

投訴處理及法律行動

Complaint Handling and Legal Action



根據香港的三條反歧視條例，凡基於性別、婚姻狀況、懷孕、殘疾或家庭崗位而作出歧視，作出性騷擾，或基於殘疾而作出的騷擾及中傷等行為，皆屬違法。

三條條例中有關僱傭範疇的條文不單保障在職人士，亦為求職者、中介人及承辦商提供保障。條例亦涵蓋關乎職業訓練、職業介紹所、業務合夥、專業團體及職工會等活動。條例中有關非僱傭範疇的條文，包括教育、貨品或服務的提供、以至參加會社和體育活動、處所管理及政府活動等方面。

查詢

委員會在本年度繼續致力為市民服務，以高效率 and 效益的方式解答市民循不同途徑(如電話、親訪、信件和電子郵件)提出的各種歧視問題。委員會於1997年4月至1998年3月(即正式全面投入服務的首年)共接獲7,284宗查詢，當中包括5,670宗一般查詢和1,614宗具體查詢。在2005/06年度，此數字增逾兩倍至25,934宗，當中7,927宗是一般查詢，18,007宗是具體查詢。具體查詢的數字突然上升，是因為收到11,750宗就性傾向事宜的查詢和書面意見。

Under Hong Kong's three anti-discrimination ordinances, it is unlawful to discriminate against anyone on the grounds of sex, marital status, pregnancy, disability or family status. Behaviour such as sexual harassment, or harassment and vilification on the grounds of disability, are unlawful under the Sex Discrimination Ordinance and the Disability Discrimination Ordinance.

The employment-related provisions of the ordinances provide protection, not only to existing employees but also to job applicants, agents and contractors. They also cover activities relating to vocational training, employment agencies, partnership admissions, professional bodies and trade unions. The non-employment related provisions offer coverage in areas ranging from education and the provision of goods or services to participation in clubs and sporting activities, the management of premises and government activities.

Enquiries

During the year, the EOC continued to offer effective and efficient enquiry service to members of the public who approached us by phone, in person, via letters and e-mails on a range of issues relating to the different kinds of discrimination in Hong Kong. In our first full year of operation, from April 1997 to March 1998, we recorded a total of 7,284 enquiries consisting of 5,670 general and 1,614 specific enquiries. In 2005/2006, the figure more than tripled to 25,934 with 7,927 general and 18,007 specific enquiries. The sudden rise in specific enquiries was triggered by 11,750 enquiries and written views expressed on the subject of sexual orientation.

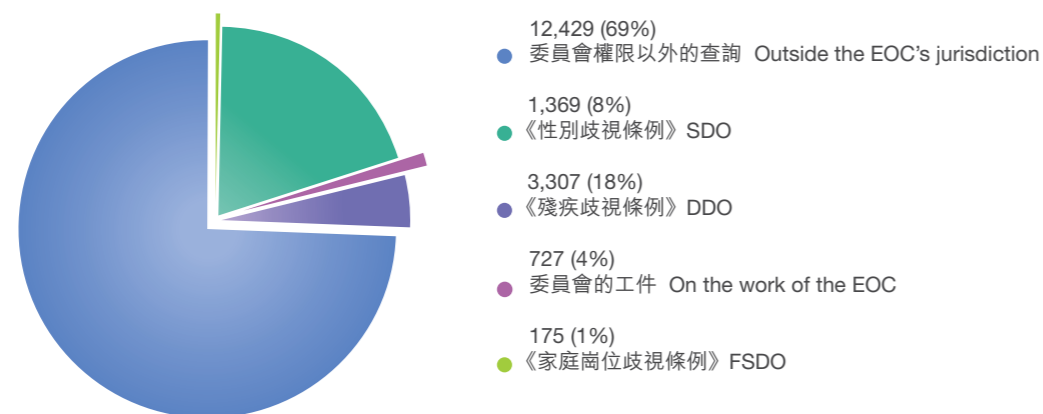
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一般查詢包括委員會的工作和本港反歧視條例，具體查詢則涉及個別事件的有關問題。在本年度收到的18,007宗具體查詢中，1,369宗與《性別歧視條例》有關，3,307宗與《殘疾歧視條例》有關，175宗與《家庭崗位歧視條例》有關，另有727宗關乎委員會的工作，其餘12,429宗則涉及年齡、種族、性傾向及宗教等不屬委員會權限的問題(詳情見表1)。

General enquiries relate to our activities and the provisions of Hong Kong's anti-discrimination legislation, whilst specific enquiries cover incident-related questions. Of the 18,007 specific enquiries received, 1,369 were related to the Sex Discrimination Ordinance (SDO), 3,307 to the Disability Discrimination Ordinance (DDO) and 175 to the Family Status Discrimination Ordinance (FSDO). A further 727 focused on the work of the EOC, while the remaining 12,429 enquiries, covering areas such as age, race, sexual orientation and religion, fell outside our jurisdiction. (See Figure 1).

