

Give us your views

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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. As part of the reform generally, a key objective should be to simplify and make consistent the existing Discrimination Ordinances. Consolidation should surely be part of this process. Having four separate ordinances is cumbersome and inefficient – having to review and update four separate ordinances which contain many common provisions is clearly inefficient. Consider the consequences of the Government deciding to introduce protection for other minority groups defined for example by sexual orientation, age or religion: if Hong Kong continues with its current system of individual discrimination laws, this would necessitate the enactment of a host of new individual ordinances which would make future reforms even more unwieldy and the laws harder to apply, particularly in the event of intersectional discrimination. It is notable that Britain recently enacted the Equality Act 2010 which modernised and consolidated into one Act all the existing discrimination legislation in Britain. For these reasons, The Women’s Foundation strongly supports the consolidation of the existing Discrimination Ordinances into a single modernised Discrimination Ordinance.

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. Clearly identifying and signaling the purpose or goals of the discrimination legislation should allow all who read it to understand, in layman’s terms, the general intention of the law. Furthermore, highlighting the principles behind the legislation and providing a reminder of the key elements of equality should assist in providing greater context and understanding more generally.

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. We believe neutral language should be used in relation to the protected

characteristic of sex.

Consultation Question 4 P.32

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

Yes. The Women’s Foundation believes the protection of female employees from discrimination during maternity leave is critically important to women from all walks of life. At the more blue-collar level, women working in the 4C’s – cleaning, cashiering, caring and catering – should be able to take maternity leave without fearing that their future employment and livelihood will be compromised. Likewise, in terms of professional women, Hong Kong companies should be focusing on building and sustaining their pipeline of female executives and taking positive steps to encourage women to return to work after having children. More progressive companies now have policies to support female employees during their pregnancy and maternity leave and which encourage and facilitate their return to the workplace. We hope that the proposed reform of the Ordinance to include an express reference to protection from discrimination during maternity leave will encourage all companies to review their current policies and practices in this regard.

Consultation Question 5 P.32

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

Yes. A woman should not be overlooked for a role or a promotion simply because she is or may be capable of bearing children or has expressed a desire to become pregnant or is likely or is perceived to be likely to become pregnant. Organisations need to guard against “inadvertent” discrimination on the part of managers who believe they are being kind to women, particularly married women, by taking them out of consideration for challenging projects, promotions or international assignments on the assumption that they are planning to start a family and would therefore not be interested in advancement opportunities at work. Companies need to ensure women are not missing out on opportunities because of stereotyped assumptions that women are more likely to put their family before their careers. We hope that explicitly including an additional layer of protection from discrimination on the grounds of potential pregnancy will raise greater awareness around this issue on the part of employers.

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?

Given the large number of couples living together who are not married, The Women’s Foundation supports the amendment of the Ordinance to encompass the broader concept of relationship status as opposed to marital status and the express protection from discrimination of persons in de facto relationships including former de facto relationships. We believe when it comes to defining de facto relationships, it may be helpful to draw on the definitions that have been adopted in other jurisdictions, for example Britain and Australia. While The Women’s Foundation is in favour of protection for both heterosexual relationships and same-sex relationships in principle, we also believe that protection for same-sex relationships needs to be part of the bigger debate on whether Hong Kong should introduce sexual orientation anti-discrimination laws.

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?

The Women’s Foundation is in favour of qualifying the definition and scope of what constitutes a disability for the purposes of the Ordinance to require the impairment to be substantial, to clarify that it does not apply in the event of minor illnesses and conditions. We believe that this would ensure protection is only be invoked in situations where the principles of appropriateness and proportionality apply.

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. The Women’s Foundation supports the proposal to redefine the protected characteristic of family status as “family responsibilities” in order to clarify that it

relates to persons who have responsibility for the care of immediate family members.

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?

Given the large number of couples living together who are not married, The Women’s Foundation supports the expansion of the scope of family status discrimination to include protection where people in de facto relationships care for immediate family members. We also support extending protection to situations where a person cares for an immediate family member from a former marriage or de facto relationship. We believe that when it comes to defining de facto relationships, it may be helpful to draw on the definitions that have been adopted in other jurisdictions, for example Britain and Australia.

Consultation Question 10 P.44

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

The Women’s Foundation supports the inclusion of an express reference in the definition of family status to include protection from discrimination for breastfeeding women which would bring Hong Kong into line with the position in the UK and Australia.

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?

The Women’s Foundation supports the addition of nationality, citizenship, residency and related status as protected characteristics. Like other NGO groups, we are concerned about reports that New Arrivals from the Mainland are being discriminated against given in particular the large number of New Arrivals who are women.

