Compliance with nationality requirements in the Basic Law

Representatives of the Administration said that under Article 99 of the Basic Law, public servants serving in all government departments of the Hong Kong Special Administrative Region (HKSAR) must be permanent residents of the region, except where otherwise provided for in Article 101 of the Law regarding public servants of foreign nationalities and except for those below a certain rank as prescribed by law. Article 61 of the Law required, among other things, that the principal officials of HKSAR should be Chinese citizens who were permanent residents of the Region with no right of abode in any foreign country. The Administration raised whether these requirements were consistent with the Bill. A member added that the Bill should also be consistent with the Basic Law in respect of the nationality requirements for the First Legislative Council Members of HKSAR. Mrs WONG agreed to consider the concerns raised. *Mrs WONG*

Labour importation policy

The Administration raised whether the labour importation policy was in breach of the provisions of the Bill. In this connection, a member asked whether the Bill outlawed the prohibition of importation of Chinese domestic workers. Mrs WONG said that, as a matter of principle, the Bill outlawed racial discrimination which also applied in the area of employment.

IV. Date of next meeting

Members agreed that the next meeting would be held on 12 June 1997 at 12:30 pm in the Chamber of the Legislative Council Building to continue examination of the Equal Opportunities (Race) Bill.

The meeting ended at 2:40 pm.

Provisional Legislative Council Secretariat
21 August 1997

PLC Paper No. CB(2)165
(These minutes have been seen
by the Administration and cleared
with the Chairman)

Ref : CB2/BC/55/95

**Bills Committee on the
Equal Opportunities (Family Responsibility, Sexuality & Age) Bill,
Equal Opportunities (Race) Bill,
Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and
Family Status Discrimination Bill**

**Minutes of the 13th meeting
held on Thursday, 12 June 1997 at 12:30 pm
in the Chamber of the Legislative Council Building**

Members Present : Dr Hon John TSE Wing-ling (Deputy Chairman)
Hon Emily LAU Wai-hing, JP
Hon Zachary WONG Wai-yin
Hon Christine LOH Kung-wai
Hon LEE Cheuk-yan
Hon CHAN Yuen-han
Hon LAU Chin-shek, JP
Hon LEUNG Yiu-chung

Members Absent : Dr Hon LEONG Che-hung, OBE, JP (Chairman)
Hon LAU Wong-fat, OBE, JP
Hon Mrs Miriam LAU Kin-yee, OBE, JP
Hon CHEUNG Hon-chung
Hon Albert HO Chun-yan
Hon Bruce LIU Sing-lee
Hon NGAN Kam-chuen

Member Attending : Hon Mrs Elizabeth WONG, CBE, ISO, JP

Public Officers Attending : Mr NG Hon-wah
Deputy Secretary for Home Affairs (Acting)

Mr John DEAN
Principal Assistant Secretary for Home Affairs

Miss Helen TANG
Principal Assistant Secretary for Home Affairs

Miss Charmaine LEE
Assistant Secretary for Home Affairs

Ms Esther LEUNG
Principal Assistant Secretary for Education and Manpower

Mr M Y CHENG
Assistant Director of Education

Mr David YIP
Principal Assistant Secretary for Security

Mr Vincent FUNG
Assistant Secretary for Financial Services

Attendance : Mr Adam MAYES
by Invitation Personal Assistant to Hon Christine LOH

Ms CHEUNG Yuet-fung
Personal Assistant to Hon LAU Chin-shek

Clerk in : Mrs Anna LO
Attendance Chief Assistant Secretary (2) 2

Staff in : Mr Stephen LAM
Attendance Assistant Legal Adviser 4

Mr Colin CHUI
Senior Assistant Secretary (2) 2

Action

As the Chairman was not available for the meeting due to other commitments, the Deputy Chairman took the chair.

I. **Confirmation of minutes of meeting on 15 May 1997**
(LegCo Paper No. CB(2)2605/96-97)

2. The minutes of meeting held on 15 May 1997 were confirmed.

II. **Committee stage amendments (CSAs) to the Family Status Discrimination Bill**

Mr LAU Chin-shek's proposed CSAs to the Bill

(Paper No. CB(2)2655/96-97 (0~~2~~))

3. Mr LAU Chin-shek said that the President had ruled his proposed CSAs to be outside the scope of the Bill.

Parallel issues in the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 and Family Status Discrimination Bill

(Paper No. CB(2)2679/96-97 (01) - summary of voting results on the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996)

(Paper No. CB(2)2679/96-97 (03) - Miss Christine LOH's proposed CSAs to the Family Status Discrimination Bill)

4. Members noted the summary of voting results on Miss Christine LOH's Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996. In view of the voting results and the deadline for notice of CSAs to the Family Status Discrimination Bill on 13 June 1997, Miss Christine LOH had prepared parallel amendments to the Family Status Discrimination Bill set out in her paper tabled at the meeting. She asked the Administration to advise as soon as possible whether it would move these amendments. She would do so if the Administration declined to move them. The Administration agreed to inform her of its decision by noon of 13 June 1997.

(Post-meeting note : As the Administration decided not to move the parallel amendments, Miss LOH would move the CSAs (at Appendix II to LegCo Paper No. CB(3)1210/96-97).)

Technical amendments to the Bill

5. The Administration pointed out that after discussion with ALA4, it would move some technical amendments to the Bill.

Adm

(*Post-meeting note* : The Administration's CSAs including the technical amendments were circulated to all LegCo Members vide Appendix I to LegCo Paper No. CB(3)1210/96-97.)

