

# **Discrimination Law Review**

## **Report on Responses to the Public Consultation**



平等機會委員會  
EQUAL OPPORTUNITIES COMMISSION

**March 2016**

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# Introduction

The Equal Opportunities Commission (EOC) is Hong Kong's statutory body with responsibility for promoting equality and eliminating discrimination. One of its key duties is to keep under review the working of the current four anti-discrimination Ordinances: the Sex Discrimination Ordinance (SDO); the Disability Discrimination Ordinance (DDO); the Family Status Discrimination Ordinance (FSDO); and the Race Discrimination Ordinance (RDO). Where the EOC believes it is appropriate, it can make submissions to the Chief Executive to amend the Ordinances in order to better promote equality and eliminate discrimination.

In March 2013, the EOC launched the Discrimination Law Review (DLR) to review all the existing anti-discrimination legislation and make recommendations to the Government to modernise them. This is the first time the EOC has comprehensively reviewed all the existing anti-discrimination legislation.

The DLR consists of the following phases:

<b>Phase 1</b>	An internal review by the EOC of the anti-discrimination legislation and its operation in practice
<b>Phase 2</b>	A public consultation with all stakeholders and the general public on their views as to how the anti-discrimination legislation should or could be modernised
<b>Phase 3</b>	An assessment of all the submissions and views expressed during the public consultation
<b>Phase 4</b>	Drafting and publishing submissions and recommendations to the Government on how the anti-discrimination legislation should be modernised
<b>Phase 5</b>	Discussing with the Government and other stakeholders on how the recommendations can be implemented

This report describes in a factual manner the public consultation exercise which took place from 8 July 2014 to 31 October 2014 and the responses the EOC received. In this report, the consultation document published on 8 July 2014 is described as the "Consultation Document". The consultation generated significant interest from a wide range of sectors of society, and a very large number of responses of 125,041 written responses from individuals and organisations representing many groups and interests. Given the significant interest by the public in the issues, the EOC believes it is important to provide information on the numbers and nature of the responses it received. The structure of the report is described below.

**Chapter 1** explains the public consultation exercise, including the process by which the EOC assisted the public in understanding the issues and gathering their views, as well as the methodology by which it has analysed the responses.



**Chapter 2** summarises responses including overall statistics on numbers and types of responses, differences between responses from organisations and individuals, and examples of how responses were made.

**Chapter 3** describes the general comments made by stakeholders and the public on a range of overarching issues including matters relating to the consultation process, and the scope of the issues consulted. These comments do not directly relate to specific consultation Questions, but the EOC believes are important to note.

Chapters 4 to 9 summarise the responses received to all the consultation Questions. They follow the sequence in which the Chapters and Questions were set out in the Consultation Document for ease of reference.

**Chapter 4** describes the responses to Chapter 1 (Rationale and Principles of the Review) of the Consultation Document on consolidating the anti-discrimination Ordinances into one Ordinance. It also describes the responses to Chapter 2 regarding the goals of the legislation and possible reform of the protected characteristics of sex, pregnancy, marital status, disability, family status or race

**Chapter 5** describes the responses to Chapter 3 of the Consultation Document on the forms of prohibited conduct and in particular: direct and indirect discrimination; pregnancy discrimination; equal pay for equal value provisions; discrimination relating to having an assistance animal; discrimination arising from disability; a duty to make reasonable accommodation for persons with disabilities; harassment including sexual harassment; intersectional discrimination; discrimination by association; discrimination by perception; and other unlawful conduct.

**Chapter 6** describes the responses to Chapter 4 of the Consultation Document on the fields in which discrimination is prohibited, and in particular: the scope of protection from discrimination in relation to public authorities; inconsistencies between the anti-discrimination Ordinances as to which sectors prohibit discrimination; Race Discrimination Ordinance (RDO) limitations regarding medium of instruction in the fields of education and vocational training; and expanding the fields and scope of protection from harassment.

**Chapter 7** describes the responses to Chapter 5 of the Consultation Document on promoting and mainstreaming equality. It examines in particular proposals regarding special measures and a public sector equality duty.

**Chapter 8** describes the responses to Chapter 6 of the Consultation Document on court proceedings, as well as the powers and constitution of the EOC.

**Chapter 9** describes the responses to Chapter 7 of the Consultation Document regarding exceptions to non-discrimination and in particular: Genuine Occupational Qualifications; discriminatory training; exceptions relating to charities; exceptions relating to the New Territories Ordinance and small house policy; exceptions relating

to sex; exceptions relating to marital status; exceptions relating to family status; exceptions relating to disability; and exceptions relating to race.

This report on responses to the public consultation should be read with the submissions to the Government on the DLR being published at the same time. The submissions set out the EOC's position and recommendations on all the consultation questions from the Consultation Document, including issues that the EOC believes for a number of reasons are higher priorities to implement with legislative reform and other action(s).

# **Chapter 1      The Public Consultation**

- 1.01. The public consultation on the DLR took place from 8 July to 31 October 2014. The initial three-month public consultation period was extended by three and a half weeks, given the very large volume of responses received and some requests for an extension.
- 1.02. The EOC believes that the public consultation was essential for a number of reasons, including:-
- (i) to obtain evidence, research or other relevant information on particular issues from organisations or individuals with an interest in the possible reforms;
  - (ii) to raise awareness and understanding of the current anti-discrimination legislation and how they could be improved.
- 1.03. This chapter describes the following aspects of the public consultation: the public forums and meetings held to consult the public; the means the EOC used to promote understanding of the issues; and the methodology used by the EOC to analyse the responses.

## **Part I: Public Forums and Meetings with stakeholders**

- 1.04. During the public consultation exercise, the EOC held four public forum consultation sessions (9 August 2014, 16 August 2014, 23 August 2014, and 30 August 2014). Any individuals or representatives of organisations could register to attend the public forums. In order to gain views from people in different parts of Hong Kong, two sessions were held on Hong Kong Island, one in Kowloon and one in the New Territories. Further, to ensure that people could provide their views in the two official languages of Hong Kong, three sessions were conducted in Cantonese and one in English.
- 1.05. In addition, to take into account the specific views of a wide range of ethnic minority groups, a further seven public forums were held with Filipinos, Thais, Indonesians, Sikhs, Hindus, Muslims, and Nepalese. These were conducted either in the particular ethnic minority language and/ or English. In total, approximately 723 people attended the public forums.
- 1.06. The EOC held 29 meetings with different stakeholder organisations over the consultation period, with a total of 234 organisations or their representatives attending those meetings.

- 1.07. The meetings were held with a wide range of organisations including: non-governmental organisations representing persons with disabilities, women, ethnic minorities; human rights organisations; employer and employee groups such as Chambers of Commerce and Trade Unions; legal institutions and members of the legal profession; educational institutions such as universities, schools and vocational training bodies; religious groups; groups representing sexual minorities; political parties; and various public bodies.
- 1.08. The extensive number of forums and meetings enabled the EOC to gather the views and respond to questions from a large number of individuals, and very broad cross section of stakeholder organisations with particular interests in the issues raised by the public consultation. A full list of the public forums and meetings with stakeholder organisations is contained in **Appendix 1**.

## **Part II: Promoting understanding of the issues**

- 1.09. The EOC used a number of methods to raise awareness of the consultation, educate the public on the details of the issues consulted on, or respond to specific queries by the public. These included email alerts to stakeholders; making the documents available at the EOC office; developing a dedicated website with downloadable versions of the documents and information on the consultation; Announcements in Public Interest (APIs); and a wide range of media interviews and articles. The EOC has also regularly updated the Legislative Council on the DLR, which has responsibility for monitoring the work of the Government and public bodies.
- 1.10. The EOC publicised the DLR public consultation through both its established mediums, and those developed specifically for the DLR. In relation to established mediums, it informed the public through its Electronic News and communication to EO Club Members .
- 1.11. The Consultation Document was made available in a number of different versions: the full version; an executive summary; easy read guide for persons with certain disabilities; and six ethnic minority languages (Bahasa, Tagalog, Hindi, Urdu, Thai and Nepali). Braille and audio versions of the consultation document were also available for persons with disabilities upon request. The consultation document was available at the EOC office in hard copies, downloadable versions from the EOC website (see below), and it was sent to the Home Affairs Department Public Enquiry Service Centres.

## **Dedicated DLR Website**

- 1.12. The EOC also developed a dedicated website for the DLR on which all the consultation documents were available to read and download.<sup>1</sup> The website contained barrier free access features with colour theme options and font size to assist persons with disabilities. A section called “Frequently Asked Questions” was used to provide information to the public on some of the issues the EOC believed further explanation would be helpful, particularly where we considered there were or may be misunderstandings of particular issues.
- 1.13. The website generated a very large number of visitors that were either gathering information about the consultation or responding to the consultation. During the consultation period from 8 July to 31 October 2014 there were 11,487,746 hits on the website.
- 1.14. The public could use the website to respond to the consultation in a number of ways: by downloading the form for the questions and emailing or sending the completed responses; or by answering the questions online. The EOC is also publishing this report on the responses and the submissions to the Government on the DLR website so they are available to the general public.

## **Announcements in public interest and responding to queries**

- 1.15. The EOC created TV and Radio Announcements in Public Interest (APIs) in Cantonese, English and Putonghua which were broadcast from 7 July 2014 to 7 October 2014 on various TV and radio stations to raise awareness of the public consultation.
- 1.16. The EOC’s staff members also responded to telephone queries and emails from the public relating to the DLR. The EOC received and responded to approximately 120 telephone queries and comments from the public.

## **Raising awareness in the media**

- 1.17. In relation to the media, the EOC promoted awareness of the consultation and the issues by the following means:
- (i) Three press releases were issued and 26 interviews were given to media organisations by the Chairperson or representatives of the EOC to publicise the public consultation exercise between July and

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<sup>1</sup> <http://www.eocdlr.org.hk/en/index.html>

- December 2014;
- (ii) A total of 122 and 32 news reports relating to the public consultation exercise were published in Chinese and English newspapers respectively between July and December 2014;
  - (iii) Three opinion-editorial articles on the Discrimination Law Review were published in the South China Morning Post and Ming Pao Daily respectively from October to December 2014.

## **Meetings with Legislative Council Members**

- 1.18. In relation to the Legislative Council, the Chairperson of the EOC met with the Legislative Councillors on the Constitutional Affairs Panel of the Legislative Council on four occasions to update them on the DLR public consultation and preparatory work: on 17 June 2013 and 23 April 2014 prior to the public consultation; and on 16 March 2015 and 20 July 2015 after the public consultation. The Constitutional Affairs Panel has responsibility for monitoring and examining the work of the Government and public bodies in relation to promoting human rights including equality. At those meetings, the EOC provided briefings to the Legislative Councillors explaining the planned scope of the consultation and the responses to the consultation. Specific questions by Legislative Councillors were also answered at the meetings.

## **Part III: Methodology for analysing the responses**

- 1.19. The EOC used both a quantitative and qualitative methodology to analyse the responses. This was facilitated by using a database to record all the responses from both individuals and organisations.
- 1.20. The quantitative analysis indicates the numbers of responses that were in favour, against or expressed some other views regarding each of the 77 questions or other issues. This took into account the fact that for some of the questions there were sub-questions, and the fact that some questions were open ended rather than asking for a “Yes” or “No” response.
- 1.21. The qualitative analysis was used to study the particular reasoning provided for the responses. This included relevant evidence to support the position in the responses such as evidence of discrimination; evidence or reasoning that it was not necessary to introduce the particular proposal; research studies relevant to any particular proposal; evidence of how the proposal would affect a particular sector in practice; relevant Hong Kong and international case law; and relevant recommendations by United Nations international human rights treaty bodies to the Government to modernise the anti-discrimination legislation.



## Chapter 2 Overview of Responses

2.01. As indicated in the introduction, there were a very large number of written responses received to the public consultation of 125,041. As some of the responses were signed on behalf of a group of individuals and/ or organisations, the total number of views received was 238,422. This represents by far the largest number of consultation responses the EOC has received to any public consultation conducted by the Commission. An overview of the responses is as follows:

<b><u>Organisations</u></b>	<b>288 responses<sup>2</sup></b>
Non governmental organisation (NGO) Women	34
NGO Ethnic Minorities	12
NGO Persons with Disabilities	15
NGO Human Rights	4
Other NGOs	34
Religious Groups	96
Family Groups	9
Educational Institutions	28
Legal Profession and Institutions	3
Corporations	21
Employer Groups	17
Employee Groups	8
Public Bodies	7
Political Parties	7
Residents Groups	1
<b><u>Individuals</u></b>	<b>124,753 responses</b>

2.02. The nature and format of responses from organisations and individuals were often quite different, and as a result the EOC describes them separately below and in the analysis of each question in the report.

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<sup>2</sup> It is to be noted that for 8 organisations, given the nature of their work (eg an NGO working with ethnic minority women), they were categorised as being two types of organisations and therefore the above total number of types of organisations is 296. However for the purpose of evaluating their responses, those organisations have been considered as one response.

## **Part I: Summaries and calculation of responses**

- 2.03. A summary of the responses from organisations and individuals to each Question are contained in Chapters 4 to 9. Each summary follows the same format with:
- (i) Pie charts indicating the numbers of organisation and individuals that responded to each Question (in brackets), and the percentages of those that agreed, disagreed or provided some other comments on the particular issue;
  - (ii) in relation to organisation responses, we have provided the top four types of organisations that either agreed or disagreed with the proposal;
  - (iii) a summary of some of the main reasons (where they have been provided), for why organisations or individuals have either agreed or disagreed with the proposal, and other comments of note.
- 2.04. The EOC counted the responses to the consultation according to the number of written comments received. Each response submitted by an organisation or individual, but co-signed by a different organisation(s) and/or individual(s), was counted as one response. The data displayed in pie charts have been rounded to the nearest whole number for illustrative purposes only.
- 2.05. The total number of reasons recorded for individual responses may exceed the total of respondents agreeing or disagreeing for each question, because some respondents gave more than one reason for agreeing, disagreeing or commenting on each question. Further, there may be several instances where there is a small degree of error in total number of reasons compared to the total of respondents agreeing or disagreeing.
- 2.06. It should also be noted that many respondents commented on issues that were outside the scope of this consultation in terms of possible reforms of anti-discrimination legislation, for example:
- (i) Personal attacks towards mainland Chinese people; and
  - (ii) Comments on the “Occupy Central” movement.
- 2.07. Where these types of comments were made and did not specifically address the consultation questions, the EOC has analysed all these issues under “other comments” below.

## **Part II: Responses from organisations**

- 2.08. The 288 responses from organisations consisted of a wide variety of stakeholder groups in Hong Kong which the EOC has categorised into 15 groups as follows: non-governmental organisations (NGOs) working with women; NGOs working with ethnic minorities; NGOs working with persons with disabilities; NGOs working on human rights; other types of NGOs; religious groups; family groups; educational institutions (such as schools); organisations from the legal profession or legal institutions (e.g. the Law Society); corporations; employer groups (such as Chambers of Commerce); employee groups (such as Trade Unions); public bodies; political parties; and residents groups.
- 2.09. Some organisations are also representative groups as they represent a large number of individuals or organisations: for example, Trade Unions which represent many employees; Chambers of Commerce which represent many corporations and other businesses; and NGOs that are umbrella groups representing a number of distinct NGOs (e.g. NGOs working to promote equality of persons with different types of disabilities).
- 2.10. Overall, the proportion of organisations that were supportive of proposals is significantly higher than for individuals. For 57 of the 77 Questions, a majority percentage of responses from organisations supported the proposals. This can be contrasted with responses from individuals, where, for 66 of the 77 Questions, a majority percentage opposed the proposals.
- 2.11. In terms of differences of responses between different types of organisations, overall non-governmental organisations working with women, ethnic minorities, persons with disabilities, or on human rights were more supportive of the proposals. In contrast, most of the religious and family groups and primary and secondary religious educational institutions expressed concerns or disagreement with the majority of the proposals. The religious and family groups and primary and secondary religious educational institutions also expressed strong disagreement and concerns in relation to the proposals relating to providing protection from discrimination for persons in cohabiting/de facto relationships.
- 2.12. Further, generally, employer groups were more likely to disagree with many of the proposals, often raising concerns of the possible effect on business, for example, perceived increased expenses associated with the proposals.
- 2.13. A list of the organisations that provided written responses to the consultation is at **Appendix 2**. It is to be noted that a number of organisations requested that their response remain confidential, but wished for their views to be

considered. We have therefore not listed those organisations in Appendix 2, but have analysed and considered their responses.

### **Part III: Responses from individuals**

- 2.14. The numbers of responses from individuals was very large, and much larger than in any previous public consultation the EOC has conducted.
- 2.15. The format of a large proportion of responses from individuals is notable and different from most responses from organisations. Most responses from individuals used different variations of a pro forma response. In other words, an identical or very similar form of response was used by a large number of individuals to respond to particular questions.
- 2.16. Many of the responses from individuals to the Questions (and a much higher proportion than responses from organisations) did not provide reasoning or evidence as to why they either disagreed or agreed with proposals. Where that was the case, it has therefore not been possible to analyse those responses (whether from individuals or organisations) to determine whether they raise any pertinent concerns or other relevant information.
- 2.17. Several examples of pro forma responses are contained in **Appendix 3** of the Report on Responses. It is also notable that there were available on the internet a number of “slot machine” types of pro forma responses, by which individuals could randomly choose responses to particular questions to be sent in responses. Several examples of “slot machine” pro forma responses are also contained in **Appendix 3**.
- 2.18. The EOC is also aware that individuals used social media to disseminate to particular groups or the general public the pro forma responses and encourage people to respond using them. Several examples of the social media pages used to encourage responses are also included in **Appendix 3** of the Report on Responses.
- 2.19. The pro forma responses and the non- pro forma responses from individuals indicate that a very high proportion related to two primary issues: protection from discrimination on grounds of nationality, citizenship and residency status; and protection from discrimination for persons in cohabiting/de facto relationships.
- 2.20. Questions 11 to 16 related to providing protection from discrimination on the grounds of nationality, citizenship and residency status. In particular, most of those responses relate to the discrete issue of whether there should be protection from discrimination against persons from mainland China. Most individuals were opposed to the proposals.

- 2.21. Questions 6, 9, 70, 71, 72 and 73 related to whether persons in cohabiting/de facto relationships should be protected from discrimination relating to marital status or family status, respectively under the SDO and FSDO. Most individuals opposed the proposals.
- 2.22. It should also be noted that, in order to protect the privacy and any personal data provided by individuals, we have not included in the report the names or other information (such as email addresses or telephone numbers) relating to any of the responses from individuals.

## **Chapter 3      General Comments on the Consultation**

3.01. This chapter examines the general comments that were made in the consultation responses that relate to the overall approach and scope of the consultation. Part I examines issues raised relating to the consultation process. Part II examines additional areas in which stakeholders believe the anti-discrimination legislation should be modernised, including the introduction of new protected characteristics.

### **Part I: The consultation process**

3.02. A wide variety of comments were received by organisations and some individuals on the consultation process, including: the functions of education and awareness-raising as part of the consultation exercise; its length and role of the EOC; and the degree to which reliance should be placed on the quantitative number of responses either in favour or against any proposals.

3.03. Many organisations welcomed the fact that the EOC conducted the DLR in order to seek to modernise the existing anti-discrimination Ordinances. They supported the consultation as a crucial method to obtain evidence and views from the public. However, several responses from organisations (such as NGOs working with ethnic minorities, human rights, and the business sector, as well as a legal institution) expressed the view that, as part of the consultation process and prior to it, the EOC should have engaged in greater education and awareness-raising of the issues. Some highlighted that this was, in their view, particularly crucial given that there is a lack of understanding of the existing anti-discrimination legislation, and some stakeholders may have not fully understood the legal effect of the proposals.

3.04. In relation to the length of the consultation period and the role of the EOC, a number of organisations such as some corporations, religious groups, and public bodies expressed the view that they did not think the consultation period was long enough, given the number and complexity of issues consulted on. Some voiced the view that more detailed consideration was needed by the EOC or the Government on the potential impacts of the proposals, such as financial and social implications. Several organizations, such as corporations and an organisation representing the legal profession, also believed that in relation to some of the issues (such as providing protection from discrimination for persons in cohabiting/de facto relationships or provisions on equal pay for equal value), it was appropriate for the Government to consider the issues from a wider policy perspective, rather than the EOC doing so.



- 3.05. Further, several organizations, such as NGOs working with ethnic minorities and on human rights, expressed the view that the EOC should proceed with caution when drawing any conclusions from the public consultation, particularly the quantitative data on the numbers of those supportive or opposed to any proposals. For example, an NGO working on human rights stated that the consultation is not an empirically- scientific study of public opinion on the issues. It further stated that, in any event, whether or not the majority of people support or oppose any proposals should not be determinative of whether or not protections from discrimination are appropriate. This is of particular importance in relation to protecting minorities or other groups in society that are subject or vulnerable to discrimination.

## **Part II: Additional areas to modernise the anti-discrimination legislation**

- 3.06. A number of organisations and some individuals provided views on additional areas, where they believed the anti-discrimination legislation should be modernised and were not specifically consulted on.
- 3.07. Firstly, a number of organisations (such as NGOs working with sexual minorities, an NGO working on human rights, an NGO working with the business sector, and a legal institution) and individuals expressed the view that there should be additional protected characteristics to be covered by anti-discrimination legislation, including sexual orientation, gender identity, intersex status, age, religion or belief, political or other opinion, participation in Trade Unions and language. A legal institution indicated that, in their view, the scope of the consultation should have been wider and considered the possibility of the introduction of anti-discrimination legislation in those additional areas.
- 3.08. Secondly, one legal institution believed that the role of the EOC and courts in enforcement should have been more broadly consulted on. In particular, they stated that there were significant barriers in relation to access to justice in the current system, by which the EOC considers complaints, conducts conciliation and legal proceedings before the courts. They raised, for example, the issue which has previously been discussed by the Government and the EOC of introducing an Equal Opportunities Tribunal for all discrimination claims.
- 3.09. As stated in the Consultation Document, the focus of the Discrimination Law Review has been on considering reforms to the protections from discrimination under the four anti-discrimination Ordinances. It has not been intended to focus on developing comprehensive anti-discrimination

legislation in relation to new protected characteristics as in our view that should be the subject of separate consultation and detailed consideration.<sup>3</sup>

- 3.10. However, the EOC does believe that it is important for the Commission to consider, within its duties and powers to review the current anti-discrimination legislation, whether the current protected characteristics should be expanded in any ways. For that reason, the EOC has recently conducted two research studies to consider the need for anti-discrimination legislation on the grounds of age,<sup>4</sup> as well as on the grounds of sexual orientation, gender identity and intersex status.<sup>5</sup>

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<sup>3</sup> See paragraphs 10 and 11 Discrimination Law Review Public Consultation Document.

[http://www.eocdlr.org.hk/downloads/dlr\\_fulldoc\\_en.pdf?f=s&c=white](http://www.eocdlr.org.hk/downloads/dlr_fulldoc_en.pdf?f=s&c=white)

<sup>4</sup> “Exploratory Study on Age Discrimination in Employment” Equal Opportunities Commission, 7 January 2016,

<http://www.eoc.org.hk/eoc/upload/ResearchReport/2016161633111925251.pdf>

<sup>5</sup> “Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status”, 26 January 2016, <http://www.eoc.org.hk/eoc/upload/ResearchReport/20161251750293418312.pdf>

## Chapter 4 Consolidation, Goals of the Legislation and Protected Characteristics

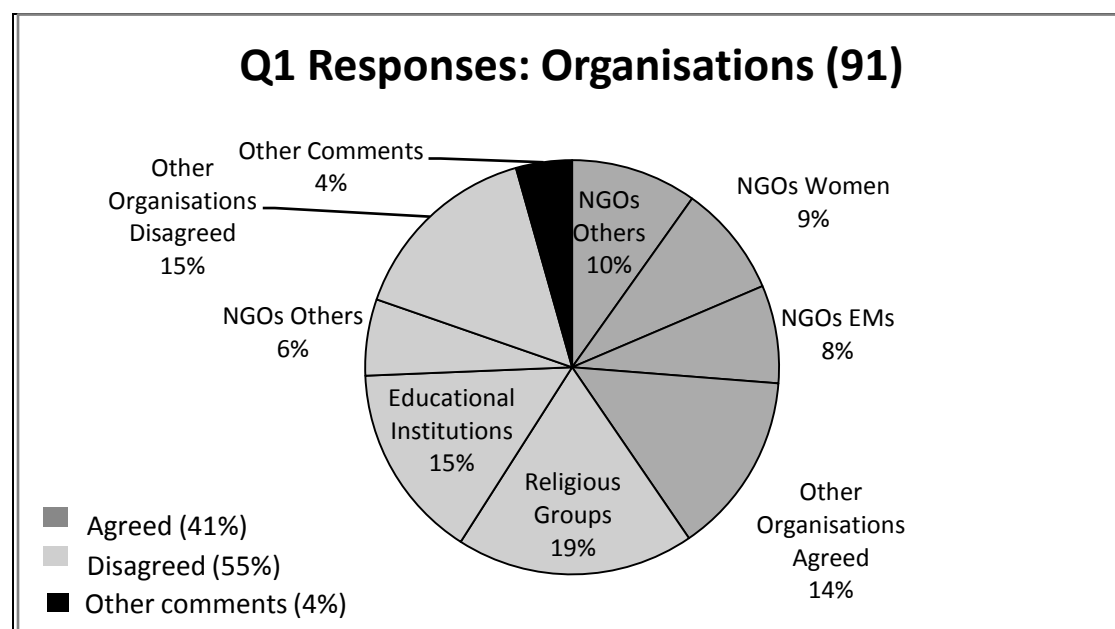
4.01. This chapter describes the responses to Chapter 1 (Rationale and Principles of the Review) of the Consultation Document on the issue of consolidating the discrimination Ordinances into one Ordinance. It also describes the responses to Chapter 2 regarding the goals of the legislation and possible reform of the protected characteristics of sex, pregnancy, marital status, disability, family status or race. It follows the broad structure of the consultation document for ease of reference.

### Part I: Consolidation

#### Consultation Question 1

*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?*

#### Organisations

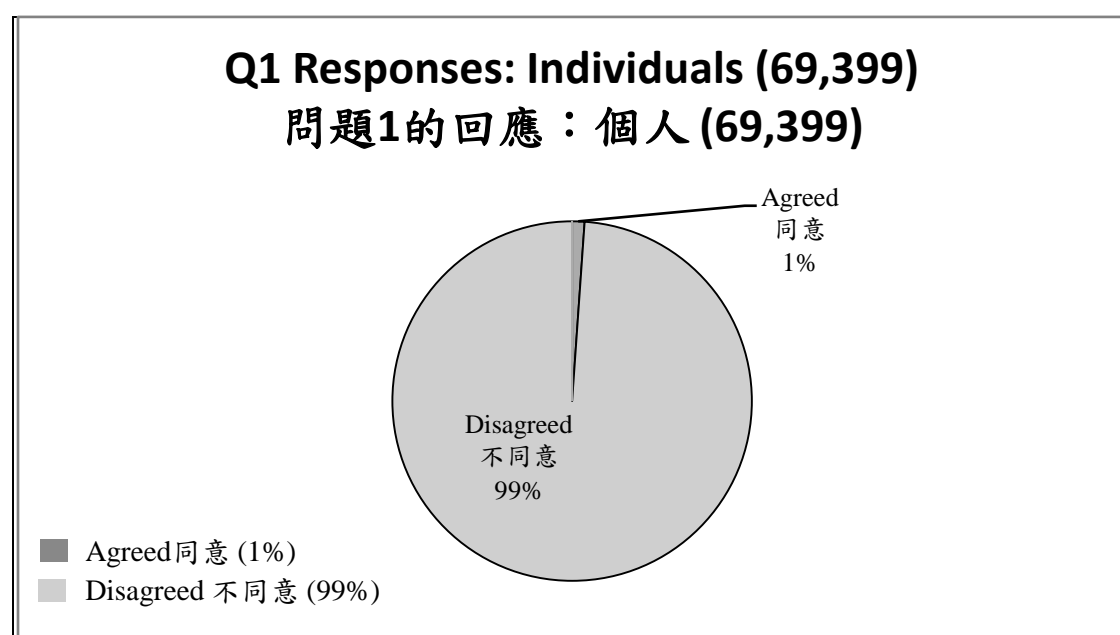


4.02. 91 organisations expressed views on this question. For organisations that agreed with the proposal, the reasons for supporting the proposal generally related to the fact that they believed it would help to simplify and harmonise

provisions where appropriate. For example, one employer group supported the proposal for consolidation as it would simplify the regulation of discrimination issues; several NGOs believed that it would make it easier for stakeholders to navigate the law, and would simplify the procedure for adding new protected characteristics in the future. One legal institution at a University referred to a similar example of consolidation and harmonisation in Hong Kong in another area of law, as seen in the Securities and Futures Ordinance.<sup>6</sup>

- 4.03. In relation to organisations that disagreed with the proposal, several NGOs working with persons with disabilities raised concerns that there would be a danger of a reduction in protection or loss of the particularities of the protections relating to disabilities. Several corporations linked to the airline industry stated that rather than consolidation, it was preferable to have clear guidance in the form of Codes of Practice to explain the current laws.

### Individuals



- 4.04. 69,399 respondents expressed views on this question. A few respondents (772) indicated their support to this question, the majority (68,618) raised their objection, while a few (9) had other comments.
- 4.05. Of the responses which agreed with this question, some respondents (230) gave no reason. Many respondents (542) suggested that the merger would make the discrimination law easier to read and apply.

<sup>6</sup> Cap 571 in 2002. This consolidated ten pieces of legislation in relation to company law.

4.06. Of the responses which disagreed with this question, many responses (21,364) gave no reason. Others mainly took these views:-

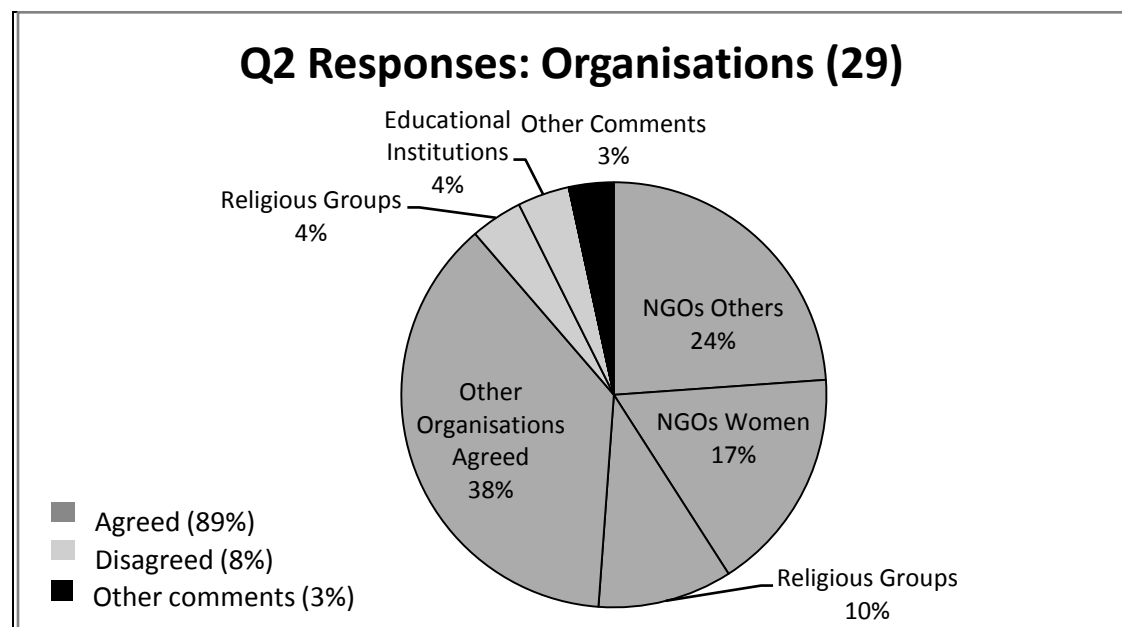
- (i) The merging of the anti-discrimination Ordinances could reduce the number of exceptions / change the laws relating to race discrimination. It makes it more likely that it is unlawful to discriminate against mainlanders. (35,208 responses)
- (ii) The current model of having different Ordinances is effective. (73 responses)
- (iii) The Ordinances should be kept separate as they focus on different types of discrimination. The merger would prevent a targeted approach and make the law too simplistic. (11,930 responses)
- (iv) Merging the Ordinances would make the Ordinance more difficult to understand. (179 responses)

## **Part II: Goals of the legislation**

### **Consultation Question 2**

*Do you think that a clause at the commencement of the discrimination legislation should be incorporated to set out its purpose or goals?*

#### **Organisations**



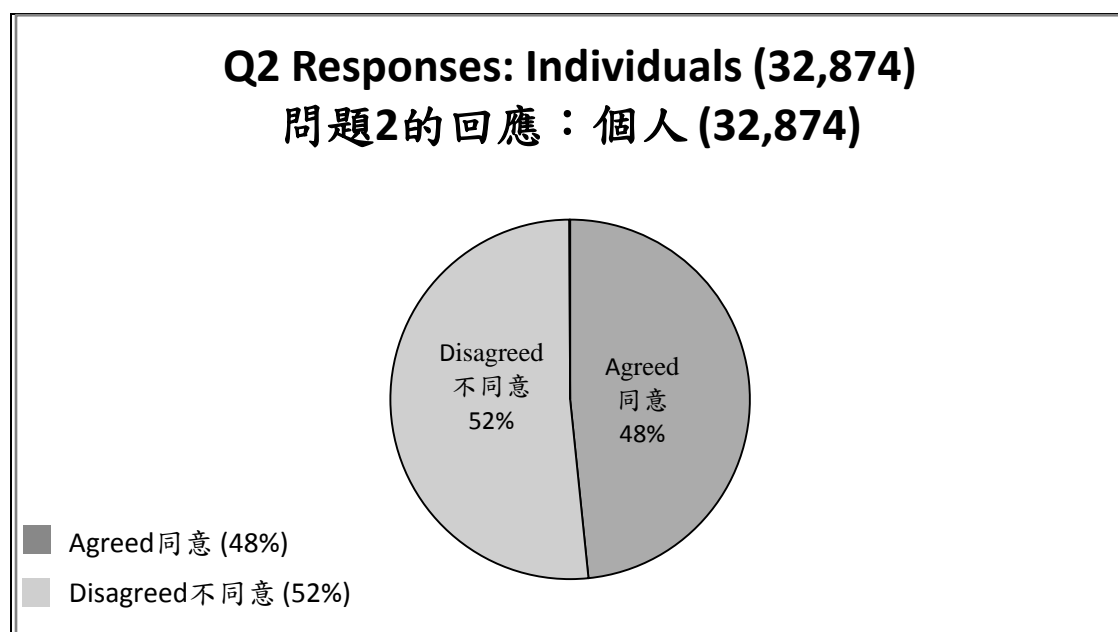
4.07. 29 organisations expressed views on this question. Of the organisations that agreed, their reasons for supporting a purpose clause included:

- (i) To better enable stakeholders to understand the legislation, and
- (ii) To assist courts in interpreting and applying it.