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?

The Women’s Foundation is in favour of protection applying to any person whether or not they are Hong Kong residents or how long they have been resident in Hong Kong, whether or not they are visiting Hong Kong on a tourist visa or whether they are immigrants to Hong Kong. In support of this, we note the recent decision in December 2013 of the Court of Final Appeal in *Kong Yunming v The Director of Social Welfare* which found the Government’s policy requiring all CSSA recipients to have been Hong Kong residents for at least seven years to be unconstitutional and in breach of the right to social welfare under article 36 of the Basic Law.

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. The Women’s Foundation is in favour of these exceptions being repealed. Protection from race discrimination should extend to discrimination on the basis of residency status although as suggested in paragraph 2.85 of the EOC’s DLR document, we believe consideration may be given to specific exceptions relating to benefits associated with residency status and length of residence provided the exception is for a legitimate aim and proportionate, in keeping with the Court’s decision in *Kong Yunming v The Director of Social Welfare* cited above.

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, for the reasons given in our responses to questions 12 and 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, for the reasons given in our responses to questions 12 and 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, see our response to question 13 above.

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 Women’s Foundation is in favour of amending the definition of direct discrimination to include any less favourable treatment on grounds of a protected characteristic to better align with international standards. We are also in favour of amending the Ordinance to make it clear that for direct disability discrimination, a comparison can be made with persons without that particular disability including persons with a different disability.

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. The Women’s Foundation supports a different test for direct pregnancy discrimination as outlined in questions 18. For one thing, there is no need for a comparator in the case of direct pregnancy discrimination, and secondly, the new language would explicitly protect women who are treated less favourably because they have to take sick leave for a medical condition relating to their pregnancy or

because they take maternity leave.

Consultation Question 19 P.59

How to protect pregnant staff from dismissal after maternity leave on the pretext that the temporary replacement performed better?

At The Women’s Foundation, we believe it is vitally important that working women in Hong Kong who become pregnant or who have a child are protected in terms of their rights to employment during and after their pregnancy. This includes protection in the specific situation mentioned in question 19. In most international jurisdictions including the UK and Australia, a woman on maternity leave has the right to return to the same job before she left; an interim employee cannot be given her job even if the employer thinks the person is a better employee. While The Women’s Foundation believes that Hong Kong should follow suit in affording similar protection to working women returning from maternity leave, we would be in favour of legislation specifying a set period of time following the maternity leave during which employers must allow a female employee returning from maternity leave to resume work in the same role or capacity in which they were previously employed, unless there are legitimate reasons for terminating or varying their employment contract. Legitimate reasons could include the situation where (i) the employee herself requests to return in a different role or capacity, or (ii) the employer can point to performance issues that pre-dated the pregnancy and were not dealt with at the time, or (iii) in the event of genuine redundancy which was not caused by the pregnancy or maternity leave itself and no suitable alternative vacancy exists.

We believe that by specifying a finite period of time during which female staff members returning from maternity leave are protected against termination or a variation in their employment conditions, employees returning from maternity leave have a safety net of time during which they can adjust to being back at work in their previous role while employers have clarity as to the length of time during which no changes to the staff member’s employment conditions can be made. Countries that have adopted this approach include China where the period of protection corresponds to the nursing period; in Belgium and South Korea, the period of protection is 30 days following the maternity leave; and in Austria and Germany, it is four months following the birth.

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”?

At The Women’s Foundation, we believe that the definition of indirect discrimination should better align with legislative developments in other leading international jurisdictions. Accordingly, we are in favour of amending the definition to refer to a “provision, requirement or practice”. We also believe that in the interests of harmonisation, all the existing Ordinances should follow the example of the ROD and expressly define the meaning of “justifiable” as set out above.

Consultation Question 21 P.66

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

Yes. As alluded to in section 3.49 of the EOC’s document on the DLR, women’s rights to equal pay are protected by specific discrimination laws in many international jurisdictions including Australia, the EU, the UK and the US. The Women’s Foundation believes that Hong Kong should follow suit in according similar protection to working women especially in light of Government statistics suggesting that differences in average pay between men and women persist within most sectors and there are greater pay gaps in low skilled and low paid work which suggest that the women workers who can least afford it are the most vulnerable to discrimination and exploitation. The Women’s Foundation is also concerned by evidence that part-time workers (the majority of whom tend to be women because of their caring responsibilities for children and elderly dependents) are generally not paid the same as full-timers doing the same jobs, on a pro-rata basis. At the same time, equal pay protection is just as important for professional women. 33 years after the Civil Service reformed its pay structure to provide equal conditions of service and benefits for men and women working in the Civil Service, we believe it is less common, but not unheard of, for women to be paid a lower base wage than men doing the same jobs. But the pay issues of today are more complex. For example, job evaluation processes may undervalue female dominated occupations and therefore set lower pay rates for those roles compared with male dominated jobs, thereby contributing to unequal pay between men and women. We believe that because of the complexity of the issue, many crucial factors hampering the establishment of pay equity have not been adequately tackled in Hong Kong and that employers need to

be reminded of their responsibilities in this regard. For all these reasons, we strongly support the introduction of specific equal pay for equal value provisions.

