

# Give us your views

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# Optional

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***Please give us your views in the spacing under the respective consultation question below. You may give us your views on separate sheets where necessary.***

## CHAPTER 1: RATIONALE AND PRINCIPLES OF THE REVIEW

**(Page No. as per Public Consultation document)**

Consultation Question 1 ..... P.26  
Do you think that, in reforming the current discrimination laws, the Government should consolidate all the existing Discrimination Ordinances into a single

modernized Discrimination Ordinance?

**Yes. This is because:**

- 1. It would clarify the overall aim of such ordinances which is about providing equal opportunity in Hong Kong.**
- 2. It would make it more convenient for the end user to have one overall ordinance to refer to rather than having many different ones. The process of bringing them all together in itself would result in more uniformity between existing Ordinances and greater clarity.**

## **CHAPTER 2: GOALS OF THE LEGISLATION AND PROTECTED CHARACTERISTICS**

Consultation Question 2 ..... P.29

Do you think that a clause at the commencement of the discrimination legislation should be incorporated to set out its purpose or goals?

**Yes. By incorporating the ultimate purpose the reader is made aware that the purpose of such laws is to provide equal opportunity to all.**

Consultation Question 3 ..... P.30

Do you think that in relation to the protected characteristic of sex, neutral language of “a person” should be used?

**Yes. This is because the law can be applied to both men and women.**

**Also, there needs to be consideration of gender identity and not just gender.**

Consultation Question 4 ..... P.32

Do you think there should be express reference to protection from discrimination during maternity leave?

**Yes. This is a significant form of discrimination against women.**

Consultation Question 5 ..... P.32

Do you think there should be protection from discrimination on grounds of potential pregnancy?

**Yes. This is because research previously done by me at Community Business on women in Hong Kong shows that there is discrimination against women exists**

when there is a perception that she will become pregnant (so for example, her chance of getting a promotion, relative to her male counterpart, is reduced because of the assumption that she will get pregnant and therefore will not be as “committed” as her male colleagues).

Consultation Question 6 ..... P.37

Do you think that the protected characteristic of marital status should be amended to apply to “relationship status” and expressly protect persons in de facto relationships? If so, how should de facto relationships be defined? Should it be defined to include protection for both heterosexual relationships and same-sex relationships? Should this also be extended to protection from discrimination relating to former de facto relationships?

**Yes. This is for the following reasons:**

- 1. Not all couples in long term relationships are married. In fact for a number of reasons, including the high cost of housing, couples may chose not to be married.**
- 2. Also, the law should be inclusive of those in same sex relationships.**

**The law should cover protection to former and de facto relationships. This is in line with “modernising” the law where individuals are increasingly divorced or separated.**

**In terms of how to define a “de facto” relationship, we should look to international best practice from overseas. The main concern here is to be inclusive as possible without compromising the spirit of a “relationship”.**

Consultation Question 7 ..... P.40

Do you think that the current definition and scope of what constitutes a disability is appropriate and proportionate? Or should it be amended in any way, for example by qualifying that the physical or mental impairment must be substantial and/ or likely to last a certain period?

**Yes, the current definition of what constitutes a disability is appropriate. The definition should include short term disability (as it currently does) and should not require the impairment to be either long term or substantial.**

Consultation Question 8..... P.43

Do you think that the protected characteristic of family status should be redefined as “family responsibilities” in order to clarify that it relates to persons who have responsibility for the care of immediate family members?

**Yes. This is because the term “family responsibilities” is much more understandable.**

Consultation Question 9 ..... P.44

Do you think that the scope of family status discrimination should be expanded to include protection where persons in de facto relationships care for immediate family members? If so, how should de facto relationships be defined? Further, do you think the protection should be extended to situations where a person cares for an immediate family member from a former marriage or de facto relationship?