One legal group stated that it should not only refer to eliminating discrimination, but also to achieving substantive equality as set out in international human rights treaties which apply to Hong Kong.

4.08. In relation to organisations that disagreed with this proposal, few reasons were provided.

### **Individuals**



4.09. 32,874 respondents expressed views on this question. Close to half of the respondents (15,901) supported this question, over half (16,953) indicated objection, while the rest (20) had other comments.

4.10. Of the responses which agreed with this question, the majority of respondents (15,332) gave no reason. A small proportion (569) viewed that a purpose clause would be helpful in explaining the goals of the discrimination legislation.

4.11. Of the respondents who disagreed with this question, the majority of respondents (16,919) gave no reason. A few (34) opined that it is unnecessary to add a purpose clause for the Ordinances as the existing provisions are sufficient.



## Part III Reforming the definitions and scope of the protected characteristics

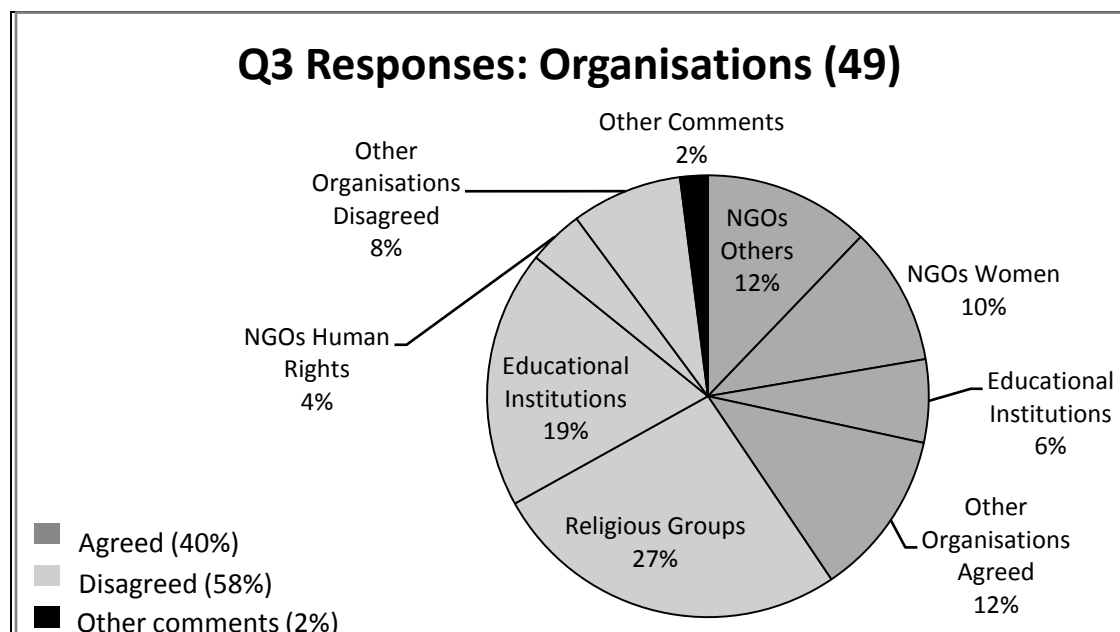
### A. Protected characteristics of sex, pregnancy and marital status

#### (i) Protected characteristic of sex

### Consultation Question 3

*Do you think that in relation to the protected characteristic of sex, neutral language of “a person” should be used?*

#### Organisations

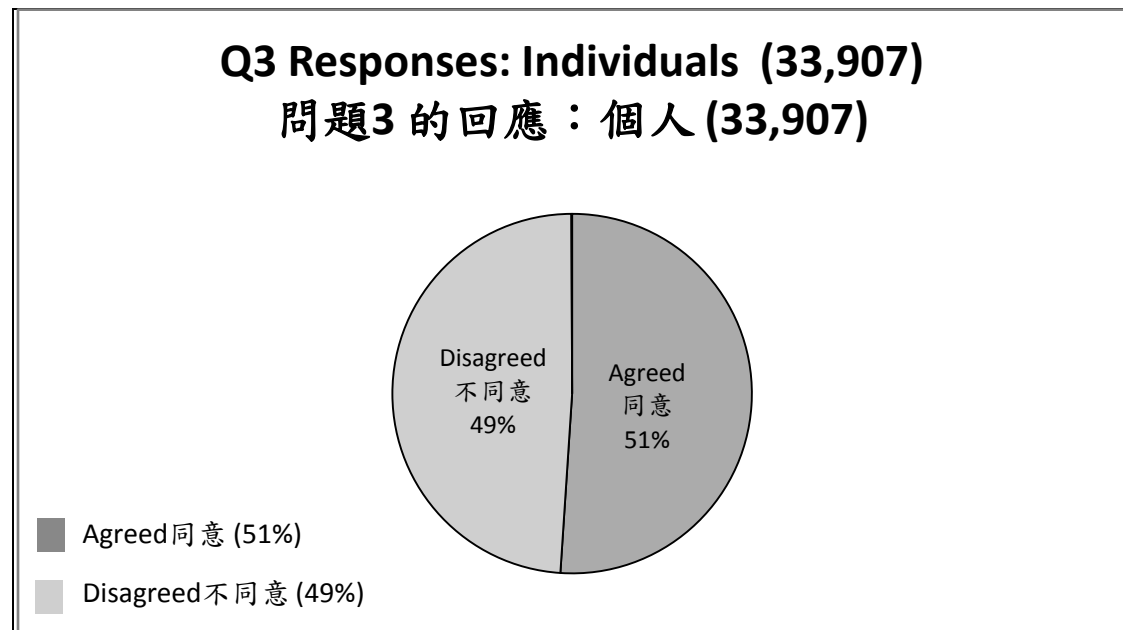


4.12. 49 organisations expressed views on this question. Of the organisations that agreed, most believed that it would make the legislation clearer that the SDO applies to both women and men. An organisation representing seven NGOs working on protecting LGBTI rights agreed to using neutral language so it is clearer that the SDO protects both women and men. They also considered that it is important to expand the protection to persons that do not identify themselves to be men or women, as well as to protection relating to gender expression.

4.13. Of the organisations that disagreed, most believed the current provisions are sufficiently clear. One NGO working on human rights stated that in their view, it was important to maintain the specific references to women, given that it is

more often that women are discriminated against. A secondary school disagreed, stating that the use of neutral language could mean that persons who do not identify as male or female, such as transsexual and intersex people, could be protected. In their view, such persons should not be protected by anti-discrimination legislation.

### **Individuals**



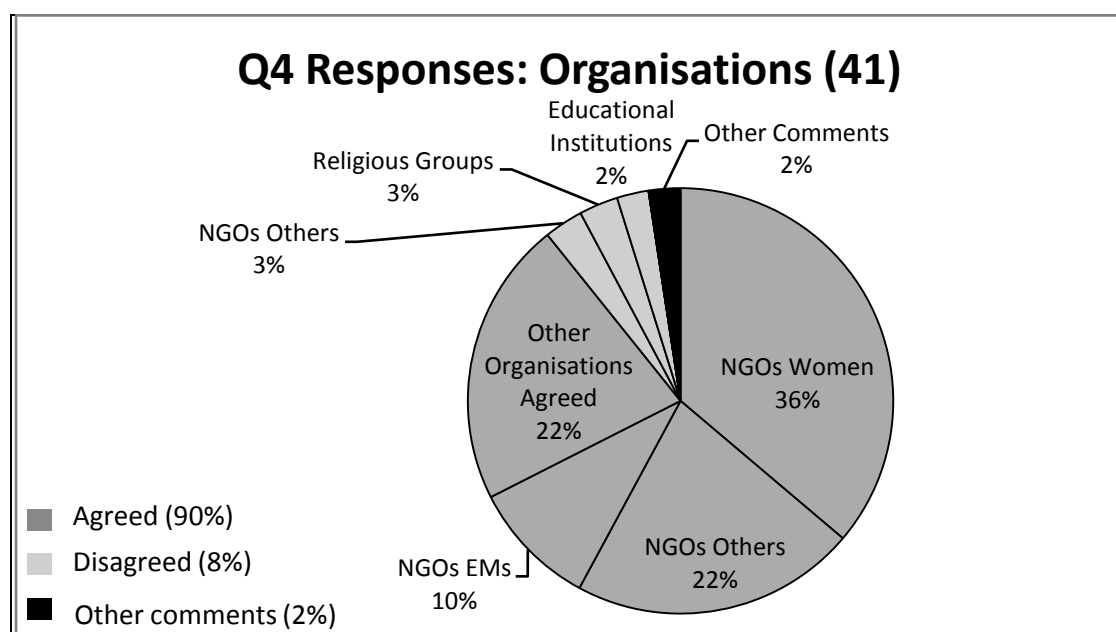
- 4.14. 33,907 respondents expressed views on this question. Over half of the respondents (17,342) agreed with this question, close to half (16,544) raised their objection. A small number (21) had other comments.
- 4.15. Of the respondents who agreed with this question, the majority of respondents (17,315) gave no reason. A small proportion (27) expressed the view that the natural language of “a person” would help indicate that the law is neutral and applies to all persons, including providing protection based on gender identity and sexual orientation.
- 4.16. Of the respondents who disagreed with this question, the majority of respondents (10,559) gave no reason. Others made these key comments:-
- (i) As the SDO relates to sex, the sex should be clearly stated. (2,518 responses)
  - (ii) There are only two genders, and it would blur issues of gender recognition (i.e., against protection from discrimination relating to gender identity). (3,536 responses)

## (ii) Protected characteristic of pregnancy

### Consultation Question 4

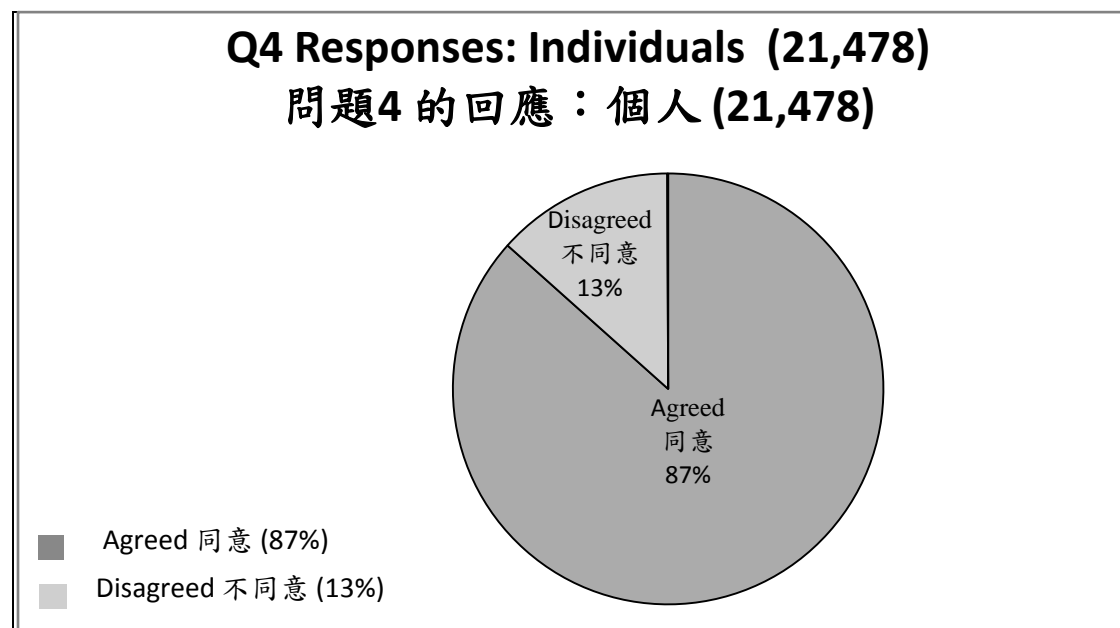
*Do you think there should be express reference to protection from discrimination during maternity leave?*

#### Organisations



- 4.17. Of the organisations that agreed, most believed that it would be important to have express reference to protection from discrimination during maternity leave to make the legislation clearer. One employee group stated that, as the current pregnancy discrimination provisions do not make specific reference to discrimination during maternity leave being prohibited, it was appropriate that the legislation was amended. An NGO working with female workers stated that the protection from discrimination should expressly cover not just the maternity leave period, but the whole peri-natal period (period of pregnancy, birth and at least 6-12 months after birth).
- 4.18. In relation to organisations that disagreed, the main reason stated was that the protections from pregnancy discrimination apply in practice to the maternity leave period and after returning to work, where a reason for less favourable treatment is related to the pregnancy.

## Individuals

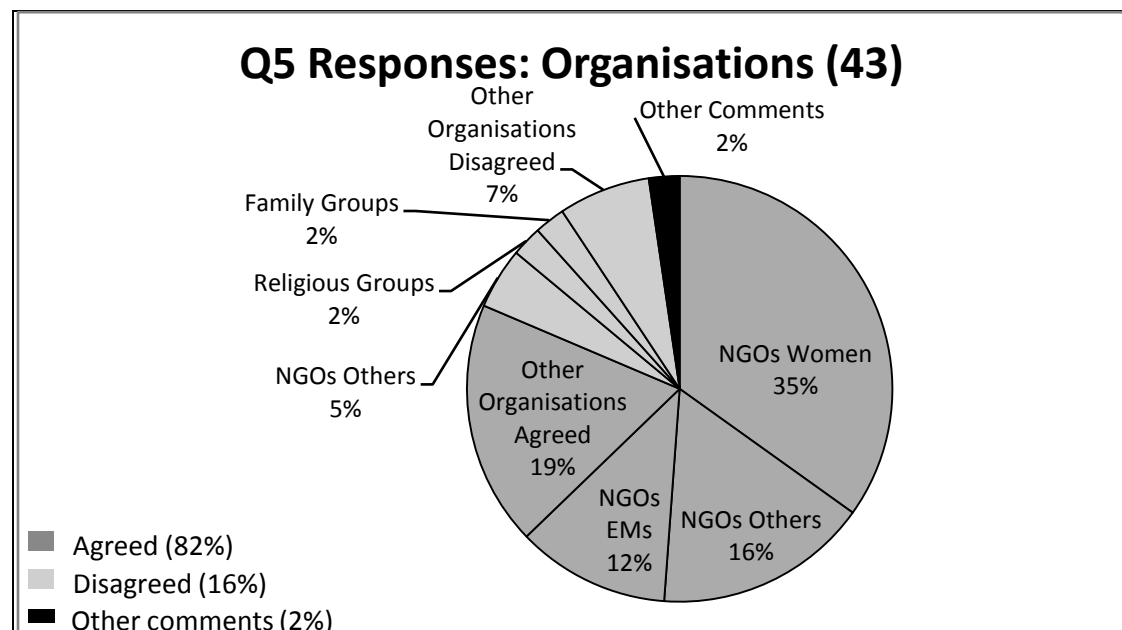


- 4.19. 21,478 respondents expressed views on this question. The majority of respondents (18,601) were supportive of this question, some (2,863) expressed their opposition, while a few (14) had other comments.
- 4.20. Of the respondents who agreed with this question, the majority of respondents (18,215) gave no reason. Others mainly expressed these views:-
- (i) It would provide better clarity that women are protected from discrimination during the maternity leave. (386 responses)
  - (ii) Many women on maternity leave are required to work during maternity leave. (2 responses)
- 4.21. Of the respondents who disagreed with this question, some respondents (1,773) gave no reason. Others mainly took these views:-
- (i) The existing provisions are sufficient. (1,088 responses)
  - (ii) Discrimination during maternity leave should be dealt with in the Employment Ordinance. (1,032 responses)
  - (iii) Increase financial burden. (2 responses)

## Consultation Question 5

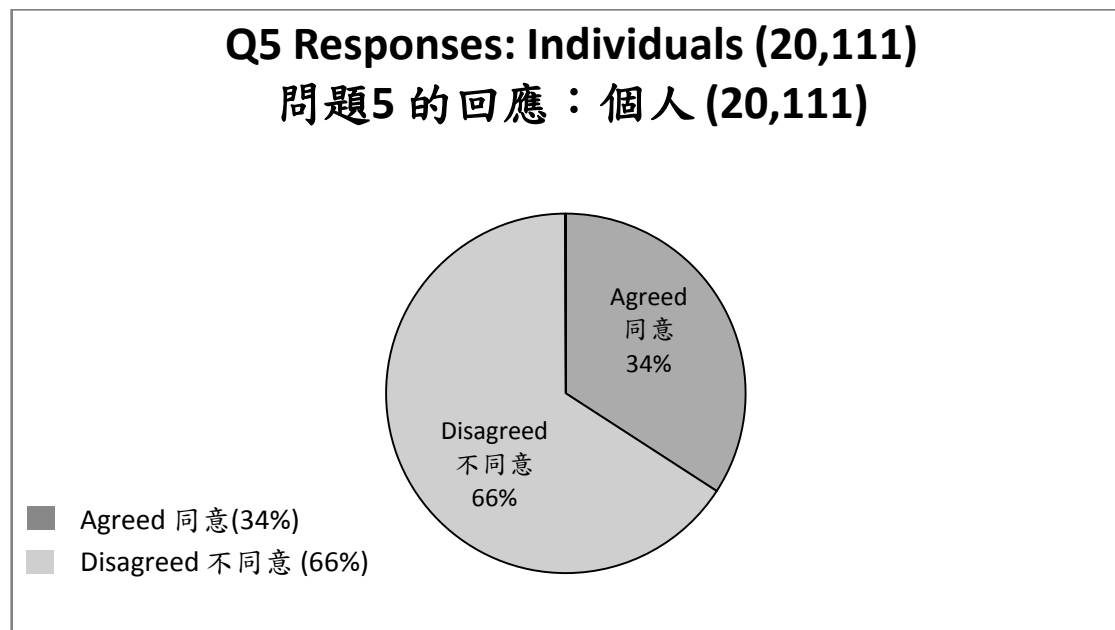
*Do you think there should be protection from discrimination on grounds of potential pregnancy?*

### Organisations



- 4.22. 43 organisations expressed views on this question. Of the organisations that agreed, most believed women often experience discrimination in circumstances of potential pregnancy, and it was therefore important to make the legislation clearer. A number of NGOs and employee groups working with female domestic workers provided evidence that employment agencies or employers sometimes require the domestic workers to take contraceptives, report when they miss their period or take pregnancy tests. They, therefore, believed it is important to provide protection from such discrimination and potential breaches of other human rights.
- 4.23. In relation to the organisations that disagreed, one employer group raised a concern that if such a provision was introduced, it could be too broad in its effect, as all women can potentially be pregnant.

## Individuals



- 4.24. 20,111 respondents expressed views on this question. Over one-third of the respondents (6,868) agreed with this question, around two-thirds (13,230) expressed their disagreement, while a minority (13) had other comments.
- 4.25. Of the respondents who agreed with this question, the majority of respondents (6,837) gave no reason. A small proportion shared these views:-
- (i) All women should be protected from discrimination relating to the possibility of becoming pregnant. (24 responses)
  - (ii) Further work would be needed on how to define or implement potential pregnancy. (7 responses)
- 4.26. Of the respondents who disagreed with this question, the majority of respondents (12,962) gave no reason. Others mainly expressed these views:-
- (i) The concept of potential pregnancy is unclear. (29 responses)
  - (ii) It would be difficult to prove potential pregnancy. (192 responses)
  - (iii) It would make the protection too broad as all women are potentially pregnant. (21 responses)
  - (iv) It would be too easy to abuse this form of protection (37 responses)



### (iii) Protected characteristic of marital status

#### Consultation Question 6

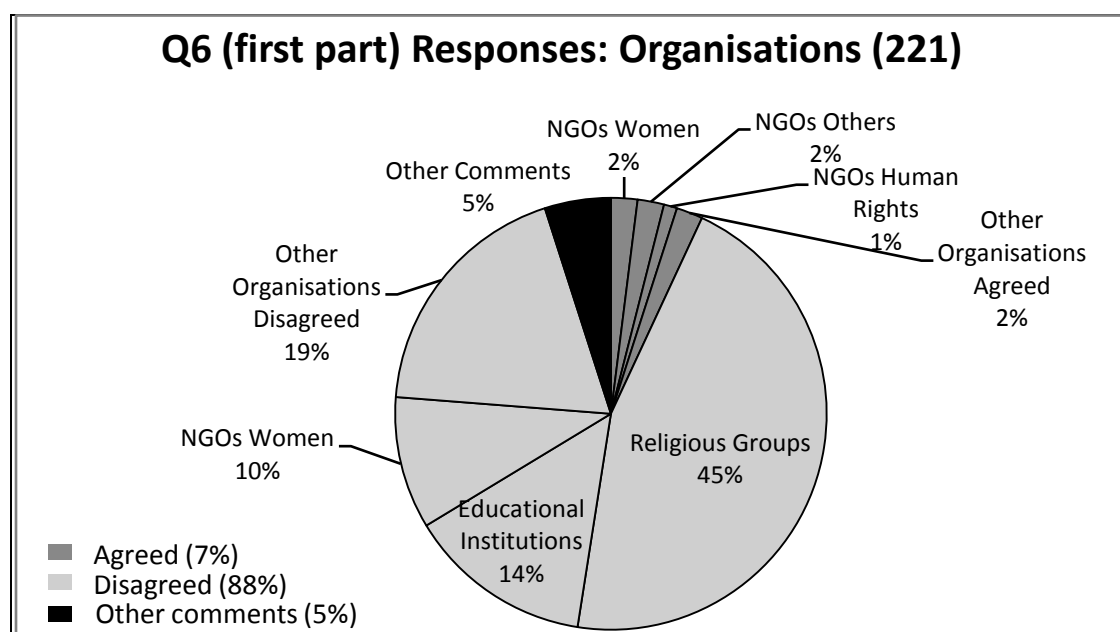
*Do you think that the protected characteristic of marital status should be amended to apply to “relationship status” and expressly protect persons in de facto relationships? If so, how should de facto relationships be defined? Should it be defined to include protection for both heterosexual relationships and same-sex relationships? Should this also be extended to protection from discrimination relating to former de facto relationships?*

4.27. Although this Question is divided into three parts, for organisation responses, we have summarised their overall main reasoning to the issues raised. The Question is related to questions 70, 71, 72 and 73, as well as Question 9 which relates to protection from family status discrimination for cohabiting/de facto relationships.

#### First Part of Consultation Question 6

*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?*

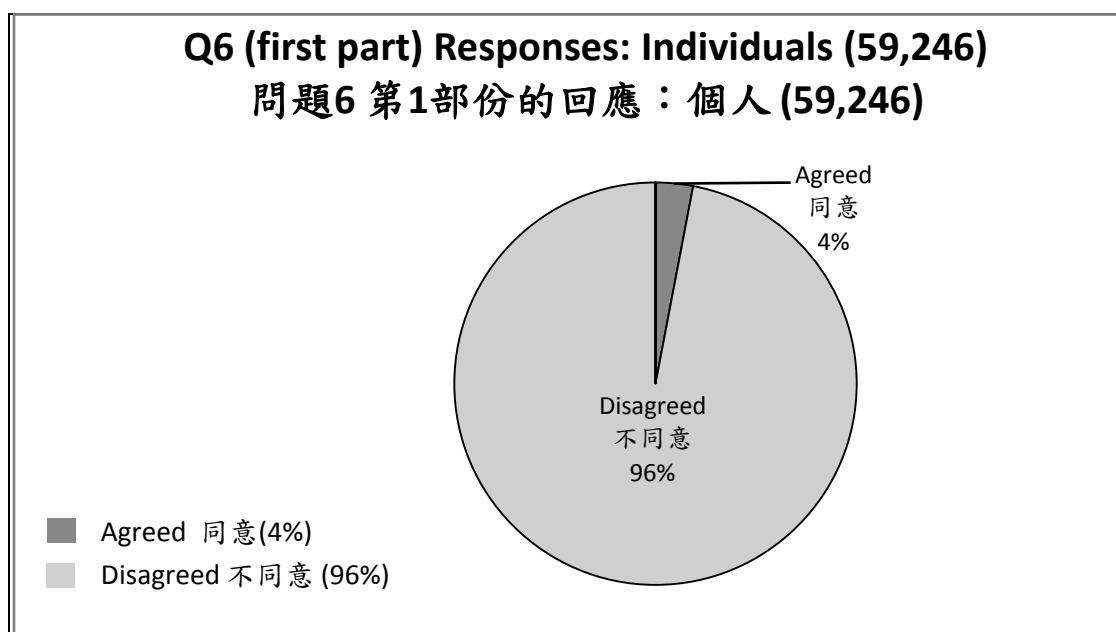
#### Organisations



- 4.28. 221 organisations expressed views on this question. Of the organisations that agreed, most believed that the structure of families in Hong Kong is changing, and, therefore, there should be protection from discrimination for cohabiting/de facto couples. One NGO representing women supported that such protections be extended to couples in same-sex de facto relationships, but thought it should be part of the wider discussion on whether sexual orientation and gender identity anti-discrimination legislation should be introduced in Hong Kong. Another NGO representing 7 organisations working on LGBT rights also agreed with the proposals, including to protect from discrimination couples in same-sex de facto relationships.
- 4.29. Several organisations referred to the importance of having a clear definition and system for proving de facto relationships. For example, several organisations referred to the existing precedent in Hong Kong under the Domestic and Cohabitation Relationships Violence Ordinance (CAP 189) which defines cohabiting relationships and applies to heterosexual and homosexual couples. A legal institution also suggested there could be a formal registration system of the de facto relationships.
- 4.30. In relation to the organisations opposing protections, there were a number of different reasons provided:
- (i) Corporations and employer groups were particularly concerned with the potential increased cost implications if they would be required to pay the same medical and dental benefits to partners in de facto relationships as they currently provide for spouses in marriages;
  - (ii) Some corporations were also concerned with the perceived difficulties with proving people are in de facto relationships, the possibility of the system being abused, and, therefore, the likelihood of there being more disputes in the workplace;
  - (iii) A number of the employer groups also said that the proposals would damage and are contrary to the existing institution of marriage. Further, several suggested that the EOC should evaluate the potential cost implications to employers of the proposals before any further steps are taken;
  - (iv) A large number of Christian religious groups, and NGOs related to women and parents, raised similar concerns that the proposals would be contrary to the existing institution of marriage being the unity of a man and woman; it would undermine and devalue the institution of marriage; threaten the moral foundations of society in Hong Kong; could lead to the introduction of same-sex marriages to which they are opposed; would damage family relationships, including with children, given their view that a marriage is the best environment to bring up children; and would destabilise society and encourage irresponsibility;

- (v) Some religious groups and educational institutions also raised concerns that such protections could result in reverse discrimination on grounds of religion against them (for example, a religious school being forced to teach students values with which they did not agree), and that this could infringe their rights to freedom of religion.

### Individuals



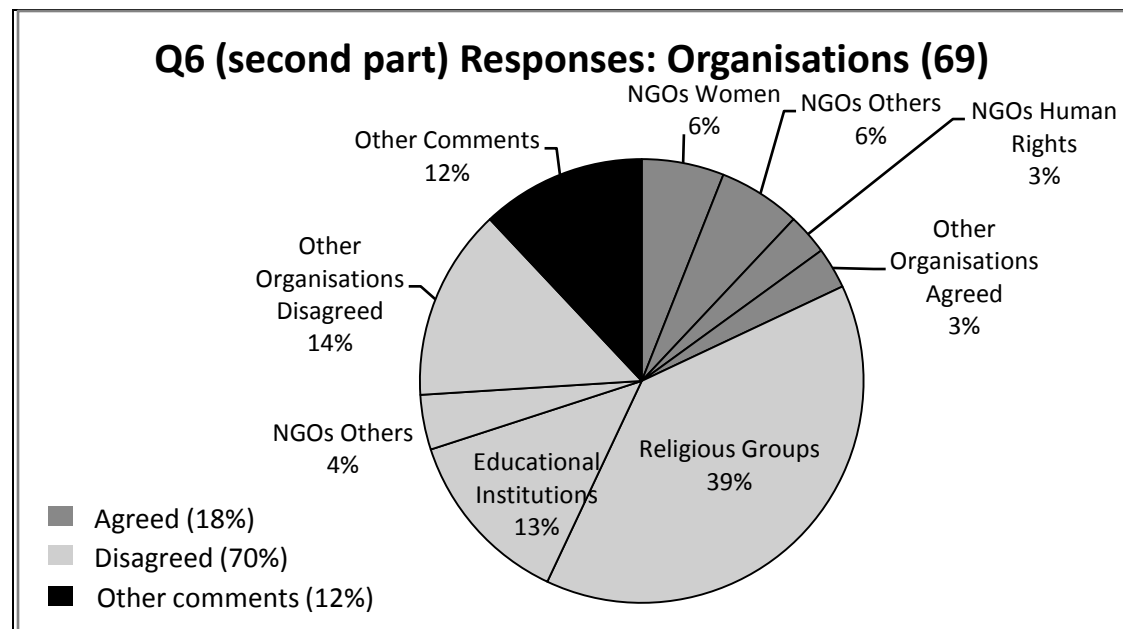
- 4.31. 59,246 respondents expressed views on this part. A small fraction of the respondents (2,315) expressed their agreement to this part, the majority of respondents (56,763) raised their objection, while some (168) had other comments.
- 4.32. Of the respondents who agreed with this part, some respondents (675) gave no reason while over half (1,640) considered that de facto relationships are more common so people in those relationships should be protected from discrimination, and/or the legislation should be consistent with the social trend of not marrying.
- 4.33. Of the respondents who disagreed with this part, over half of the respondents (34,572) gave no reason. Others made these comments:-
- (i) It would be difficult to define or prove who is in a de facto relationship and when they start or end. (2,149 responses)
  - (ii) People may attempt to abuse the system by claiming benefits of being in a relationship and single at the same time, or pretending to be in a relationship. (1,206 responses)

- (iii) De facto relationships should not be treated as equivalent to marriages. Persons in de facto relationships should not have the same rights or benefits as married persons. (6,002 responses)
- (iv) It would go against family values to recognise de facto relationships. (13,945 responses)
- (v) It would lead to social instability and moral degeneration. (2,137 responses)
- (vi) It would encourage casual relationships or polygamy. (522 responses)
- (vii) By creating legal obligations to protect de facto relationship would limit the freedom of not marrying. (278 responses)
- (viii) Against religious belief. (1,659 responses)
- (ix) Increase financial and/or social burden. (2,342 responses)
- (x) Influencing how the next generation understands marriage. (316 responses)

## **Second Part of Consultation Question 6**

*If so, how should de facto relationships be defined?*

### **Organisations**

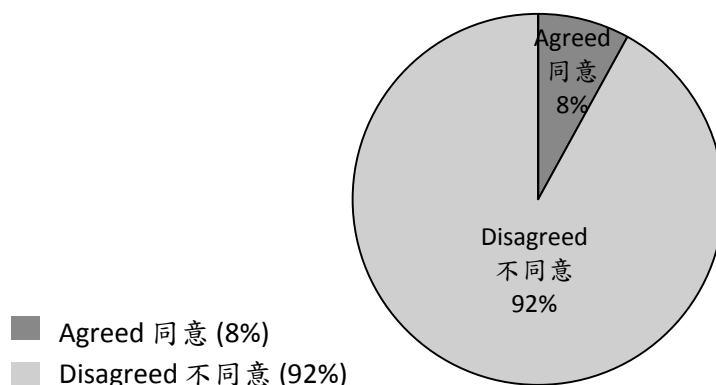


4.34. 69 organisations expressed views on this part. Please refer to the first part of the question above for a summary of views provided.