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. The Women's Foundation supports the addition of discrimination due to being accompanied by an assistance animal as a category of disability discrimination.

Consultation Question 23 P.70

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

Yes. The Women's Foundation supports the introduction of a new discrete category of discrimination arising from disability based on the UK definition to address the current gap in protection between direct and indirect disability discrimination.

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. The Women's Foundation supports the introduction in the discrimination legislation based on the UK model of a distinct duty to make reasonable accommodation for persons with disabilities. This will ensure persons with disabilities are better able to participate in key aspects of life such as education and employment and in accessing services.

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. The Women's Foundation is in favour of stronger protection against harassment in general and supports the proposal that harassment should be prohibited in relation to the protected characteristics of sex, pregnancy, marital status and family status in line with the position in the UK.

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. The current inconsistencies between the Ordinances in the definition of harassment should be eradicated and the position should be harmonised across all Ordinances. The Women’s Foundation supports the adoption of the definition set out in question 26 which will make the position in Hong Kong consistent with that in the UK and the EU.

Consultation Question 27 P.79

Do you think there should be protection from harassment for all protected characteristics?

Yes. As stated in our response to question 25, The Women’s Foundation is in favour of stronger protection from harassment in general and therefore supports protection from harassment for all protected characteristics.

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. The Women’s Foundation believes that in relation to sexual harassment, 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.

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. The Women’s Foundation supports the introduction of provisions on intersectional direct and indirect discrimination, as well as harassment, and we agree that there should be protection from intersectional discrimination on the basis of two or more protected characteristics.

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 to both. The Women’s Foundation believes that it would be beneficial to harmonise the situation across all the Ordinances and to provide for protection from direct and indirect discrimination and harassment by association across all the protected characteristics. We also agree that “association” should be defined as set out above.

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. The Women’s Foundation is in favour of express protection from direct and indirect discrimination and harassment by perception and imputation across all the existing protected characteristics, in line with the position in other leading international jurisdictions.

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. The Women’s Foundation supports a defence for principals from liability for the unlawful conduct of agents where the principal took reasonably practicable steps to prevent the unlawful conduct, in line with the position for employers and employees.

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. The Women's Foundation is in favour of extending the prohibition on requesting information for a discriminatory purpose to all existing protected characteristics in the interests of harmonisation and providing consistent levels of protection.

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. The Women's Foundation is in favour of amending the Ordinances to make it clear that they apply to all public authorities and that it is unlawful for them to discriminate in the performance of their functions and exercise of their powers.

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. The Women's Foundation believes the current lacuna should be addressed and is in favour of introducing protection from racial discrimination in the exercise of the Government's functions and powers.

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. The Women's Foundation believes it is important for Hong Kong to actively promote an environment in which all persons including persons with disabilities are

encouraged to participate in public affairs including in relation to the election and voting of members to public bodies. Accordingly, we are in favour of an express prohibition on disability discrimination in relation to the election and voting of members to public bodies. However, we also recognise that the Legislative Council Ordinance and the District Councils Ordinance may have legitimate cause in restricting voting rights to persons who are mentally capable. Accordingly, we would support an exception permitting disability discrimination where 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. The Women’s Foundation believes that Hong Kong should actively promote an environment where sports are a key activity in which all individuals should have the right to participate. Accordingly, we are in favour of extending the current express protection from disability discrimination to all the protected characteristics subject to exceptions for particular characteristics – for example, it should not be unlawful to hold same sex only sports activities or competitions.

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. The Women’s Foundation believes that it is important to ensure equal access to education and vocational training for all. Accordingly, we are in favour of repealing the current limitations on the operation of the RDO in the education and vocational training sectors regarding the exception on the medium of instruction. We believe that the question of whether the provision of education or vocational training in a particular language or manner is discriminatory should be determined on a case by case basis and considerations of whether there was a legitimate aim in a particular language or manner and whether the means used to achieve that aim was proportionate.

