



平等機會委員會  
EQUAL OPPORTUNITIES COMMISSION

# 歧視條例檢討

## Discrimination Law Review

### 公眾諮詢文件

For Public Consultation

Easy Read Guide 簡易指引



請於**2014年10月7日或之前**把意見以書面  
送交平等機會委員會

You are invited to give your comments  
in writing to the Equal Opportunities Commission  
by **7 October 2014**

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# 1

## 平機會主席的話

## Message from the EOC Chairperson

平等機會委員會(平機會)現正進行歧視條例檢討，以探討如何改善香港的歧視條例及促進人人平等。

這份是有關上述檢討的公眾諮詢文件的簡易指引，當中闡釋了一些我們在公眾諮詢文件內提出的重要議題，並撮要主要的諮詢問題。如欲參閱整份諮詢文件，請到訪我們的網頁 [www.eoc.org.hk](http://www.eoc.org.hk)。

平機會期待您的意見，以協助我們將來向政府提出修訂建議。

The Equal Opportunities Commission (EOC) is pleased to launch the Discrimination Law Review (DLR) on how to improve discrimination laws in Hong Kong and promote equality for everyone.

This is an easy read guide to the public consultation document. It explains some of the important issues that we have raised and summarizes some of the consultation questions in the full consultation document. For full details, please visit our DLR website at [www.eoc.org.hk](http://www.eoc.org.hk).

The EOC looks forward to receiving your views, which will help us in making future recommendations to the Government.

平等機會委員會主席  
周一嶽  
2014年7月8日

**York Y.N. Chow**  
Chairperson  
Equal Opportunities Commission  
8 July 2014

## 香港的歧視條例

現行的四條歧視條例包括《性別歧視條例》、《殘疾歧視條例》、《家庭崗位歧視條例》及《種族歧視條例》。歧視條例保障任何人免受基於性別、婚姻狀況、懷孕、殘疾、家庭崗位或種族的歧視。

條例適用於生活上的不同公共範疇，包括僱傭、教育、服務提供、處所，以及政府和公共機構的活動。

## Discrimination laws in Hong Kong

There are four discrimination laws at the moment. They are the Sex Discrimination Ordinance (the SDO), the Disability Discrimination Ordinance (the DDO), the Family Status Discrimination Ordinance (the FSDO) and the Race Discrimination Ordinance (the RDO). Discrimination laws protect people from being discriminated against because of their sex, pregnancy, marital status, disability, family status, or race.

The laws apply to many areas of public life such as employment, education, providing services, premises and the work of the Government and public bodies.

# 2



# 3



## 歧視條例檢討

## The Discrimination Law Review (DLR)

### 檢討歧視條例的原因

平機會致力促進平等和根據歧視條例去消除歧視。

平機會有見歧視條例應在多方面與時並進，於是在2013年決定就現行四條歧視條例進行檢討，即「**歧視條例檢討**」。

諮詢文件**第一章**提及檢討歧視條例的原因，主要包括：

- 履行平機會檢討法例的職能；
- 有證據顯示條例未能充分保障市民免受歧視；及
- 履行國際和本地促進平等和消除歧視的人權責任。

### Why are we doing the DLR?

The EOC works to promote equality and prevent discrimination under the discrimination laws.

In 2013, the EOC decided to review all four current discrimination laws, as we believe the laws can be modernized and improved in many ways. This is called the **Discrimination Law Review (DLR)**.

**Chapter 1** of the consultation document tells you why we are doing the DLR. Our main reasons are:

- To comply with the duty on the EOC to review the discrimination laws;
- There is evidence that the laws do not adequately protect people from discrimination; and
- To comply with Hong Kong's international and domestic human rights obligations to promote equality and prevent discrimination.



## 公眾諮詢

歧視條例與每一位香港市民息息相關，我們歡迎您就不同議題和如何改善條例發表意見。平機會將仔細研究您的意見，及後建議政府修訂條例。

為此，平機會將於2014年7月8日至10月7日進行為期3個月的公眾諮詢，並**誠邀您參閱歧視條例檢討網頁**[www.eoc.org.hk](http://www.eoc.org.hk)及提出意見。

平機會將舉行一連串公眾論壇，以協助公眾瞭解是次歧視條例檢討所涉及的議題和讓市民發表意見。平機會亦將分別舉行備有不同少數族裔語言翻譯的會議，以聆聽少數族裔社群的意見。

## Public Consultation

Discrimination laws are for everyone in Hong Kong. We would like to hear from you about the different issues and ways to improve the laws. The EOC will carefully study all the comments, and afterwards make recommendations to the Government on possible law amendments.