## Individuals

### **Q6 (second part) Responses: Individuals (25,551)**

#### **問題6第2部份的回應：個人(25,551)**

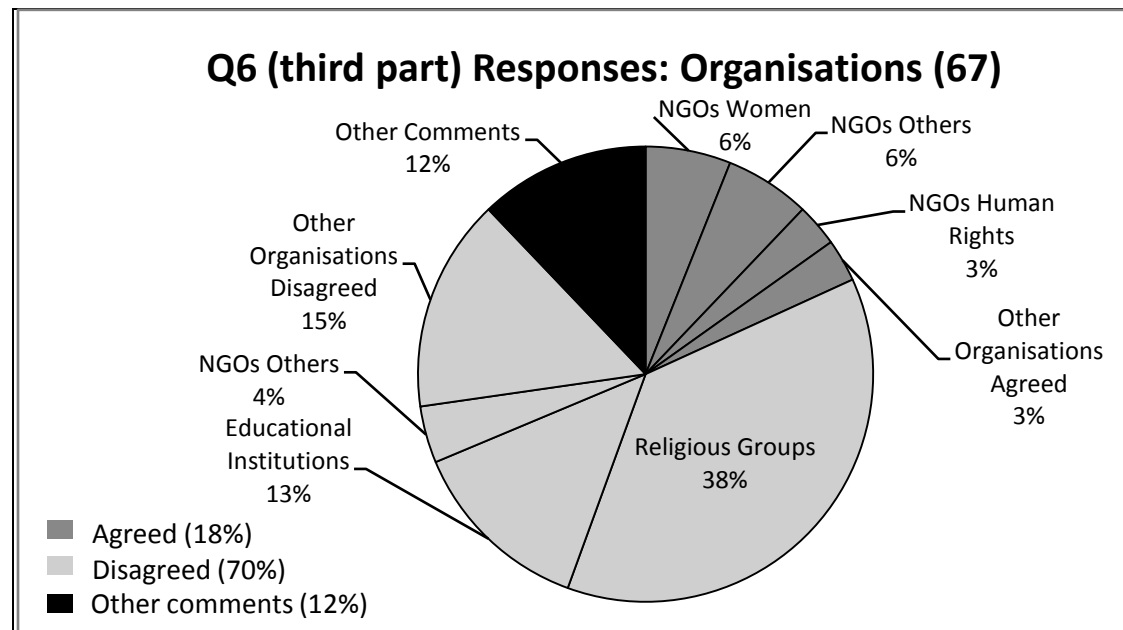


- 4.35. 25,551 respondents expressed views on this part. Although this is an open-ended question, many respondents did not answer how de facto relationships should be defined, but only indicated “yes” or “no” or make other comments.
- 4.36. Of the respondents who expressed views on this question, the EOC received the following:-
- (i) There should be an objective standard to determine whether a couple is in a de facto relationship. (14 responses)
  - (ii) Homosexual relationships should be protected, but that should be done by legalising homosexual marriage. (13 responses)
  - (iii) There should be the first consideration of protection of heterosexual de facto relationships, then homosexual. (2 responses)
  - (iv) This is an attempt or step to legalise same-sex marriage which should not be allowed. (1,641 responses)
  - (v) Against family values. (5,261 responses)
  - (vi) Increase social and/or financial burden. (560 responses)

## **Third Part of Consultation Question 6**

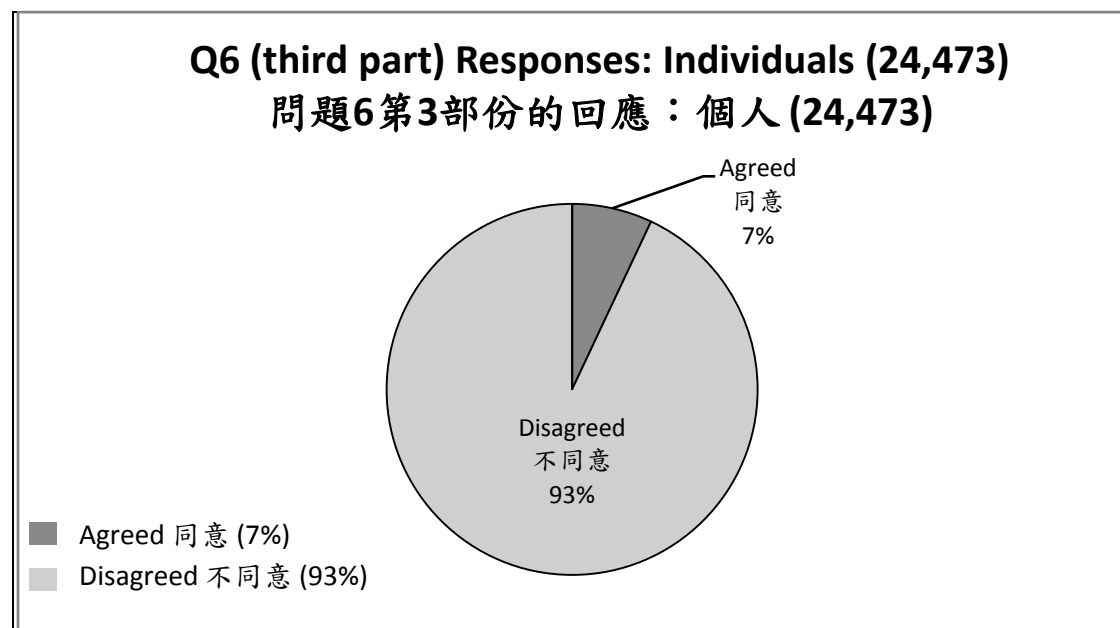
*Should this also be extended to protection from discrimination relating to former de facto relationships?*

### **Organisations**



4.37. 67 organisations expressed views on this part. Please refer to the first part of the question above for a summary of views provided.

## Individuals



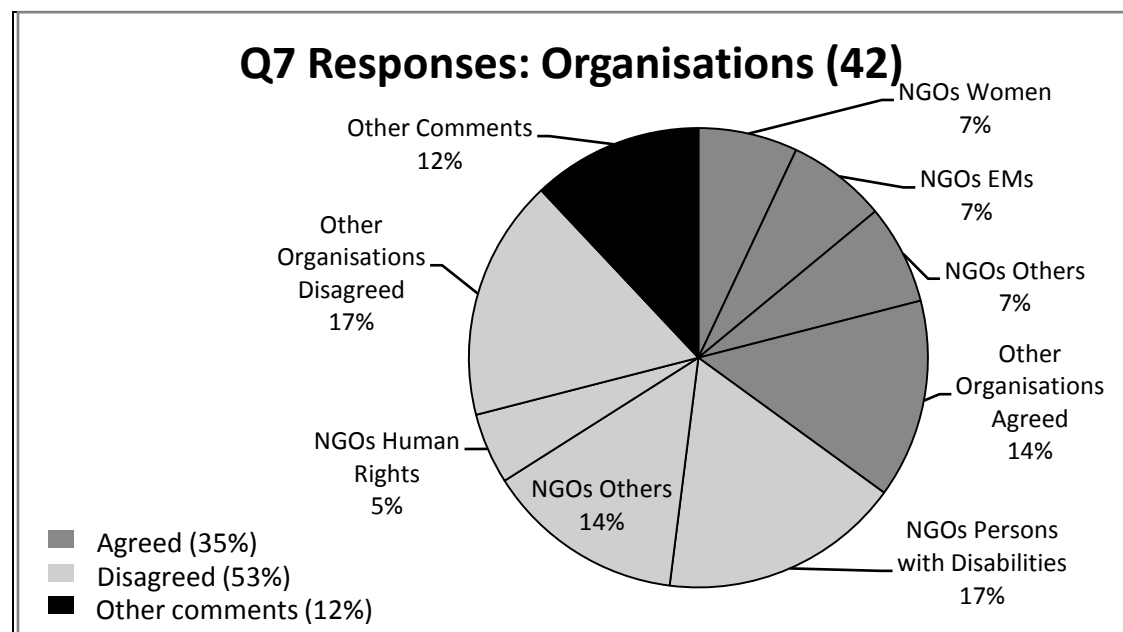
- 4.38. 24,473 respondents expressed views on this part. A small proportion of the respondents (1,817) indicated their support to this part, the majority (22,652) expressed their opposition, while a few (4) had other comments.
- 4.39. Of the respondents who agreed with this part, the majority of respondents (1,812) gave no reason. Others (5) expressed the view that it is not fair if a person is discriminated against in relation to former relationships.
- 4.40. Of the respondents who disagreed with this part, over two-thirds of the respondents (17,412) gave no reason. Others expressed these opinions:-
- (i) Against family values. (5,057 responses)
  - (ii) Increase social and/or financial burden. (595 responses)

## B. Protected characteristics of disability

### Consultation Question 7

*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?*

#### Organisations



4.41. 42 organisations expressed views on this question. Of the organisations that agreed the definition should be amended, one corporation cited, as a reason, that the current definition is too broad and is sometimes abused by employees taking sick leave unnecessarily. They believe temporary or less-serious sicknesses such as the flu should not be considered a disability.

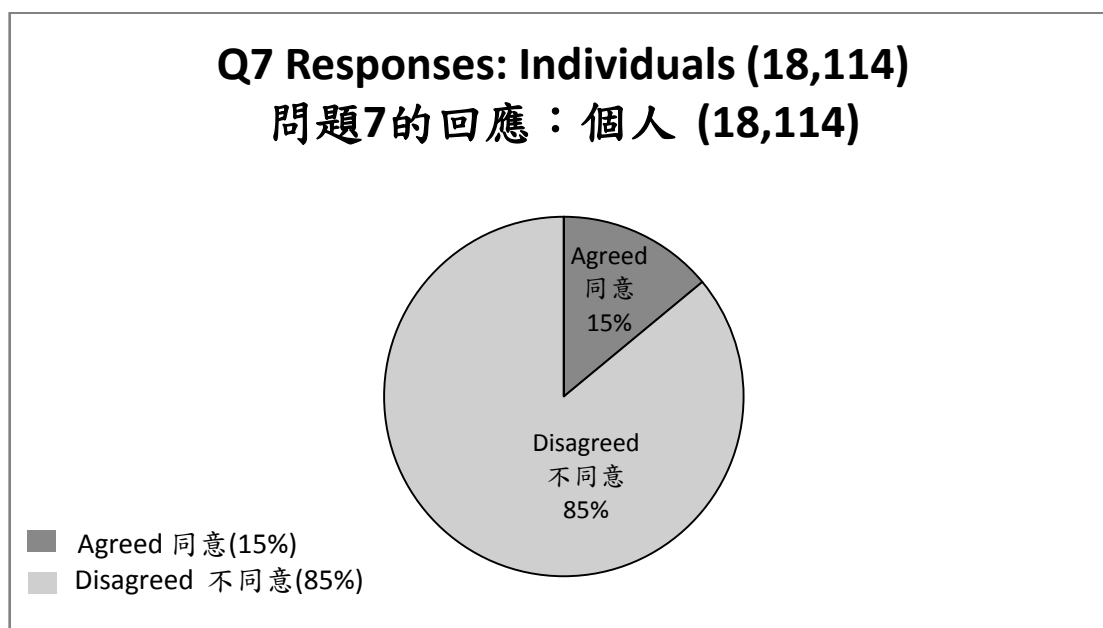
4.42. Of the organisations that disagreed with the definition of disability being changed, many were NGOs working with persons with disabilities, as well as a human rights NGO, a Trade Union employee group and a legal institution. A number of reasons were provided including:

- (i) That it would reduce the current levels of protections from discrimination of persons with disabilities;
- (ii) A reduction in protection would be inconsistent with the principle of harmonisation as stated by the EOC in the consultation document;



- (iii) It would not be consistent with the broad definition of a disability under the United Nations Convention on the Rights of Persons with Disabilities;
- (iv) It may be difficult to define the term “substantial”; and
- (v) A short term condition which has a substantial impact on a person could be the basis of someone being discriminated against, so there should be no amendment.

## **Individuals**



4.43. 18,114 respondents expressed views on this question. Some respondents (2,619) supported this question, a significant number (15,414) indicated their objection, while a few (81) had other comments.

4.44. Of the respondents who agreed with this question, the majority of respondents (2,574) gave no reason. A small proportion made these comments:-

- (i) Should narrow the existing definition to avoid abuse. (20 responses)
- (ii) The disability must be permanent; short-term disabilities should be dealt with by sick leave. (26 responses)

4.45. Of the respondents who disagreed with this question, the majority of respondents (15,397) gave no reason. A small proportion expressed these views:-

- (i) Persons with a minor disability would not be protected. (12 responses)
- (ii) It would reduce the current levels of protection from disability discrimination. (6 responses)

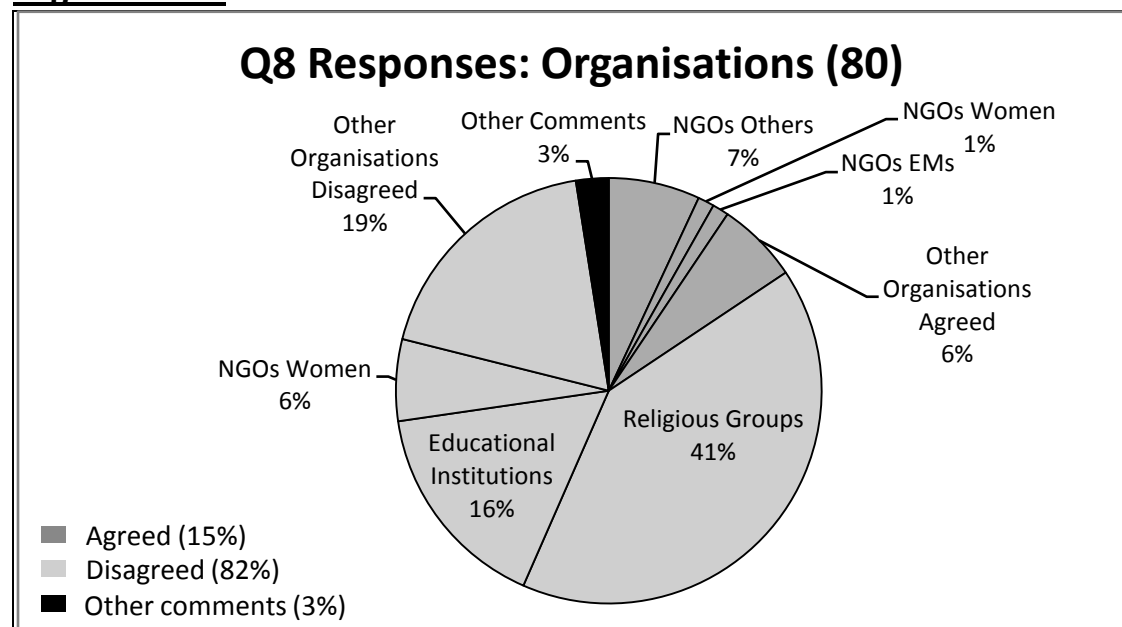
## C. Protected characteristics of family status

### (i) Changing the term “family status” to “family responsibilities”

#### Consultation Question 8

*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?*

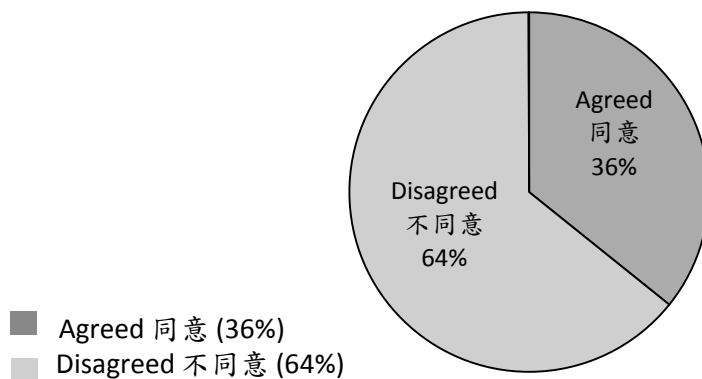
#### Organisations



- 4.46. 80 organisations expressed views on this question. Of the organisations which agreed, some believed that the term “family responsibilities” would be clearer in describing the nature of the protection.
- 4.47. Of the organisations that disagreed, a number believed that the term “family responsibility” does not sufficiently describe the scope of protection provided. This is because the term “family status” in Cantonese better explains both aspects of responsibility and caring. They were, therefore concerned, that changing the term would give the perception of narrowing the scope of protection from discrimination.

#### Individuals

### Q8 Responses: Individuals (39,900) 問題8的回應：個人 (39,900)



- 4.48. 39,900 respondents expressed views on this question. Over one-third of the respondents (14,285) indicated their support to this question, close to two-thirds (25,596) expressed their opposition, while a small number (19) had other comments.
- 4.49. Of the respondents who agreed with this question, the majority of respondents (14,265) gave no reason. The remaining (20) took the view that the phrase “family status” is an accurate expression of the concept.
- 4.50. Of the respondents who disagreed with this question, the majority of respondents (24,989) gave no reason. Some (607) opined that it is unnecessary to change the language as there is no real difference between the terms.

## (ii) Care arising from de facto and former relationships

### Consultation Question 9

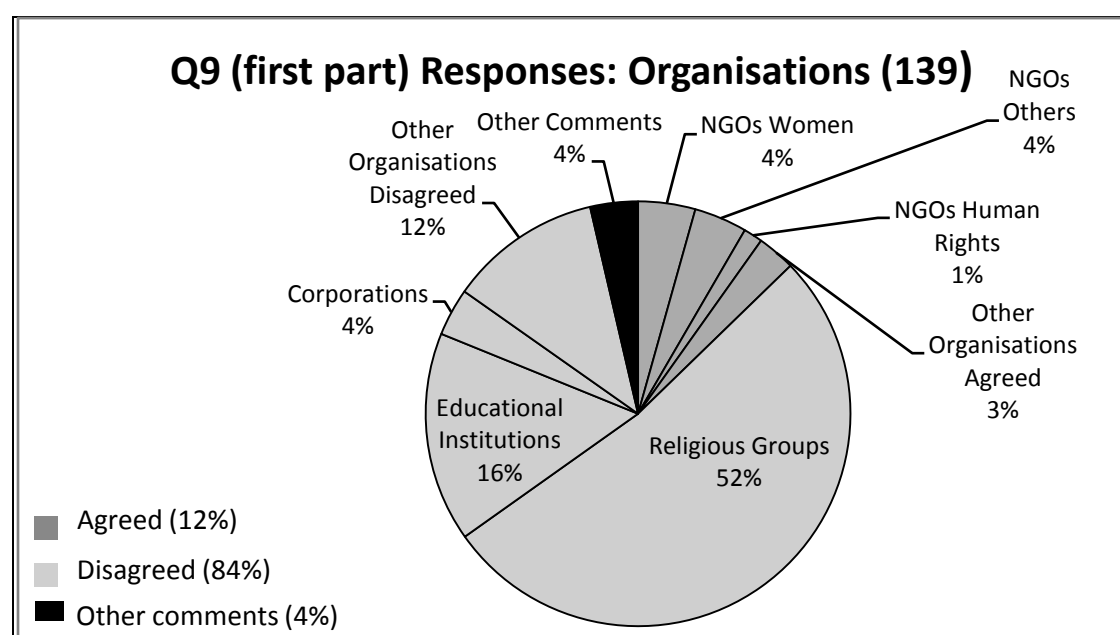
*Do you think that the scope of family status discrimination should be expanded to include protection where persons in de facto relationships care for immediate family members? If so, how should de facto relationships be defined? Further, do you think the protection should be extended to situations where a person cares for an immediate family member from a former marriage or de facto relationship?*

4.51. This Question is subdivided into three parts but the responses for organisations are summarised together.

## **First Part of Consultation Question 9**

*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?*

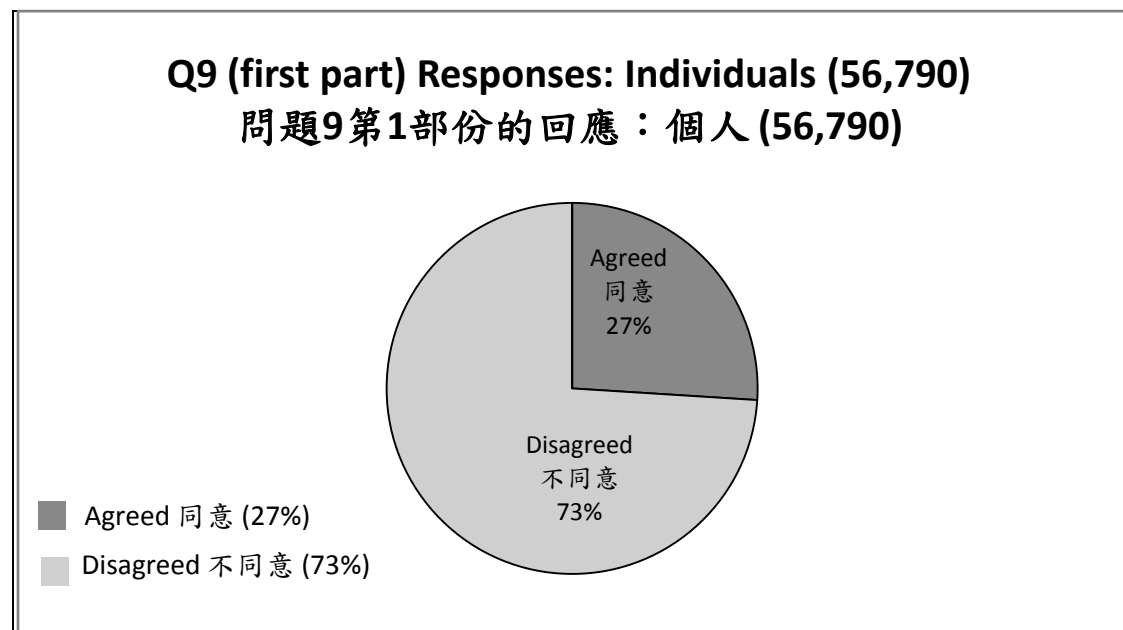
### **Organisations**



4.52. 139 organisations expressed views on this part. Of the organisations that agreed, they generally believed that there should be protection for those that have to care for family members, irrespective of whether they are married or not. One NGO working with women with disabilities believed it would be important to introduce such protections, especially for women that often care for their partners, whether or not they are married, and including after a divorce.

4.53. Many organisations that disagreed with introducing protections from discrimination for cohabiting/de facto couples in relation to caring for family members provided similar reasoning as to why they disagreed with cohabiting couples being protected from discrimination in relation to marital status (Question 6). Of the organisations that disagreed, these were often religious groups or religious educational institutions, which believed such changes would go against traditional family concepts and values.

## **Individuals**

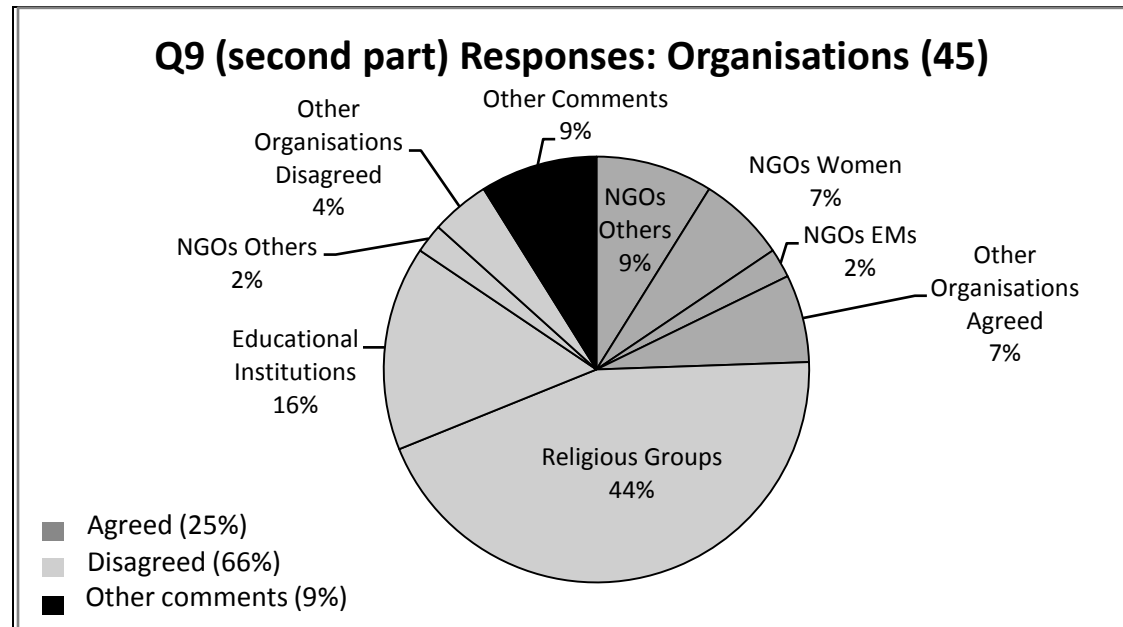


- 4.54. 56,790 respondents expressed views on this part. Over a quarter of respondents (15,129) agreed with this part, and almost three quarters (41,637) raised their objection, while a small fraction (24) had other comments.
- 4.55. Of the respondents who agreed with this part, the majority of respondents (15,120) gave no reason. A small proportion (9) took the view that people in a de facto relationship also have family responsibilities.
- 4.56. Of the respondents who disagreed with this part, over one-half of the respondents (28,793) gave no reason. Others mainly took these views:-
- (i) A broader definition would lead to abuse. (980 responses)
  - (ii) De facto relationships should not be given the same protection as married persons. (1,049 responses)
  - (iii) By creating legal obligations to protect de facto relationships would limit the freedom of not marrying. (282 responses)
  - (iv) Increase social and / or financial burden. (790 responses)
  - (v) Against family values. (11,022 responses)
  - (vi) Against religious belief. (503 responses)

## Second Part of Consultation Question 9

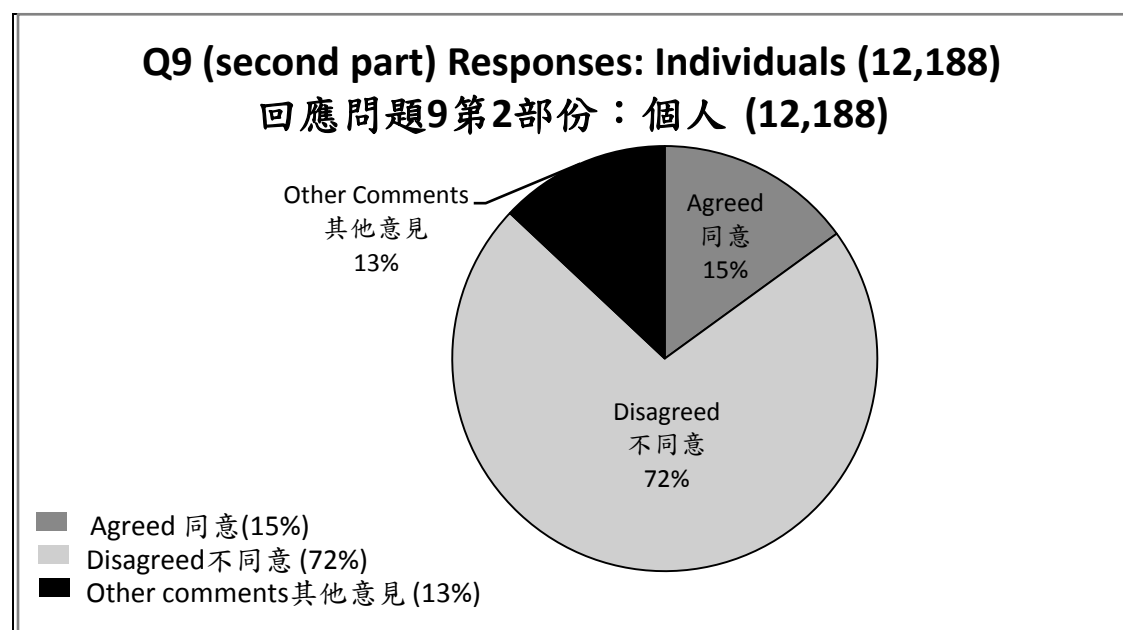
*If so, how should de facto relationships be defined?*

### Organisations



4.57. 45 organisations expressed views on this part. Please see the first part of the question above for a summary of views provided.

### Individuals



4.58. 12,188 respondents expressed views on this part. Although this is an open-ended question, many respondents did not answer how de facto

relationships should be defined, but only indicated “yes” or “no” or make other comments.

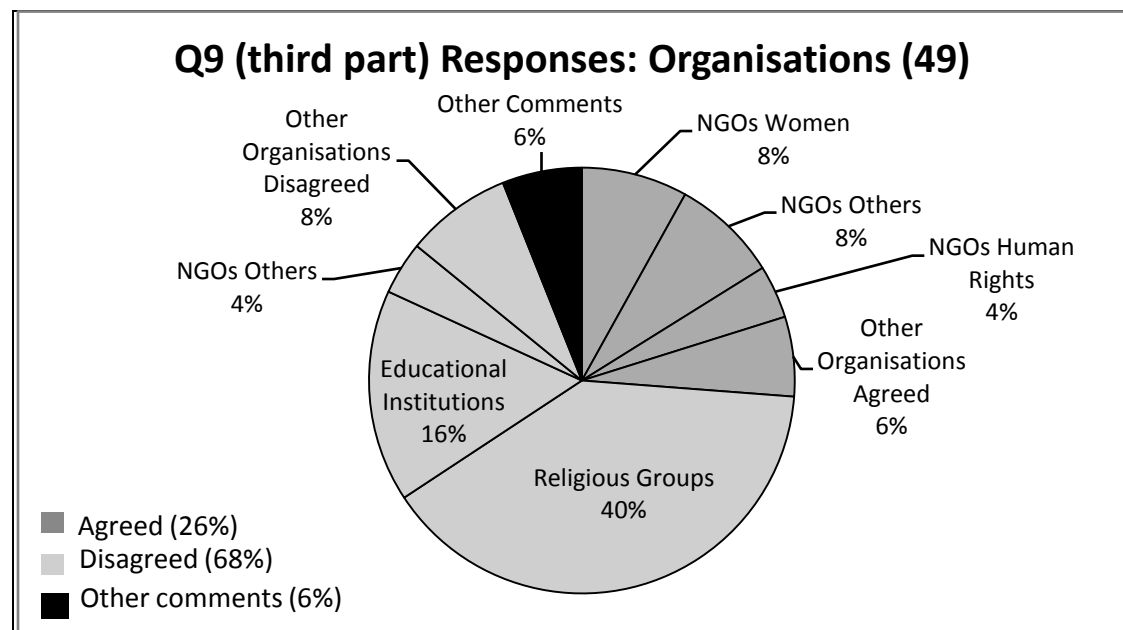
4.59. Of the respondents who expressed views on this question, the EOC received the following:-

- (i) Careful consideration should be given to its definition (91 responses).
- (ii) A de facto relationship should never be defined and protected (35 responses).

### **Third Part of Consultation Question 9**

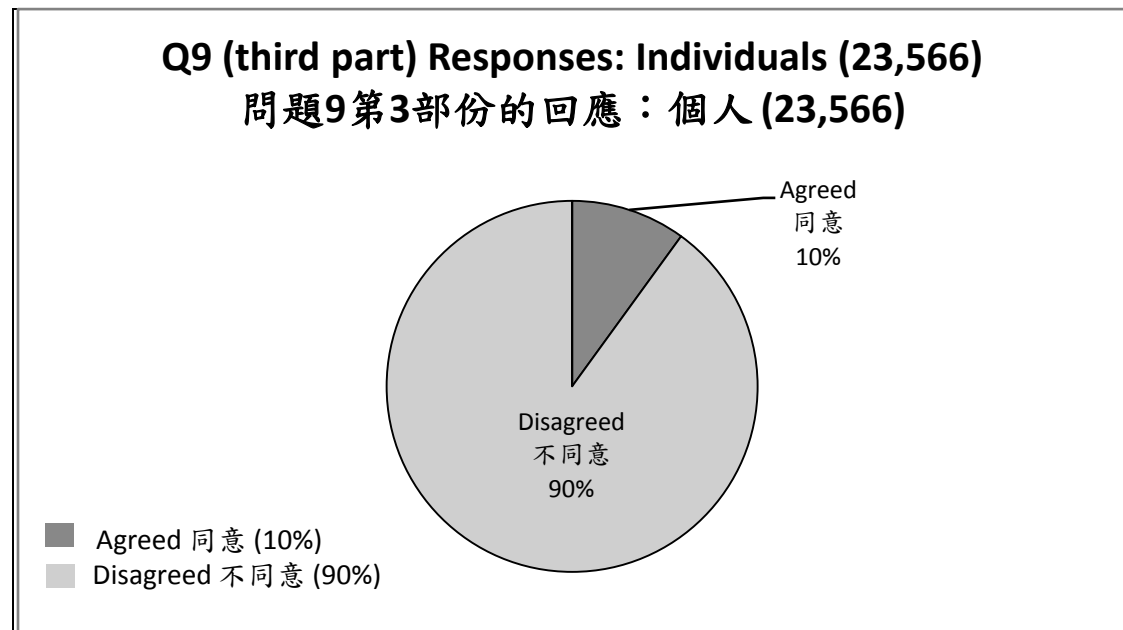
*Further, do you think the protection should be extended to situations where a person cares for an immediate family member from a former marriage or de facto relationship?*

#### **Organisations**



4.60. 49 organisations expressed views on this question. Please see the first part of the question above for a summary of views provided.

