

捍衛法治——法律服務 Upholding the Law – Legal Service

投訴人作出投訴後，若未能達成和解，可向平機會申請協助，包括法律協助。平機會的法律服務科負責處理法律協助的申請，還會就反歧視條例的成效進行檢討，以及向平機會提供內部法律意見和支援。

When a complaint has been lodged, but not settled, the complainant may apply to the EOC for assistance, including legal assistance. The Legal Service Division (LSD) of the EOC is responsible for handling applications for legal assistance, in addition to reviewing the effectiveness of the anti-discrimination laws and providing internal legal advice and support to the EOC.



向投訴人提供的協助

每當收到法律協助申請時，法律服務科會指派部門內一名律師處理有關申請。該律師會細閱與個案有關的所有文件和資料，進行法律研究，就應否給予法律協助擬備詳盡的意見書，提交平機會管治委員會轄下的法律及投訴專責小組。

提供法律協助與否的考慮因素

法律及投訴專責小組會考慮多項因素以決定是否提供法律協助，包括：

- 案件能否就重要法律問題確立先例？

Assistance to Complainants

Whenever an application for legal assistance is received, a lawyer of the LSD will be assigned to deal with the application. The lawyer will peruse all documents and information in relation to the case, conduct legal research, and prepare a detailed submission to the Legal and Complaints Committee (LCC) of the EOC Board, advising whether legal assistance should be granted.

Considerations for Giving or Not Giving Legal Assistance

In deciding whether or not to give legal assistance, the LCC considers a wide range of factors, including:

- Could the case establish a precedent on important legal issues?

- 案件會否喚起公眾關注香港仍然常見的歧視問題(如懷孕歧視和處所通道問題)?
- 案件會否鼓勵有關方面在制度上作出改革以消除歧視?
- 個案是否過於複雜,或雙方的相對位置過於懸殊(如權力不平衡),以致申請人難以處理?
- 證據是否足以在法庭獲得勝訴?
- 就某特定個案而言,法律訴訟是否消除歧視的最佳或最有效方法?
- Would the case raise public awareness in areas of discrimination which are still prevalent in Hong Kong, such as pregnancy discrimination and accessibility to premises?
- Would the case encourage institutional changes to eliminate discrimination?
- Would it be difficult for the applicant to handle the case given its complexity and/or the relevant position of the parties (eg imbalance of power)?
- Is the evidence sufficient to support a good prospect for success in court?
- Is legal proceeding the best or most effective way to eliminate discrimination insofar as the particular case is concerned?

這些因素在每一宗個案的適用程度不一,專責小組通常會綜合考慮各個原因才作出決定。

The applicability of these factors varies from case to case, and often a combination of reasons is involved in reaching a decision.

若專責小組成員決定給予某個案法律協助,負責的平機會律師會採取一切所需的跟進行動協助申請人。有關協助包括由平機會律師向申請人提供法律意見、收集或評估進一步資料或證據,或由平機會律師或平機會聘任的私人執業律師在法律訴訟中代表申請人。

If Members of the LCC decide to grant legal assistance to a particular case, the responsible EOC lawyer will take all necessary follow-up actions to assist the applicant. The assistance may include legal advice to the applicant by the EOC lawyer(s), legal services related to the gathering and assessment of further information or evidence, or representation in legal proceedings by the EOC lawyer(s) or by lawyer(s) in private practice engaged by the EOC.

法律服務科的指定律師會擔任受助人的法律代表,擬備所需的法律文件,為受助人提起法律訴訟程序。法律服務科的律師會在各非正審聆訊/審訊中代表受助人出庭,或視乎案件的複雜和影響程度,延聘外間的獨立大律師代表受助人出庭。

The designated lawyer(s) of the EOC will act as the assisted person's legal representative and prepare the necessary legal documentation with a view to issuing legal proceedings on behalf of the assisted person. The lawyer(s) will appear in court on behalf of the assisted person in various interlocutory hearings/trials or engage an independent counsel to do so, depending on the complexity and magnitude of the case.