表 1. 2005年4月1日至2006年3月31日期間的具體查詢分類 (共18,007宗)
Figure 1. 18,007 Specific Enquiries - 1 April 2005 to 31 March 2006



投訴與調查

任何人士如認為自己因性別、婚姻狀況、懷孕、殘疾和家庭崗位這些受法例保障的原因而受到歧視，可親身或授權代表向委員會提出書面投訴，尋求公道。首先，在調查期間，委員會會研究每宗個案的情況，並讓雙方就有關指稱提出意見和作出回應。然後，我們會致力以調解方式協助雙方和解。假如未能和解，委員會可應投訴人的申請，考慮提供其他形式的協助。委員會會研究每宗申請，考慮當中是否涉及原則問題，和評估投訴人能否在沒有委員會協助的情況下獨自處理個案。協助形式包括給予法律意見、法律協助、或任何委員會認為適當的協助。

Complaints and Investigations

Anyone who feels that he or she has been discriminated against on protected grounds including gender, marital status, pregnancy, disability and family status can seek redress by lodging a complaint in writing, either personally or through a representative, with the EOC. First of all, when investigating the complaint, we look into the facts of each case with both parties being given the opportunity to comment and respond to the allegations made. Then, we endeavour to resolve the matter through conciliation, helping the parties involved to reach a settlement. If a settlement cannot be reached, we are able to consider other forms of assistance if the complainant makes an application to take the matter further. We look at each application individually, considering issues of principle as well as the ability of the applicant to deal with the case unaided. Assistance granted can include advice, legal assistance or any other assistance deemed appropriate.

表 2. 2005年4月1日至2006年3月31日期間接獲的投訴及調查 (共678宗)
Figure 2. Complaints and Investigations: 678 complaints received - 1 April 2005 to 31 March 2006

		《性別歧視條例》 SDO	《殘疾歧視條例》 DDO	《家庭崗位歧視條例》 FSDO	總數 Total
投訴數目	No. of complaints	233	420	25	678
投訴人數目	No. of complainants	162	351	18	531
答辯人數目	No. of respondents	215	392	19	626

經處理的投訴

2005/06年度，委員會接獲由531名投訴人對626名答辯人作出的投訴，共涉及678宗指稱違法作為的個案，較2004/05年度由449名投訴人作出562宗投訴為多。在這些投訴中，有233宗根據《性別歧視條例》提出、420宗關乎《殘疾歧視條例》，另有25宗關乎《家庭崗位歧視條例》。連同往年未完成的個案，委員會在本年度共處理874宗投訴，比上年度的789宗增加10.8% (詳情見表3)。投訴人與答辯人達致和解的比率達64%，而之前12個月的調解率為69%。

Complaints Handled

During the year, we received complaints from 531 complainants against 626 respondents involving 678 cases of alleged unlawful acts, an increase from the 562 complaints received in 2004/05 from 449 complainants. Of the complaints, 233 were received under the SDO, 420 under the DDO and 25 under the FSDO. Together with those carried forward from previous years, we investigated a total of 874 complaints, representing an increase of 10.8% as compared to 789 in the previous year (See Figure 3). The conciliation rate between complainants and respondents is 64% during the year as compared with 69% in the previous twelve months.

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表3. 2005年4月1日至2006年3月31日期間已處理的投訴調查 (共874宗)
Figure 3. Complaints and Investigations: 874 complaints handled – 1 April 2005 to 31 March 2006

		《性別歧視條例》 SDO	《殘疾歧視條例》 DDO	《家庭崗位歧視條例》 FSDO	總數 Total
僱傭範疇	Employment	277	410	29	716
非僱傭範疇	Non-employment	29	124	5	158
總數	Total	306	534	34	874

在2005/06年度，委員會完成了624宗有關指稱違法作為個案的調查工作(詳情見表3a)。當中有265宗進行了調解，其中170宗調解成功，餘下的95宗個案未能和解(詳情見表3b)。

In 2005/06, we completed investigations on 624 cases of alleged unlawful behaviour (See Figure 3a). Of this number, 265 proceeded to conciliation, with 170 reaching successful settlement. The remaining 95 cases were unsuccessful (See Figure 3b).