## Individuals



- 4.61. 23,566 respondents expressed views on this part. Some respondents (2,458) were supportive of this part, the majority (21,103) expressed their disagreement, while the rest (5) had other comments.
- 4.62. Of the respondents who agreed with this part, the majority of respondents (2,382) gave no reason. A small fraction (76) viewed that protection should only be given to a person who cares for an immediate family member from a former marriage.
- 4.63. Of the respondents who disagreed with this part, many respondents (15,392) gave no reason. Others gave these opinions:
- (i) Increase social and/or financial burden. (340 responses)
  - (ii) Against family values. (5,626 responses)

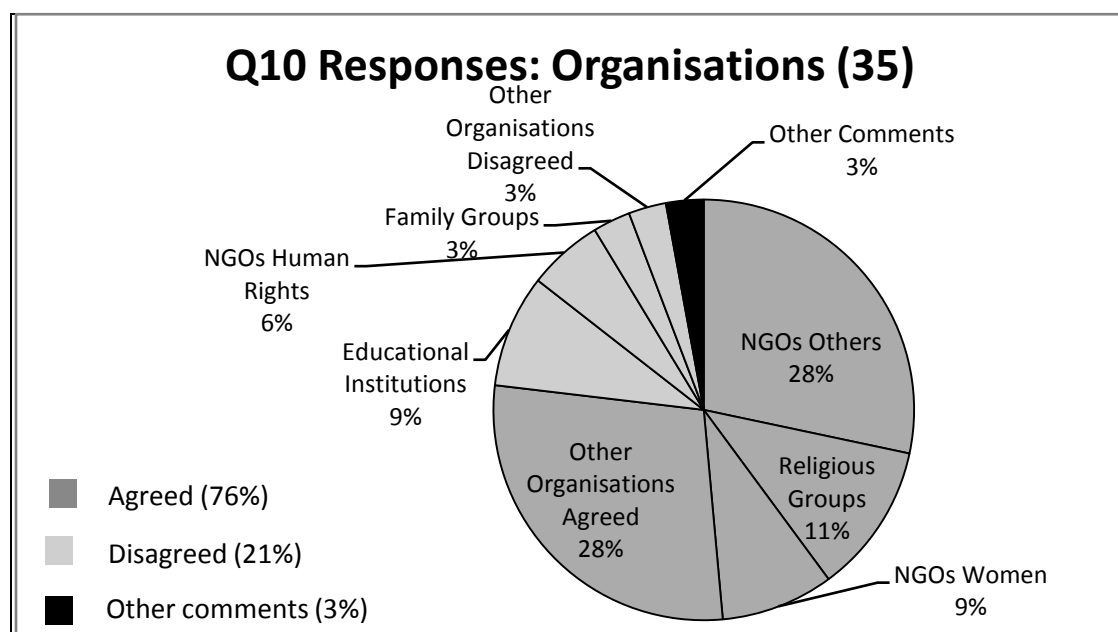


(iii) **Protection from discrimination relating to breastfeeding women**

**Consultation Question 10**

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

**Organisations**

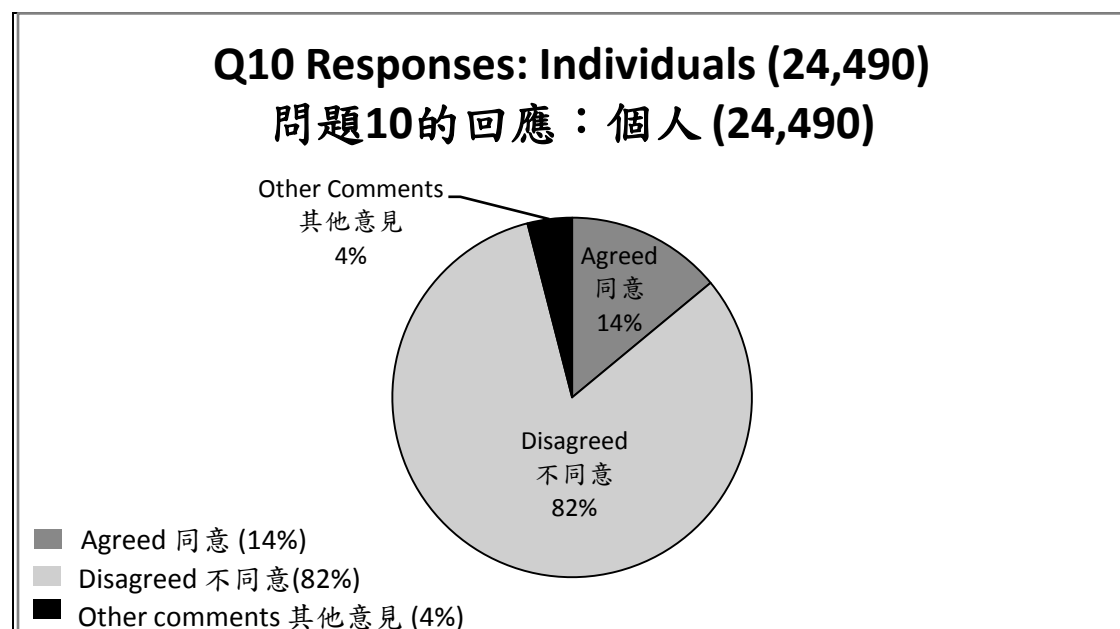


4.64. 35 organisations expressed views on this question. Of the organisations that agreed, there were a number of reasons provided including:

- (i) A number of organisations raised concerns that it is not clear in the current anti-discrimination laws that breastfeeding women are protected from discrimination;
- (ii) Hong Kong should improve protections in line with international best practice in similar jurisdictions such as the United Kingdom and Australia;
- (iii) Women often face discrimination in public venues and employment; and
- (iv) There are insufficient facilities for breastfeeding women, such as for expressing and storing milk at work.

- 4.65. Of the organisations that disagreed with the proposal, generally their reasons were that the current provisions provide sufficient protection from discrimination in relation to breastfeeding.

### **Individuals**



- 4.66. 24,490 respondents expressed views on this question. Some respondents (3,497) supported this question, many (20,058) raised their objection, while a small number (935) had other comments.
- 4.67. Of the respondents who agreed with this question, the majority of the respondents (3,486) gave no reason. A few (11) expressed the view there is substantial discrimination against breastfeeding women, for example by not being allowed time for a break at work to express milk. There were also views that the law should be consistent with the social trend of increasing numbers of women breastfeeding.
- 4.68. Of the respondents who disagreed with this question, the majority of the respondents (19,872) gave no reason. A small proportion (186) took the view that the proposal will increase financial burden.

## D. Protected characteristic of race

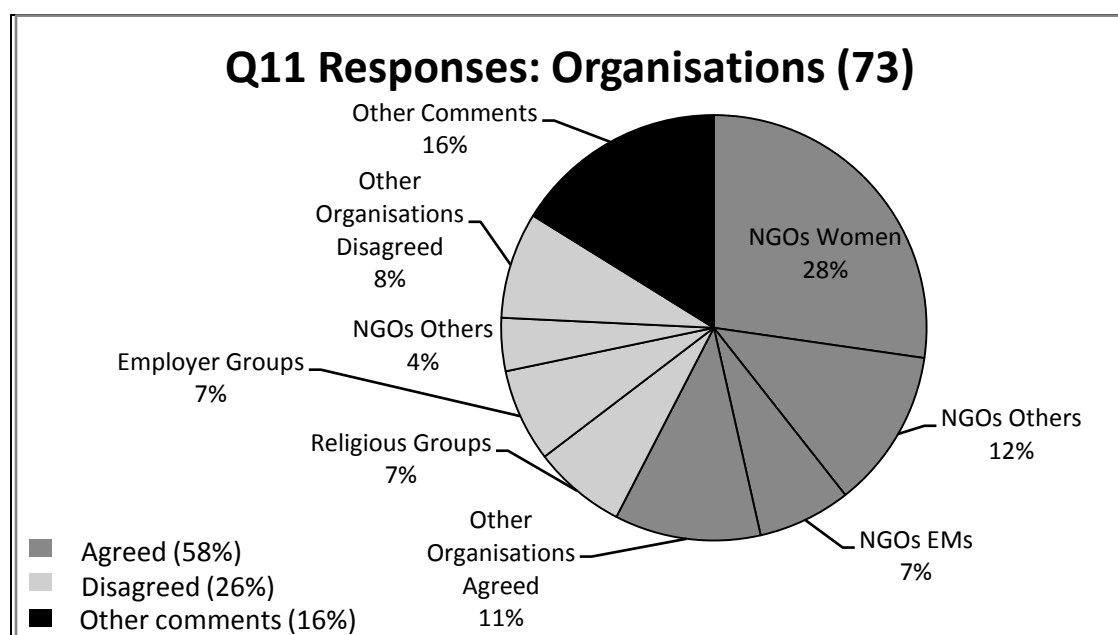
### (i) Nationality, citizenship, and residency status

#### Consultation Question 11

*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?*

4.69. Questions 11 to 16 are all related, so in relation to organisation responses, they are discussed together in question 11 below.

#### Organisations



4.70. 73 organisations expressed views on this question. Of the organisations that agreed, there were a number of reasons including:

- (i) There is evidence of people in Hong Kong being discriminated against on grounds of nationality, citizenship or residency status;
- (ii) Nationality, citizenship or residency status is often closely related to a person's race, and therefore there is a significant gap in protection under the Race Discrimination Ordinance;
- (iii) The lack of protection is not consistent with Hong Kong and international human rights obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,

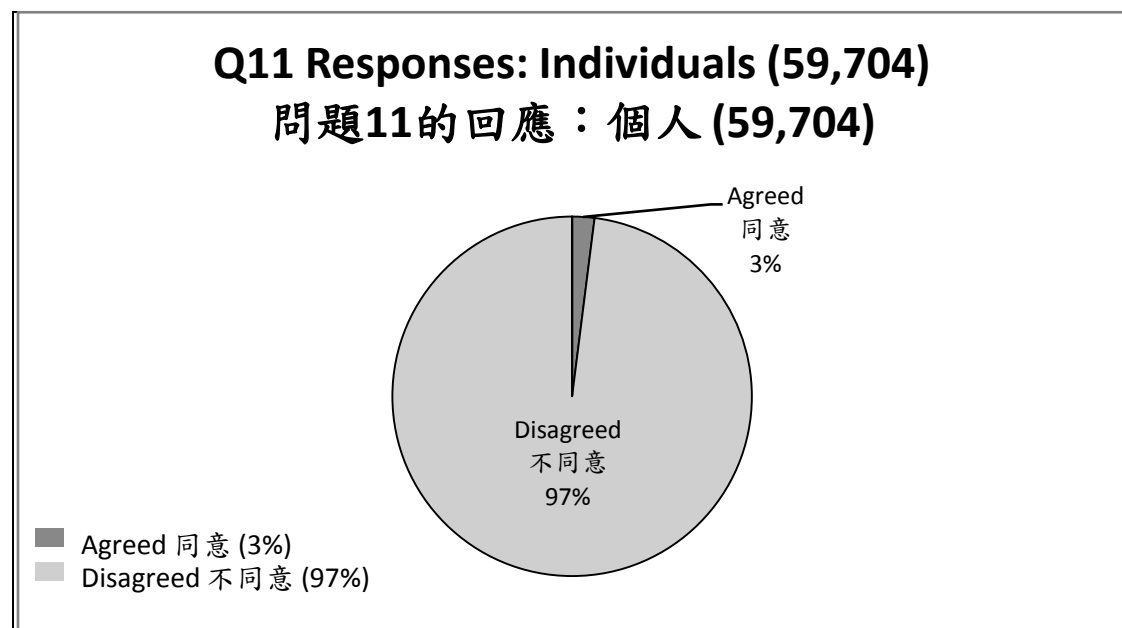
and recommendations made by the United Nations to provide protection on grounds of nationality, citizenship and residency status.

4.71. Of particular note were the responses from some NGOS working with ethnic minorities. They referred to evidence of discrimination on grounds of nationality by banks in relation to opening accounts; of employment discrimination on grounds of residency status for ethnic minorities in the construction sector; evidence of discrimination against new immigrants from mainland China in a number of fields such as employment and the provision of services; and evidence of discrimination against asylum seekers, for example in the provision of services.

4.72. Of the organisations which disagreed or expressed some concerns, the reasons varied:

- (i) In relation to nationality and citizenship, some banking organisations were concerned that protection from nationality could affect their ability to comply with money laundering legislation. As a result, an exception relating those requirements may be appropriate;
- (ii) In relation to residency status, the main concern was from the tourism sector and employer organisations that protection from residency status discrimination could affect their ability to provide specific benefits for tourists visiting Hong Kong. Such organisations believed further consultation on the possible effect of the proposals on their industry was appropriate;
- (iii) in relation to nationality, citizenship and residency status, some employer groups were concerned that the issues raised were complex, particularly in relation to possible discrimination between people from Hong Kong and the mainland, and that legislating on the issues may create a negative reaction.

## Individuals



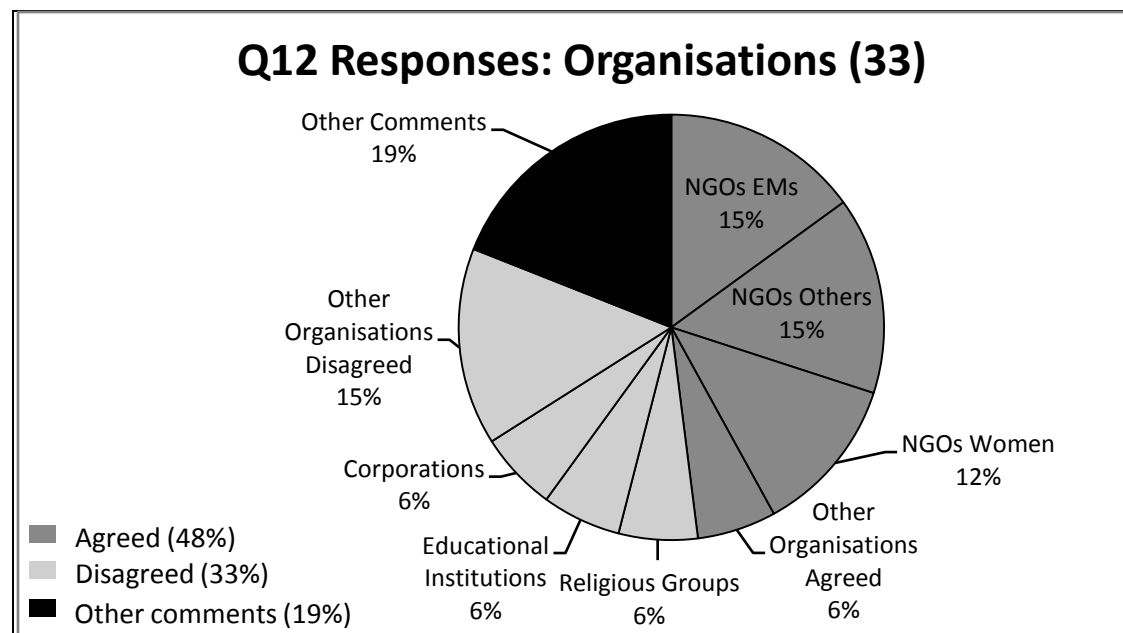
- 4.73. 59,704 respondents expressed views on this question. A small proportion of the respondents (1,790) were supportive with the question, the majority (57,885) raised opposition, while the rest (29) had other comments.
- 4.74. Of the respondents who agreed with this question, almost all respondents (1,787) gave no reason. A very few (3) opined that it would be important to respond to a changing society.
- 4.75. Of the respondents who disagreed with this question, over one-fifth of the respondents (19,928) gave no reason. Others generally made these key comments:-
- (i) It would make it unlawful to criticise the behaviour of mainlanders. (20,733 responses)
  - (ii) It would increase tension between people from Hong Kong and the Mainland. (2,068 responses)
  - (iii) It would enable mainlanders to claim benefits and rights of Hong Kong permanent residents. (17,926 responses)
  - (iv) Nationality, citizenship and residency status are different to race and, therefore, should not be protected. (30,912 responses)
  - (v) It is not common in other common law jurisdictions to provide such protections. (36 responses)
  - (vi) It is difficult to define the concepts of nationality, citizenship or residency status. (105 responses)
  - (vii) It is appropriate sometimes to have differences in entitlements depending on the length of residence. (563 responses)

- (viii) Increase social and financial burden. (812 responses)
- (ix) It would cause “PRC colonisation”. (31 responses)

## Consultation Question 12

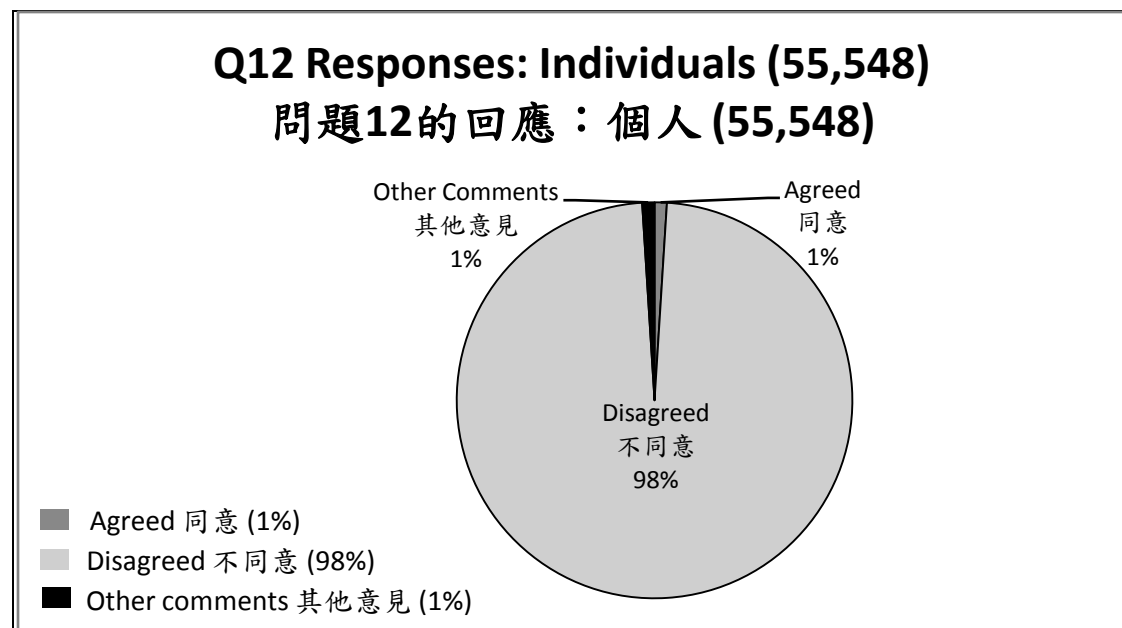
*In relation to residency status or related status, if you think there should be protection, how should it be defined?*

### Organisations



4.76. 33 organisations expressed views on this question. As Questions 11 to 16 are all related, they are discussed together in question 11 above.

## Individuals

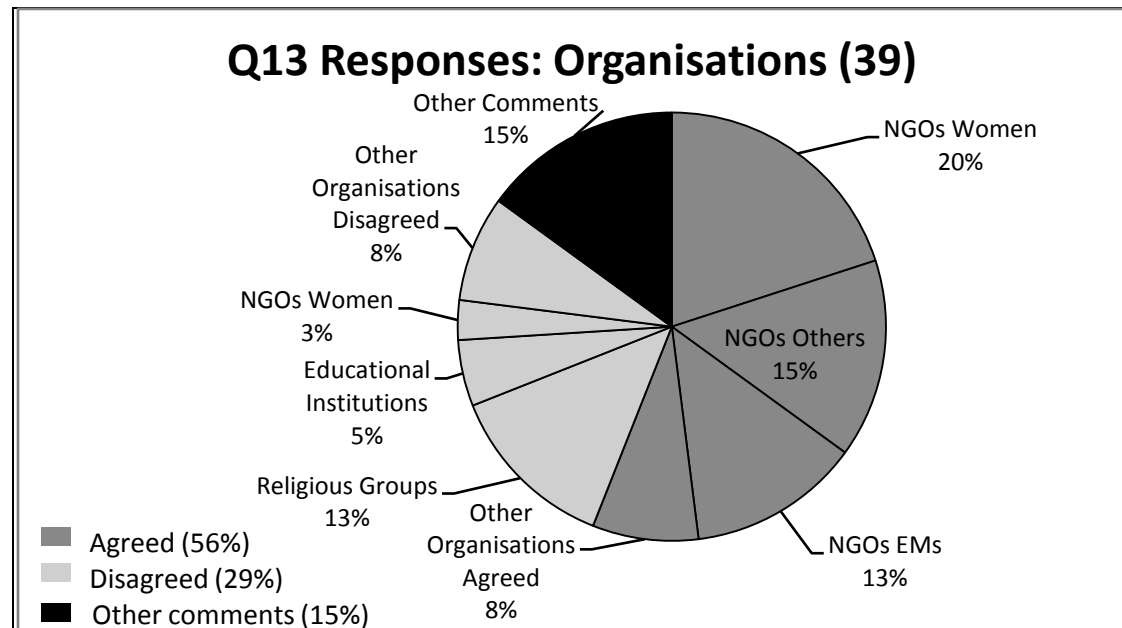


- 4.77. 55,548 respondents expressed views on this question. Although this is an open-ended question, most respondents did not answer how residency status or related status should be defined, but only indicated “yes” or “no” or make other comments.
- 4.78. Of the respondents who expressed views on this question, the EOC received the following:-
- The person to be protected must be a permanent resident or be the spouse of a permanent resident. (76 responses);
  - Do not agree there should be protection relating to residency status. (45,793 responses)
  - It would be too difficult to define residency status. (7 responses).

## Consultation Question 13

*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?*

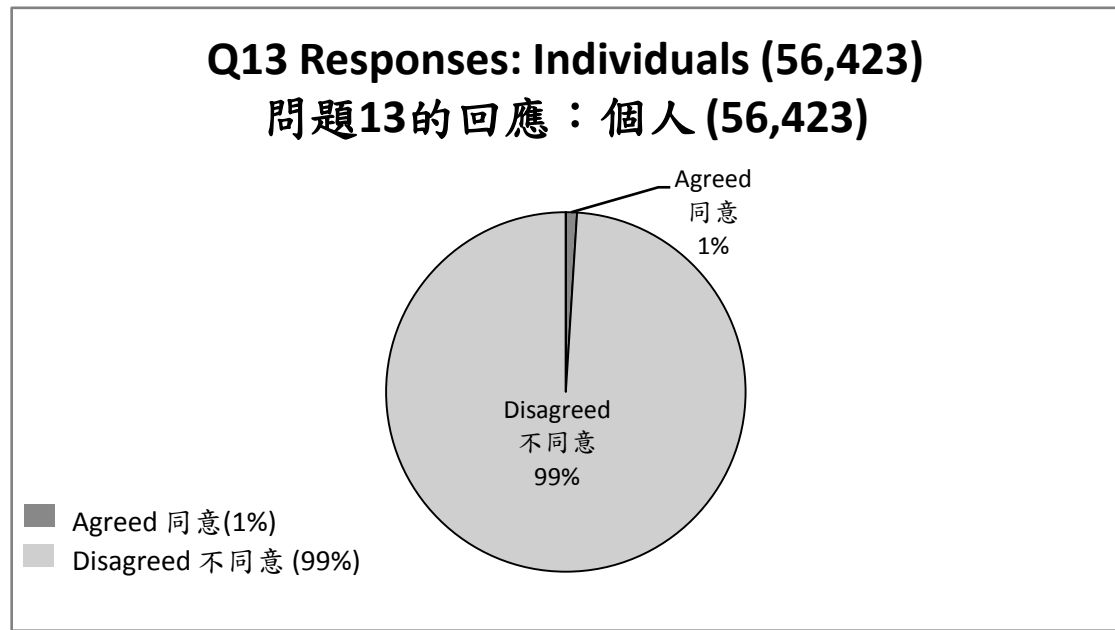
### Organisations



4.79. 39 organisations expressed views on this question. As Questions 11 to 16 are all related, they are discussed together in question 11 above.



## Individuals

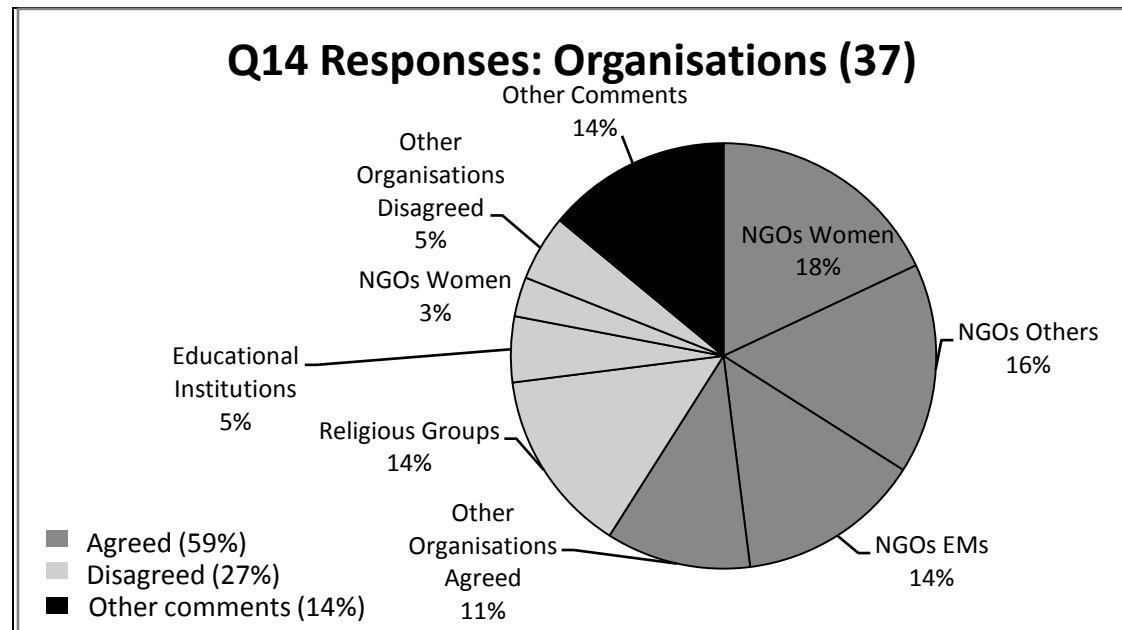


- 4.80. 56,423 respondents expressed views on this question. A small proportion of the respondents (373) supported this question, the majority of the respondents (56,041) indicated objection, while the rest (9) had other comments.
- 4.81. Of the respondents who agreed with this question, all respondents gave no reason.
- 4.82. Of the respondents who disagreed with this question, some respondents (9,012) gave no reason. Others expressed these views:-
- (i) Residency status and right of abode are unrelated to race, and the exceptions are appropriate. (45,794 responses)
  - (ii) The exceptions are needed for immigration and population control, and for fair resource distribution. (1,064 responses)
  - (iii) It would cause substantial numbers of mainlanders settling in HK and enjoying social welfare immediately. (118 responses)
  - (iv) Increase social and / or financial burden. (121 responses)
  - (v) It would cause "PRC colonisation". (52 responses)

## Consultation Question 14

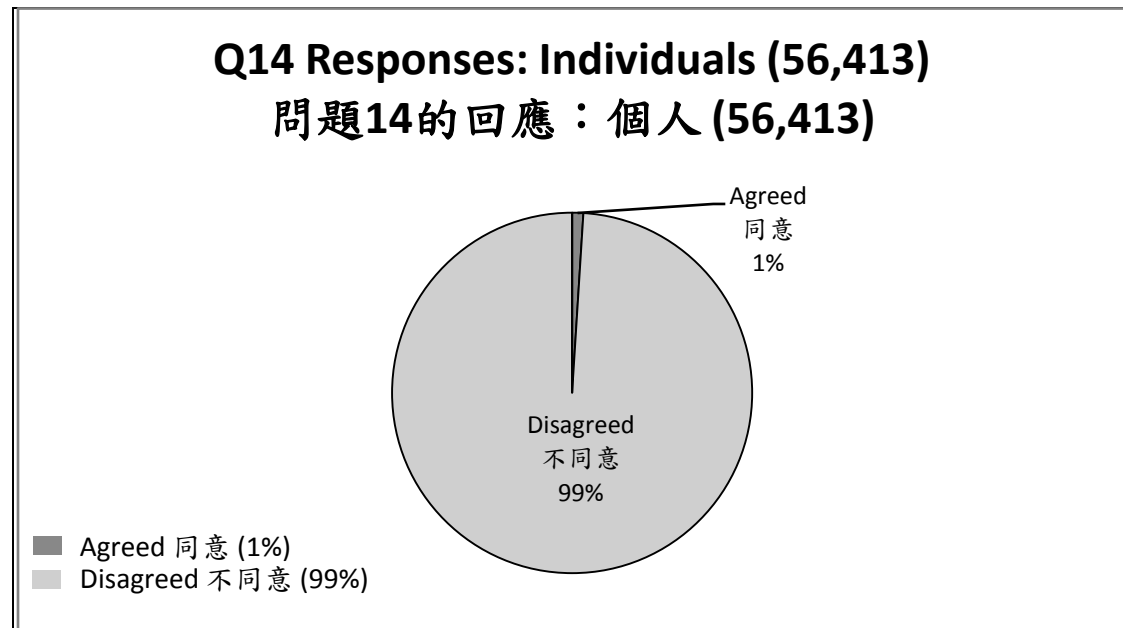
*Do you think that the exception to race discrimination on the grounds of length of residence in Hong Kong under section 8(3)(c) should be repealed?*

### Organisations



4.83. 37 organisations expressed views on this question. Questions 11 to 16 are all related so are discussed together in question 11 above.

## Individuals



4.84. 56,413 respondents expressed views on this question. A few respondents (376) agreed with this question, the majority (56,027) expressed their disagreement, while the rest (10) had other comments.

4.85. All respondents who agreed with this question gave no reason.

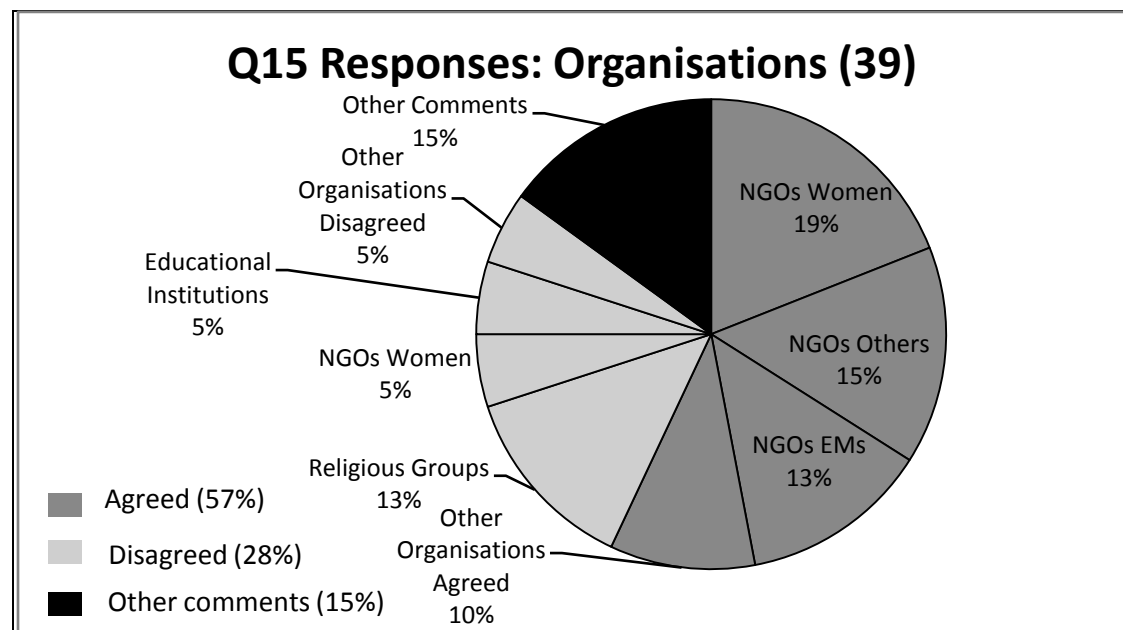
4.86. Of the respondents who disagreed with this question, some respondents (9,009) gave no reason. Others mainly took these views:-

- (i) The length of residence is unrelated to race, and the exception should, therefore, be retained. (46,945 responses)
- (ii) It would not be fair if persons who are not permanent residents can have the same benefits as permanent residents. (67 responses)
- (iii) Increase social and/or financial burden. (46 responses)
- (iv) It would cause "PRC colonisation". (5 responses)

## Consultation Question 15

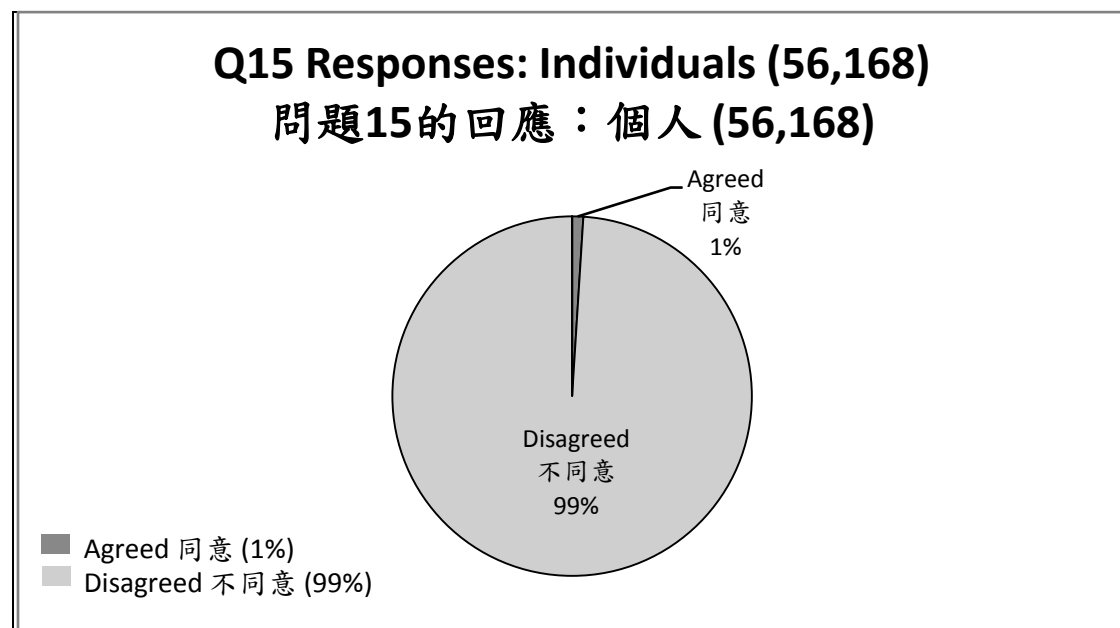
*Do you think that the exception to race discrimination on the grounds of nationality, citizenship or resident status of a person in another country under section 8(3)(d) should be repealed?*

### Organisations



4.87. 39 organisations expressed views on this question. As Questions 11 to 16 are all related, they are discussed together in question 11 above.