To do this, the EOC is holding a public consultation for three months, from 8 July 2014 to 7 October 2014. **You are invited to visit our DLR website at [www.eoc.org.hk](http://www.eoc.org.hk)** and respond to the consultation questions.

To help everyone understand the issues and make their comments, the EOC will host a series of public meetings to explain the DLR to the public. There will also be separate sessions with minority language translation for our ethnic minority communities.

# 4

## 歧視條例檢討內容

## What is in the Discrimination Law Review?

### 合併法例

四條歧視條例重複採用許多相似或相同字眼，例子可見於直接和間接歧視、騷擾和使人受害的定義。

平機會認為應參考其他執行類似法例的地方的經驗，透過合併四條歧視條例，盡可能簡化及統一條例的內容，令公眾更容易理解和應用法例。

### Combining the laws into one law

Many of the similar or the same expressions in the four discrimination laws are repetitive, such as direct and indirect discrimination, harassment and victimization.

The EOC thinks that the discrimination laws should be simplified and made consistent where possible. This could be done by combining all four discrimination laws into one law, as has been done in a number of places with similar discrimination laws. We think this would help to make the laws easier to understand and apply.

### 例子

《種族歧視條例》的「間接歧視」定義，相比於《性別歧視條例》、《殘疾歧視條例》和《家庭崗位歧視條例》稍為不同，但更見清晰。平機會認為合併後的條例，所有受保障範疇都應採用《種族歧視條例》中「間接歧視」的定義。

### Example

The definition of “indirect discrimination” in the RDO is slightly different but clearer than in the SDO, DDO and FSDO. The EOC believes that the definition under the RDO should be used for all protected groups in a combined law.

### 問題

您認為將現行四條歧視條例合併為一會否更佳？**(詳見諮詢文件內的諮詢問題1)**

### Question

Do you think it is better to put all four discrimination laws together into one law? **(see Consultation Question 1 of the consultation document)**

## 事實婚姻關係

### De facto relationships similar to marriage



諮詢文件**第二章**探討是否需要改革歧視條例的受保障特徵，即性別、懷孕、婚姻狀況、殘疾、家庭崗位和種族。

《性別歧視條例》保障您免受基於婚姻狀況，即未婚、已婚、已離婚或已喪偶而產生的較差待遇。但是，法律未有列明**事實婚姻關係**是否受保障。事實婚姻關係是指兩人雖然沒有正式結婚，但雙方如婚姻關係般共同生活並互相作出承諾。

**Chapter 2** of the consultation document looks at the need to change the protected characteristics covered by the discrimination laws: sex, pregnancy, marital status, disability, family status and race.

The SDO says that you cannot be treated less favourably (worse) because of your marital status, i.e. you being single, married, divorced or widowed. But it is not clear if the law includes people in a **de facto relationship**. This is where people, although not married, are in a relationship similar to a marriage with mutual commitment.

#### 例子

有些僱主只向僱員的配偶提供醫療福利，而僱員的事實關係伴侶卻不能享用該醫療福利。此舉在現行條例下是否構成婚姻狀況歧視並不清晰。

#### Example

Some employers only provide medical benefits to spouses of employees. Partners of the employees who are in de facto relationships do not receive the same benefits, and under the current laws it is not clear that this would be marital status discrimination.

#### 問題

您認為歧視條例應澄清是否為事實婚姻關係的人士提供保障嗎？(詳見諮詢文件內的諮詢問題6)

#### Question

Do you think the law should be made clear that it protects people in de facto relationships from discrimination? (see Consultation Question 6 of the consultation document)



# 國籍、公民身份、 香港居民身份或其他有關身份

## Nationality, citizenship, Hong Kong residency or related status



《種族歧視條例》保障所有人士不會因為他們的種族、膚色、世系或人種而遭受歧視，但國籍、公民身份、香港居民或相關身份等則不屬保障範疇。**國籍**和**公民身份**指一個人在其國家擁有身為國民或公民的權利和義務。**香港居民身份或相關身份**是指一個人在香港的身份是居民、遊客或移民。

The RDO protects people from discrimination because of their race, colour, descent or ethnic origin. It does not cover a person's nationality, citizenship, Hong Kong residency or related status. **Nationality** and **citizenship** are about which countries you have rights and duties as a national or citizen. Hong Kong **residency or related status** is about whether you are a resident, tourist, or an immigrant in Hong Kong.