III. CSAs to the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

Parallel issues in Mr LAU's Equal Opportunities (Family Responsibility, Sexuality & Age) Bill and Miss LOH's Bill

(Paper No. CB(2)2679/96-97 (02) - Mr LAU's proposed CSAs to his Bill)

6. Referring to his proposed CSAs tabled at the meeting, Mr LAU said that he had incorporated into his Bill amendments parallel to the enacted provisions of Miss LOH's Bill. Part II of his Bill on family responsibility discrimination would be withdrawn under these CSAs.

Exemption for the insurance industry

7. In reply to the Administration, Mr LAU said that he had proposed a CSA to exempt the insurance industry from Part III of his Bill on sexuality discrimination.

IV. Continued examination of the Equal Opportunities (Race) Bill

8. Mrs Elizabeth WONG briefed members on her proposed CSAs to the Bill set out in her paper (Paper No. CB(2)2679/96-97 (04)) tabled at the meeting. The CSAs included parallel amendments with Miss LOH's Bill. The salient points of discussion on Mrs WONG's Bill as amended by these CSAs were set out in the ensuing paragraphs.

Clause 1 - Short title and commencement

9. Mrs WONG said that she would revise the commencement date of the Bill to 1 January 1998.

Clause 3 - Interpretation

10. To address concerns raised at the last meeting, Mrs WONG proposed a CSA to clause 3(1) to redefine "race" in the Bill by deleting "nationality and national origin". The definition as amended now included "colour, descent or ethnic origin".

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Clause 8 - Discrimination on the ground of race

Mrs
WONG

11. In reply to the Administration, Mrs WONG agreed to remove "practice" from the CSA to clause 8(2) to (4) to tie in with the parallel provision in SDO and DDO.

(Post-meeting note : Mrs WONG's CSAs incorporating this revision were circulated to all LegCo Members vide LegCo Paper No. CB(3)1197/96-97.)

Clause 9 - Discrimination against applicants and employees

Clause 23 - Discrimination in the administration of laws and government programmes

12. The Administration pointed out that one of the twin cardinal principles of the labour importation policy was to ensure that local workers would be given priority in filling job vacancies available in the labour market. It was therefore concerned whether this principle and the measures underpinning it would be regarded as racial discrimination under clauses 9 or 23 of the Bill. Moreover, since imported workers and their local counterparts were offered different terms of employment (e.g. median wage requirement and restrictions on change of jobs for imported workers), it was also concerned that this differential treatment might constitute racial discrimination under the clauses. If so, the Bill should provide exemption for the policy. Mrs WONG shared a member's view that with the priority treatment, only local people could apply for the job vacancies. As there were no non-local applicants, racial discrimination against them did not exist. The different terms of employment for local and imported workers arose from their nationalities. As "nationality" had been removed from the definition of "race" in the Bill by her CSA, this differential treatment would not constitute racial discrimination. The Administration said that it would need to seek advice from the Legal Department on whether Mrs WONG's interpretation was correct.

Clause 16 - Education

13. Representatives of the Administration said that at present aliens were not admitted to public sector schools unless they had obtained the approval of the Director of Immigration in respect of entry or residence in Hong Kong for the purpose of attending these schools. Clause 16 might outlaw the practice of these schools to refuse admission of aliens. Places in public sector schools were for Hong Kong children and children resident with their families as members of the Hong Kong community. Admission of aliens to these schools might create language teaching difficulties and incur additional expenditure at public expense. The Bill should therefore provide exemption for this practice. In fact aliens whose travel documents were endorsed "Student" might attend private schools in Hong Kong. Mrs WONG responded that, as a matter of principle, the Bill prohibited racial discrimination which was also applicable in the area of education. Public sector schools refused admission of aliens on the grounds of their status (e.g. tourists) of entry or residence in the territory. This

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practice therefore related to immigration policy. In any case, the exemption for school admission schemes provided for under the CSA to clause ~~40~~ might exempt this practice.

Clause 40 - Compliance with school admission schemes

14. To address the Administration's concern raised at the last meeting, Mrs WONG had proposed a CSA to clause 40 to provide exemption for the four existing school admission schemes. The Administration was concerned that the CSA to clause 40 might not be broad enough to include any new admission schemes. It suggested that the CSA be replaced by a general exemption provision for the existing and future admission schemes.

Clause 41A - Immigration law and policy

15. To address the Administration's concerns, Mrs WONG proposed a CSA to introduce a new clause 41A to provide exemption for immigration law and policy.

16. In reply to Mrs WONG, the Administration stated that from the financial services aspects, it had no comments on the Bill. The Federation of Insurers raised no objection to the Bill.

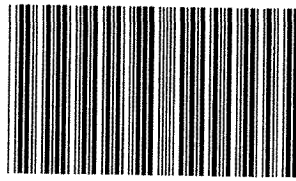
V. Legislative timetable

17. The Deputy Chairman said that a verbal report on the three bills was given at the House Committee meeting on 6 June 1997. The written report of the Bills Committee would be submitted to the House Committee on 13 June 1997. Both Members-in-charge and the Administration had given notice for resumption of Second Reading debates of the Bills at the last sitting commencing on 23 June 1997. The Deputy Chairman reminded the Administration and members that the deadline for notice of CSAs was 13 June 1997.

18. The meeting ended at 1:30 pm.

Provisional Legislative Council Secretariat

19 August 1997



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Legco Bills Committee
proceedings : notes of
meetings.
[Hong Kong] : Centre for
Comparative & Public Law,
Faculty of Law, University of