表3a. 2005年4月1日至2006年3月31日期間經調查及調解後已完結的個案 (共624宗)
Figure 3a. Investigation & Conciliation: 624 cases concluded – 1 April 2005 to 31 March 2006

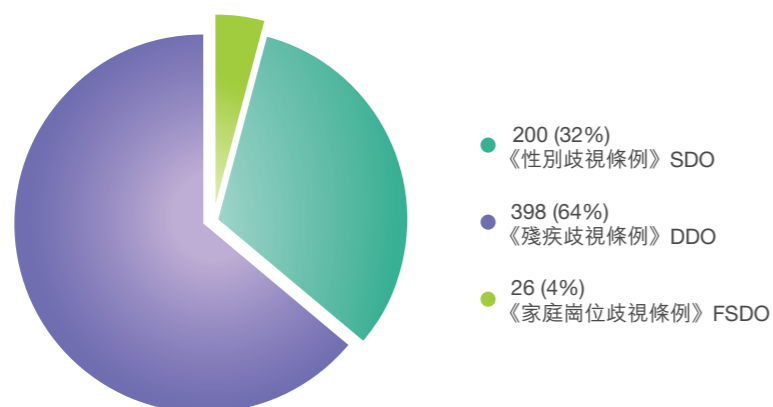


表3b. 2005年4月1日至2006年3月31日期間曾進行調解的個案 (共265宗)
Figure 3b. Cases Proceeding to Conciliation: 265 cases – 1 April 2005 to 31 March 2006

		《性別歧視條例》 SDO	《殘疾歧視條例》 DDO	《家庭崗位歧視條例》 FSDO	總數 Total
調解成功個案	Successfully conciliated cases	71	93	6	170
未能和解個案	Unsuccessful cases	30	64	1	95
總數	Total	101	157	7	265

至於未進行調解的投訴，是因為各種原因需終止調查，例如有關作為並不違法、投訴人不想繼續追究、或所指稱的行為在投訴時已超過12個月的限期。此外，若投訴透過其他方法獲得解決或委員會認為有關投訴屬瑣屑無聊、無理取鬧、錯誤理解或缺乏實質，委員會亦會終止調查。在終止個案方面，本年度有359宗(詳情見表4)。

Complaint cases that do not proceed to conciliation are discontinued for a variety of reasons. This happens if the act in question is not unlawful, the complainant no longer wants to pursue the complaint, or if a period of over 12 months has passed since the act was committed. Investigations also cease if the dispute is resolved through other means, or if the EOC considers the complaint to be frivolous, vexatious, misconceived or lacking in substance. A total of 359 complaints in this category were discontinued (See Figure 4).

表4. 2005年4月1日至2006年3月31日期間個案終止調查的原因 (共359宗)
Figure 4. Discontinued Cases by Reason: 359 cases – 1 April 2005 to 31 March 2006

		不屬違法 作為 No unlawful acts	瑣屑無聊 或缺乏實質 Frivolous or lacking in substance	投訴人不願 繼續追究 Complainants did not wish to pursue	投訴得到 提早解決 Complaint resolved through early resolution	超過12個月 的時限 Beyond 12-month time bar	總數 Total
《殘疾歧視條例》	DDO	9	150	66	11	5	241
《性別歧視條例》	SDO	1	60	25	9	4	99
《家庭崗位歧視條例》	FSDO	1	10	8	0	0	19
總數	Total	11	220	99	20	9	359

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與《性別歧視條例》相關之投訴

- 委員會本年度共調查了277宗涉及僱傭範疇的指稱，當中懷孕歧視個案仍然是主要的投訴原因，有118宗(43%)，其次是性騷擾，共95宗(34%) (詳情見表5)。
- 委員會本年度共調查了29宗涉及非僱傭範疇的指稱，其中18宗 (62%)關乎性別歧視 (詳情見表6)。

SDO-related Complaints

- A total of 277 employment-related allegations were investigated. Pregnancy discrimination continued to be the major cause for complaint with 118 cases (43%), followed by 95 (34%) sexual harassment cases (See Figure 5).
- Investigations were made into 29 non-employment related allegations; 18 (62%) of which were related to sex discrimination (See Figure 6).