**Yes the scope of the Family Status Discrimination Ordinance should be expanded to include protection of those in de facto relationships as well.**

**The definition of de facto relationships should be developed, appropriately for Hong Kong, and also looking at international best practice (such as UK and Australia).**

**There are also considerable examples by way of multinational companies operating in Hong Kong, who have looked at what constitutes an appropriate definition of “relationship”. These companies, in line with international standards and taking into consideration what is appropriate for Hong Kong, have developed the definition of “relationship” for purposes mainly of employee health insurance coverage and employee benefits.**

Consultation Question 10 ..... P.44

Do you think that there should be express reference in the definition of family status to include breastfeeding women?

**Yes. This is because breastfeeding women in Hong Kong face a unique form of discrimination resulting from their act of breastfeeding in public. Ensuring that these women are protected would ensure that women are able to breastfeed in public and also send a clear message that such discrimination is unlawful.**

Consultation Question 11 ..... P.50

In relation to the protected characteristic of race, do you think that any or all of the characteristics of nationality, citizenship, residency or related status should be added as protected characteristics?

**Yes. This is because:**

- 1. Employers sometimes discriminate on the grounds of nationality or citizenship, not race. For example, ethnic minorities permanent residents who are blue colour workers (such as in construction) in Hong Kong have reported that they are paid lower wages because they do not have 3 stars on their HKID or do not hold a HKSARG passport.**
- 2. In addition, Mainland Chinese who are either visiting Hong Kong or who have been in Hong Kong for less than 7 years are the same race as the Hong Kong Chinese but experience discrimination in the provision of services because of their “nationality”.**
- 3. The spirit of this legislation is that you should not be discriminated because of “where you come from or have lived, or where your ancestors come from”. We need to understand this and protect on these grounds.**

Consultation Question 12 ..... P.50

In relation to residency status or related status, if you think there should be protection, how should it be defined?

**Yes there should be protection regardless of duration in Hong Kong, and whether or not they are a resident of Hong Kong.**

**We agree with the decision in Yunming v The Director of Social Welfare where it is unlawful to deny social welfare to a resident of less than 7 years.**

Consultation Question 13 ..... P.51

Do you think that the exception to race discrimination on the grounds of permanent residency and right of abode in Hong Kong under section 8(3)(b)(i) and (ii) should be repealed?

**Yes, these exceptions should be repealed. To discriminate against a person because of their residency and right of abode contravenes the spirit of the law**

**which is about inclusion.**

Consultation Question 14 ..... P.51

Do you think that the exception to race discrimination on the grounds of length of residence in Hong Kong under section 8(3)(c) should be repealed?

**Yes, as per Question 13 above.**

Consultation Question 15 ..... P.51

Do you think that the exception to race discrimination on the grounds of nationality, citizenship or resident status of a person in another country under section 8(3)(d) should be repealed?

**Yes, as per Question 13 above.**

Consultation Question 16 ..... P.51

Do you think that consideration should be given to an exception to discrimination on grounds of residency status, but only where the relevant requirement is for a legitimate aim and is proportionate?

**Yes, we believe that there should be an exception on the grounds of residency but only where the relevant requirement is for a legitimate aim and is proportionate.**

**CHAPTER 3: FORMS OF PROHIBITED CONDUCT**

Consultation Question 17 ..... P.57

Do you think that the definition of direct discrimination should be amended to:

- include any less favourable treatment on grounds of a protected characteristic; and
- made clear that for direct disability discrimination a comparison can be made with persons without that particular disability (including persons with a different disability)?

**Yes, the definition of direct definition should be amended to include any less favourable treatment from a protected characteristic.**

Consultation Question 18 ..... P.59

Do you think that there should be a different test for direct pregnancy discrimination

which states:

“on the ground of her pregnancy, sickness or other characteristic that appertains generally to women who are pregnant or potentially pregnant a person treats her unfavourably”?