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. The Women's Foundation supports all the above proposals which will strengthen the protection of individuals in Hong Kong from harassment, harmonise the position across the Ordinances and bring the position in Hong Kong in line with other leading international jurisdictions. In particular, we believe that an employer should be potentially liable to employees who are harassed by customers, tenants or other third parties where the employer has been put on notice of the likelihood of harassment occurring and fails to take reasonable action to investigate or prevent the harassment occurring. We also believe that a person who harasses another person in a common workplace should be liable even where there is no common employer or no employment relationship. Turning to educational establishments, at The Women's Foundation, we are very concerned by reports of rising incidents of sexual harassment in primary, secondary and tertiary institutions with offenders getting younger and younger. We strongly support the view that educational establishments should take reasonable steps to prevent sexual harassment and other forms of harassment including the harassment by students of fellow students. We also believe that service users who harass service providers or other service users should be liable for their actions and that protection should be extended to all protected characteristics, not just sexual harassment as proposed by the Government's recent Sex Discrimination (Amendment) Bill 2014.

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. The Women's Foundation strongly believes that while providing redress for individual acts of discrimination is required, it is also vitally important to focus on the protection of disadvantaged groups through the development of policies, programs and other measures to promote equality and eliminate systemic discrimination. Unlike positive discrimination (i.e., the automatic preference for particular groups in employment, education or other fields) which is generally unlawful, all of the current Ordinances allow special measures which address disadvantages or discrimination experienced by a particular group and which are reasonably intended to ensure persons with the protected characteristics have equal opportunities with others and can access goods, services, grants, benefits or programmes to meet their special needs. Accordingly, The Women's Foundation is in favour of re-conceptualising and re-positioning special measure provisions within the discrimination legislation as positive action measures to promote substantive equality rather than as lawful forms of discrimination. We are also in favour of making the definition of special measures clearer as suggested in paragraph 5.18 in terms of their purpose, the 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. The Women's Foundation supports the suggestion that all public authorities should have a duty to promote equality and eliminate discrimination in all their functions and policies, across all protected characteristics. This would bring the position in Hong Kong in line with international practice – e.g., in the UK and

Australia.

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. The Women's Foundation is in favour of clarifying the standard and burden of proof for discrimination law proceedings so all parties know what is required to be proven by whom. Given the difficulty of proving discrimination claims and the fact that it is frequently the respondent that is in possession of the evidence that will indicate whether or not the act or decision complained of was discriminatory, The Women's Foundation supports the introduction of provisions to indicate that once the claimant has established facts from which discrimination can be inferred, the burden of proof should shift to the respondent to show there was no discrimination. This would also bring the Hong Kong position in line with other leading jurisdictions.

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 Women's Foundation agrees with the proposal that, consistent with the position for indirect disability discrimination, damages should also be able to be awarded for indirect sex, pregnancy, marital status, family status and race discrimination, even where there was no intention to discriminate.

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. The Women's Foundation supports the amendment of the discrimination laws to ensure the EOC can recover its legal costs where claimants are awarded costs.

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. The Women’s Foundation supports the amendment of the discrimination laws to allow the EOC to initiate proceedings in its own name for discriminatory practices to be consistent with its other powers.

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 Women’s Foundation supports the amendment of the discrimination laws to expressly provide that the EOC may produce non-statutory guidance on eliminating discrimination and promoting equality of opportunity.

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. The Women’s Foundation supports the amendment of the formal investigation provisions to set out more clearly the distinction between general and specific investigations.

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. The Women’s Foundation supports the amendment of the discrimination laws to provide that the EOC can issue enforcement notices relating to discriminatory practices against persons with disabilities.

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. The Women's Foundation supports the amendment of the discrimination laws so that in relation to formal investigations, permitting voluntary binding undertakings should be introduced and enforceable by the EOC.

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. The Women's Foundation supports the amendment of the discrimination laws to expressly provide that the EOC has powers to conduct research and education in relation to all the protected characteristics.

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. The Women's Foundation supports the amendment of the discrimination laws to expressly provide that the EOC has the power to monitor and advise in the instances mentioned in question 51.

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. The Women's Foundation supports the amendment of the discrimination laws to expressly provide that the EOC can apply to intervene in or appear as amicus curiae in court proceedings relating to any relevant discrimination issue.

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. The Women’s Foundation supports the amendment of the discrimination laws to expressly recognise the power of the EOC to institute judicial review proceedings.

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. The Women’s Foundation supports the proposal 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. This is important because it will ensure (i) the EOC engages with all key stakeholders and members of the public in order to, and before it decides, its priority areas of work and (ii) the EOC has a clear focus on how it should prioritise and allocate its resources and provide indicators to measure its performance.