表5. 2005年4月1日至2006年3月31日期間根據《性別歧視條例》提出，關乎僱傭範疇而獲調查的指稱 (共277宗)
Figure 5. Employment Related Allegations investigated under the SDO: 277 cases – 1 April 2005 to 31 March 2006

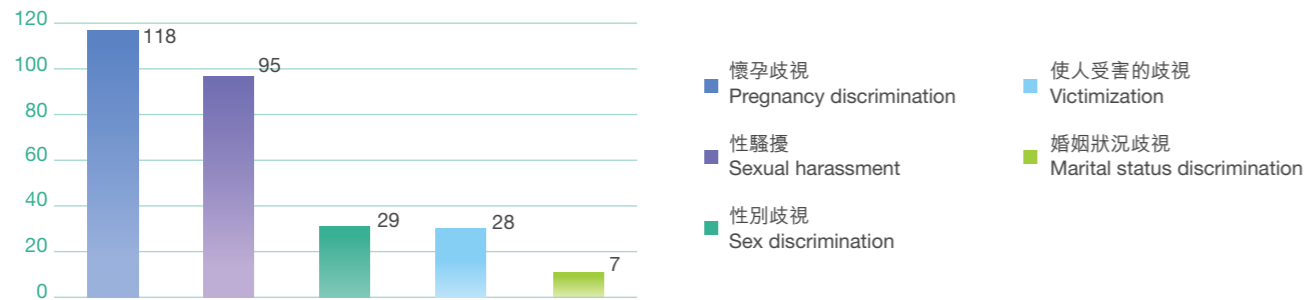


表6. 2005年4月1日至2006年3月31日期間根據《性別歧視條例》提出，關乎非僱傭範疇而獲調查的指稱 (共29宗)
Figure 6. Non-employment Related Allegations investigated under the SDO: 29 cases – 1 April 2005 to 31 March 2006



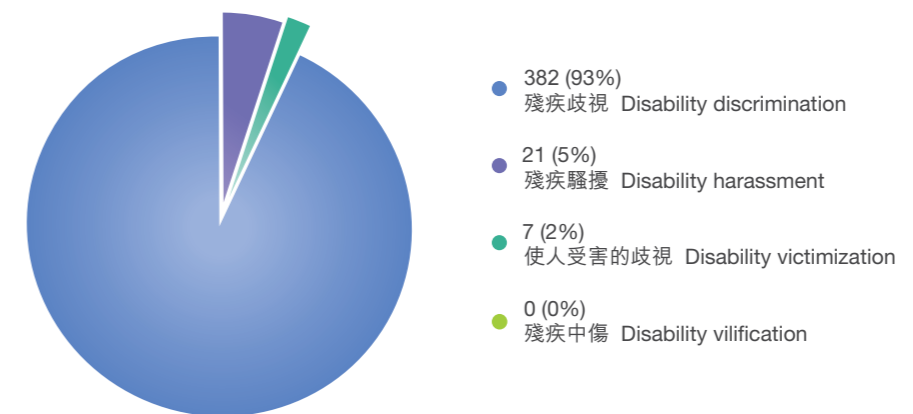
與《殘疾歧視條例》相關之投訴

- 委員會本年度調查了534宗有關《殘疾歧視條例》的指稱，其中410宗屬僱傭範疇，124宗屬非僱傭範疇。
- 在已處理的僱傭範疇及非僱傭範疇個案中，殘疾歧視的投訴個案佔最多，達492宗(佔總數92%)(詳情見表7及表8)。

DDO-related Complaints

- A total of 534 allegations were investigated, consisting of 410 employment-related and 124 non-employment related cases.
- Among both the employment-related and non-employment related cases handled, disability discrimination was the single largest cause for complaint, accounting for 492 (92%) of the total (See Figures 7 and 8).