**Yes. This is because there is no need for a comparator (“less favourably”) as only women can get pregnant. In addition, the revised language also accommodates the whole pregnancy experience as it covers sickness (i.e. morning sickness which is not uncommon) and other characteristics to pregnant or potentially pregnant women.**

Consultation Question 19 ..... P.59  
How to protect pregnant staff from dismissal after maternity leave on the pretext that the temporary replacement performed better?

**It is important to protect a pregnant staff from maternity leave.**

**In line with protecting the pregnant staff her job should be held for a finite amount of time, to be defined by the Ordinance. During this period, the employer should not be able to replace the woman and the woman should be able to return to her previous held position. Of course there may be a limited number of situations where exceptions apply such as:**

- 1. For legitimate reasons, the role no longer exists and there are genuinely no other roles that the woman can return to.**
- 2. The woman herself would like to change her conditions of employment.**
- 3. The woman in fact had unsatisfactory work performance prior to her becoming pregnant and these have been clearly documented.**

**The exceptions would not include where a temporary worker performed better than the pregnant woman.**

**The aim of the law with regard to this kind of protection is to not discriminate against the woman because she is pregnant and to follow best practice that gives women every opportunity to return to work after maternity leave (as in Australia in UK).**

**However, equally, we must ensure that the above law is fair to employers as well. That is why we propose a finite period of time after childbirth that a woman will**

**have her rights protected to return to her previously held role with all conditions intact.**

Consultation Question 20 ..... P.62

Do you think that the definition of indirect discrimination should be amended to:

- refer to a “provision, requirement or practice”; and
- set out the meaning of “justifiable” as where a provision, requirement or practice “serves a legitimate objective and bears a rational and proportionate connection to the objective”?

**Yes, the definition of indirect discrimination should be amended as proposed. In addition, the meaning of justifiable should be defined as above.**

Consultation Question 21 ..... P.66

Do you think that there is a need for introducing specific equal pay for equal value provisions?

**Yes. This is because:**

1. **The gender pay gap is perhaps one of the biggest quantitative indicators of gender discrimination. As per the recent South China Morning Post survey conducted by Acorn, the median salary of males at managerial grade is HK\$32,500 versus women at HK\$22,500.**
2. **Often the work of men, even at lower levels of income are valued more highly than that of women. As women progress therefore, it becomes increasingly impossible to “catch up” with men.**
3. **China has ratified the International Labour Ordinance, ILO Convention C100 on Equal Pay Remuneration. Although C100 clearly states that each member state may chose how to adopt C100, one of the ways it states is through legislation.**
4. **Other countries such as UK and Australia have adopted specific legislation in this regard.**

**Other factors to consider here:**

1. **“Equal pay” must include both pay and benefits.**
2. **The field of determining equal value or similar value across jobs and roles needs to be clearly researched and explored in Hong Kong.**
3. **Part time and other contract workers must also be included here.**



Consultation Question 22 ..... P.67

Do you think that discrimination due to being accompanied by assistance animal should be added as a category of disability discrimination?

**Yes. This is because the spirit of the disability discrimination ordinance is to protect those with disabilities. In the case where a visually impaired person is being discriminated against because of the dog and not the disability, this is unacceptable.**

Consultation Question 23 ..... P.70

Do you think that a new category of discrimination arising from disability should be introduced?

**Yes. This is because in the current Disability Discrimination Ordinance there is no express statement that includes a requirement to make reasonable accommodations in both direct and indirect discrimination provisions.**

Consultation Question 24 ..... P.73

Do you think that new distinct duty to make reasonable accommodation for persons with disabilities should be introduced in the discrimination legislation and that it should be based on the United Kingdom model?

**Yes. This will more likely include people with disabilities in education and the workplace – as it has done in the UK.**

Consultation Question 25 ..... P.76

Do you think that harassment should be prohibited in relation to the protected characteristics of sex, pregnancy, family status and marital status?

**Yes.**

Consultation Question 26 ..... P.78

Do you think that the definition for harassment for all protected characteristics should be “A person (A) harasses another (B) if—

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of—

- (i) violating B’s dignity, or
- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.”?