## Individuals

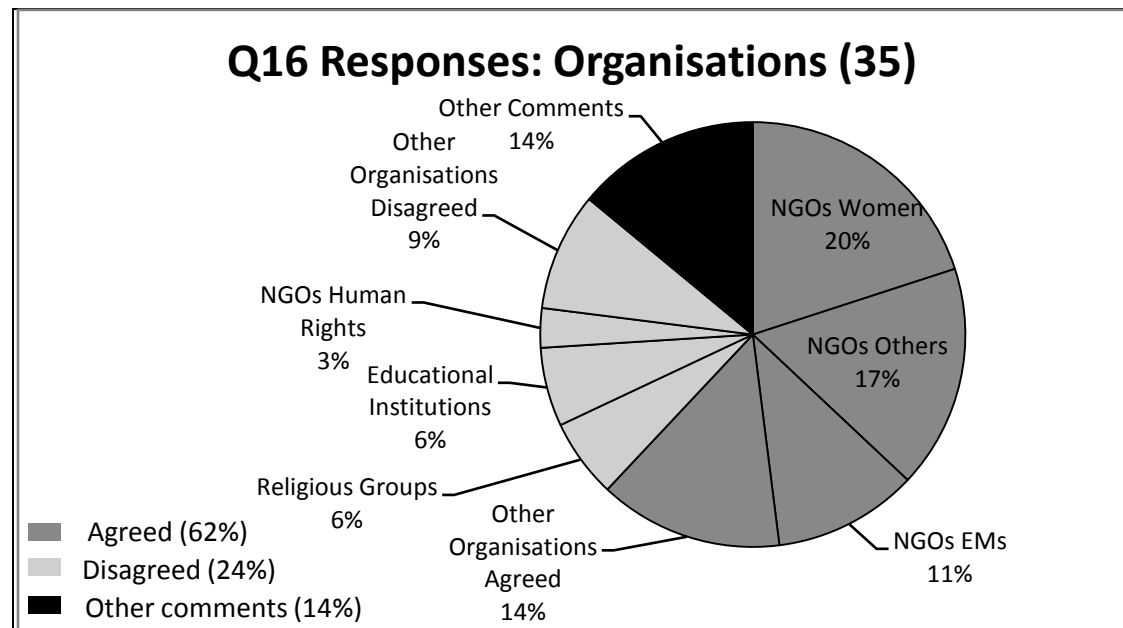


- 4.88. 56,168 respondents expressed views on this question. A minority of the respondents (399) were supportive of this question, the majority of the respondents (55,758) raised their objection, while the rest (11) had other comments.
- 4.89. All respondents who agreed with this question gave no reason.
- 4.90. Of the respondents who disagreed with this question, almost one-fifth of the respondents (10,162) gave no reason. Others made these comments:-
- (i) Nationality, citizenship and residency status are unrelated to race and, therefore, the exceptions should be retained. (45,563 responses)
  - (ii) Removal of the exceptions would be detrimental to determining policy relating to entitlements and resource allocation. (8 responses)
  - (iii) It would not be fair if persons who are not permanent residents can have the same benefits as permanent residents. (23 responses)
  - (iv) Increase social and/or financial burden. (6 responses)
  - (v) It would cause "PRC colonisation". (2 responses)

## Consultation Question 16

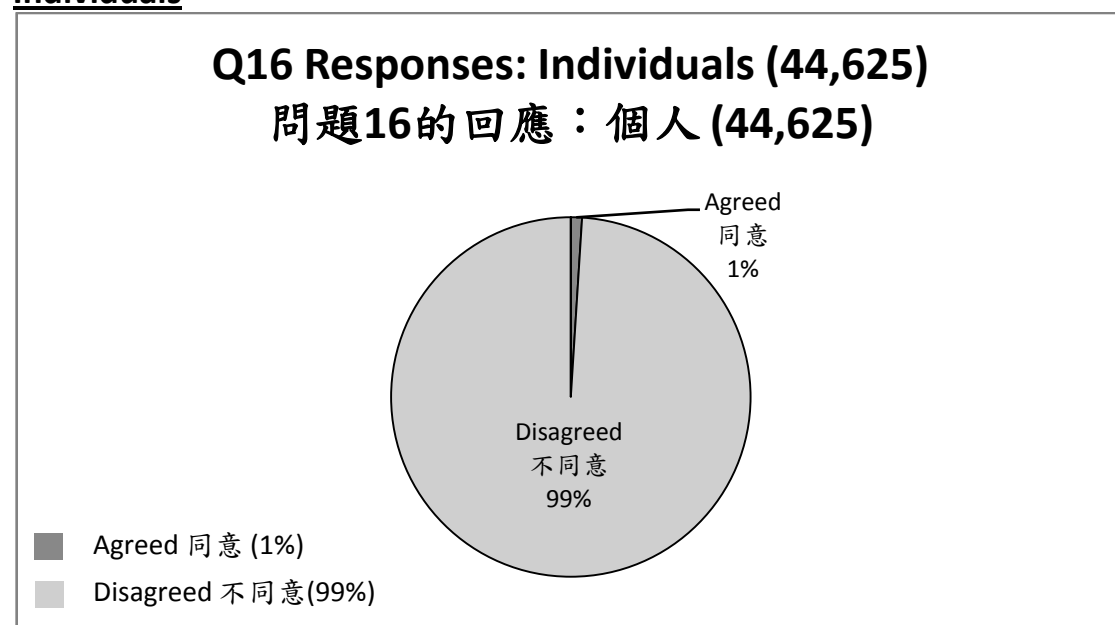
*Do you think that consideration should be given to an exception to discrimination on grounds of residency status, but only where the relevant requirement is for a legitimate aim and is proportionate?*

### Organisations



- 4.91. 35 organisations expressed views on this question. As Questions 11 to 16 are all related, they are discussed together in Question 11 above.

### Individuals



- 4.92. 44,625 respondents expressed views on this question. A small proportion of the respondents (554) indicated their support, the majority of the respondents (44,057) expressed disagreement, while the rest (14) had other comments.
- 4.93. All respondents who agreed with this question gave no reason.
- 4.94. Of the respondents who disagreed with this question, some of the respondents (9,672) gave no reason. Others took these views:-
- (i) Residency status should not become a protected characteristic under discrimination laws. (34,347 responses)
  - (ii) It would not be fair if persons who are not permanent residents can have the same benefits as permanent residents. (45 responses)
  - (iii) Increase social and/or financial burden. (9 responses)
  - (iv) It would cause "PRC colonisation". (1 response)

## Chapter 5      Forms of Prohibited Conduct

5.01. This Chapter describes the responses to Chapter 3 of the Consultation Document on the forms of prohibited conduct and in particular: direct and indirect discrimination; pregnancy discrimination; equal pay for equal value provisions; discrimination relating to having an assistance animal; discrimination arising from disability; a duty to make reasonable accommodation for persons with disabilities; harassment including sexual harassment; intersectional discrimination; discrimination by association; discrimination by perception; and other unlawful conduct.

### A.          Direct discrimination

#### Consultation Question 17

*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 2 persons without that particular disability (including persons with a different disability)?*

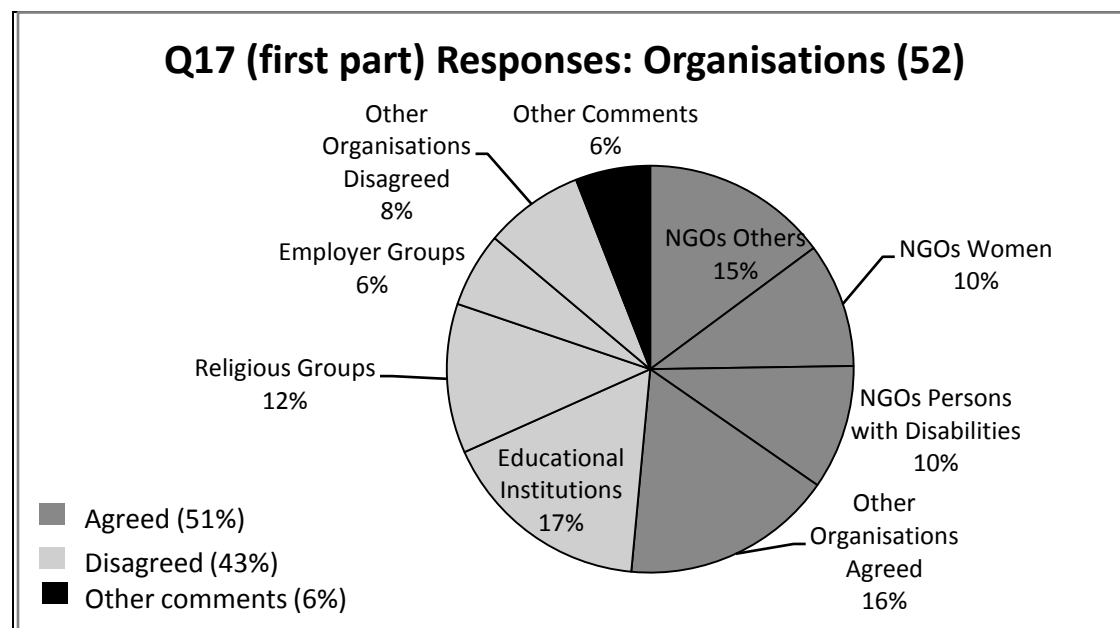
#### First Part of Question 17

*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 .....*

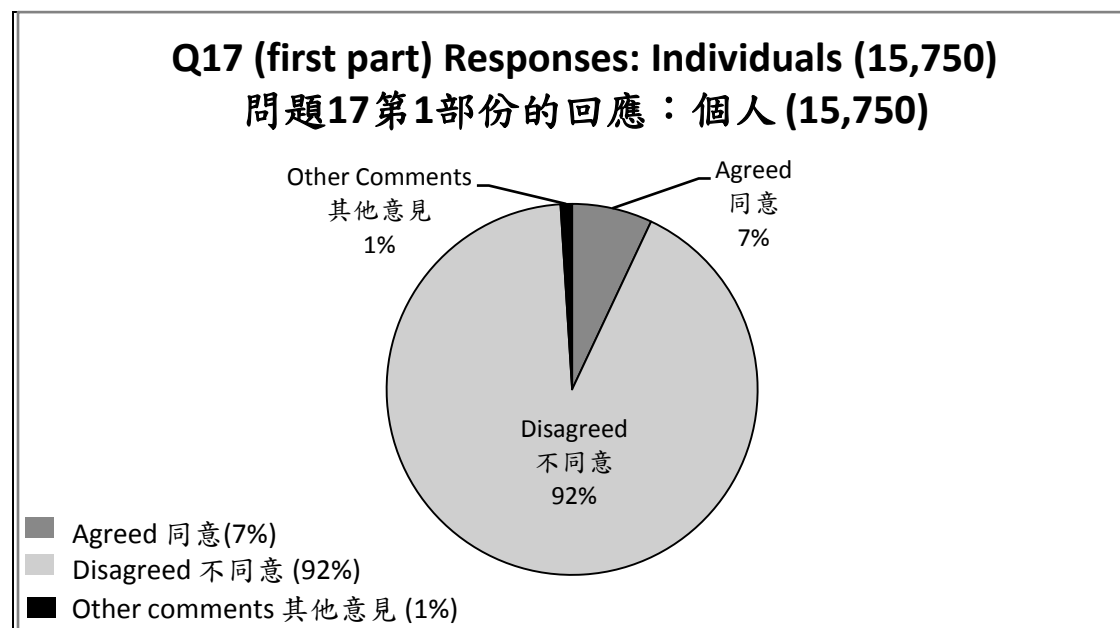


## Organisations



- 5.02. 52 organisations expressed views on this part. Of the organisations that agreed, a number noted (as discussed in the Consultation Document) the importance of ensuring that discrimination is prohibited on the basis of the characteristic, without a requirement that the victim possesses the characteristic in question. Several highlighted that the definition of direct discrimination should be consistent with the concepts of discrimination by association and discrimination on the basis of perception. One legal group noted that there should be an overarching and simplified definition of direct and indirect discrimination, which should serve an educative function as well as to provide legal clarity of rights and obligations.
- 5.03. Of the organisations that disagreed, the main reason given was that it would unduly and unnecessarily broaden the protection. One group noted that the proposal would be, in their view, contrary to a fundamental principle of discrimination law that “the reason for discrimination should be due to the attribute of the person claiming discrimination, rather than the attribute of a third party”.

## Individuals



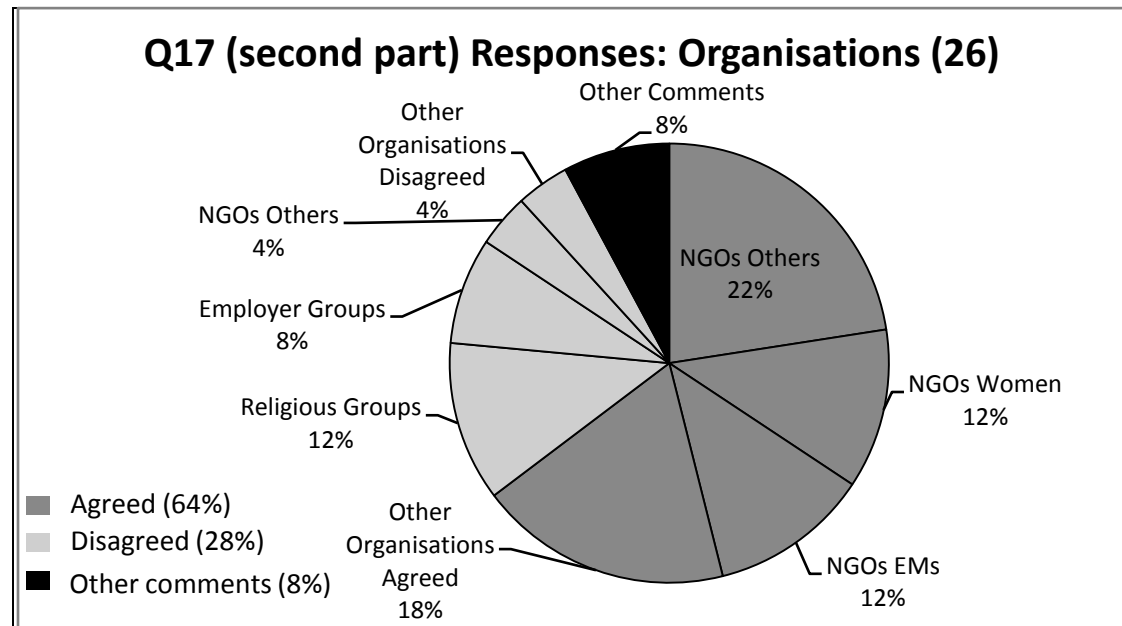
- 5.04. 15,750 respondents expressed views on this part. A few respondents (1,122) agreed with this part, the majority (14,430) raised their objection, while some (198) had other comments.
- 5.05. Of the respondents who agreed with this part, almost all respondents (1,117) gave no reason, while a few (5) opined that the definition of direct discrimination is clearer and more objective.
- 5.06. Of the respondents who disagreed with this part, almost all respondents (14,418) gave no reason. A minority (12) expressed the view that the amendment would not make a big difference.

## Second Part of Question 17

***Do you think that the definition of direct discrimination should be amended to:-***

- .....
- ***made clear that for direct disability discrimination a comparison can be made with 2 persons without that particular disability (including persons with a different disability)?***

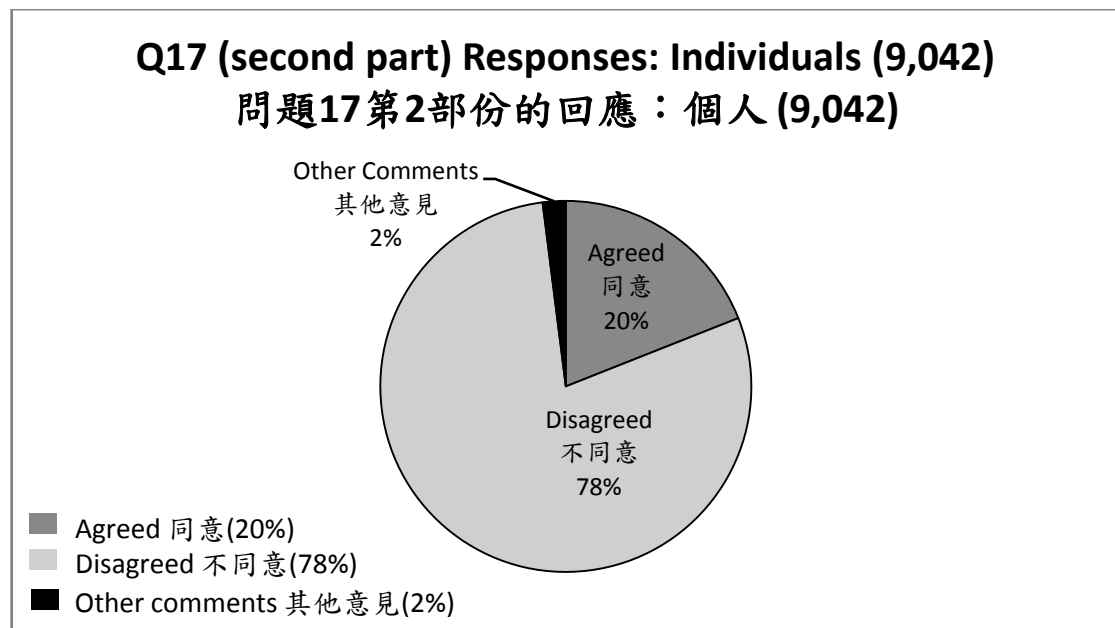
## Organisations



5.07. 26 organisations expressed views on this part. Of the organisations that agreed with the proposal to make a clarification to the comparator in direct disability discrimination, a number noted that the comparator in direct disability discrimination should encompass different types and levels of disabilities, including between different disabilities. One organisation referred to the approach in the British Equality Act 2010. One NGO working with people with disability agreed, but also noted their concern that if certain social enterprises only employ persons with a particular type of disabilities (e.g. blind people), they may breach the law.

5.08. Of the organisations that disagreed, one legal institution wrote that it is clearer to base the comparator in direct disability discrimination as between persons with and without a disability. In their view, adding a comparator to include person with a different disability shows a misunderstanding of the intention of the legislation, or would cause confusion on the scope of the protection.

## Individuals



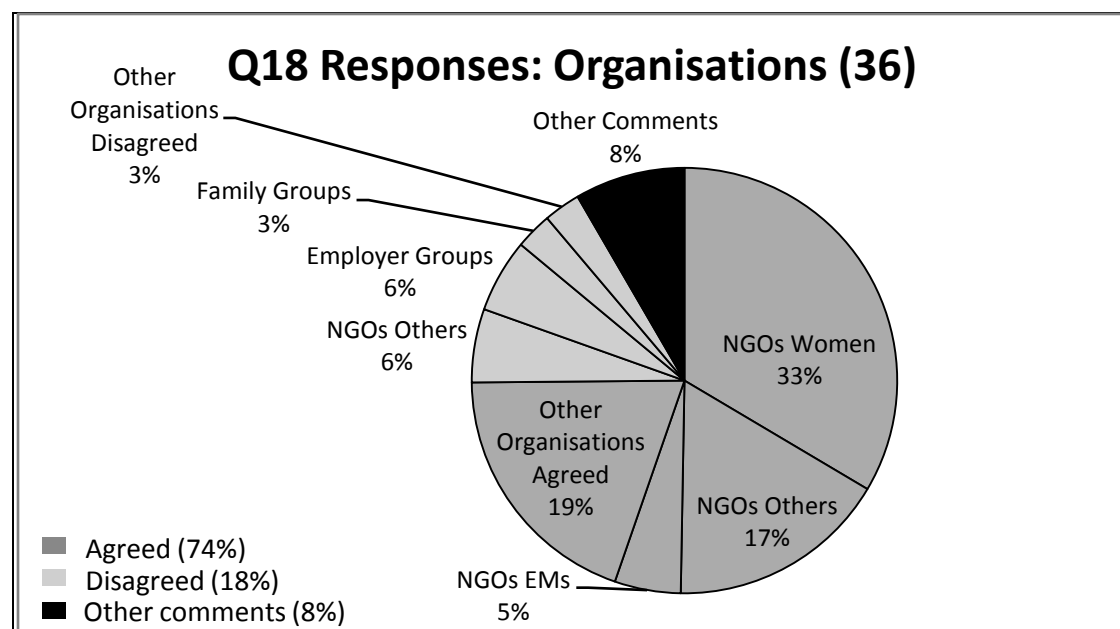
- 5.09. 9,042 respondents expressed views on this part. Close to one-fifth of the respondents (1,784) supported this question, almost four-fifths (7,065) expressed objection, while a small number (193) had other comments.
- 5.10. Of the respondents who agreed with this part, almost all respondents (1,778) gave no reason, while a few (6) expressed the view that the definition of direct discrimination is clearer and more objective.
- 5.11. Of the respondents who disagreed with this part, almost all respondents (7,054) gave no reason, while a small number (11) viewed that the amendment will not clarify the definition.

## B. Direct pregnancy discrimination

### Consultation Question 18

*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”?*

#### Organisations

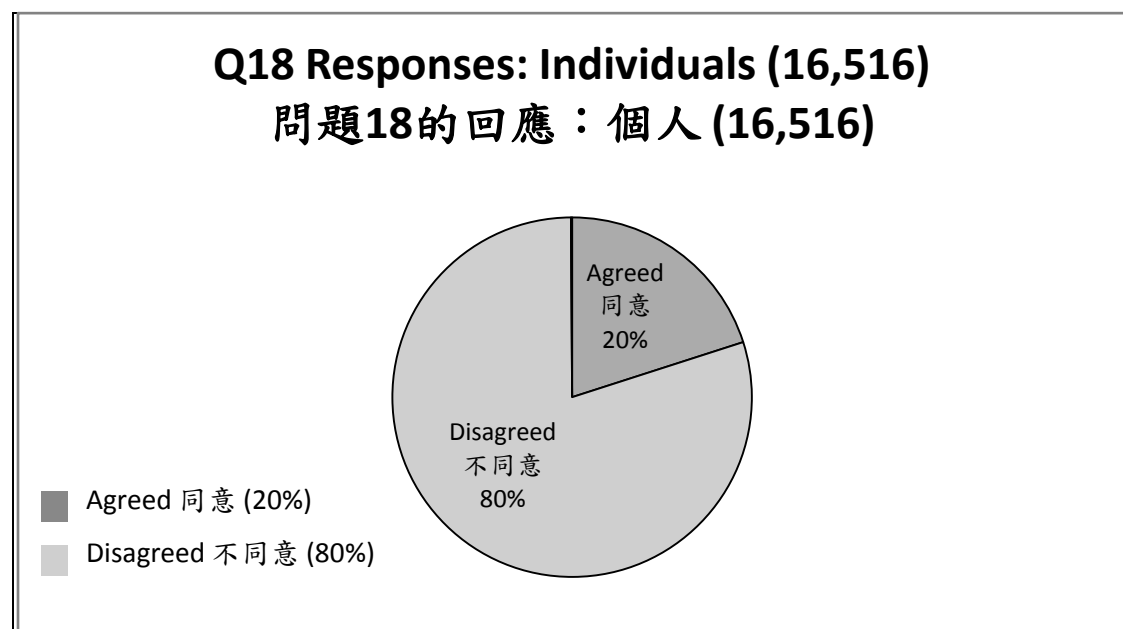


- 5.12. 36 organisations expressed views on this. Of the organisations that agreed with the proposal, some cited the prevalence of discrimination faced by women in relation to her pregnancy, including related-sicknesses, and the subsequent need for clearer protection. One NGO working with women noted that pregnancy discrimination “should cover all health complications, physical and mental, arising from or connected with pregnancy, and should cover entire child bearing timeline: potential pregnancy, pregnancy, maternity, post natal and breastfeeding”.
- 5.13. With regard to removing the comparator in pregnancy discrimination, several organisations cited the observation by the Committee on Economic, Social and Cultural Rights (CESCR, General Comment 20, para. 10(a)) on this subject. Another NGO supported the removal of a comparator in pregnancy discrimination, but urged the EOC to amend the wording of the proposed

characteristics in a number of respects to improve clarity. One employee group also suggested that the EOC should research and formulate a Code of Practice on the SDO on Education, dealing with underage students' pregnancy and their discrimination in school or society.

- 5.14. Of the organisations that disagreed with the question, a reason given is that the current system is working adequately; thus, there is no justification for the amendment. One organisation representing the legal profession felt that current protections under the SDO and the Employment Ordinance already provide sufficient protections for the situation described. One employer group noted their concern that the removal of the comparator in pregnancy discrimination would mean one has to rely on subjective assessment, which would lead to uncertainty and a rise in claims.

### **Individuals**

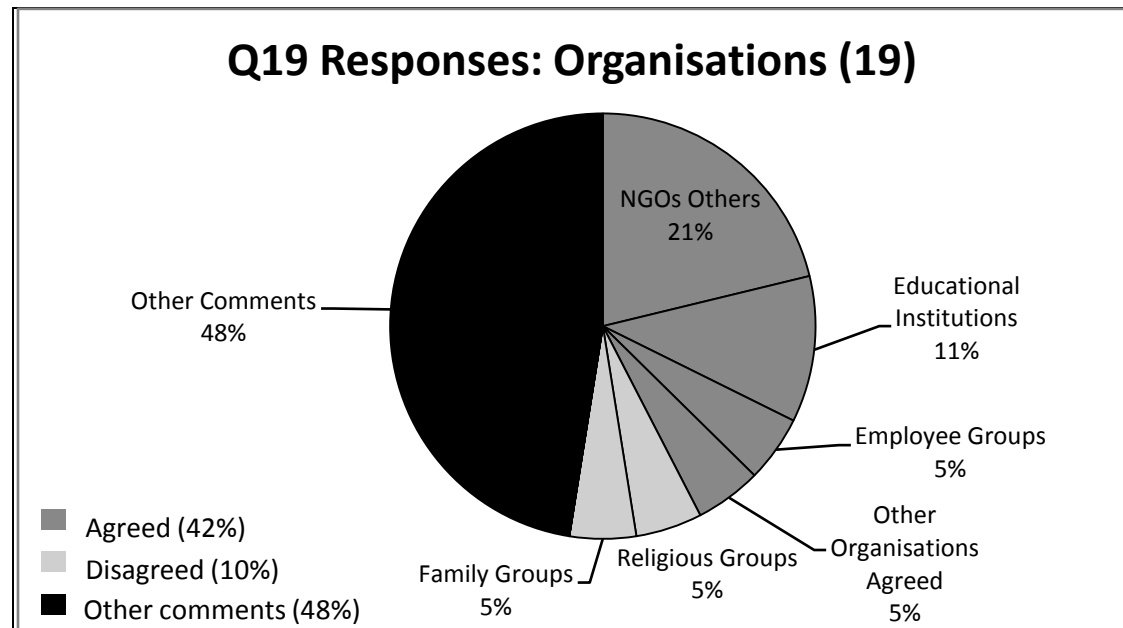


- 5.15. 16,516 respondents expressed views on this question. Some respondents (3,311) were supportive of this question, many (13,188) raised their objection, while a small number (17) had other comments.
- 5.16. All respondents who agreed with this question gave no reason.
- 5.17. Of the respondents who disagreed with this question, almost all respondents (13,184) gave no reason, while a few (4) viewed that the test proposed is not essential.

## Consultation Question 19

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

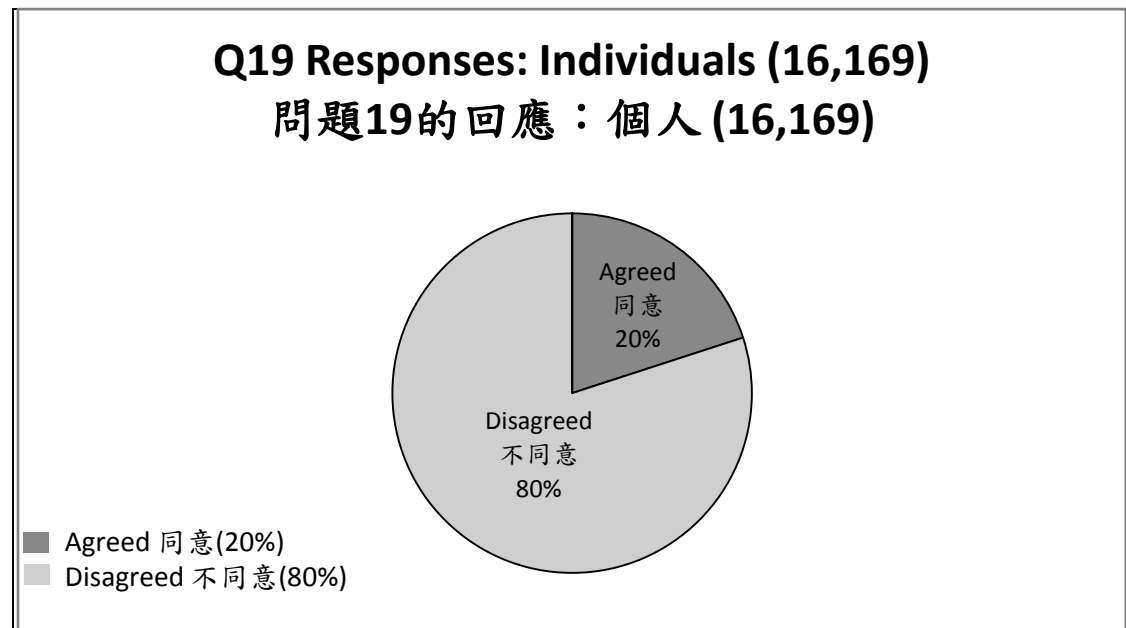
### Organisations



5.18. 19 organisations expressed views on this question. In relation to organisations' response to this question, a number cited the importance of introducing a statutory right of return to work after maternity leave to better protect women from discrimination when having children. Almost all the organisational responses noted that, similar to practices in overseas jurisdictions such as Australia or the UK, the right to return could be for a specified period of time after return from maternity leave, and can be subject to reasonable exceptions, such as the role no longer exists and there are genuinely no other roles that the woman can return to.

5.19. For organisations that disagreed with the proposal, they generally expressed the view that the current protections from pregnancy discrimination are sufficient.

## Individuals



- 5.20. 16,169 respondents expressed views on this question. Some respondents (3,202) were supportive of this question, many (12,919) raised their objection, while a small number (48) had other comments. All respondents who agreed or disagreed with this question did not give any reason.