表7. 2005年4月1日至2006年3月31日期間根據《殘疾歧視條例》提出，關乎僱傭範疇而獲調查的指稱 (共410宗)
Figure 7. Employment Related Allegations investigated under the DDO: 410 cases – 1 April 2005 to 31 March 2006



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表 8. 2005年4月1日至2006年3月31日期間根據《殘疾歧視條例》提出，關乎非僱傭範疇而獲調查的指稱 (共124宗)
Figure 8. Non-employment Related Allegations investigated under the DDO: 124 cases – 1 April 2005 to 31 March 2006

投訴類別 Type of complaint	投訴數目 Number of complaints
殘疾歧視 Disability discrimination	110
貨品、服務及設施 Goods, services and facilities	41
處所通道 Access to premises	37
政府 Government	16
教育 Education	12
會社 Club	2
處所的處置和管理 Disposal and management of premises	1
其他 Other fields	1
殘疾中傷、騷擾及使人受害的歧視 Disability vilification, harassment & victimization	14
總數 Total	124

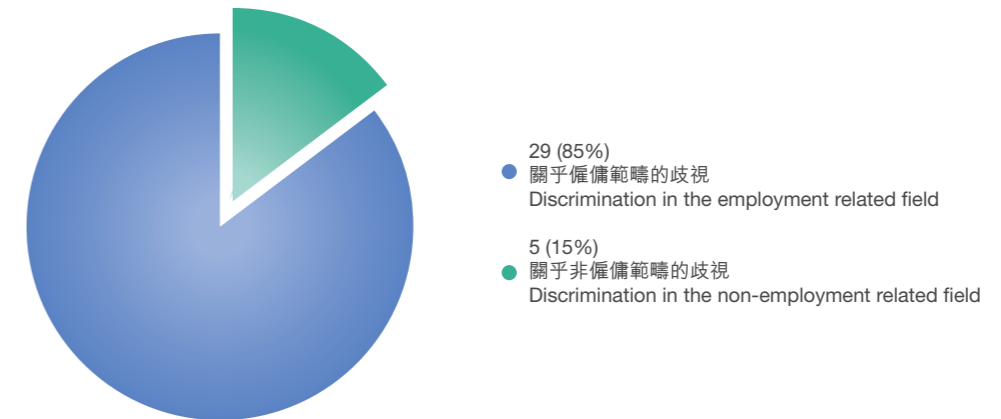
與《家庭崗位歧視條例》相關的投訴

- 委員會本年度調查了34宗有關《家庭崗位歧視條例》的指稱，當中有29宗(85%)關乎僱傭範疇，5宗(15%)關乎非僱傭範疇(詳情見表9)。大部分關乎僱傭範疇的指稱(55%)與基於家庭崗位的其他不利情況有關。

FSDO-related Complaints

- During the year, a total of 34 FSDO allegations were investigated, 29 (85%) of which were employment-related and five (15%) were non-employment related (See Figure 9). The majority (55%) of the allegations in the employment field were related to other detriments on the grounds of family status.

表 9. 2005年4月1日至2006年3月31日期間根據《家庭崗位歧視條例》提出並獲調查的指稱 (共34宗)
Figure 9. Allegations investigated under the FSDO: 34 cases – 1 April 2005 to 31 March 2006



委員會的主動調查

對於第三者或不想參與調查或調解的受屈人士所提出的違法行為，委員會亦會採取行動。在這些情況下，委員會會聯絡有關人士，就事件作出查詢，向他們解釋有關法例，並建議他們加以糾正。在本年度，委員會處理了82宗有關個案，其中18宗關乎《性別歧視條例》，63宗關乎《殘疾歧視條例》，和1宗關乎《家庭崗位歧視條例》。

法律協助的申請

當投訴的雙方未能達成和解，委員會有權向有意採取法律行動的申請人提供法律協助。在收到協助申請後，委員會的律師會評估個案的證據是否有力及其他考慮因素，然後向委員會提出建議。委員會會根據法律意見，決定是否給予協助。協助的形式包括：由委員會的律師向申請人提供法律意見、協助申請人取得進一步的資料或證據供考慮和評估、或由委員會的律師或委員會延聘的私人執業大律師在訴訟中擔任申請人的法律代表。

EOC-initiated Investigations

We also take action on complaints with regard to unlawful acts brought to our attention by third parties, or aggrieved individuals who do not wish to be involved in the investigation or conciliation process. Under these circumstances, the Commission approaches the concerned parties to inquire into the matter, explain the relevant legislation, and advise that they rectify the situation. During the year, we handled 82 such cases, 18 under the SDO and 63 under the DDO, and one under the FSDO.