**Yes.**

Consultation Question 27 ..... P.79  
Do you think there should be protection from harassment for all protected characteristics?

**Yes. In line too with harmonisation of the Ordinances, for all protected characteristics there should be protection from harassment.**

Consultation Question 28 ..... P.79  
In relation to sexual harassment, do you think that the definition should be the same as other forms of harassment, other than stating in addition that it is unwanted conduct of a sexual nature?

**Yes, other than stating in addition that it is unwanted conduct of a sexual nature.**

Consultation Question 29 ..... P.81  
Do you think that there should be provisions on intersectional direct and indirect discrimination, as well as harassment? If so, do you think that there should be protection from intersectional discrimination on the basis of two or more protected characteristics?

**Yes, there should be provisions on intersectional direct and indirect discrimination and harassment.**

**Yes, there should be protection from intersectional discrimination on the basis of two or more protected characteristics.**

**It is the experience of The Zubin Foundation that South Asian women do in fact encounter discrimination as a result of being the “combination” of South Asian and female.**

Consultation Question 30 ..... P.84  
Do you think that:

- there should be protection from direct and indirect discrimination, and harassment by association across all the protected characteristics;

- and if so, do you think “association” should be broadly defined to include association by immediate family, other relatives, caring responsibilities, friendships or working relationships?

**Yes.**

Consultation Question 31 ..... P.85  
Do you think that there should be express protection from direct and indirect discrimination, and harassment by perception and imputation across all the existing protected characteristics?

**Yes.**

Consultation Question 32 ..... P.87  
Do you think that there should be a defence for principals to liability from unlawful conduct of agents, where the principal took reasonably practicable steps to prevent the unlawful conduct?

**Yes.**

Consultation Question 33 ..... P.88  
Do you think that the prohibition on requesting information for a discriminatory purpose relating to disability discrimination should be extended to all existing protected characteristics?

**Yes.**

#### **CHAPTER 4: FIELDS OF PROHIBITED CONDUCT**

Consultation Question 34 ..... P.91  
Do you think that there should be express provisions in the discrimination laws that it applies to all public authorities, and that it is unlawful for them to discriminate in the performance of their functions and exercise of their powers?

**Yes.**

Consultation Question 35 ..... P.93

Do you think that there should be protection from racial discrimination in the exercise of the Government's functions and powers?

**Yes.**

Consultation Question 36 ..... P.94

Do you think that for reasons of consistency there should be an express prohibition on disability discrimination in relation to election and voting of members to public bodies? If so, do you think that there should be an exception permitting disability discrimination but only where it is for a legitimate aim and proportionate?

**Yes there should be an express prohibition on disability discrimination in relation to election and voting of members on disability to public bodies. It is important to include people with mental disabilities in all facets of life including public bodies and politics. People with mental disabilities are people too.**

**Discrimination on the grounds of discrimination should be only be permitted if it is for a legitimate aim and proportionate.**

Consultation Question 37 ..... P.96

Do you think that the current express protection from disability discrimination in sporting activity should be extended to all the protected characteristics?

**Yes.**

**From the experience of The Zubin Foundation, there have been instances where in sporting activity, South Asians in Hong Kong have been discriminated against as a result of their race.**

Consultation Question 38 ..... P.98

Do you think that the limitations on the operation of the RDO in the education and vocational training sectors regarding the exception on the medium of instruction should be repealed?