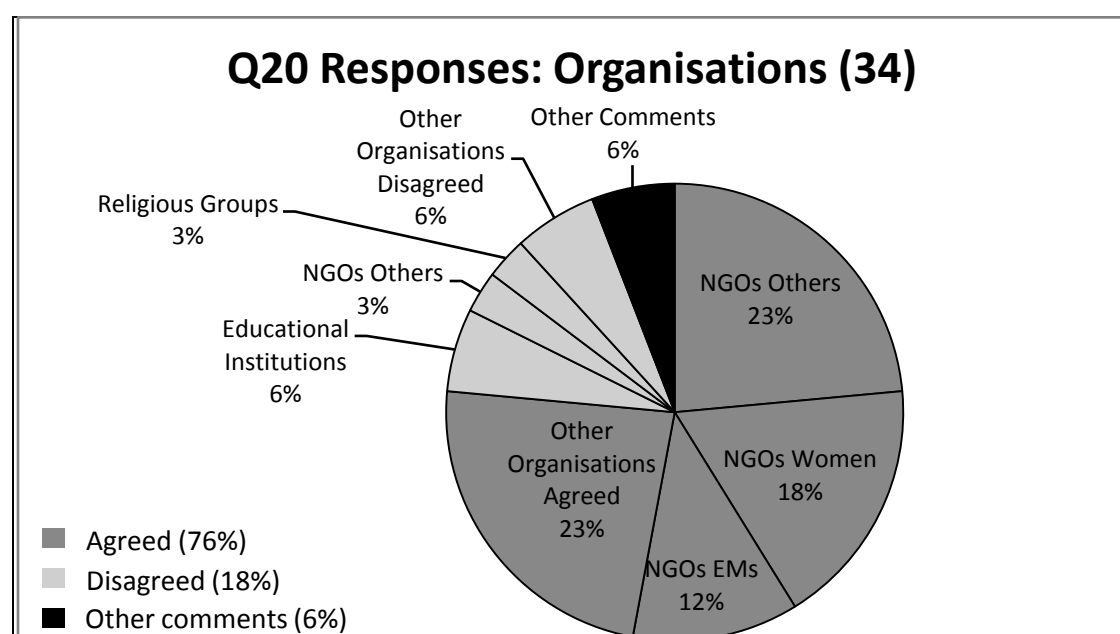
## C. Indirect discrimination

### Consultation Question 20

***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”?***

### Organisations

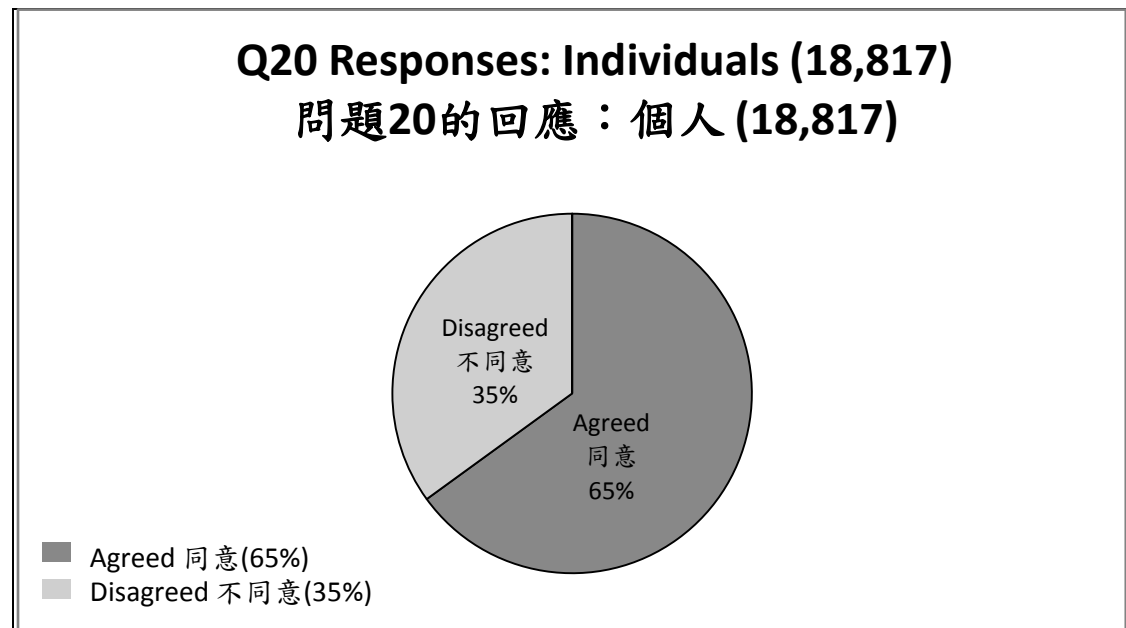


5.21. 34 organisations expressed views on this question. Of the organisations that agreed with the proposal, the main reason provided was the difficulty currently faced by victims of discrimination in seeking redress under the current narrow definition. One human rights NGO noted that, under the current definition, it is easy for discriminators to justify their discrimination and avoid liability. Another NGO agreed with the EOC’s proposal but suggested a few amendments to the EOC’s proposed definition, including replacing “requirement” with “criterion” in order to include informal practices in addition to formal rules and requirements; and that the test of justification be expanded to include the element of “necessity” in addition to being for a legitimate aim and proportionate.

5.22. For organisations that disagreed with the proposal, the main reason provided was that the current definition was adequate. One group representing the

legal profession cited that there is case law guidance on what to consider in the context of justification, such that it is unnecessary to put this into legislation. One employees group disagreed with the EOC's proposal to use the British model "provision, criterion or practice" for the proposed definition, but supported the adoption of a more flexible term, "policies, procedures, rules, arrangements and requirements", as adopted by European countries.

## **Individuals**



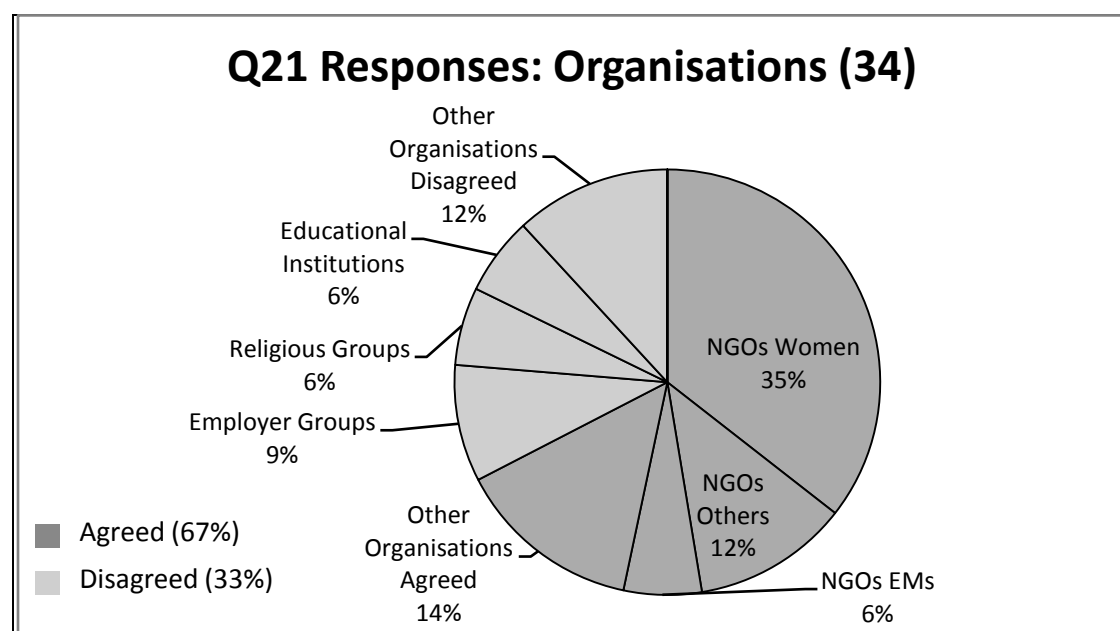
- 5.23. 18,817 respondents expressed views on this question. Close to two-thirds (12,197) of the respondents expressed their agreement to this question, over one-third (6,557) raised their objection, while the rest (63) had other comments.
- 5.24. Of the respondents who agreed with this question, almost all respondents (12,191) gave no reason, while a few (6) viewed that further study is required.
- 5.25. Of the respondents who disagreed with this question, almost all respondents (6,551) gave no reason, while a few (6) viewed that the proposed change will not make a big difference.

## D. Equal pay for work on equal value for women and men

### Consultation Question 21

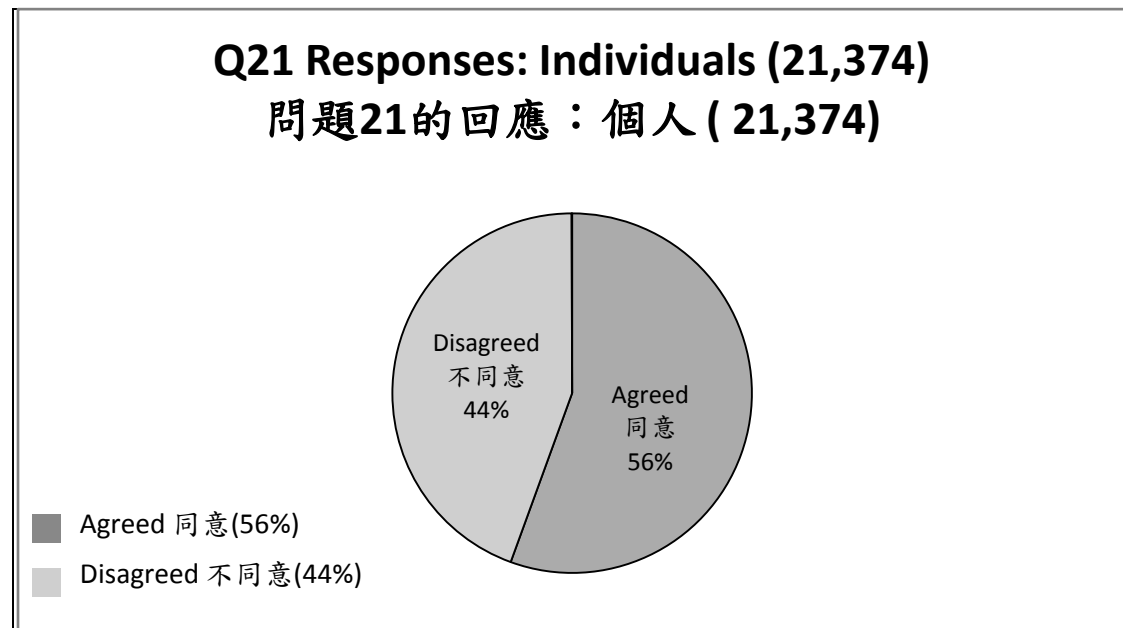
*Do you think that there is a need for introducing specific equal pay for equal value provisions?*

#### Organisations



- 5.26. 34 organisations expressed views on this question. For organisations expressing support for the proposal, a number cited evidence of discrimination between women and men in pay. One NGO noted that it is not clear if the evidence of gender pay gap is of like roles, or what other reasons could contribute to it. Some others cited international legal obligations and best practices, which suggest that there should be specific provisions within anti-discrimination legislation on equal pay. Such measures may provide wider benefits such as giving key definitions on what constitutes work of “equal value”, and setting out additional means to tackle pay inequality.
- 5.27. For organisations who disagreed with the proposal, the main reason provided was that there is insufficient evidence to warrant introducing a new provision, and that it would involve significant resource and costs to employers. One employer group felt that the proposal assumes implicitly that wages do not reflect actual value, and that the proposal would be tantamount to wage control.

## Individuals



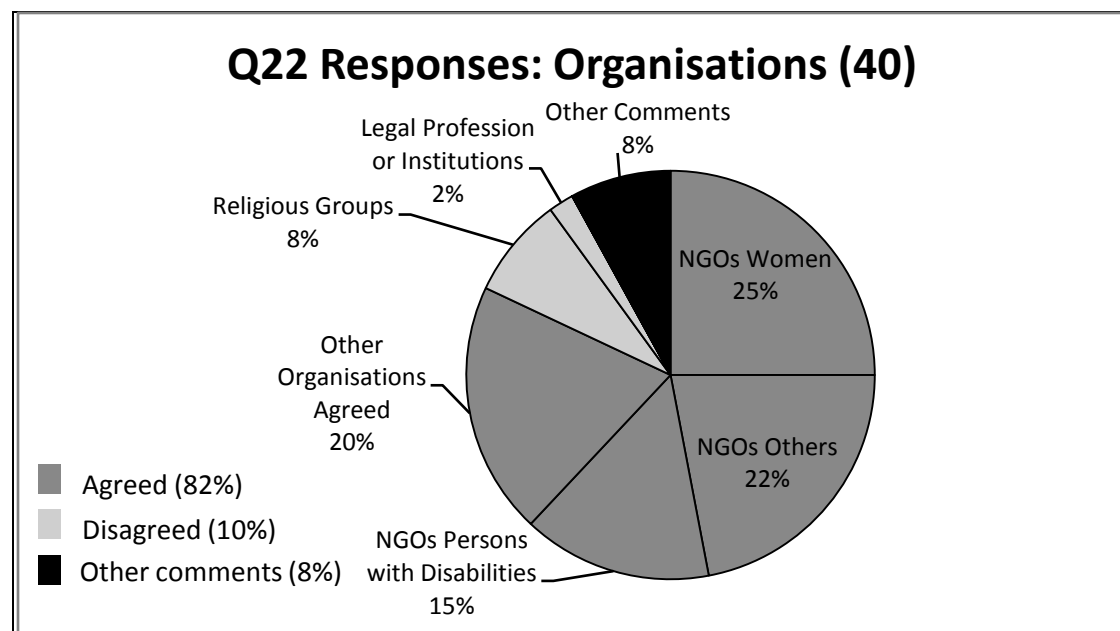
- 5.28. 21,374 respondents expressed views on this question. Over half of the respondents (11,876) indicated their support to this question, a significant number (9,489) indicated opposition, while a small number (9) had other comments.
- 5.29. Of the respondents who agreed with this question, almost all respondents (11,867) gave no reason, while a few (9) expressed the concern that it is difficult to quantify what is work of equal value.
- 5.30. Of the respondents who disagreed with this question, the majority of the respondents (9,283) gave no reason, while some (206) opined that it would not be possible to determine the value of different jobs.

## E. Disability discrimination

### Consultation Question 22

*Do you think that discrimination due to being accompanied by assistance animal should be added as a category of disability discrimination?*

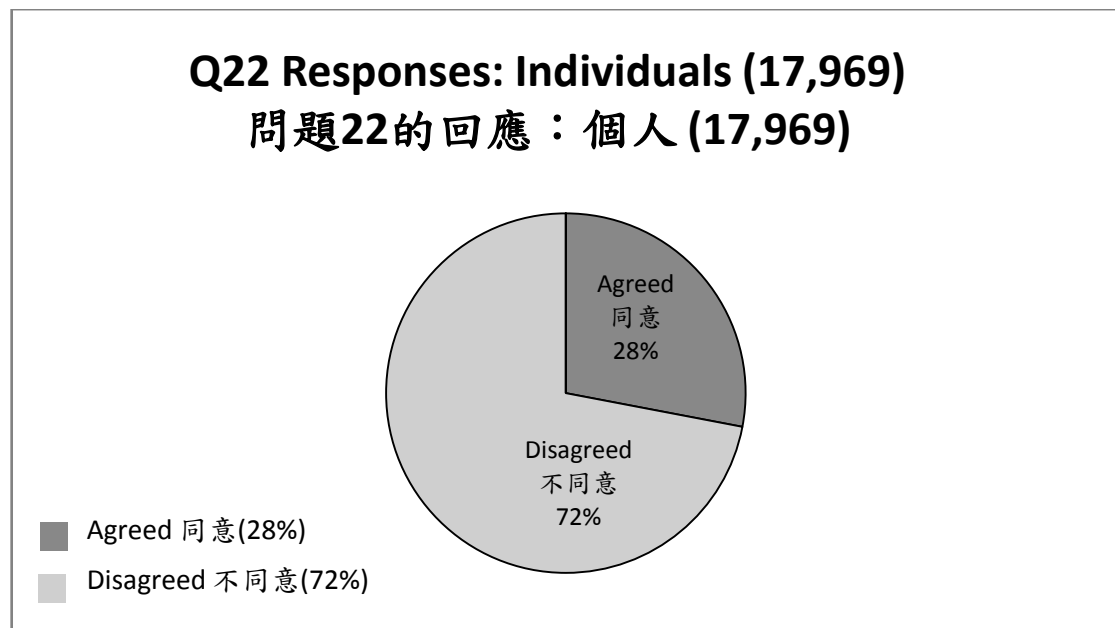
#### Organisations



5.31. 40 organisations expressed views on this question. For organisations that agreed with the proposal, a number cited that there are plans to increase the number of assistance animals, which could help people with visual impairment to better participate in the community. A few organisations also noted that the EOC or the Government should have responsibilities to promote the development of assistance animals and raise public awareness, given that there is a lack of understanding on assistance animals currently, which may fuel discrimination. A number of organisations also noted that there should be a clear definition of assistance animals, including one NGO who urged the EOC to provide appropriate guidance on the applicability of the legislation to facilitate its implementation. One corporation also raised a concern that only properly accredited or certified assistance animals should be recognised, and that it should be possible to request proof of disability and requirement of assistance animals.

5.32. For organisations who disagreed with the proposal, a reason provided was that, given Hong Kong's high population density, the proposal may bring up issues with public safety and animal management.

## Individuals

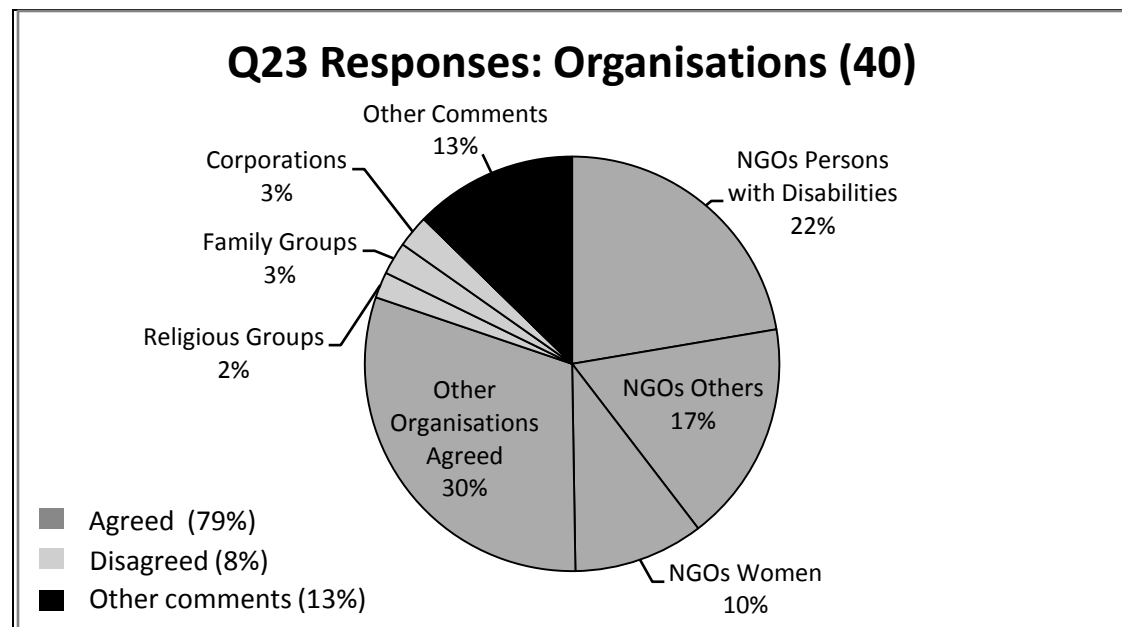


- 5.33. 17,969 respondents expressed views on this question. Over one-quarter of the respondents (5,039) supported this question, close to three-quarters (12,921) raised their objection, while very few (9) had other comments.
- 5.34. Of the respondents who agreed with this question, almost all respondents (5,038) gave no reason, while one (1) respondent expressed the view that public education should be done first.
- 5.35. Of the respondents who disagreed with this question, the majority of the respondents (12,912) gave no reason, while a small fraction (9) expressed the view that assistance animals can cause problems such as colleagues being allergic to them, and hygiene issues.

## Consultation Question 23

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

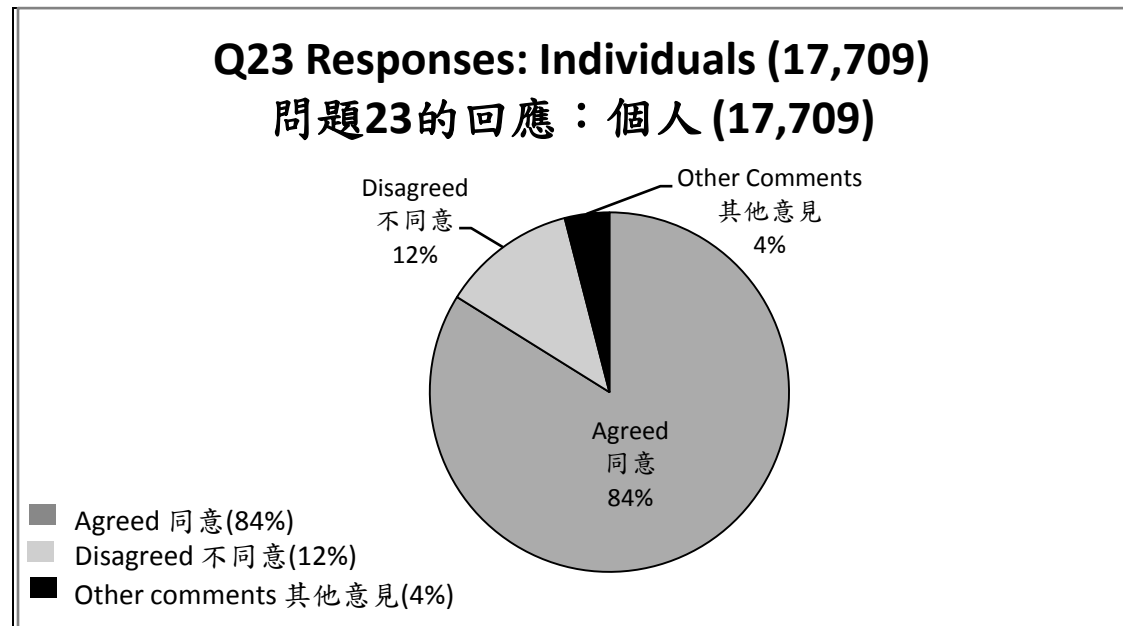
### Organisations



5.36. 40 organisations expressed views on this question. Of the organisations in agreement with the proposal, some cited situations where there is currently a gap in protection. One NGO working with people with disability noted that the proposal would be relevant for people with chronic illness who require regular follow-up medical appointments. A legal organisation also noted that this proposal is linked to the issue of comparators for disability discrimination. This should be amended to eliminate the need to identify either a real or hypothetical comparator, which often leads to unnecessarily strained reasoning and unpredictable outcomes. One group representing people with disabilities also stated that, for reasons of clarity, the specific categories of disability discrimination in sections 9 and 10 of the DDO should also be retained.

5.37. For organisations who disagreed with the proposal, one noted that there is insufficient evidence indicating a need for the proposed provision.

## Individuals



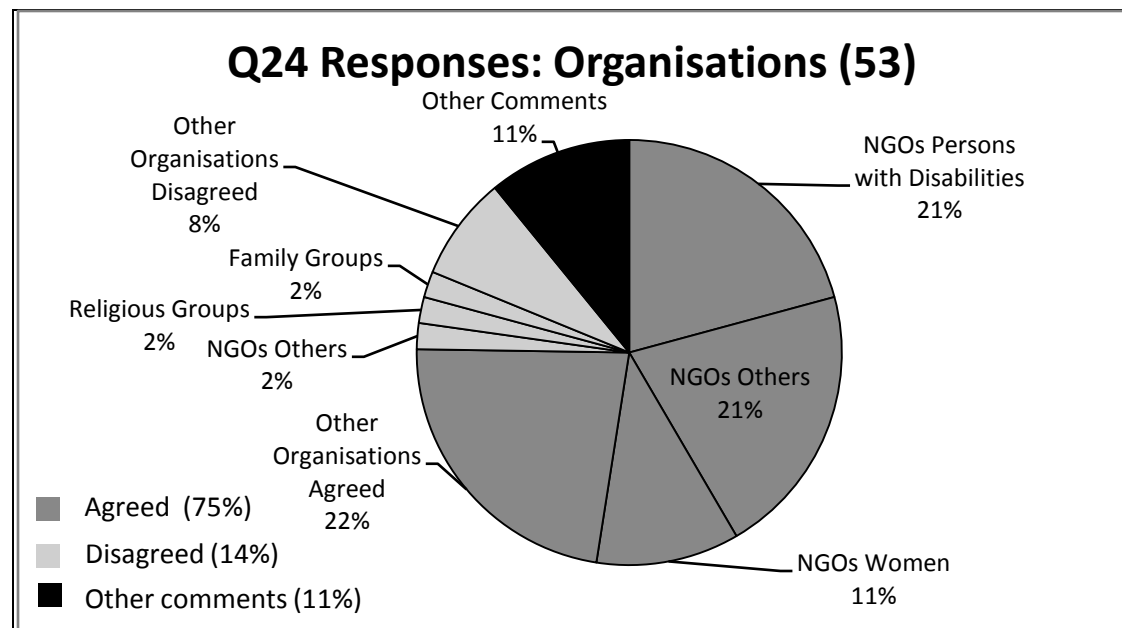
- 5.38. 17,709 respondents expressed views on this question. Many respondents (14,855) were supportive of this question, some (2,144) indicated disagreement, while a small number (710) had other comments.
- 5.39. Of the respondents who agreed with this question, almost all respondents (14,852) gave no reason, while a very few (3) suggested that the EOC conduct research before introducing a new category.
- 5.40. Of the respondents who disagreed with this question, the majority of the respondents (2,135) gave no reason, while a small proportion (9) opined that the existing Disability Discrimination Ordinance provisions are sufficient.



## Consultation Question 24

*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?*

### Organisations



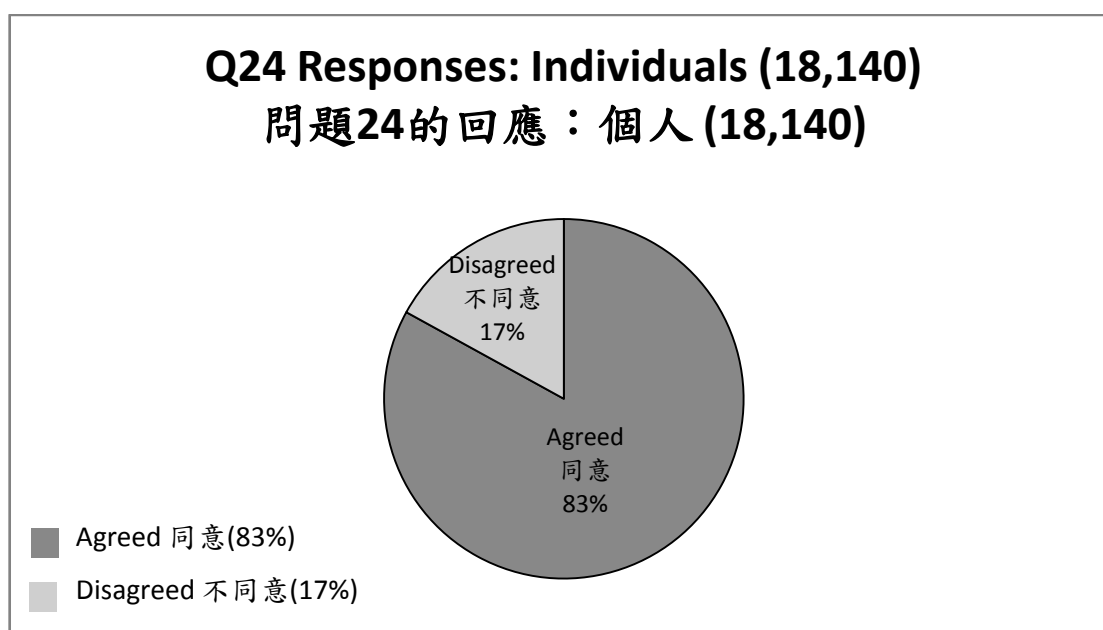
5.41. 53 organisations expressed views on this question. Of the organisations who agreed with the proposal, a considerable number referred to Hong Kong's obligations under the Convention on the Rights of Persons with Disabilities (CRPD) as a key reason to introduce a duty to make reasonable accommodation for persons with disabilities. One NGO also urged the EOC to include failure to make reasonable accommodation as a distinct form of discrimination. A few organisations also wrote that "reasonable accommodation" should be clearly defined, with due consideration given to employers' concerns.

5.42. A number of NGOs also noted that people with disability currently face significant barriers to equality, including in social aspects of health/ sports, employment and education; this suggests that the current protection under the DDO is outdated and should be reformed to be in line with the international standard of the social model of disability. One human rights NGO observed, for instance, that, under Hong Kong's current model, there is no duty for an employer to consider changing the nature of job for an employee with disability, or considering the employee for another post,

particularly when the employee develops a disability while being employed. A group working on LGBT rights also noted that, under the proposal, there should be reasonable accommodation provided to those with gender identity disorder.

- 5.43. For organisations who disagreed with the proposal, the main reasons cited were the potential cost implications, both for employers as well as service providers in order to make adjustments to premises or provide reasonable accommodation (such as finding a new role for the employee with disability). One public body expressed their view that the current scope of protection is sufficient, and a new duty is not necessary. Others noted that, since the issue involves a fundamental shift in the approach and scope of protection, it should be a policy issue for the Government to consider. A few groups also expressed concern about the increase in employers' liability, and urged the EOC to clearly define the scope of the employer's responsibilities.

### **Individuals**



- 5.44. 18,140 respondents expressed views on this question. Many respondents (15,045) supported this question, some (3,070) raised their objection, while the rest (25) had other comments.
- 5.45. Of the respondents who agreed with this question, almost all respondents (15,039) gave no reason, while a very few (6) took the view it will offer better protection for persons with disability.
- 5.46. Of the respondents who disagreed with this question, the majority of the respondents (2,837) gave no reason. Others mainly took these views:-

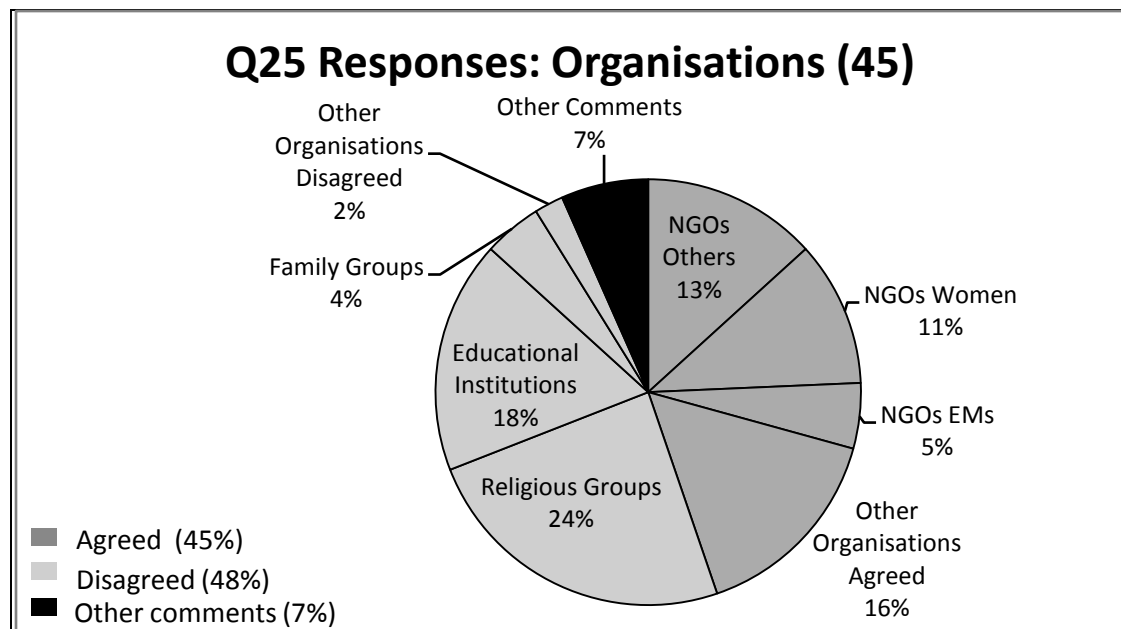
- (i) It is difficult to define what is a “reasonable accommodation”. (221 responses)
- (ii) Increase financial burden. (12 responses)

## F. Harassment

### Consultation Question 25

*Do you think that harassment should be prohibited in relation to the protected characteristics of sex, pregnancy, family status and marital status?*

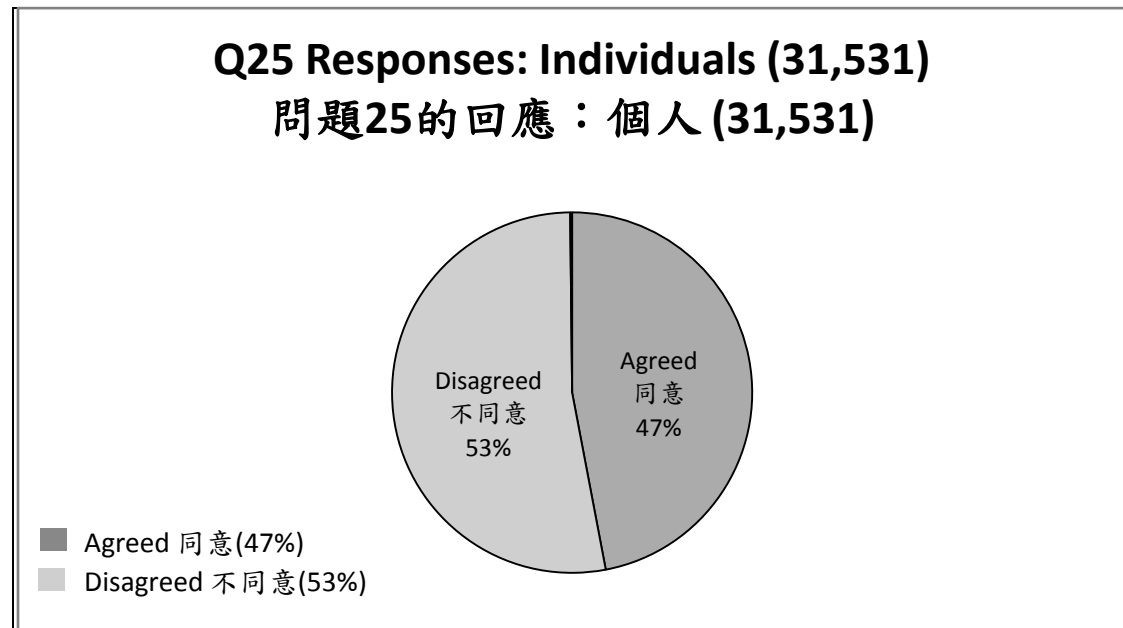
#### Organisations



5.47. 45 organisations expressed views on this question. Of the organisations who agreed with the proposal, one NGO noted that harassment is a form of discrimination, and therefore should be prohibited in relation to all protected characteristics. Another employee group suggested the UK and Australian approaches as references.