法律服務 Legal Service

申請協助

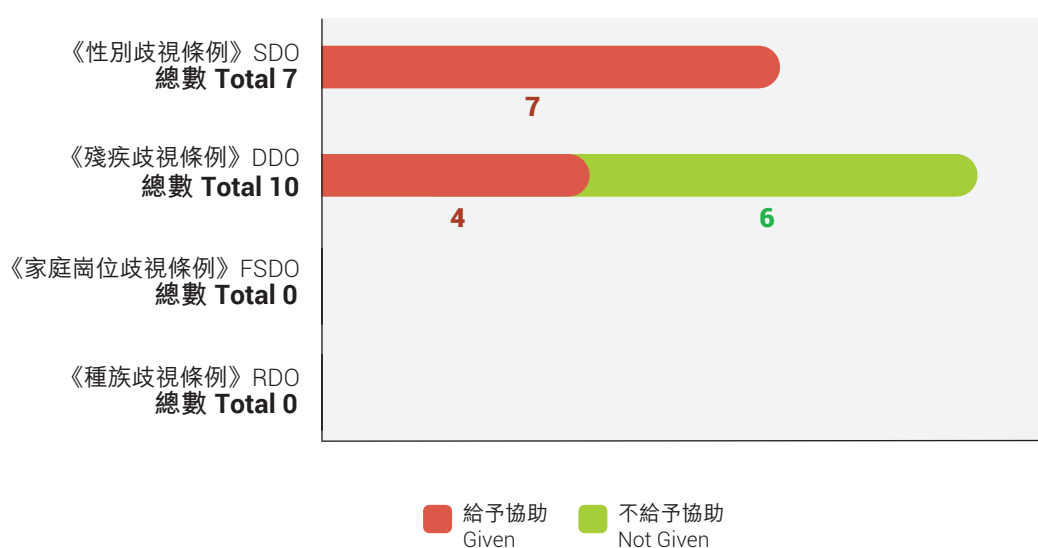
在2021-22年度，平機會共處理了17宗法律協助申請，當中11宗獲得協助，其餘六宗不獲協助。

Applications for Assistance

In 2021-22, the EOC handled 17 applications for assistance. Of these, 11 cases were given legal assistance, while the remaining six cases were not given assistance.

按條例劃分的法律協助申請數字

Breakdown on Applications for Legal Assistance by Ordinance



法律協助的案例 Examples of Legally Assisted Cases

2021年7月20日—平機會根據《性別歧視條例》，代表一名外籍家庭傭工（申索人）向區域法院提出法律訴訟。申索人指稱，受僱於前僱主（答辯人）期間多次被他性騷擾。

20 July 2021 – The EOC issued legal proceedings under the SDO in the District Court on behalf of a foreign domestic helper (the Claimant), who alleges that her former employer (the Respondent) sexually harassed her on many occasions during the course of her employment with him.

2021年11月5日—平機會根據《性別歧視條例》，代表一名女士（申索人）向區域法院提出法律訴訟。申索人指稱，她的前男同事（答辯人）好幾次在工作場所內性騷擾她。

5 November 2021 – The EOC issued legal proceedings under the SDO in the District Court on behalf of a woman (the Claimant), who alleges that her former male colleague (the Respondent) sexually harassed her in the workplace on a number of occasions.

無需展開訴訟便已完結的受助個案

雖然平機會致力協助有需要的個案展開法律訴訟，但平機會亦重視和解，讓雙方無需耗費大量時間和金錢經法庭程序，便得以解決爭議。為此，平機會的指定律師除了向申索人提供法律意見和擔任法律代表，也會協助申索人與答辯人進行和解商議。

在2021-22年度，有九宗在該年度及之前已獲法律協助的個案，無需展開法律訴訟便已解決，或是因為個案的進一步發展及評估證據後未獲進一步協助。另有七宗個案仍在處理，至報告期完結時尚未有結果或未展開法律訴訟。

法庭案件

平機會在2021-22年度共處理了十宗法庭訴訟，其中五宗有關《性別歧視條例》，四宗有關《殘疾歧視條例》，餘下一宗同時有關《性別歧視條例》和《殘疾歧視條例》。

在平機會律師的協助下，三宗個案在保密條款下成功和解而無需進行審訊，或因為個案的進一步發展及評估證據後未獲進一步協助。截至2022年3月31日為止，其餘七宗個案仍未完結。

Legally Assisted Cases Concluded without Commencing Legal Proceedings

While the EOC endeavours to assist warranted cases by way of commencing legal proceedings, the EOC appreciates the value of settlement, which allows the parties concerned to resolve the dispute without having to undergo the time-consuming and costly court proceedings. To this end, the designated lawyer(s) of the EOC would assist the Claimant(s) in settlement negotiation with the Defendant(s), besides providing legal advice and representation.

In 2021-22, nine cases, to which legal assistance was given before and during the year, were either resolved without the need to commence legal proceedings, or were given no further assistance upon further development and assessment of evidence. Another seven cases remained in process, with no outcome having been reached and no court proceedings having commenced yet at the end of the period under review.

Court Cases

In 2021-22, the EOC handled 10 court proceedings – five under the SDO, four under the DDO, and one involved both the SDO and DDO.