**Yes. This limitation must be repealed.**

**The Zubin Foundation has found that often the medium of instruction in education is a significant form of discrimination and exclusion to the South Asian and South East Asian community in Hong Kong.**

Consultation Question 39 ..... P.108

Do you think that new harassment provisions should be introduced for all the protected characteristics which provide:

- (1) employer liability for harassment of employees by customers, tenants or any other third parties not in an employment relationship where an employer is put on notice of the harassment and fails to take reasonable action;
- (2) common workplace liability on the person harassing but there is no employer/employee relationship (e.g. volunteers harassed by another volunteer);
- (3) liability on educational establishments where they are put on notice of harassment between students and fail to take reasonable action;
- (4) liability of service users for harassing the service providers;
- (5) liability of service users for harassing other service users;
- (6) liability for harassment on ships and aircraft in relation to the provision of goods, facilities and services;
- (7) liability of tenants and subtenants for harassing other tenants or subtenants; and
- (8) liability of the management of clubs for harassing members or prospective members?

**Yes to all.**

## **CHAPTER 5: PROMOTING AND MAINSTREAMING EQUALITY**

Consultation Question 40 ..... P.115

Do you think that:

- Special measures provisions should be conceptualized and positioned within the discrimination legislation as measures to promote substantive equality rather than exceptions to non-discrimination; and
- The definition of special measures should be made clearer as suggested in paragraph 5.18 in terms of their purpose, circumstances in which they can be used and when they should end?

**Yes, special measures should be conceptualized and positioned within the discrimination legislation as the ultimate aim of such legislation has got to be to promote substantial equality. As such, The Zubin Foundation supports positive action to achieve this (not the same as positive discrimination).**

**Yes, special measures should be made clearer as per 5.18 in terms of their purpose, circumstances in which they can be used and when they should end.**

Consultation Question 41 ..... P.122

Do you think that there should be duties on all public authorities to promote equality and eliminate discrimination in all their functions and policies, and across all protected characteristics?

**Yes. Public authorities should have an express duty to promote equality and eliminated discrimination in all their functions and policies and across all protected characteristics.**

## **CHAPTER 6: ASPECTS OF COURT PROCEEDINGS, POWERS AND CONSTITUTION OF THE EOC**

Consultation Question 42 ..... P.126

Do you think there should be provisions introduced which indicate that once the claimant establishes facts from which discrimination can be inferred, the burden of proof shifts to the respondent to show there was no discrimination?

**Yes.**

Consultation Question 43 ..... P.127

Do you think that, consistent with indirect disability discrimination provisions, damages should be able to be awarded for indirect sex, pregnancy, marital status, family status and race discrimination, even where there was no intention to discriminate?

**Yes.**

**The Zubin Foundation agrees that in line with indirect disability discrimination provisions, damages should be awarded on the abovementioned grounds even when there is no intention to discriminate. Intention is not relevant.**

Consultation Question 44 ..... P.129

Do you think that the discrimination laws should be amended to ensure the EOC can recover its legal costs where claimants are awarded costs?

**Yes.**

Consultation Question 45 ..... P.130

Do you think that for reasons of consistency with its other powers, the EOC should be able to initiate proceedings in its own name for discriminatory practices?

**Yes.**

Consultation Question 46 ..... P.132

Do you think that the discrimination laws should contain an express power that the EOC may produce non-statutory guidance?

**Yes. The aim of equal opportunity legislation is ultimately to have a society where all individuals are given equal opportunity to achieve their full potential. For Hong Kong to achieve this, in addition to the EOC giving statutory guidance we need the EOC to play a leadership role in promoting inclusion and producing non-statutory guidance. As such, The Zubin Foundation believes that the discrimination laws should contain an express power that the EOC may produce non-statutory guidance.**

Consultation Question 47 ..... P.135

Do you think that the formal investigation provisions should set out more clearly the distinction between general and specific investigations?

**Yes.**

Consultation Question 48 ..... P.136

Do you think that for reasons of consistency with the EOC's other powers, the EOC should be able to issue enforcement notices relating to discriminatory practices against persons with disabilities?

**Yes.**

Consultation Question 49 ..... P.136

Do you think that in relation to formal investigations provisions, permitting voluntary binding undertakings should be introduced and be enforceable by the EOC?

**Yes.**

Consultation Question 50 ..... P.136

Do you think that the discrimination laws should expressly provide that the EOC has powers to conduct research and education in relation to all the protected characteristics?

**Yes.**

Consultation Question 51 ..... P.138

Do you think that reformed discrimination laws should expressly provide that the EOC has powers to monitor and advise:

- The Government on relevant existing and proposed legislation and policy; and
- On the Government's compliance with international human rights obligations relating to equality and discrimination?

**Yes.**

Consultation Question 52 ..... P.139

Do you think there should be an express power of the EOC to apply to intervene in or appear as amicus curiae in court proceedings relating to any relevant discrimination issue?

**Yes.**

Consultation Question 53 ..... P.140

Do you think that the EOC's power to institute judicial review proceedings should be more clearly set out as a separate power of the EOC?

**Yes.**

Consultation Question 54 ..... P.141

Do you think that the EOC should be required to produce a Strategic Plan in consultation with the public that sets out its strategic priority areas of work over several years?

**Yes, there should be a Strategic Plan developed in consultation with the public. There is much work already done on best practice on all areas of Diversity & Inclusion in Hong Kong and the EOC should look at developing Strategic**



**Partnerships.**

Consultation Question 55 ..... P.144

Do you think that a provision should be included in reformed discrimination laws providing for the maintenance of the independence of the EOC from the Government?

**Yes.**

Consultation Question 56 ..... P.144

Do you think that in relation to Board members, applications should be openly invited and an independent panel established to interview and make recommendations for appointments?

**Yes.**

**In line with global best practice on corporate governance, the EOC should have a board appointed nominating committee, diverse in its make up at seeking the top talent (“diverse panel”).**

**In addition to applications being openly invited, the EOC should go through a professional search. The search process should be wide and the EOC should require that the candidate shortlist is diverse and if this is not possible, the search firm must clearly explain why this is the case. This will allow the EOC to ensure that as far as possible it is demonstrating a commitment to diversity itself. This practice is not novel and is already being adopted by companies committed to diversity and inclusion.**

**Furthermore, the interview panel at the EOC must also be diverse. This will ensure, as far as possible the bias’ are minimized. The process described here is known as “diverse panels and diverse slates”.**

**There should be a requirement that candidates should be committed to Hong Kong- the only exception being one or two overseas experts. The Zubin Foundation has no reservation in having an overseas equal opportunity expert (or diversity expert in one or more of the protected characteristics) . For example, to better understand the issue of religion how to navigate through this in Hong Kong it may be a good idea to invite someone from the UK (similar in jurisdiction) which has already started to think about this, to sit on the EOC board.**

**The EOC should make every effort to include on its board ethnic minorities of Hong Kong, women, gays, lesbians and transgender individuals, people with disabilities and those across different age cohorts.**

**However, it should not be that such individuals are invited to the board at the expense of a meritocracy. The EOC must aim to bring on the best people for the job of board member, whatever their background may be.**

Consultation Question 57 ..... P.144  
Do you think that there should be a provision in the legislation requiring Board members to have suitable experience in any relevant area of discrimination or promoting equality?

**As research shows, a diverse board is critical for creativity, innovation and increasingly survival in this new, more global world. Diversity is not just about gender, race, disability, race, age, sexual orientation and gender identity. We are all different in many ways.**

**A diverse board is what we recommend for the EOC in terms of industry and skills set as well. Having said that, in order for the EOC to lead in promoting equality it is very important that it has a significant number of its board members who understand equal opportunity, best practice in diversity and equality and Hong Kong.**

**The Zubin Foundation believes that the EOC board members should be required to have a personal interest in human rights and equality- without which it would be difficult to help support and serve the mission of the EOC.**

**In addition all EOC board members should be required to go through diversity training and unconscious bias training.**

Consultation Question 58 ..... P.145  
Do you think that there should be a provision protecting EOC members and staff from personal liability where they act in good faith in relation to the DDO and FSDO, as is the case for the SDO and RDO?

**Yes, there should be a provision to protect them from personal liability only insofar**

**as this liability arises from their work with the EOC only.**

Consultation Question 59 ..... P.145

Do you think that there should be express provision restricting disclosure of information arising from complaint handling in accordance with the principles of confidentiality?

**Yes.**

Consultation Question 60 ..... P.147

Do you think that Hong Kong should establish a Human Rights Commission fully compliant with the Paris Principles? If so what structure and mandate should the Human Rights Commission have?

**Yes, The Zubin Foundation supports the establishment of a Human Rights Commission fully compliant with the Paris Principles.**

**In terms of structure, we recommend that the mandate of the EOC is amended to monitor and promote compliance with the Hong Kong Bill of Rights and international human rights obligations. This is because the EOC is already handling international human rights obligations as far as equality and discrimination is concerned.**

**In order for the EOC to be able to effectively be a Human Rights Commission, per se, the EOC will need to consider assessing its existing structure and talent pool.**

## **CHAPTER 7: EXCEPTIONS**

Consultation Question 61 ..... P.149

Do you think that all the exceptions should be contained in one section (Schedules) of the discrimination laws in order that the law is clearer?

**Yes.**

Consultation Question 62 ..... P.152

Do you think that the definition of genuine occupational qualifications (GOQs) should be reformed and made consistent across all the protected characteristics by defining them as:

- “- There is an occupational requirement which relates to a protected characteristic;
- the application of the requirement is a proportionate means of achieving a legitimate aim;
- the applicant or worker does not meet the requirement; or, the employer has reasonable grounds for not being satisfied that the applicant or worker meets the requirement.

In relation to the protected characteristic of disability, the exception does not apply where a reasonable accommodation can be made to perform the occupational requirement.”?

**Yes, the definition of a genuine occupational qualification should be reformed and harmonised across all protected characteristics by defining them as per above.**

**Yes, in relation to the protected characteristic of disability, the exception does not apply where a reasonable accommodation can be made to perform the occupational requirement.**

Consultation Question 63 ..... P.153

Do you think that the discriminatory training exceptions are unnecessary and should be repealed and incorporated within the scope of the definition of special measures?

**Yes.**

Consultation Question 64 ..... P.153

Do you think that the charities exceptions should be amended to require a legitimate aim and proportionality in order to be lawful?

**Yes.**

Consultation Question 65 ..... P.154

Do you think that the Government should conduct a review of its New Territories small house policy?

**Yes.**

Consultation Question 66 ..... P.156

Do you think that the Government should as soon as possible repeal the exceptions

in the SDO relating to sex and:

- requirements for height or weight;
- granting pension benefits to surviving spouses and children of deceased public officers?

**Yes, both should be repealed.**

Consultation Question 67 ..... P.156

Do you think that the exception for numbers of men and women employed in the Correctional Services Department is unnecessary and should be repealed?

**Yes.**

Consultation Question 68 ..... P.157

Do you think that the national security exception relating to sex is necessary, and if so do you agree that it should be amended to require proportionality?

**Yes.**

Consultation Question 69 ..... P.158

Do you think that the exception permitting sex discrimination in employment and qualification bodies for religious purposes should be extended to permit marital status discrimination?

**The Zubin Foundation does not agree to a blanket exception permitting sex discrimination in employment and qualification bodies for religious bodies in the form of marital status discrimination.**

**The term “religious purposes” is too broad and vague. We are concerned that this exception may be an excuse to exclude women in religion.**

**The Zubin Foundation believes that the Equal Opportunities Commission needs to give more substantial thought to the subject of religion and equal opportunity. This also includes introduction religion as a protected characteristic.**

Consultation Question 70 ..... P.158

Do you think that the exception relating to providing benefits differentially based on marital status should be amended to provide equality between persons who are

married and persons in a de facto relationship?

**Yes.**

Consultation Question 71 ..... P.160

Do you think that:

- the Human Reproductive Technology Ordinance should be amended to remove a requirement that a person is married to be provided with IVF treatment; and
- the exception in the SDO relating to reproductive technology should then be repealed?