### 例子

一名僱主認為內地來港的新移民員工的價值比香港永久居民員工低，因此就同樣工作給予新移民員工較低工資。在可能出現的新條例下，僱主的行為可構成基於居民身份的直接歧視。

### Example

An employer pays a new immigrant from the mainland China lower wages than the other employees who are permanent residents of Hong Kong for doing the same job. The employer claims that because the person is a new immigrant, he is worth less than those in the company who are permanent residents. This could be direct discrimination because of residency status under possible new laws.

### 問題

您認為條例應否保障任何人免受因國籍、公民身份、香港居民身份和相關身份而起的歧視？(詳見諮詢文件內的諮詢問題11和12)

### Question

Do you think the law should protect people from discrimination because of their nationality, citizenship, Hong Kong residency or related status? (**see Consultation Questions 11 and 12 of the consultation document**)

# 為殘疾人士作出合理遷就的責任

## A duty to provide reasonable accommodation for persons with disabilities



諮詢文件的**第三章**探討不同種類的被禁止行為。

平機會認為現時《殘疾歧視條例》未能清晰表明或強調要為殘疾人士作出合理遷就的責任，因此在條例上明文規定此等責任相當重要。此舉有助殘疾人士在僱傭、教育和接受服務方面更充份地融入社會。

實施與香港相類似的歧視法例的地方如英國和澳洲，也明確規定要對殘疾人士作出合理遷就。

**Chapter 3** of the consultation document looks at the different types of prohibited treatment.

One important issue is whether a duty should be introduced to provide reasonable accommodation for persons with disabilities. The EOC thinks the current discrimination laws relating to disability are not clear or strong enough on this issue. A duty would help persons with disabilities to better participate in all areas of life, such as employment, education, and accessing services.

In places with similar discrimination laws like the United Kingdom and Australia, there is a requirement of reasonable accommodation to be made.

### 例子

一名輪椅人士新租住一個私人屋苑單位，她向業主和物業管理公司要求加建斜道，以便她出入大廈。加建斜道工程不但不昂貴，還能便利屋苑內其他使用嬰兒車人士和長者，該項工程看來是一種合理遷就。

### Example

A new tenant of a private housing estate is wheelchair bound. She asks the owner of the estate and the management company to install ramps to enable her to access her building more easily. The ramps will not cost much money and will benefit other persons with prams and older persons in the estate. This is likely to be a reasonable accommodation.

### 問題

您認為條例應否加入為殘疾人士提供合理遷就的責任？(詳見諮詢文件內的諮詢問題24)

### Question

Do you think the law should include a duty to provide reasonable accommodation for persons with disabilities? (see **Consultation Question 24 of the consultation document**)

# 禁止騷擾的情況

## Situations where harassment is prohibited



諮詢文件的**第四章**探討歧視條例的適用範疇。現行條例適用於市民生活的不同公共範疇，例如僱傭、教育、服務提供、處所，以及政府和公共機構的活動。

我們認為有些應受保障的範疇並未獲現行條例所涵蓋，例如在受聘於不同僱主的情況下，在共同工作間內遭性騷擾。

我們亦相當關注其他情況，例如僱主已知悉僱員被顧客性騷擾後，卻沒有採取任何措施防止性騷擾再發生。

**Chapter 4** of the consultation document looks at the areas where discrimination is prohibited. Currently discrimination laws apply to different areas of public life such as employment; education; the provision of services; premises; and the work of the Government and public bodies.

There are some areas where discrimination laws do not prohibit harassment but we think they should. One area is where individuals are being sexually harassed in common workplaces but they do not belong to the same employer.

We are also looking at other areas, such as when employers become aware that their employees are being harassed by customers, but do not take action to prevent it.