5.48. Of the organisations who disagreed with the proposal, one legal professions group noted that there is no evidence of harassment in the proposed areas. It suggested that the EOC should consider the issues in the context of anti-stalking legislation.

## Individuals



- 5.49. 31531 respondents expressed views on this question. Nearly half of the respondents (14,822) indicated their support to this question, over half (16,655) raised their objection, while a small number (54) had other comments.
- 5.50. Of the respondents who agreed with this question, almost all respondents (14,821) gave no reason, while one (1) expressed the view that further discussion is necessary.
- 5.51. Of the respondents who disagreed with this question, close to two-thirds of the respondents (10,442) gave no reason, while the rest (6,213) expressed the view it would unduly hinder freedom of speech.

## Consultation Question 26

*Do you think that the definition for harassment for all protected characteristics should be “A person (A) harasses another (B) if—*

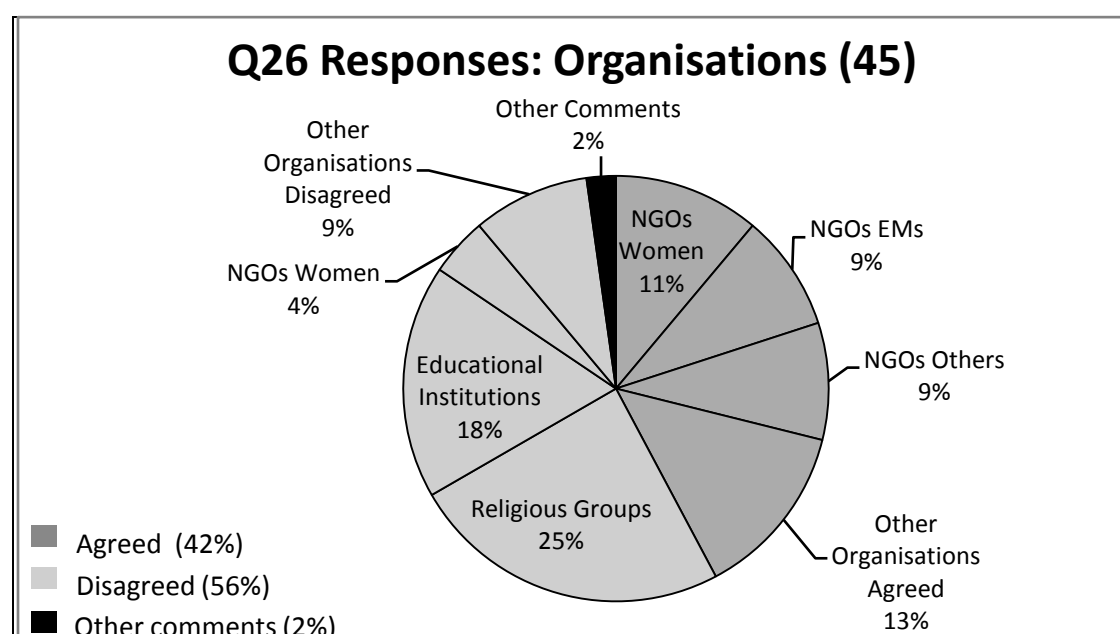
*(a) A engages in unwanted conduct related to a relevant protected characteristic, and*

*(b) the conduct has the purpose or effect of—*

*(i) violating B’s dignity, or*

*(ii) creating an intimidating”*

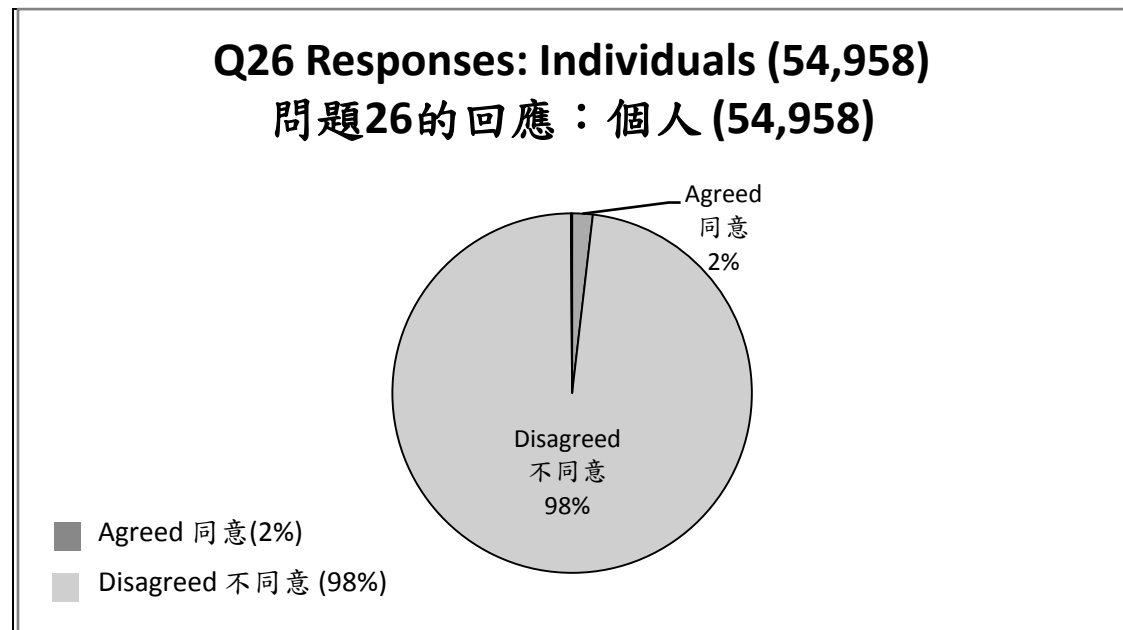
### Organisations



5.52. 45 organisations expressed views on this question. Of the organisations who agreed with the proposal, of note were further suggestions on the EOC’s proposed definition as modelled from the British Equality Act 2010. A few NGOs mentioned that the term “dignity” was too abstract, and should be accompanied by relevant descriptions.

5.53. Of the organisations which disagreed with the proposal, a number believed that the current definition is effective, and therefore it is unnecessary to amend.

## Individuals

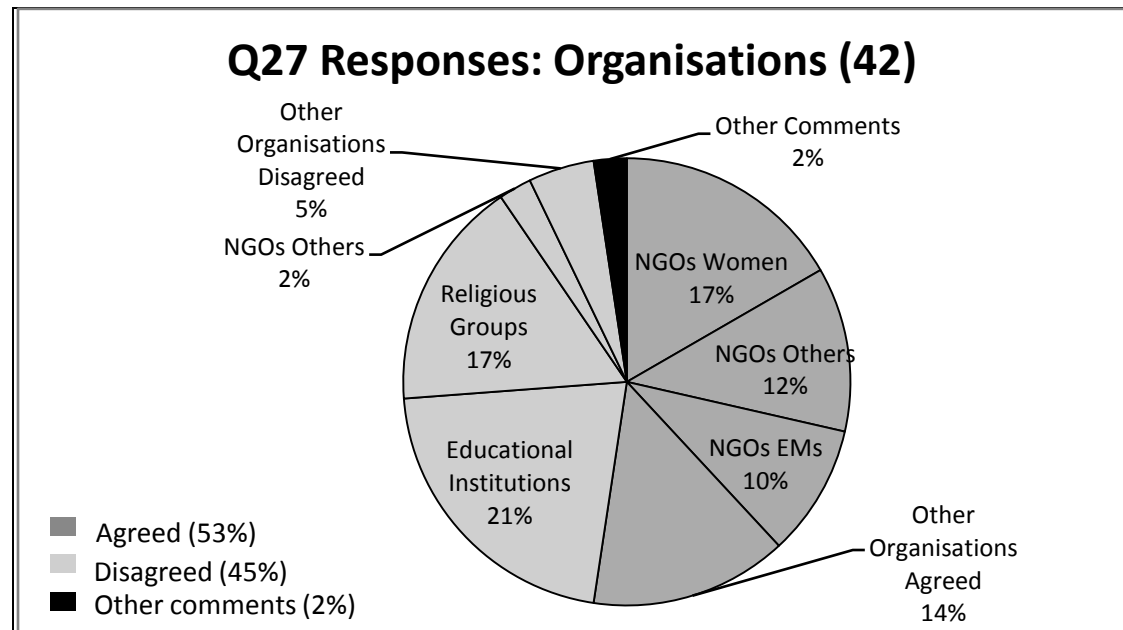


- 5.54. 54,958 respondents expressed views on this question. A small fraction of the respondents (1,015) indicated their support to this question, the majority (53,885) raised their objection, while the rest (58) had other comments.
- 5.55. Of the respondents who agreed with this question, almost all respondents (1,013) gave no reason, while the rest (2) expressed the view that further research on this issue is required.
- 5.56. Of the respondents who disagreed with this question, over one-quarter of the respondents (14,856) gave no reason, while close to three-quarters (39,029) opined that the meaning of the terms are not clear, objective, and it would not permit freedom of speech about mainland Chinese people.

## Consultation Question 27

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

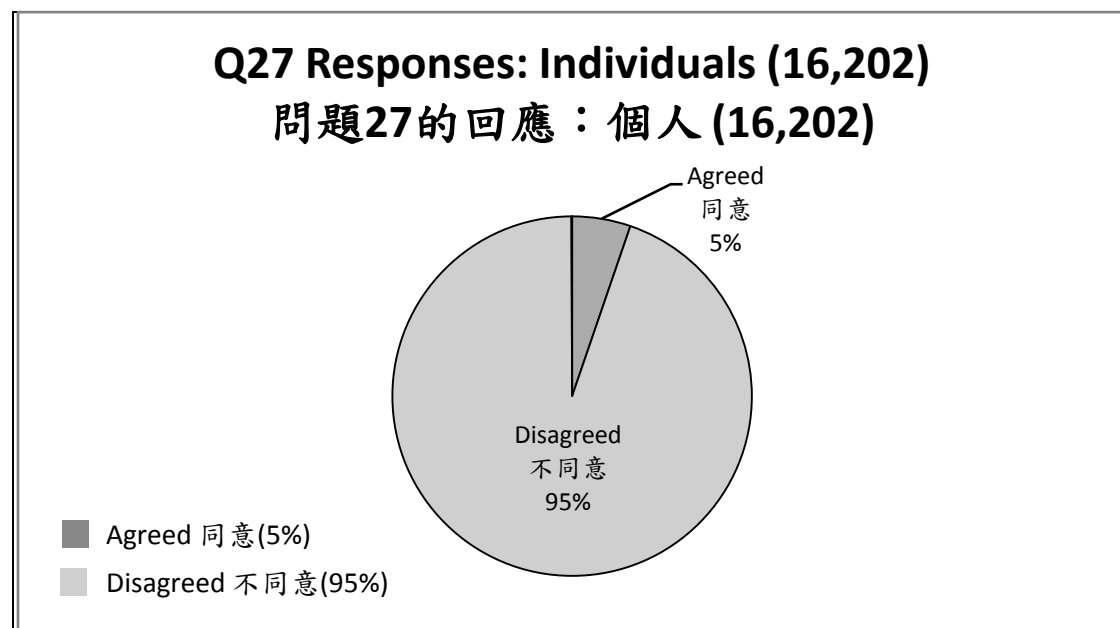
### Organisations



5.57. 42 organisations expressed views on this question. Of the organisations that agreed with the proposal, one noted that it would help to deal with the gaps in the existing protection against harassment under the existing legislation. One legal profession group also expressed that the protection against harassment, vilification and victimisation should be applied to all protected characteristics.

5.58. For organisations that disagreed with the proposal, please see the summary of responses to Question 30 below, as the issues raised in that question are similar to Question 27.

## Individuals



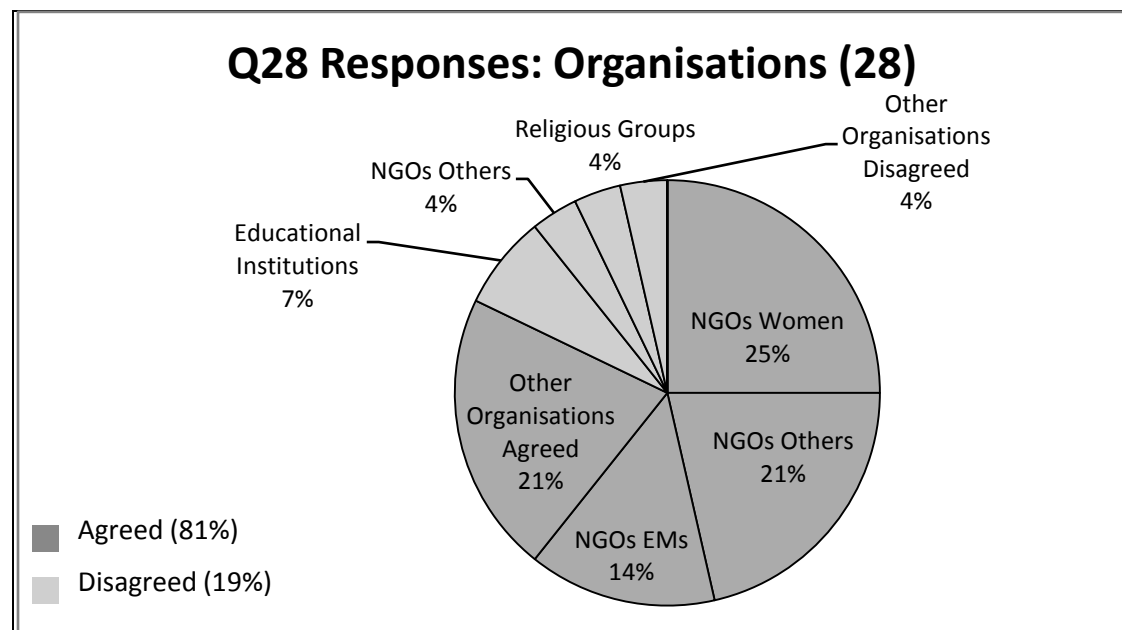
- 5.59. 16,202 respondents expressed views on this question. A small proportion (851) expressed their agreement to this question, the majority of respondents (15,342) disagreed, while the rest (9) had other comments.
- 5.60. Of the respondents who agreed with this question, almost all respondents (849) gave no reason, while the rest (2) expressed the view they agree but further research on this issue is required.
- 5.61. Of the respondents who disagreed with this question, almost all respondents (14,757) gave no reason, while a small number (585) viewed that it should not be extended to nationality, citizenship or residency status.



## Consultation Question 28

*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?*

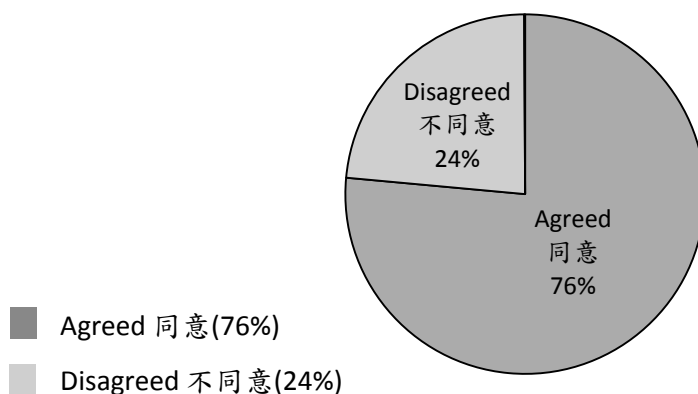
### Organisations



- 5.62. 28 organisations expressed views on this question. One organisation who agreed with the proposal noted that, in relation to sexual harassment, while the definition of sexual harassment should include conduct of a sexual nature, it should also preserve section 2(5)(a)(ii) of the SDO, which would help to maintain both the subjective element (the claimant's perception of the conduct) and objective element (reasonable person's perspective).
- 5.63. For organisations that disagreed with the proposal, they generally believed that the current provisions on sexual harassment are effective, and therefore it is unnecessary to amend them.

## Individuals

### Q28 Responses: Individuals (15,829) 問題28的回應：個人(15,829)



- 5.64. 15,829 respondents expressed views on this question. Over three-quarters of respondents (12,104) indicated their support to this question, nearly one quarter (3,712) raised their objection, while a small proportion (13) had other comments.
- 5.65. All the respondents who agreed with this question gave no reason.
- 5.66. Of the respondents who disagreed with this question, the majority of the respondents (3,693) gave no reason, while a small number (19) viewed that sexual harassment differs from racial and disability harassment.

## G. Intersectional discrimination

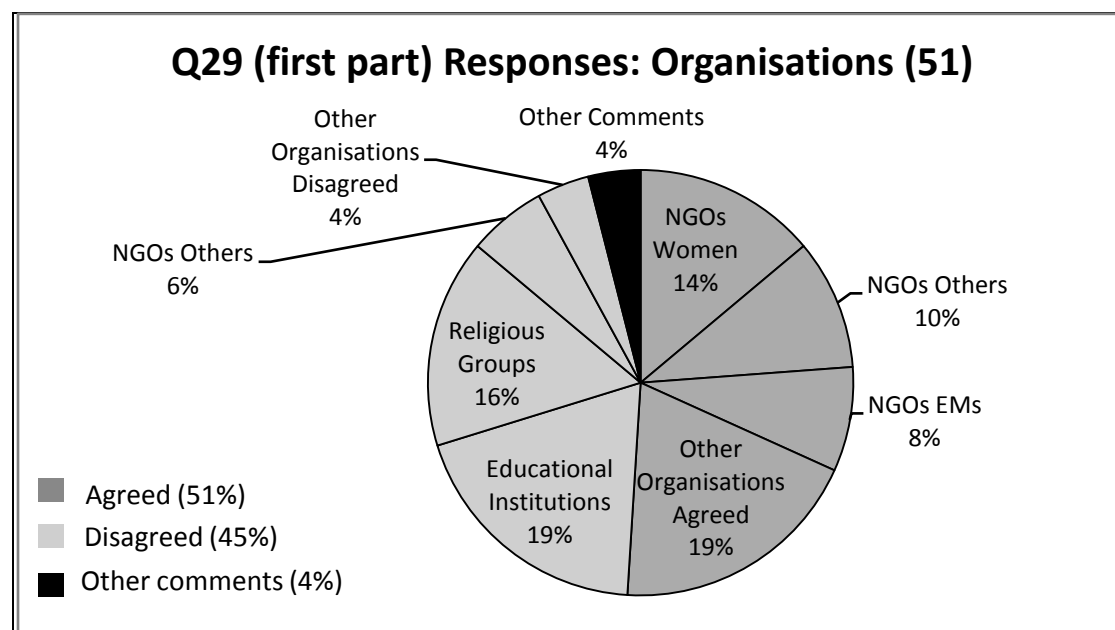
### Consultation Question 29

*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?*

## First Part of Question 29

*Do you think that there should be provisions on intersectional direct and indirect discrimination, as well as harassment?*

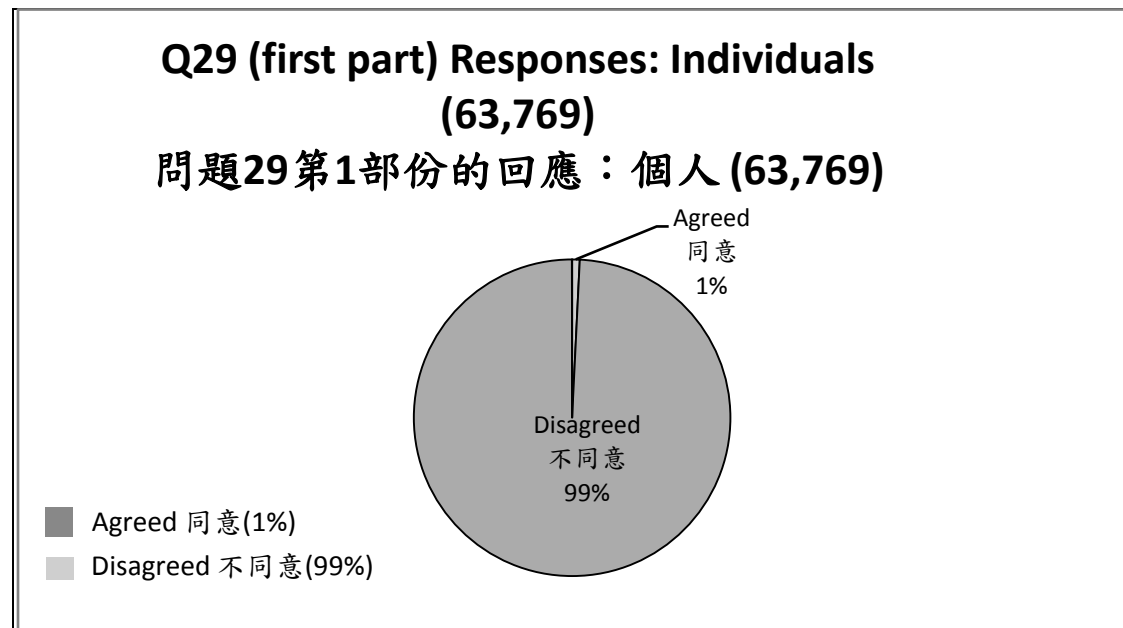
### Organisations



5.67. 51 organisations expressed views on this part. Of the organisations that agreed, a number cited the comments made by the UN human rights monitoring bodies on this issue, in addition to practices in overseas jurisdictions. A number also cited evidence of discrimination. For instance, one NGO working with people with disabilities said that many of their members are women with disabilities, who face discrimination due to a combination of the characteristics of “sex” and “disability”. One human rights NGO suggested that the protection on intersectional discrimination should also extend to other forms of prohibited conduct in addition to direct and indirect discrimination and harassment, namely victimisation (to protect complainants, witnesses etc. of intersectional discrimination), vilification and serious vilification. It further noted that the British model may not be an appropriate approach to follow, and that such an approach is too narrow.

5.68. For organisations that disagreed, one legal organisation noted that the current provisions may already apply to situations of possible intersectional discrimination.

## Individuals

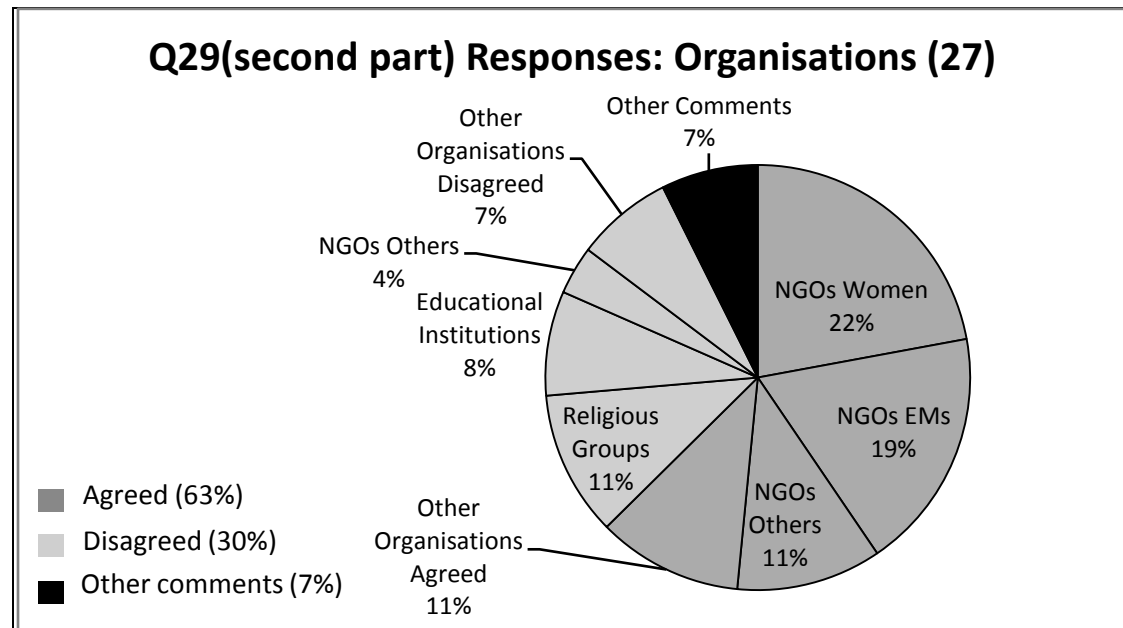


- 5.69. 63,769 respondents expressed views on this part. A minority (492) was supportive with the question, the majority (63,264) raised their objection, while the rest (13) had other comments.
- 5.70. All respondents who agreed with this question gave no reason.
- 5.71. Of the respondents who disagreed with this part, over two-fifths of the respondents (27,669) gave no reason, while the rest (35,595) took the view that the purpose of the proposal was to create laws so that Hong Kong people can be sued for discriminating against mainland Chinese people.

## **Second Part of Question 29**

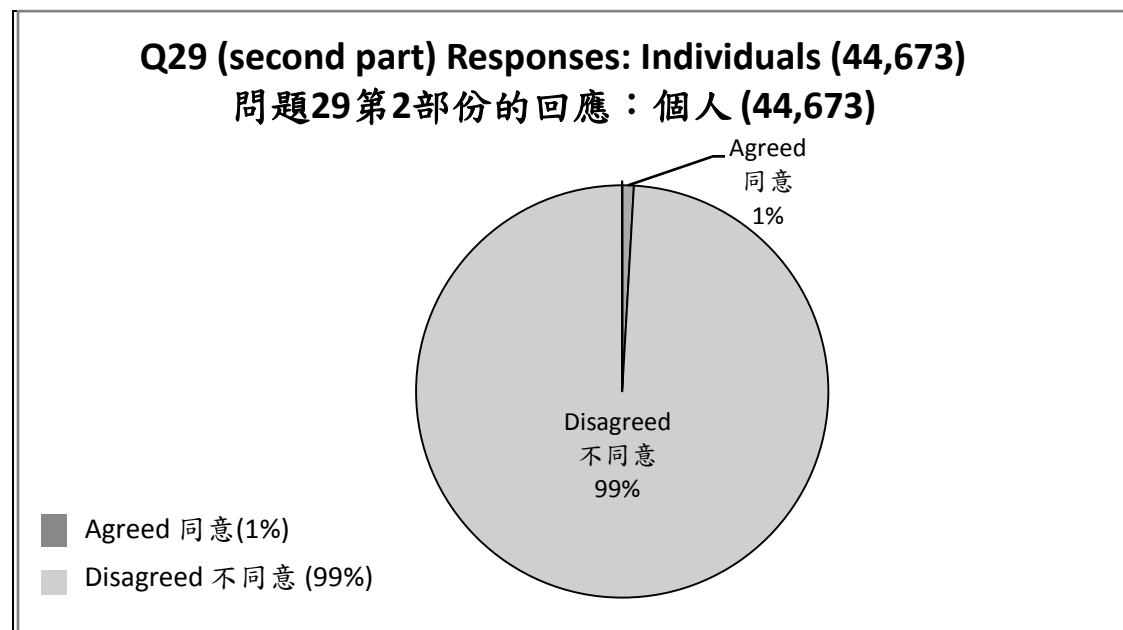
*If so, do you think that there should be protection from intersectional discrimination on the basis of two or more protected characteristics?*

### **Organisations**



5.72. 27 organisations expressed views on this part. Please refer to the first part of the question above for a summary of views provided.

## Individuals



- 5.73. 44,673 respondents expressed views on this question. A few respondents (404) indicated their support to this question, the majority (44,266) raised their objection, while the rest (3) had other comments.
- 5.74. All respondents who agreed with this question gave no reason.
- 5.75. Of the respondents who disagreed with this part, the majority of the respondents (44,250) provided no reason, while the rest (16) viewed that the current law is sufficient so no more protection is required.

## H. Discrimination by association

### Consultation Question 30

*Do you think that:*

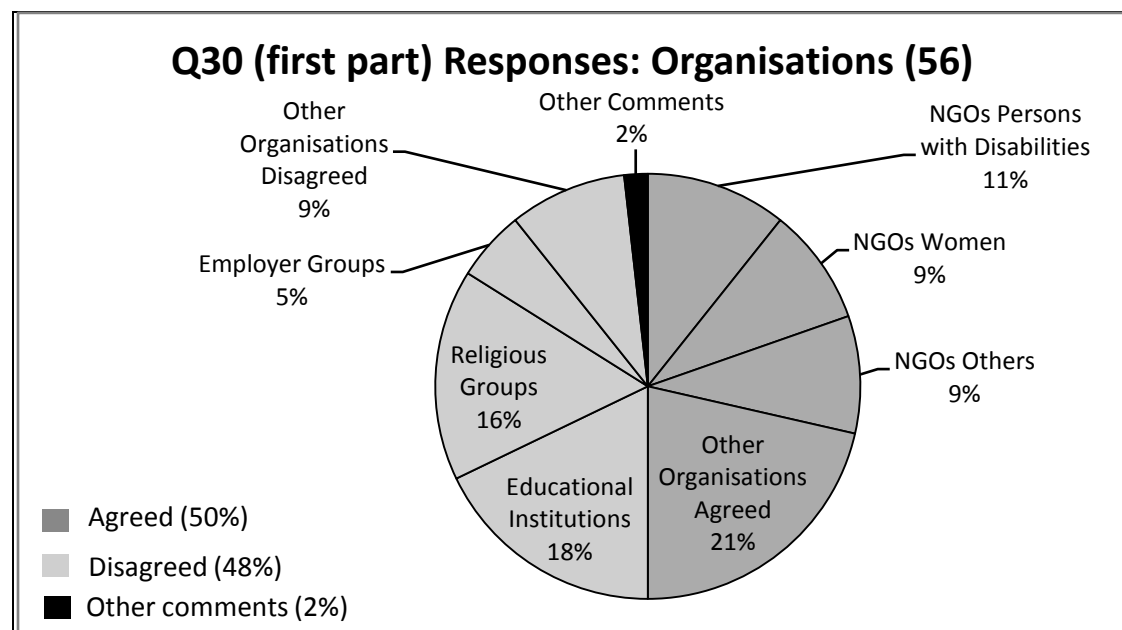
- *there should be protection from direct and indirect discrimination, and harassment by association across all the protected characteristics;*
- *and if so, do you think “association” should be broadly defined to include association by immediate family, other relatives, caring responsibilities, friendships or working relationships?*

### First Part of Question 30

*Do you think that:*

- *there should be protection from direct and indirect discrimination, and harassment by association across all the protected characteristics.....*

### Organisations

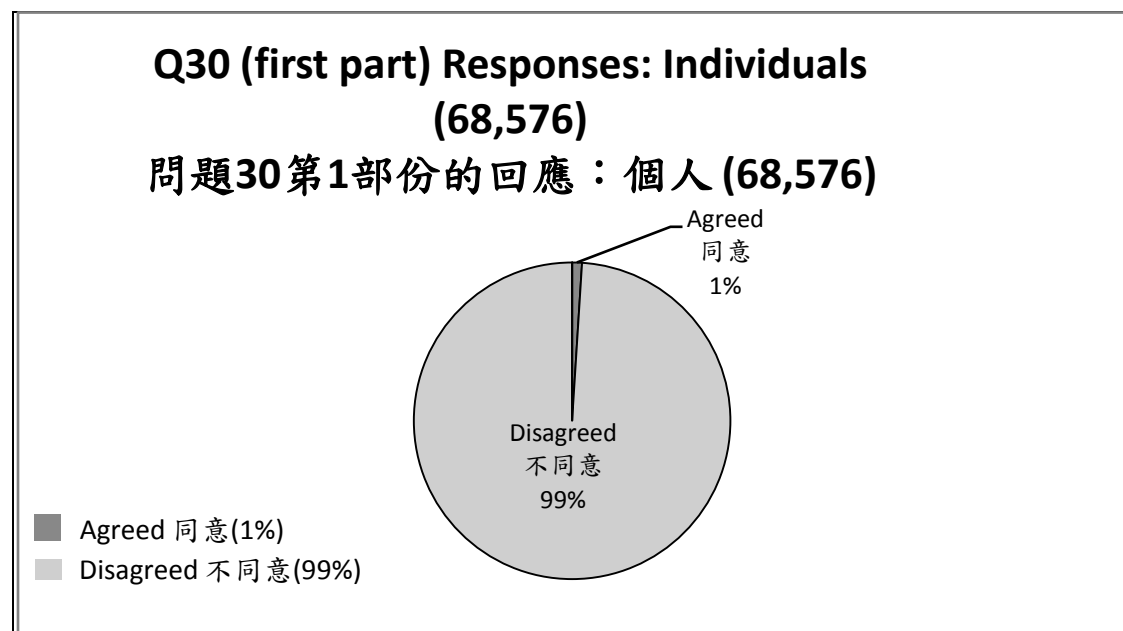


5.76. 56 organisations expressed views on this part. For organisations that agreed with the EOC's proposal, there was greater support for widening the definition of "association" than for the extension of protection against discrimination by association to cover all protected characteristics. One NGO gave as its reasoning for support best practices internationally, including comments by UN human rights monitoring bodies, and recommended a

wider definition than the EOC's proposal: "that the EOC define 'association' broadly to include – but not be limited to – members of the person's family, other relatives, caring responsibilities, friendships and working relationships."