Applications for Legal Assistance

Where a complaint has been lodged and has not been settled, the EOC has power to grant assistance to applicants who wish to take legal proceedings with regard to the complaint. When an application for assistance is received, our lawyers will conduct an assessment of the application before advising the EOC on the strength of the evidence and other considerations. Upon receipt of the legal advice of the lawyers, the EOC will decide whether or not to grant assistance. The assistance granted by the EOC may include legal advice to the applicant by the EOC's lawyers, legal services relating to consideration and assessment of further information or evidence, or representation in legal proceedings by the EOC's lawyers, or by barristers in private practice briefed by the EOC.

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在2005/06年度，委員會共處理56宗有關法律協助的申請，其中20宗獲得協助。有關申請的分類詳情請參閱附錄5。

獲委員會給予法律協助的個案

在2005/06年度，共有14宗獲委員會協助的個案(包括自往年延續至本年度的個案)在展開法律程序前已獲得解決。解決原因包括個案雙方達成和解，或委員會因各種原因而撤回法律協助(例如委員會研究證據之後，認為不宜繼續給予協助)。

此外，有15宗在2005/06年度或以前已獲給予法律協助的個案，至2005/06年底仍未有結果，亦未展開法律程序。詳情見附錄6。

法律訴訟

委員會在2005/06年度處理了7宗法庭案件，這7宗案件在2005/06年度前已展開法律程序。當中4宗案件已獲解決；2宗案件進行審訊後，委員會協助的原告人均在審訊中獲判勝訴；而餘下的一宗案件在2005/06年度完結前仍在處理中。

During 2005/06, we had to deal with 56 applications for assistance and granted assistance to 20 of them. Further details and a breakdown of the applications can be found under Appendix 5.

Legally Assisted Cases

During 2005/06, 14 cases in which legal assistance was granted before and during 2005/06 were resolved without commencing legal proceedings. These were cases in which the parties reached settlement or cases in which the EOC withdrew assistance for various reasons, for example, where upon further examination of the evidence it was considered not appropriate to continue assistance.

15 other cases where legal assistance was granted before and during 2005/06, were still being handled and for which no outcome had yet been reached and no court proceedings had been commenced as at the end 2005/06. For further details, please refer to Appendix 6.

Court Cases

During 2005/06, the EOC handled seven court cases in which court proceedings were commenced before 2005/06. Four of these cases were settled. Two of these cases proceeded to trial, and judgment was given in favour of the EOC assisted plaintiffs in both trials. The remaining case was still under handling at the end of 2005/06.

上述兩宗在2005/06年度進行審訊的案件，委員會協助的原告人獲判勝訴，其中一宗被告人其後嘗試提出上訴，但未能獲得許可。

在2005/06年度，委員會展開了3宗案件的法律訴訟。其中一宗案件在雙方同意和解條款保密的情況下已獲解決；另外2宗在2005/06年底前仍在進行。詳情見附錄7。

In one of the two cases mentioned above which proceeded to trial in 2005/06, the defendant later tried but failed to obtain leave to appeal against the decision in favour of the EOC assisted plaintiff.

During 2005/06, the EOC commenced legal proceedings in three cases. One of these cases was settled on confidential terms and two were on-going as at the end of 2005/06. Please see Appendix 7 for details.

委員會在2005/06年度採取法律行動的概要 Summary of the EOC's Legal Activities 2005/06

在2005/06年度處理的法律協助申請 Applications for legal assistance processed during 2005/06	2004/05年度收到的申請 Received in 2004/05	8
	2005/06年度收到的申請 Received in 2005/06	48
	總數 Total	56
	給予法律協助 Granted	20
	不給予法律協助 Not Granted	28
	考慮中 Under Consideration	8
獲給予法律協助的個案(毋需展開法律程序) Legally assisted cases (without commencing legal proceedings)	已解決 Resolved	14
	處理中 Ongoing	15
委員會協助的法庭案件 (2005/06年度前已展開訴訟) EOC assisted court cases (commenced before 2005/06)	已解決 Resolved	4
	勝訴 Won	2
	處理中 Ongoing	1
委員會協助的法庭案件 (在2005/06年度展開訴訟) EOC assisted court cases (commenced during 2005/06)	已解決 Settled	1
	處理中 Ongoing	2