### 例子

一位女士在某大零售店任電子產品推銷員，負責在零售店的寄售專櫃工作。她指稱受到零售店員工性騷擾。由於她是所推銷電子產品的公司的僱員而非該零售店的員工，現行條例未就此類性騷擾提供任何保障。

### Example

A woman worked on consignment in a large retail shop as a promoter of electronic products. She alleged sexual harassment by the employees of the retail shop. As she was an employee of the promoting company but not the retail shop, there is currently no protection from this sexual harassment.

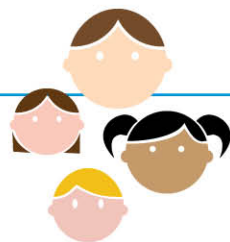
### 問題

您認為法例應否保障在沒有僱主/僱員關係的情況下，在共同工作間內免受性騷擾？(詳見諮詢文件內的諮詢問題**39(2)**)

### Question

Do you think that the law should provide protection for sexual harassment in common workplaces where there is no employer/employee relationship? (**see Consultation Question 39(2) of the consultation document**)

## 就政府行使職能時提供保障， 免受種族歧視



### Protection from race discrimination in Government functions

諮詢文件的**第四章**探討歧視條例對政府和公共機構活動的涵蓋範圍。

目前《種族歧視條例》並無規定政府在執行職能，例如制定政策時，不得作出種族歧視。這與《性別歧視條例》、《殘疾歧視條例》和《家庭崗位歧視條例》並不一致，平機會認為有需要堵塞此漏洞。

**Chapter 4** also looks at the coverage of the discrimination laws in relation to the actions of the Government and public bodies.

Under the RDO there is no protection from racial discrimination where the Government is carrying out its functions, like making policy. This is not consistent with protections under the SDO, DDO and FSDO, and the EOC believes this gap in protection should be closed.

#### 例子

執法人員在逮捕疑犯時的種族歧視行為並不一定受規管。

#### Example

There may not be protection from racial discrimination when a law enforcement officer arrests a person.

#### 問題

您認為應否規管政府在執行其職能和行使其權力時不得作出種族歧視行為？**(詳見諮詢文件內的諮詢問題35)**

#### Question

Do you think there should be protection from racial discrimination when the Government is carrying out their functions and powers?  
**(see Consultation Question 35 of the consultation document)**

# 公共機構促進平等的責任



## Duties on public bodies to promote equality

諮詢文件的**第五章**探討多種不單促進個人平等，亦會促進某些群體平等的方法，當中包括對公共機構施加促進平等的法定責任。

有些地方，例如英國，已要求公共機構，如政府、公立學校、警方等，須負平等責任，考慮如何確保在運作時促進平等，例如在提供服務、聘用人手和運用財政資源方面。如果在運作時會對某群體帶來歧視性的影響，有關公共機構須嘗試減低該影響。

**Chapter 5** of the consultation document looks at different ways to better promote equality to benefit groups of people, not just individuals. One possible way is by having a duty on public bodies to promote equality in all their work. A duty is something that an organization must do by law.

In some places such as the United Kingdom, public bodies (like the government, public schools, the police) already have equality duties to consider how they can make sure their work supports equality (for example in their services, through their employment of staff, and the way they spend their money). If the work has a discriminatory effect on a group, the public body needs to try to reduce the effect.

### 例子

一個公共機構接獲不少少數族裔服務使用者的投訴，因翻譯服務不足而令他們未能正常地享用機構服務。

若該公共機構有法定責任促進平等，它須採取行動以履行維護種族平等的責任，例如檢討其翻譯服務的效能及政策和安排上所需的改革。

### Example

A public authority receives a significant number of complaints by ethnic minority clients who are unable to use its services properly as there are not enough interpretation services provided.

If a duty was introduced to promote equality, to make sure they comply with the race equality duty, the public authority would have to take action such as reviewing the effectiveness of its interpretation services and what policies and practices may need to change.

### 問題

您認為香港的公共機構應否有責任促進平等？(詳見諮詢文件內的諮詢問題41)

### Question

Do you think that there should be a duty on public bodies in Hong Kong to promote equality? (see **Consultation Question 41 of the consultation document**)

# 平機會的權力和運作

## Powers and work of the EOC



諮詢文件的**第六章**探討平機會的權力和運作。

平機會認為可從許多方面著手，改進與平機會權力和運作相關的條文。例如，歧視條例應更全面地反映平機會擁有和運用的權力，讓公眾更清晰明白。

**Chapter 6** of the consultation document mainly looks at the powers and the ways the EOC works.

There are a number of areas of the discrimination laws relating to the EOC powers and the way it works that could be improved. For example, the EOC thinks the discrimination laws should better reflect the full range of powers it already has and uses so they are clearer to the public.