With assistance from the EOC lawyers, three cases were either successfully settled on confidential terms without proceeding to trial, or were given no further assistance upon further development and assessment of evidence. For the remaining seven cases, they were still ongoing as of 31 March 2022.

法律服務 Legal Service

和解條款

經成功調停或獲法律協助後和解的個案，和解條款包括：

- 更改政策／慣例；承諾停止歧視措施；
- 提供福利，包括教育課程／培訓；提供貨品、服務及設施；或改善設施和無障礙通道；
- 限制日後再犯同樣行為；紀律處分；作出道歉；或投訴人接受答辯人／機構的解釋；
- 發出推薦信；支付金錢；提供聘用機會；或復職；以及
- 向慈善機構作出捐款。

支付金額

在報告期內，平機會透過調停、法律協助和庭外和解方式，為受歧視的投訴人及申訴人取得的金錢總額超過港幣611萬元。

Settlement Terms

For those cases which were successfully conciliated or settled after legal assistance was given, the settlement terms included:

- Changes in policies/practices; undertaking to cease discriminatory practices;
- Provision of benefits, including education programmes/training; provision of goods, services and facilities; or improvement in facilities and accessibility;
- Restrictions on future acts; disciplinary action; apologies; or complainants accepting the respondents' explanation;
- Provision of reference letters; monetary payment; offers of employment; or reinstatements; and
- Donations to charity.

Monetary Payment

The total monetary payment secured by the EOC for complainants and claimants through conciliation, legal assistance and settlement out of court during the period under review exceeded HK\$6.11 million.



投訴／申訴人取得金額

Monetary Payment for Complainants/Claimants

超過 港幣
Over HK\$ **6,110,000**

其他法律工作

平機會處理的法律工作涵蓋不同範疇，法律協助只屬其中一項。法律服務科還會就查詢及投訴向投訴事務科提供意見；草擬實務守則及其他指引；檢討反歧視條例及提出法例修訂建議；就相關的諮詢或立法建議擬備意見書提交政府；審校合約及協議；以及提供其他形式的內部法律支援。

例如，法律服務科處理了一宗有關前總平等機會主任就被解僱一事於2018年向勞資審裁處提出的申索。法庭於2021年10月判平機會勝訴，指平機會解僱申索人時已按合約支付三個月代通知金及所有應得累積權益，符合《僱傭條例》第7條的規定，因此可在不給予理由的情況下終止僱傭合約。

反歧視法例的修訂

平機會其中一項主要職能，是檢討反歧視條例的實施情況，並且視乎需要提出修例建議。平機會於2016年就反歧視條例檢討向政府提交意見書，提出了73項改革法例的建議。政府其後提出《2018年歧視法例(雜項修訂)條例草案》以落實其中八項建議，該條例草案於2020年6月獲立法會通過。

Other Legal Work

Legal assistance is only one of the various branches of legal work at the EOC. The LSD also advises the CSD on the handling of enquiries and complaints; drafts codes of practice and guidance; reviews the anti-discrimination ordinances and proposes legislative amendments to them; drafts submissions to the Government on relevant consultations or legislative proposals; vets contracts and agreements; and provides other forms of internal legal support.

For example, the LSD handled a labour tribunal claim against the EOC for dismissal, which was filed by an ex-Chief Equal Opportunities Officer in 2018. In October 2021, the court ruled in favour of the EOC, stating that the EOC was entitled to terminate the employment contract of the officer concerned without cause, and that the EOC, in terminating the contract pursuant to Section 7 of the Employment Ordinance, already paid three months' wages and all the accrued entitlements of the officer under the contract in lieu of notice.

Amendments to the Anti-discrimination Ordinances

One of the main functions of the EOC is to keep under review the workings of the anti-discrimination ordinances and when necessary, draw up proposals for amendments. In 2016, the EOC made a submission to the Government under the Discrimination Law Review, listing out 73 recommendations for law reforms. Subsequently, the Government took forward eight of these recommendations by introducing the Discrimination Legislation (Miscellaneous Amendments) Bill 2018, which was passed by the Legislative Council in June 2020.

法律服務 Legal Service

該條例草案修訂了四條反歧視條例，禁止在共同工作場所內工作的人之間的性騷擾、殘疾騷擾和種族騷擾，以及禁止認定歸於某種族人士而作出的種族歧視，並把《種族歧視條例》的種族歧視保障範圍擴大至有聯繫者。此外，該條例草案修訂了《性別歧視條例》，保障餵哺母乳的婦女免受直接及間接歧視，以及使人受害的歧視。立法會於2021年3月通過了《性別歧視條例》的進一步修訂，保障餵哺母乳的婦女免受騷擾。除了有關餵哺母乳的條文於2021年6月19日生效之外，其餘所有保障條文已於2020年6月19日正式生效。

為向公眾廣泛宣傳修訂後的法例，平機會運用政府撥款發布了有關修訂法例的詳細指南和資料單張，還在全港推行了一連串網上和實體宣傳及公眾教育工作。

檢討條例的保障

政府於2020年要求平機會全面檢討《性別歧視條例》下有關性騷擾的條文，以找出目前保障不足之處，並在適當時建議法例改革。平機會已完成法律檢討，並已於2021年10月向政府提交結果。政府現正考慮有關建議。

平機會進行的另一項研究，是關於香港人與內地人之間的歧視、騷擾和中傷。平機會於2021年3月向政府提交研究報告，建議修訂《種族歧視條例》以解決有關問題。平機會之後一直與政府合作，商討如何可加強反歧視條例提供的保障。

Under the Bill, amendments were made to the four anti-discrimination ordinances to prohibit sexual, disability and racial harassment between persons working in common workplaces, prohibit racial discrimination by imputation, and expand protections from racial discrimination by association under the RDO. In addition, the Bill introduced protection under the SDO for breastfeeding women against direct and indirect discrimination, as well as victimisation. In March 2021, the Legislative Council passed further amendments to the SDO to provide protections for breastfeeding women from harassment. All the protections came into force on 19 June 2020, apart from those relating to breastfeeding, which came into force on 19 June 2021.

In order to widely publicise the enhanced legislation to community members, the EOC, by making use of funding from the Government, embarked on a range of online and offline publicity and public education activities across Hong Kong, besides releasing detailed guidance and information leaflets on the amendments.

Review of Protections under the Ordinances

In 2020 the Government requested the EOC to conduct a holistic review of the current protections from sexual harassment under the SDO, to identify gaps in protection and, where appropriate, make recommendations for legislative amendments. The EOC already completed the legal review and submitted the findings to the Government in October 2021. The Government is currently considering those recommendations.

Another study concerned the discrimination, harassment and vilification between people from Hong Kong and those from the Mainland. In March 2021, the EOC submitted a study report to the Government, proposing to tackle the issue by legislation with amendments to the RDO. Since then, the EOC has been working with the Government on how the protection of the anti-discrimination ordinances could be enhanced.

平機會就基於性傾向、性別認同及雙性人身分的歧視展開研究，探討如何在現行反歧視法例的框架下保障有關人士免因上述理由而遭受歧視。截至報告期完結時，內部研究仍在進行。

In relation to discrimination on the grounds of sexual orientation, gender identity and intersex status, the EOC has embarked on a study to explore the possible options for providing legal protections from discrimination on those grounds based on the existing framework of the anti-discrimination law. As at the end of the review period, the internal study remained in progress.

向政府及立法會提交的立法意見書

法律服務科亦就政府提出訂立刑事法例規管影像性暴力的建議，擬備意見書提交政府及立法會。影像性暴力包括未經同意下拍攝裙底及衣領、拍攝其他私密影像，以及發布或威脅發布相關影像。平機會就這些議題提出意見，是因為某些影像性暴力同屬性騷擾，而且認為必須新增刑事懲處，讓受害人可循刑事途徑討回公道。

Submissions to Government and Legislative Council on Legislative Proposals

LSD also led the drafting of submissions to the Government and the Legislative Council on the Government's proposals to introduce new criminal laws against image-based sexual violence, such as upskirt and downblouse photography of people without their consent, taking other intimate images of people, and publishing or threatening to publish such images. The EOC worked on these issues, as some forms of image-based sexual violence are also forms of sexual harassment, and it is important that victims have the possibility of seeking criminal redress where previously no criminal sanctions existed.

平機會於2021年3月及5月提交了詳細意見書，當中多項建議獲政府納入《2021年刑事罪行(修訂)條例草案》，例如刑事罪行涵蓋拍攝衣領，以及使法庭可命令控制相關影像的人士(包括社交媒體服務提供者)刪除或移除影像。條例草案已獲立法會通過，《2021年刑事罪行(修訂)條例》已於2021年9月生效。

The EOC made detailed submissions on the issues in March and May 2021, with many of the EOC's recommendations adopted in the Crimes (Amendment) Bill 2021, such as coverage of downblousing and enabling the court to order images to be deleted or taken down by any person controlling them, including social media providers. The Bill was passed by the Legislative Council and the Crimes (Amendment) Ordinance 2021 already came into force in September 2021.