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. The Women’s Foundation believes it is important the reformed discrimination laws maintain the independence of the EOC from the Government. This would be in keeping with the United Nations Paris Principles which emphasise the importance of independence from Government of human rights institutions.

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?

At The Women’s Foundation, we are more concerned that efforts are taken to identify the best people for any board openings based on the expertise, skills and networks that may be required at the time. We support a transparent and inclusive process for board selection but we also think it would be beneficial to allow for some flexibility regarding the nature of the search process employed since the optimal process will depend on the circumstances of the particular vacancy and the target

candidate profile for the particular opening. For example, in some circumstances, it might be appropriate to implement open recruitment and invite applications from the public, in other circumstances it might be more beneficial to engage an executive search firm, while in other cases, it might be desirable or necessary to seek recommendations from particular minority groups. In terms of whether it is necessary to establish a independent panel to manage the recruitment process, this seems particularly appropriate when it comes to recruiting the Chair of the EOC since this is an extremely important executive role – it seems less necessary for the recruitment of ordinary Board members who are non-executive in their roles.

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?

At The Women’s Foundation, we believe that it is important for any Board to comprise a diverse range of expertise, skills and networks. While clearly, it would be helpful to have Board members with suitable experience in the area of discrimination or promoting equality, we believe it would also be desirable to have EOC Board members who are experts in other areas that are relevant to the EOC’s operations – for example, financial accounting and auditing, research and communications. We think it would be a pity to bar individuals with these areas of expertise from potential EOC Board service due to a lack of experience in discrimination or promoting equality and they should be eligible to be considered provided they are motivated to support the work of the EOC and willing to learn.

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. The Women’s Foundation supports the amendment of the discrimination laws to include a provision protecting EOC members and staff from personal liability where they act in good faith in relation to all of the Ordinances.

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. The Women's Foundation supports the inclusion of an express provision restricting disclosure of information arising from complaint handling in accordance with the principles of confidentiality.

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 Women's Foundation supports the establishment of a Human Rights Commission in line with the international trend that has seen increasing numbers of states or jurisdictions establishing national human rights institutions that monitor compliance with both discrimination and human rights laws. The structure that seems most logical for Hong Kong given the existing activities of the EOC is that the mandate of the EOC could be amended to monitor and promote compliance with the Hong Kong Bill of Rights Ordinance and international human rights obligations. This would have the advantage of having one organization with a mandate to consider all issues relating to human rights.

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. The Women's Foundation is in favour of having all the exceptions in one section of the discrimination laws to make the legislation easier to navigate.

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 Women’s Foundation supports the proposed amendment to the definition of GOQs across all the protected characteristics. We also support the inclusion of the provision shown in relation to disability so that the exception does not apply where reasonable accommodation could be made for a person with disabilities to perform the occupational requirements.

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. The Women’s Foundation supports the repeal of the discriminatory training exceptions and their incorporation instead within the scope of the definition of special measures.

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. The Women’s Foundation supports the proposed amendment to the charities exceptions to require a legitimate aim and proportionality in order to be lawful.

Consultation Question 65 P.154

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

Yes. The Women’s Foundation supports the EOC’s position that the Government should review the New Territories small house policy which clearly discriminates against women.

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. The Women's Foundation believes the above -mentioned exceptions in the SDO 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. The Women's Foundation believes the exception for numbers of men and women employed in the Correctional Services Department should be repealed.

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?

The Women's Foundation believes the national security exception relating to sex should be removed or it should be amended to require proportionality.

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?

At The Women's Foundation, we are concerned about expanding the exception permitting sex discrimination where it relates to employment or a qualification for an organised religion to permit marital status discrimination. We believe that a further review should be conducted in this area to gauge the impact of the proposed change.

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. The Women’s Foundation believes the exception should be amended to provide equality between persons who are married and persons in a de facto relationship..

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. The Women’s Foundation believes the Human Reproductive Technology Ordinance should be amended as shown and the exception in the SDO relating to reproductive technology should be repealed. IVF treatment should not be available just to married couples.

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. The Women’s Foundation supports the repeal of the exception relating to adoption and marital status.

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. The Women’s Foundation believes the exception to discrimination relating to the provision of public housing permitting discrimination on grounds of marital status should be repealed.

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. The Women’s Foundation believes the exception relating to family status which

permits difference in insurance premiums based on family status should be repealed.

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?

At The Women’s Foundation, we don’t feel we are in a position to comment on these questions.

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 Women’s Foundation believes the exception to discrimination in employment conditions for persons from overseas with special skills, knowledge or experience should be repealed.

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. The Women’s Foundation is in favour of a Government review of the exception which permits differences in terms of employment for overseas and local staff for specified posts.

Any other views:
