

2020 Policy Address Public Consultation

Submission from the Equal Opportunities Commission

Introduction

While the COVID-19 pandemic is posing challenges to our society as a whole, its impact is disproportionate on disadvantaged groups. This paper aims to give views and recommendations of the Equal Opportunities Commission (EOC) for the 2020 Policy Address on enhancing the support measures to disadvantaged stakeholders including women (in particular pregnant women), caregivers, senior citizens, and promoting the equality of opportunities for students with special educational needs (SEN), persons with disabilities (PWDs), and sexual minorities. The recommendations are supplementary to an earlier submission made by the EOC in August 2020 which focuses on the rights of ethnic minorities.

Support for caregivers during COVID-19

2. A number of tragic incidents happened in the past few years concerning carers killing the persons they took care of and then attempting to commit suicide themselves. The latest victim of such tragedies came from a family living in Kwai Chung Estate, where a 46-year-old mother allegedly strangled her 21-year-old son with intellectual disability, highlighted the lack of community support for carers and the immense pressure they faced in Hong Kong.¹

3. According to a survey conducted by the University of Hong Kong in 2018, a quarter (25%) of the surveyed carers for the elderly, are at a “high risk” of having physical and mental issues, as they reported experiencing a heavy burden for caregiving, having symptoms of

¹ South China Morning Post (2020). *Hong Kong Police Arrest Mother after Son Dies in Suspected Murder-suicide Bid*. Retrieved from <https://www.scmp.com/news/hong-kong/law-and-crime/article/3100356/hong-kong-police-arrest-mother-after-son-dies>

depression, and weak family relationships.² The situation could only worsen under the COVID-19 pandemic, as many of the social welfare services and support measures, such as day care centres, sheltered workshops, integrated vocational rehabilitation services centres are closed.

4. Carers are a large stakeholder group and yet their needs are often underestimated. According to the Census and Statistics Department (C&SD), among the 506,600 PWDs residing in households, 203,700 persons (40.2%) cited that they had a person to take care of their day-to-day living as a result of their disabilities. For the 1,303,000 persons with chronic diseases residing in households, 175,600 persons (13.5%) reported the same.³ In reality, those figures are underestimated as carers of persons with intellectual disability are not included by the C&SD due to data limitation. These primary carers, mostly unpaid, are invisible from the welfare or health policies and strategies of the Government since these policies and strategies are mostly user-oriented.

5. While noting that the Labour and Welfare Bureau has commenced a policy study on strengthening carer support, the EOC believes it is high time for the Government to develop and implement a holistic plan to identify all the support needed by various caregivers as early as possible.

Financial support for carers

6. As a start, the Government should consider regularising and raising the amount of carer allowance schemes (currently HK\$2,400 per month per scheme)—namely the “Pilot Scheme on Living Allowance for Low-income Carers of Persons with Disabilities” and “Pilot Scheme on Living Allowance for Carers of Elderly Persons from Low-income Families” under the Community Care Fund—in order to help the carers in need weather the tough times of the pandemic.

² HKCSS (2018). *Research on the Profile and Service Needs of Elderly Carers*. Retrieved from <https://www.hkcss.org.hk/research-on-the-profile-and-service-needs-of-elderly-carers/?lang=en>

³ Census and Statistics Department (2015). *Hong Kong Monthly Digest of Statistics: Persons with disabilities and chronic diseases in Hong Kong*. Retrieved from <https://www.statistics.gov.hk/pub/B71501FB2015XXXXB0100.pdf>

7. Second, many carers of elderly persons or PWDs are senior citizens and/or PWDs themselves. The Government should consider easing the current restriction of disallowing recipients of Old Age Living Allowance to receive the carer allowance of both abovementioned Pilot Schemes. The additional carer allowance will allow the elderly carers to get some outside assistance or service for easing their burden of taking care of elderly persons or PWDs in their family.

8. Also, both the abovementioned carer allowance schemes assume that PWDs who are recipients of Disability Allowance are not “deemed to be a fit and capable carer”.⁴ The EOC believes such assumption should be reviewed and revised. Whether the PWDs concerned are fit to be a carer should not be assessed by his physical impairment, but by the functions and responsibilities they can perform. Otherwise, the current approach of the carer allowance schemes deviates from the spirit of “equal recognition before the law” as stipulated in Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD) by disregarding the individual capacity of all PWDs.

Respite care services

9. More importantly, a revamp of the over-subscribed respite care services is also urgently needed. It has been found that allowing caregivers to take time out are highly beneficial to their management of stress, as well as the quality of care they provided. It is, therefore, recommended that the Government should take reference from a number of overseas jurisdictions where at-home carers are entitled by law to a prescribed period of respite care services per year (e.g. Japan: 84 days; Australia: 63 days; Canada: 60 days; Taiwan: 21 days; etc.),⁵ during which they can take some rest while the elderly will be taken care of by professional caregivers at home or in short-term residential care facilities.

⁴ See Note 4 of https://www.swd.gov.hk/en/index/site_pubsvc/page_supportser/sub_PWD/

⁵ Legislative Council (2020). *Policy Support to Carers in Selected Places*. Retrieved from <https://www.legco.gov.hk/research-publications/english/1920rt07-policy-support-to-carers-in-selected-places-20200309-e.pdf>

10. In Hong Kong, the respite care services for elderly persons and PWDs in both residential care homes and day care centres are deeply inadequate. For example, as at 10 September 2020, the Day Respite Service for Elderly Persons only offers 189 places and the latest number of vacancies is only 34.⁶ Similarly, the Day Respite Service for PWDs as of September 2020 offers only 160 places.⁷ Hence, it is recommended that the Government should drastically improve the capacity of respite care services to satisfactorily accommodate citizens' needs in this regard.⁸

11. The scarcity of land in the territory and the intense competing demands of various welfare service needs make it difficult to find venues to increase respite care services within a short time to meet the demand. Moreover, there is always a shortage of staff in healthcare institutions like residential care homes and day care centres. Having said that, more and more care workers and health workers leave their full-time job and work as freelance in the private market on their own or through the network of private healthcare companies.

12. In this connection, the EOC believes the Government may explore more innovative ideas to cope with the challenge of improving the respite care services. For instance, the Government may consider borrowing the concept of the current Neighbourhood Support Child Care Project, recruiting part-time care/health workers or training people in the neighbourhood to do this job, with a view to providing day care respite services for elderly and PWDs by individual elderly/PWD sitters at their own residence in the neighbourhood or in the service users' residence.

⁶ See the website of the Social Welfare Department (SWD):
https://www.swd.gov.hk/storage/asset/section/1573/tc/Vacancy_position_of_day_respite_as_at_10_9_20.pdf

⁷ See the website of the SWD:
https://www.swd.gov.hk/storage/asset/section/2808/en/Day_Respite_Service_bilingual_082020.pdf

⁸ It is noted that there are a few hundred places of residential respite services for the elderly persons provided by subvented/contract homes or private homes in the Enhanced Bought Place Scheme, but the number is still far from enough as compared to the statutory rights offered in other jurisdictions.

Improving service quality of residential care homes for the elderly and for PWDs

13. Abuse cases of residents of private residential care homes for the elderly and for PWDs by care homes' personnel are reported from time to time in recent years. In 2017 Policy Address, the Chief Executive stated that the Government will improve the supervision and the quality of residential care homes service, as well as increase the service quota. However, the outbreak of COVID-19 in residential care homes showed that improvement of service quality in residential care homes is long overdue.

14. There are outbreaks of COVID-19 in residential care homes during the third wave of infections. As of 13 September 2020, 105 senior citizens contracted COVID-19 from residential care homes in Hong Kong, which made up 13% of the confirmed cases within the elderly age group (age 65 or above) in Hong Kong. The COVID-19 mortality rate of elderly persons living in residential care homes is 28%, which is much higher than the 2% COVID-19 mortality rate of the general population in Hong Kong. These figures highlighted the long-standing concerns of poor environment and bad management in some residential care homes, which could aggravate the plight of the vulnerable groups under the pandemic. Those problems include, for example, overcrowded environment, poor indoor ventilation, a lack of formal training for care home staff on hygiene and infectious disease control, and deployment of temporary care workers to work in different residential care homes which can increase the risk of cross infection of COVID-19.

15. Therefore, the EOC recommends that the Government should specify a timetable for the improvement of residential care homes and strengthen the inspections and supervision of residential care homes. The Government should also make the existing Centre for Health Protection's

guidelines for the prevention of COVID-19 in residential care homes mandatory,⁹ as recommended by medical experts.¹⁰

Statutory right of women to return to work after maternity leave

16. The EOC has been advocating for a statutory right of women to return to work after their maternity leave. There is a more pressing need than ever, to put this right in law in the times of pandemic when the unemployment rate has been steadily climbing since last September. The number of complaints related to discriminatory pregnancy dismissal increased from 35 in 2017 to 45 in 2019. The situation seems to be getting worse during the current pandemic. In the first eight months of 2020, the EOC received 52 complaints on pregnancy discrimination, half of which is about dismissal.

17. “Motherhood penalty” has been an issue even before the pandemic. Back in 2016, the EOC’s study on “Pregnancy Discrimination and Negative Perceptions Faced by Pregnant Women and Working Mothers in Small and Medium Enterprises” found that 22% of the employee respondents said they were discriminated during pregnancy, maternity leave, and/or within the first year after returning to work from giving birth.

18. The absence of an explicit right for women to return to work can be contrasted with some overseas jurisdictions. In the United Kingdom, women have a right to return to their former position after taking the ordinary maternity leave period of 26 weeks, while the right to return to work immediately after parental leave is guaranteed in Australia.

19. Given the vulnerability of female employees of being dismissed after maternity leave, the Government should consider amending the

⁹ Centre for Health Protection (2020). *Guidelines for Residential Care Homes for the Elderly or Persons with Disabilities for the Prevention of Coronavirus disease (COVID-19)*. Retrieved from https://www.chp.gov.hk/files/pdf/advice_to_rche_rchd_on_prevention_of_nid_eng.pdf

¹⁰ South China Morning Post (2020). *Coronavirus: guidelines to keep Hong Kong elderly care homes free of disease must be made mandatory, experts say*. Retrieved from <https://www.scmp.com/news/hong-kong/health-environment/article/3092571/coronavirus-guidelines-keep-hong-kong-elderly>

Employment Ordinance or the Sex Discrimination Ordinance by extending the protection of the right of women to return to the same position after maternity leave.

Providing family-friendly flexible working arrangements

20. Work and family responsibilities are not necessarily confronting each other when family-friendly policies are in place to help balance the two. In view of the impact of COVID-19 pandemic, the Government should consider more innovative working arrangements such as flexi-leave, flexitime and remote working, not only for prevention of infection, but also for helping families, in particular caregivers to take care of the special needs of their family members during the pandemic, such as looking after children staying at home from school.

21. The EOC recommends that the Government should consider adopting a family-friendly leave scheme and to promote it to publicly-funded institutions, which allows employees to take half-day or quarter-day leave, on top of whole day leave. Employees with family responsibilities tend to save up their paid leaves for family matters yet they may not require a full-day or half-day off for circumstances like attending their children's school events or accompanying their parents to see a doctor. Without imposing extra major financial costs, such measure creates a win-win situation for both employers and employees.

22. Another flexible work solution is flexitime which allows employees to adjust their time of reporting and leaving upon the core working hours defined by employers. Provisions for staggered hours is a helpful tool to boost employee engagement in both work and family responsibilities.

23. While flexible working arrangements are getting more established under the pandemic, the remote work trend is becoming a new normal. More importantly, employees with disabilities benefit from work-from-home when it basically eliminates the daily commute to and from work.

The option of work-from-home also creates more job opportunities to PWDs since they are no longer bounded by conventional working environment. Likewise, it is equally good for working parents or persons with caregiving responsibilities. Since women often take up the role of caregivers, work-from-home empowers women, particularly ethnic minority women, by encouraging them to participate in labour force.

Support for students with SEN

Regularisation of grants to support SEN students

24. The enrolment of students with SEN in sub-degree and undergraduate programmes funded by University Grants Committee (UGC) increased from 196 students in 2011/12 to 483 in 2017/18, representing an average annual increase of 16.2%. In the light of the growing number of SEN students, the EOC recommends the Government give due consideration to regularise the Special Grants to Enhance the Support for Students with SEN (Special Grants) for UGC-funded universities. This Special Grants started as a one-off special funding granted by the UGC for two years (2015-2017) after lobbying by the EOC. It is renewed afterwards from 2018 to 2020. The funding allows universities to provide students aged 18 to 25 with SEN a wide range of support services and resources to ensure that they have equal opportunities and benefit equally from university life, and to cultivate a campus culture of inclusion.

25. By regularising this Special Grants as a recurrent funding, the UGC-funded universities could plan their educational support more systematically without the pressure of time-limited funds and constant uncertainties of staffing situation, which could result in providing support in piecemeal manner depending on the types of SEN encountered by a certain university in a particular academic year.

26. Equally important is the grant provided for individual SEN students attending post-secondary programmes to help with their academic

expenses. The Commission on Poverty started the “Enhancing the academic expenses grant for students with special educational needs and financial needs pursuing post-secondary programmes” with funds from Community Care Fund for three academic years from 2015/16 to 2017/18, which was extended for three more years till 2020/21. This programme is particularly important to SEN students who require adaptive technologies and support that are personal in nature, e.g. assistive listening devices, sign language interpretation, etc., which may not otherwise be readily available in UGC-funded universities or self-financing tertiary institutions.

27. The EOC recommends that the Government should consolidate the data on the nature of adaptive technologies or services acquired by students with SEN since the operation of this programme in 2015/16, and consider whether regularisation of such bottom-up grant is beneficial to students’ personal circumstances.

Better transition for SEN students from secondary school to university

28. In addition, the Government could make use of the intervention strategies adopted for students with SEN in secondary-school years by transferring this support-oriented database to tertiary institutions with the consent of the students with SEN. This could allow tertiary institutions to better grasp the learning needs of the students at early stage, acquire assistive learning devices, services, facilities and make timely adjustments to assessment methods and learning environment.

Funding for Equal Opportunities Office in universities

29. The EOC also strongly recommends that the Government should provide universities with funding to set up Equal Opportunities Offices, so that universities can have designated personnel and resources for mainstreaming concepts of equal opportunities in tertiary education, no matter about issues relating to disability, gender, family status, race, or the latest legal development on protection for breastfeeding women or interns

against sexual harassment, which is a fundamental step to providing equality of opportunities and a harassment-free place for study and work.

Promoting accessibility for Residential/Composite Buildings

30. Pre-existing buildings built before 1997 (pre-1997 buildings) are not required to incorporate barrier-free facilities under the existing legislation and policies. The EOC expresses great concerns about the physical barriers faced by PWDs and elderly persons, in particular persons with mobility difficulties, in getting access to those aged buildings. The EOC proposes that the Government should consider legislating for gradual incorporation of barrier-free facilities to all pre-1997 buildings where it is practicable to do so. At the same time, the Government should develop a Code of Practice to translate Universal Design principles and concepts into actions.

31. In 2017 Policy Address, the Government announced the implementation of Operation Building Bright 2.0 (OBB 2.0) to provide direct technical and financial assistance to needy building owners in carrying out the prescribed inspection and repair works under the Mandatory Building Inspection Scheme. Under the current Schemes, eligible building owners may apply for subsidies to carry out the prescribed inspection and repair work. Building owners can make use of the remaining subsidies to improve the safety and accessibility facilities in common areas of the premises.

32. However, building owners may not know they can use this subsidy to improve the barrier free access, and even if they are aware of it, building safety repair work always takes priority over improvement of accessibility. The EOC believes the Government should expand the OBB 2.0 schemes by providing designated special allowance to building owners and encouraging them to improve barrier-free facilities for the pre-1997 buildings during building maintenance.

Discrimination Law Review

33. Following the EOC's Discrimination Law Review (DLR) in 2016,¹¹ the Government gazetted the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 in June 2020, which took forward eight of the EOC's 73 recommendations in the DLR. While welcoming Government's adoption of the eight recommendations, the EOC continues to urge the Government to devise a clear timetable for taking forward the other higher priority recommendations from the DLR, including introducing a statutory duty to provide reasonable accommodation for PWDs in key areas of public life, such as employment and education and the provision of goods, services and facilities.

34. In addition, the EOC believes the Government should also endeavour to widely promote and develop relevant guidelines on the concept of reasonable accommodation at the workplace in Hong Kong, prior to legislating it into a statutory duty. Such guidelines will allow employers and members of the public to better understand the matter and create an inclusive and disability-friendly workplace for PWDs.

Outlawing discrimination on the grounds of sexual orientation, gender identity and intersex status

35. Another area of concern is about the proposed legislative reform for the purpose of outlawing discrimination on the grounds of sexual orientation, gender identity (SOGI) and intersex status. The emergence of various judicial review and court cases in the last few years highlighted that the existing legal regime is ineffective in protecting the equal rights of lesbian, gay, bisexual, transgender and intersex people in different public domains.¹² Therefore, the EOC recommends the Government embark on

¹¹ Equal Opportunities Commission (2016). *Discrimination Law Review: Submissions to the Government*. Retrieved from <https://www.eoc.org.hk/eoc/upload/DLR/2016330179502227490.pdf>

¹² *QT v Director of Immigration* [2018] HKCFA 28; *Leung Chun Kwong v Secretary for the Civil Service and Commissioner of Inland Revenue* [2019] HKCFA 19; *Infinger Nick v The Hong Kong Housing Authority* [2020] HKCFI 329; etc.

the necessary work for introducing legislation to prohibit discrimination on the grounds of SOGI and intersex status, especially in key areas of public life, including education, employment, and provision of goods, services and facilities. Furthermore, the EOC believes that a comprehensive gender recognition law should be introduced by the Government so as to safeguard the rights of transgender people, and to address the predicament faced by them under the existing legal framework, as underlined in the landmark case of *W v Registrar of Marriages* ruled by the Court of Final Appeal in 2013.¹³

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¹³ [2013] HKCFA 39