**Yes to both.**

Consultation Question 72..... P.160

Do you think that the exception relating to adoption and marital status is no longer necessary because of amendments to the Adoption Ordinance and should be repealed?

**Yes**

Consultation Question 73 ..... P.161

Do you think that the exception to discrimination relating to the provision of public housing permitting discrimination on grounds of marital status should be repealed?

**Yes.**

Consultation Question 74..... P.162

Do you think that the exception relating to family status which permits difference in insurance premiums based on family status should be repealed?

**Yes.**

Consultation Question 75 ..... P.163

Do you think that the system under the Minimum Wage Ordinance by which persons with disabilities can assess their productivity has worked effectively? Do you think that the exceptions under Items 1 to 3 of Schedule 5 of the DDO should therefore be retained and/or reformed in any way or repealed?

**As we understand from the Minimum Wage Ordinance, persons with disabilities must receive the minimum wage. The Ordinance understands that with some people with disabilities they may encounter difficulties in ascertaining work and employment as a result of their lower productivity. As such the Ordinance gives the person with a disability flexibility by allow them to invoke a productivity assessment that may result in a lower wage paid than the minimum wage.**

**On the surface it would appear that this is just on one hand but also practical as it understands that for many people with disabilities, they want and need the employment even though their productivity may be less than someone without a disability.**

**The Zubin Foundation is not able to comment on the effectiveness of the current system. However, we would caution that the ultimate aim of the system is to leave the choice to the employee to be assessed or not. We would not want the person with disability to be coerced or pressured to undertake an assessment, by an employer or a potential employer, in order to achieve a lower wage.**

**The ultimate spirit of the minimum wage, we must not forget, is one of affording the minimum financial amount to a person in Hong Kong to live. A person with a disability needs to live too.**

Consultation Question 76 ..... P.165  
Do you think that the exception permitting discrimination in employment conditions for persons from overseas with special skills, knowledge or experience should be repealed?

**Yes, The Zubin Foundation believes that the exception permitting discrimination in employment conditions for persons from overseas with special skills, knowledge or experience should be revealed. We do not need a blanket exception and differences relating to employment terms and conditions of people from overseas should be compared with local hires and dealt with on a case- by-case basis.**

Consultation Question 77 ..... P.165  
Do you think that the exception which permits differences in terms of employment for overseas and local staff for specified posts should be reviewed by the

Government?

**Yes, this exception should be repealed and there should be no differences in employment of those employed on overseas terms and those employed on local terms. In the past perhaps the premium afforded to those on overseas terms was because Hong Kong was seen as a “hardship posting”. This is no longer the case.**

**Any other views:**

- 1. The EOC should consider including sexual orientation, gender identity and age as protected characteristic. These would all be in line with what UK and Australia have already done.**
- 2. With Hong Kong’s ageing population and one in seven people over the age of 65, it is critical that discrimination on the grounds of age be covered.**
- 3. The EOC must not be swayed by public pressure to accommodate any form of discrimination. Currently there are schools in Hong Kong under certain religious auspices of what “parents want” give girls a shorter time at school.**
- 4. Religion needs to be fully explored as a protected characteristic. International best practice must be considered and reviewed in terms of appropriateness and relevance in Hong Kong.**
- 5. Equal Pay for work of Equal Value is a fundamental issue to ensure that equality in pay exists based on work and not bias. It is critical that more work is done on understanding the “value” of different roles and developing a guide for employers in Hong Kong.**
- 6. The Hong Kong of the next few decades will be extremely different to the Hong Kong of the previous few decades in terms of demographics, attitudes, and behaviours.**
- 7. It is important that the EOC is prepared for the imminent changes in society and reflects these in how it is structured, how it engages with the public and how it advocates for equality. It is time for the EOC to reflect on how it can position itself for the future.**

**-END-**