### 例子

平機會可申請及曾經就多宗與平等和歧視問題有關的訴訟向法庭作出陳詞。這情況稱之為介入訴訟。平機會並非代表與訟任何一方，而是向法庭提供獨立的專業意見。平機會相信歧視條例應明確指出這項權力。

### Example

The EOC can apply and has on a number of occasions made submissions to a court (intervening) in cases relating to discrimination and equality generally. This is where the EOC does not represent either party but provides independent expert views. The EOC believes that the discrimination laws should expressly refer to this EOC power.

### 問題

您認為歧視條例應否明確指出平機會有權申請介入涉及歧視事宜的訴訟？**(詳見諮詢文件內的諮詢問題 52)**

### Question

Do you think that the discrimination laws should expressly refer to the EOC power to apply to make submissions to courts on discrimination issues? **(see Consultation Question 52 of the consultation document)**

## 例外情況

### Exceptions

諮詢文件的**第七章**就例外情況作出探討。歧視行為在例外情況下不屬違法。平機會發現部份例外情況有問題，例如：

- **分散各處：**  
例外情況分散記載於歧視條例內不同部份，查考起來極為困難；
- **不一致：**  
某些例外情況只適用於特定群體，但不適用於其他群體，卻欠缺明確理據支持；及
- **缺乏理據：**  
有些例外情況缺乏理據，應予廢除。

**Chapter 7** of the consultation document looks at some of the main exceptions to discrimination. Exceptions are where it is not unlawful to discriminate against a group. The EOC thinks there are problems with some of the exceptions, for example:

- **Dispersal:**  
the exceptions are often in different parts of the discrimination laws so they are difficult to find;
- **Not consistent:**  
some exceptions apply to some groups but not for others, without a clear reason; and
- **Not justified:**  
some exceptions do not appear to have a good reason to keep them.

### 例子

其中一個例外情況有關領養子女事宜。由於過往有關領養的法例規定領養子女的人必須已婚，因此《性別歧視條例》容許在領養兒童事宜上的婚姻狀況歧視。可是，有關的婚姻狀況規定已不存在，平機會認為應廢除此項例外情況。

### Example

One of the exceptions to discrimination relates to adoption of children. The SDO allows discrimination because of a person's marital status. This is because there used to be a requirement in adoption law that only married persons could adopt children. There is no longer this requirement, so the EOC thinks the exception should be removed.

### 問題

您認為應否廢除在領養兒童事宜上容許婚姻狀況歧視的例外情況？(詳見諮詢文件內的諮詢問題72)

### Question

Do you think that the exception which allows marital status discrimination in adopting children should be removed? (see Consultation Question 72 of the consultation document)

# 5

## 您的意見 Have your say

每個有關性別、殘疾、家庭崗位和種族的議題都對香港影響深遠。因此，我們期待聽到您對「歧視條例檢討」的意見。

We look forward to receiving your views on the DLR as issues of sex, disability, family status, and race equality affect everyone in Hong Kong.



平等機會委員會  
EQUAL OPPORTUNITIES COMMISSION

請於2014年10月7日或之前把意見以書面方式，透過電郵、郵寄或傳真送交平等機會委員會。

如有任何有關公眾諮詢和「歧視條例檢討」的疑問，歡迎向平機會作出查詢，詳情如下：

**You are invited to give your comments in writing to the EOC on or before 7 October 2014 by email, post or facsimile. If you have any queries relating to the public consultation and DLR generally, please contact the EOC:**

Mailing Address 郵寄地址：

香港太古城太古灣道14號太古城中心三座19樓

19/F., Cityplaza Three, 14 Taikoo Wan Road, Taikoo Shing, Hong Kong

電話 Tel : 2511 8211

傳真 Fax : 2511 8142

網址 Website : [www.eoc.org.hk](http://www.eoc.org.hk)

電郵 Email : [eoc@eoc.org.hk](mailto:eoc@eoc.org.hk)

電話短訊查詢服務 SMS Enquiry Service : 6972566616538

(供聽障/有語言障礙人士使用 For people with hearing impairment/speech difficulties)