- 5.77. For organisations that disagreed with the EOC's proposal, the main reason given was that such an expansion of protection would be too broad and difficult to implement. One group representing legal professionals suggested that such a proposal would allow unscrupulous employees to allege unlawful discrimination, and essentially shift the burden onto the employer to prove it is not the case. Another corporation expressed their concern that employers may face difficulties in verifying such information. Moreover, the definitions of terms such as "friend" and "work relationship" may change from time to time.

### **Individuals**



- 5.78. 68,576 respondents expressed views on this part. A small proportion of the respondents (591) indicated their support, the majority (67,977) raised their objection, while the rest (8) had other comments.
- 5.79. Of the respondents who agreed with this part, almost all respondents (586) gave no reason, while a few (5) took the view that further research on this issue is required.
- 5.80. Of the respondents who disagreed with this part, some respondents (21,143) gave no reason, while many (46,834) expressed disagreement because where a person is being discriminated against it does not relate to another person.

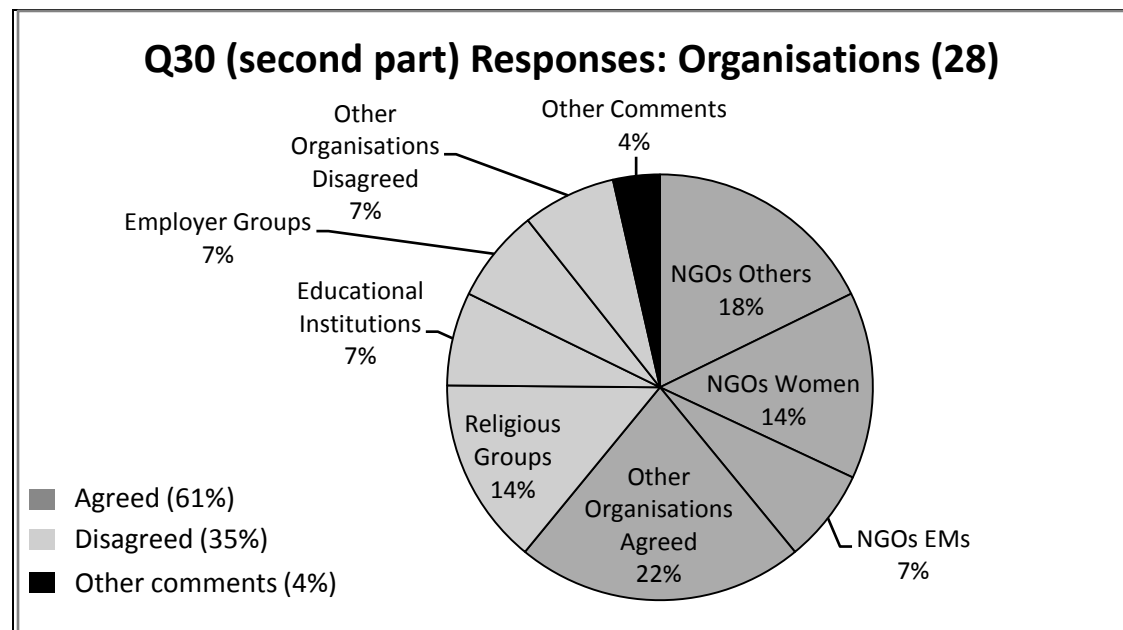


## Second Part of Question 30

**Do you think that:**

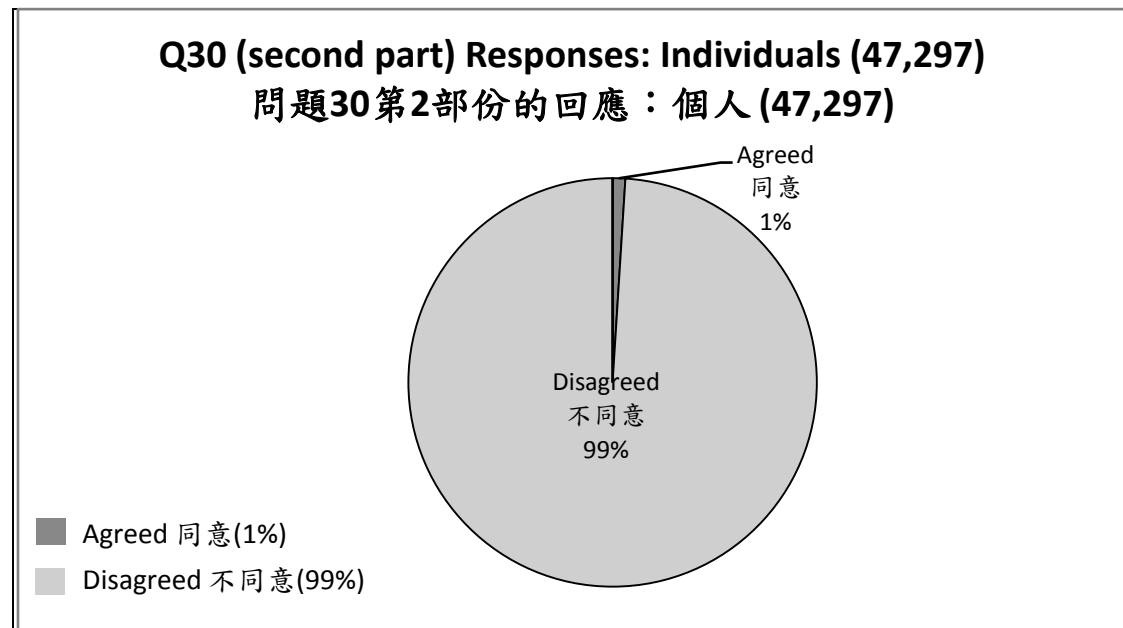
- .....
- *if so, do you think “association” should be broadly defined to include association by immediate family, other relatives, caring responsibilities, friendships or working relationships?*

### Organisations



5.81. 28 organisations expressed views on this part. Please see the first part of this question above for a summary of views provided.

## Individuals



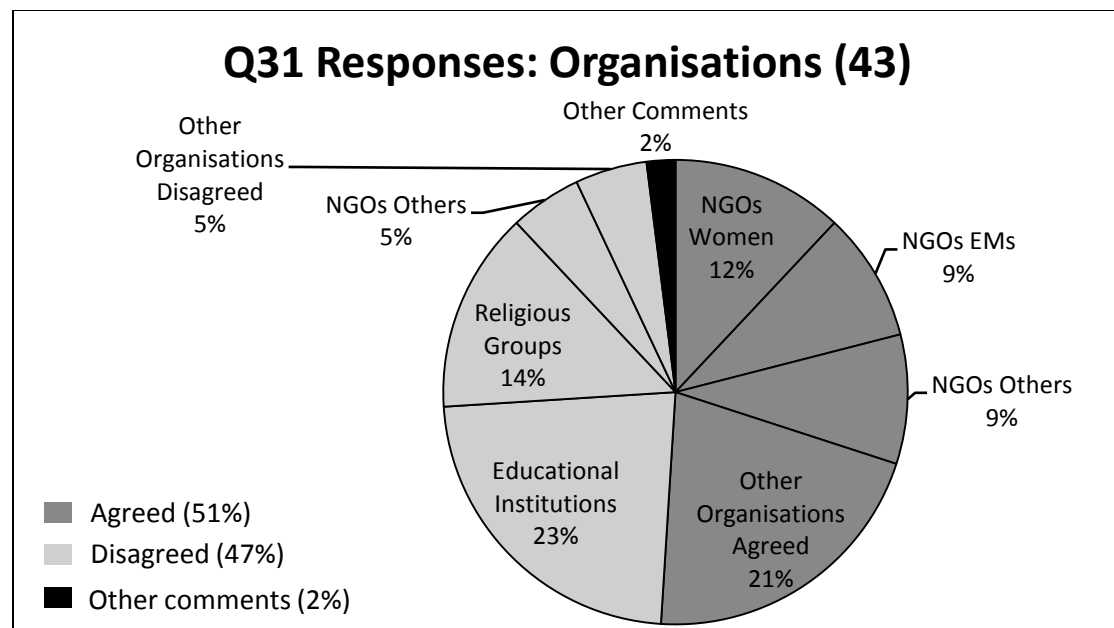
- 5.82. 47,297 respondents expressed views on this part. A small proportion (437) indicated their support for this part, the majority (46,858) raised their objection, while the rest (2) had other comments.
- 5.83. Of the respondents who agreed with this part, almost all respondents (431) gave no reason, while a few (6) took the view that “association” should include immediate family and carers.
- 5.84. Of the respondents who disagreed with this part, the majority of the respondents (46,856) gave no reason, while the rest (2) expressed the view that the association should not be made too broad. Otherwise, everyone can be covered.

## I. Discrimination by perception

### Consultation Question 31

*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?*

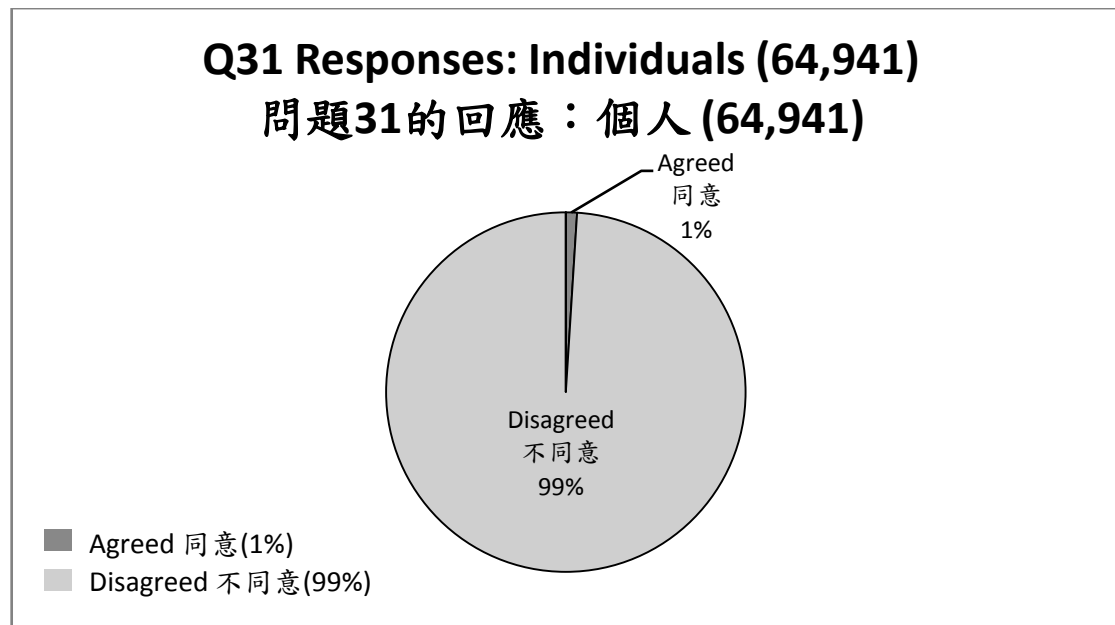
#### Organisations



5.85. 43 organisations expressed views on this question. Of the organisations that supported the EOC's proposal, one noted international practices overseas as their main reason for support.

5.86. Of the organisations that disagreed with the proposal, the reason given by one group from the legal profession was that the current legislation may already cover some of the situations mentioned in the consultation document.

## Individuals



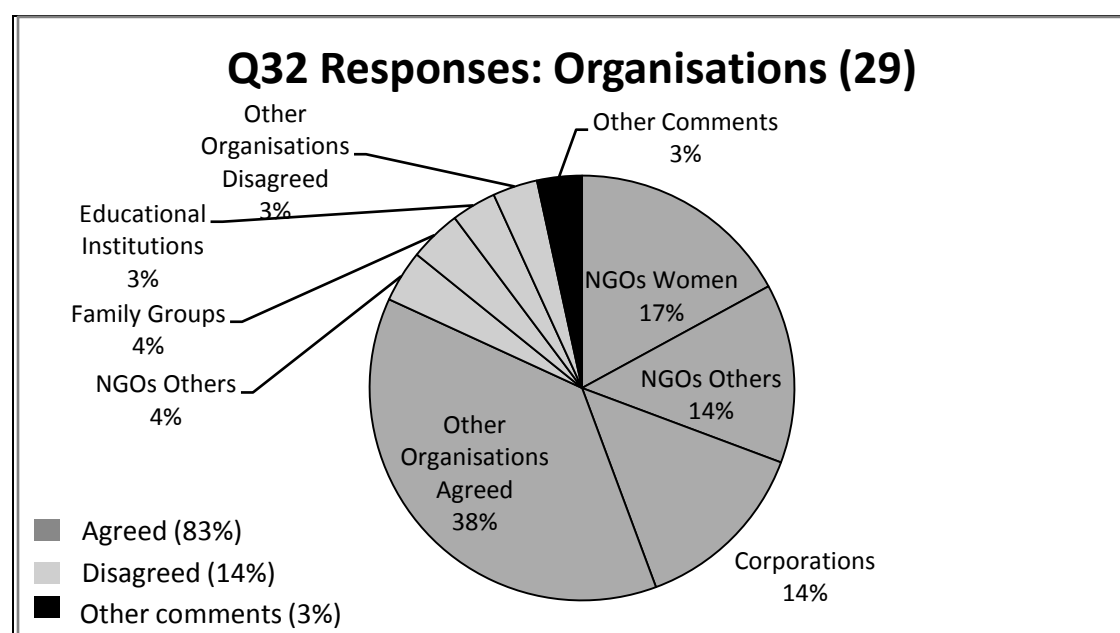
- 5.87. 64,941 respondents expressed views on this question. A small fraction (816) of the respondents indicated their support, the majority (64,116) expressed disagreement, while the rest (9) had other comments.
- 5.88. Of the respondents who agreed with this question, almost all respondents (815) gave no reason, while one (1) opined that further study on this issue is necessary.
- 5.89. Of the respondents who disagreed with this question, over half of the respondents (32,157) gave no reason, while nearly half (31,959) expressed the view that this proposal stops Hong Kong people scolding mainland Chinese people.

## J. Other unlawful conduct

### Consultation Question 32

*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?*

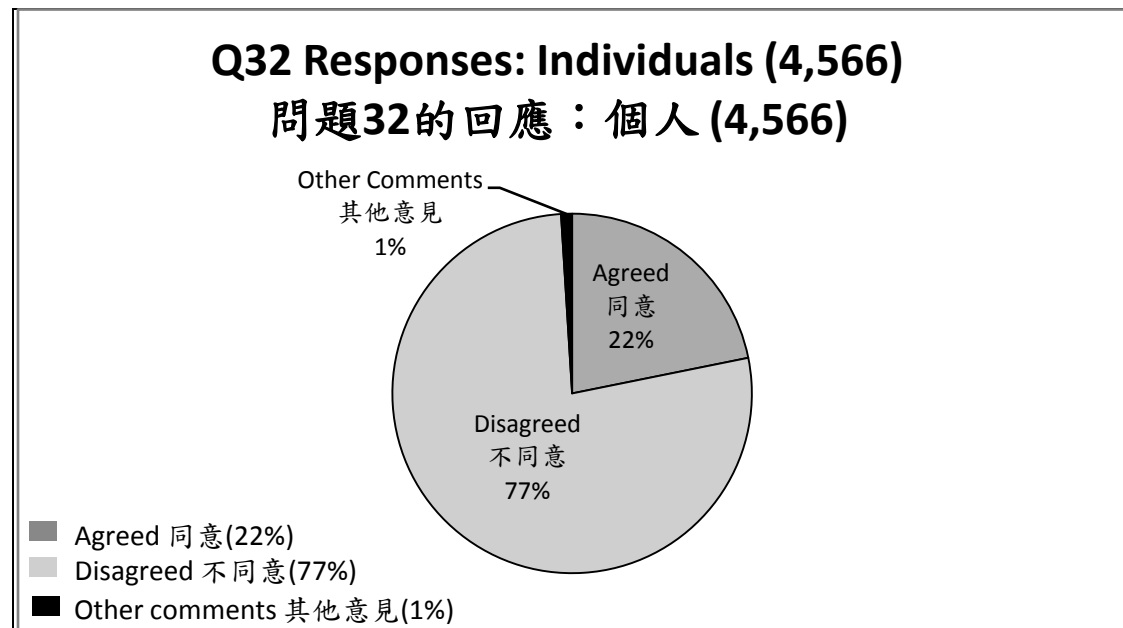
#### Organisations



5.90. 29 organisations expressed views on this question. Of the organisations that supported the EOC's proposal, a number noted that the EOC should produce clear guidelines on what would constitute reasonable steps expected to be taken by principals in order to avail themselves to such defence. A few corporations noted that this was particularly important for certain industries, such as insurance, which rely on agents or brokers to distribute their products. One NGO referred to the model under the British Equality Act 2010 for reference, and recommended the EOC to include a defence where the principal took *all* reasonably practicable steps to prevent the unlawful conduct, as well as a provision providing that the principal is not excluded from liability solely on the basis that the principal did not know or approve of the unlawful conduct.

5.91. Of the organisations that disagreed with the proposal, some concerns were raised about the difficulty of defining what would be 'reasonably practicable steps'.

## Individuals

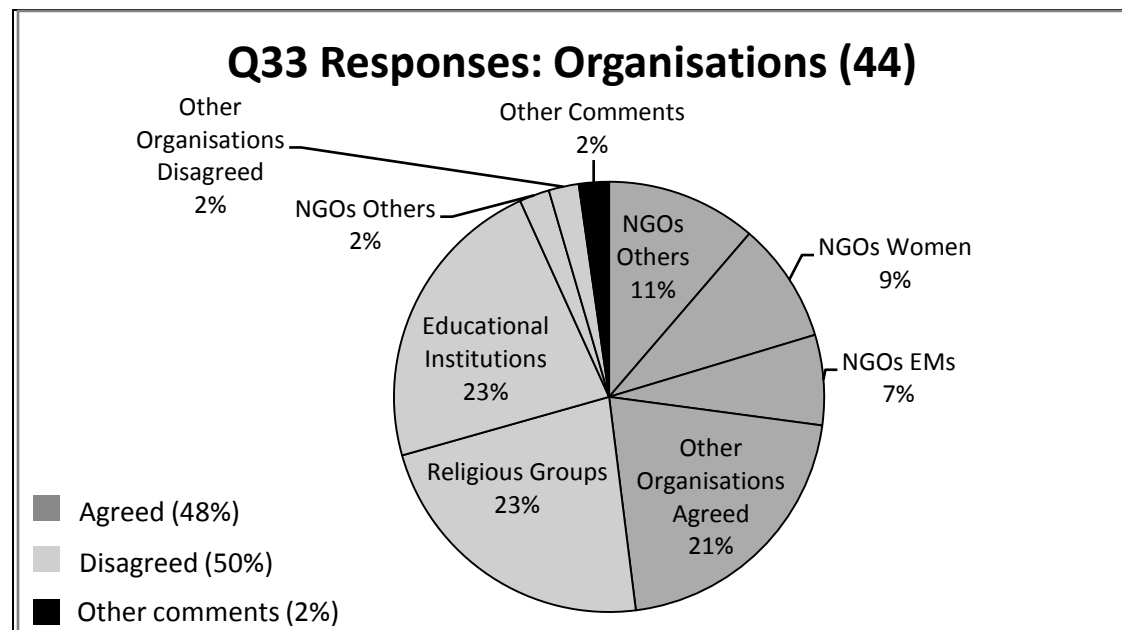


- 5.92. 4,566 respondents expressed views on this question. Over one-fifth of the respondents (997) raised their objection, over three-quarters (3,524) indicated their support, while a small number (45) had other comments.
- 5.93. Of the respondents who agreed with this question, almost all respondents (995) gave no reason, while two (2) opined that it is reasonable to introduce a defence mechanism.
- 5.94. Of the respondents who disagreed with this question, the majority of the respondents (3,509) gave no reason, while a small number (15) took the view that the concept of reasonably practicable steps is too vague.

## Consultation Question 33

*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?*

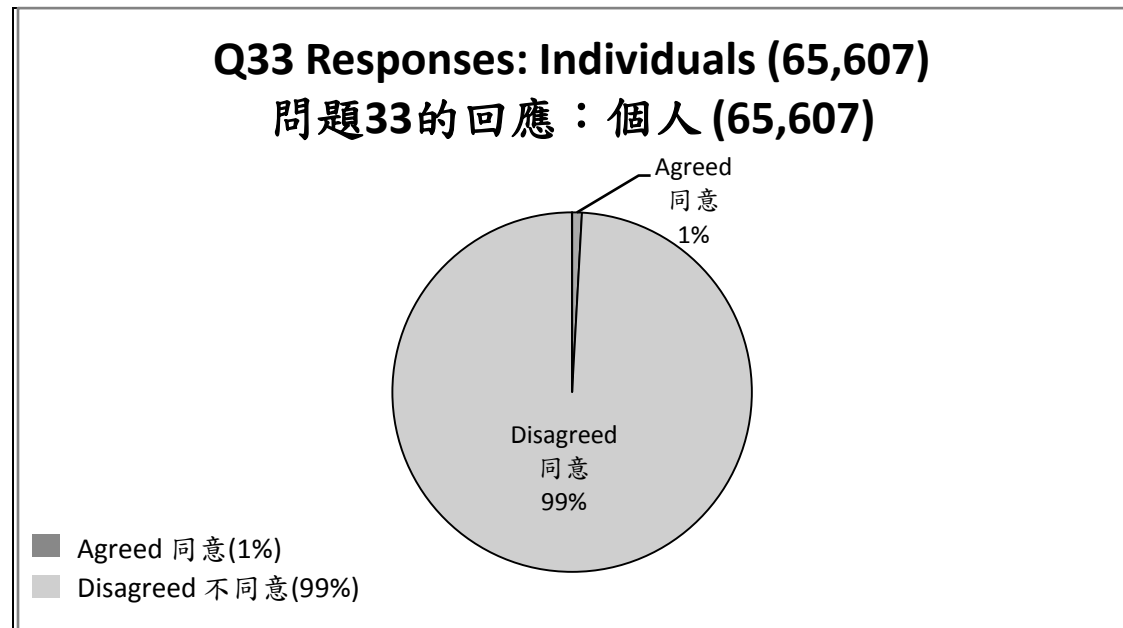
### Organisations



5.95. 44 organisations expressed views on this question. Of the organisations that supported the EOC's proposal, one representing an employee group suggested the EOC to include guidelines on this issue in the Code of Practice on Employment, reminding employers not to ask job applicants or employees questions about their relationships or personal affairs, such as whether they are dating or have a close partner, and whether they plan to pregnant.

5.96. Of the organisations that disagreed with the proposal, there were no reasons of particular note provided.

## Individuals



- 5.97. 65,607 respondents expressed views on this question. A minority of the respondents (573) expressed their support to this question, the majority (65,024) expressed opposition, while the rest (10) had other comments.
- 5.98. Of the respondents who agreed with this question, almost all respondents (572) gave no reason, while one (1) opined that all should be equally protected.
- 5.99. Of the respondents who disagreed with this question, nearly one-third of the respondents (19,871) gave no reason, while over two-thirds (45,153) gave the opinion that extending protection would prevent the public from acquiring information using a shield of discrimination.



## Chapter 6 Fields of Prohibited Conduct

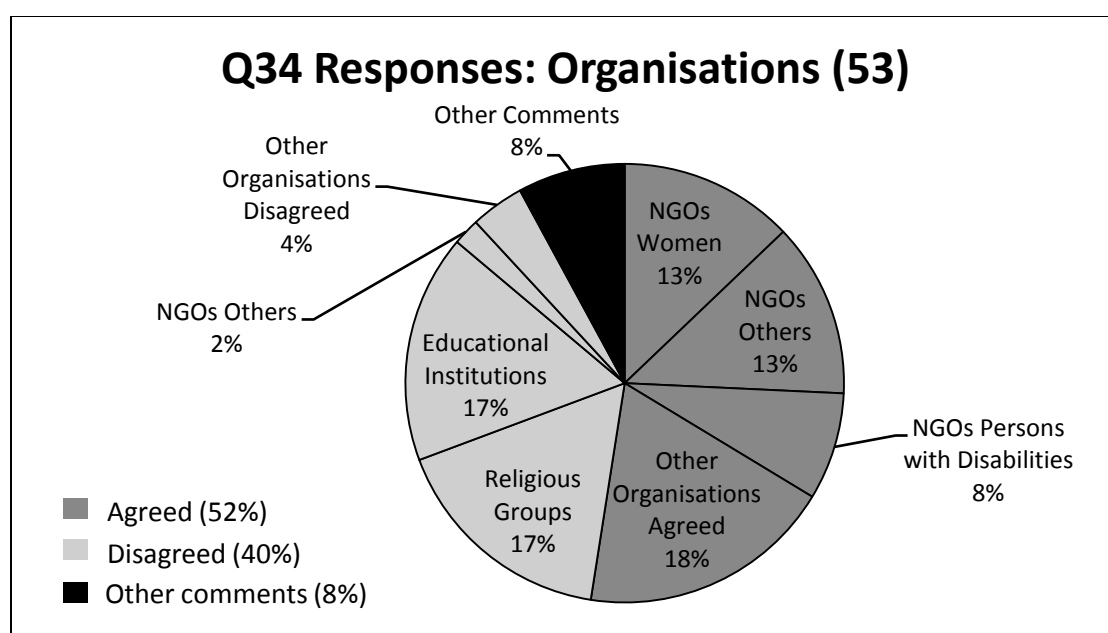
6.01. This Chapter describes the responses to Chapter 4 of the Consultation Document on the fields in which discrimination is prohibited, and in particular: the scope of protection from discrimination in relation to public authorities; inconsistencies between the anti-discrimination Ordinances as to which sectors prohibit discrimination; RDO limitations regarding medium of instruction in the fields of education and vocational training; and expanding the fields and scope of protection from harassment.

### A. Scope of protection in relation to public authorities

#### Consultation Question 34

*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?*

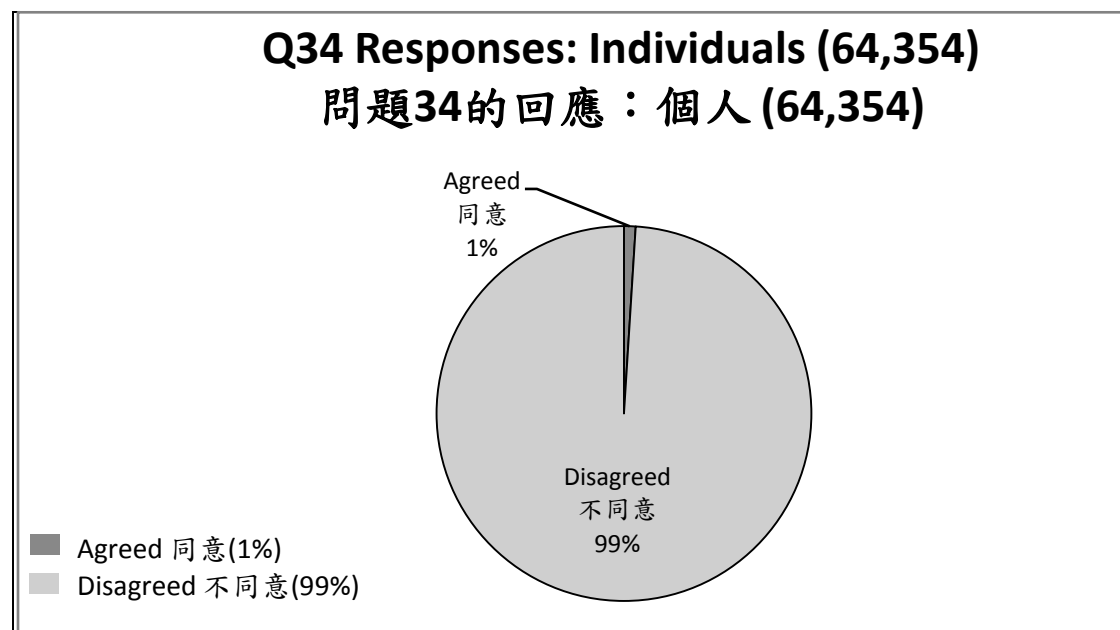
#### Organisations



6.02. 53 organisations expressed views on this question. In relation to those organisations which agreed, one stated it was important for the legislation to make it clear that it applies to all public authorities when they are exercising their functions and powers, in order to comply with international human rights obligations. Some also stated it would be important to clearly define public authorities.

6.03. In relation to organisations that disagreed, there were no reasons of particular note provided.

### **Individuals**



6.04. 64,354 respondents expressed views on this question. A minority of the respondents (862) offered their support to this question, an overwhelming majority (63,489) raised their objection, while the rest (3) had other comments.

6.05. Of the respondents who agreed with this question, almost all respondents (861) gave no reason, while one (1) viewed that all public bodies should respect equality.

6.06. Of the respondents who disagreed with this question, almost half of the respondents (28,623) gave no reason. Over half (34,866) expressed the view that if the discrimination law applied to all public authorities, it means mainland immigrants and persons from Hong Kong must be treated equally, and that new immigrants from the mainland would have the same civil rights as Hong Kong residents.

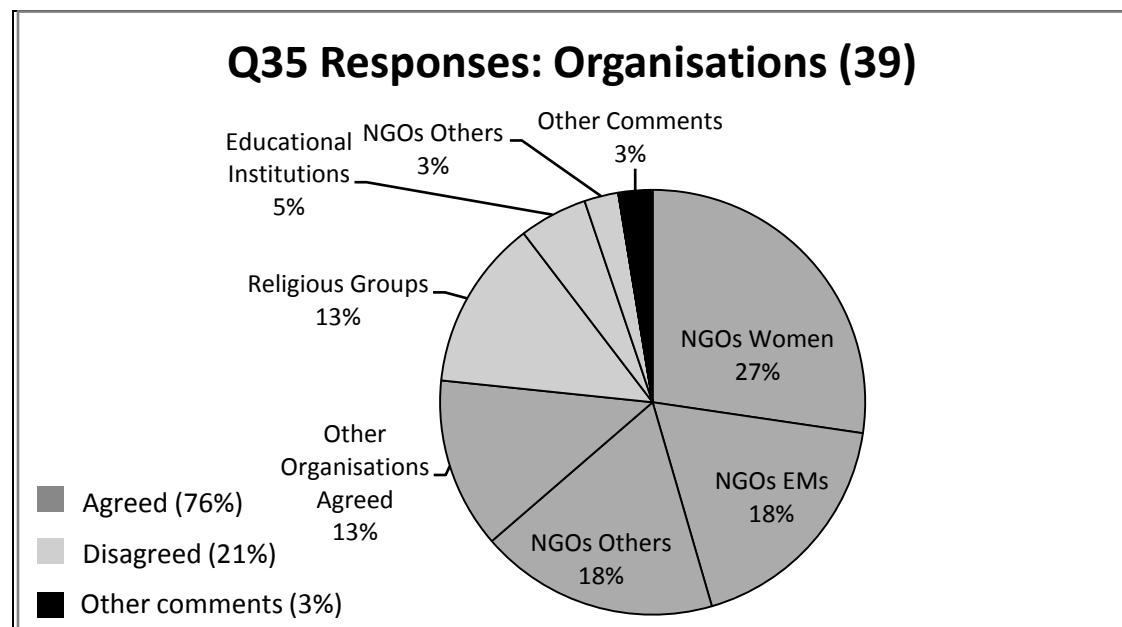
## B. Inconsistencies concerning sectors in which discrimination is prohibited

### (i) Protection from race discrimination in relation to Government functions

#### Consultation Question 35

*Do you think that there should be protection from racial discrimination in the exercise of the Government's functions and powers?*

#### Organisations

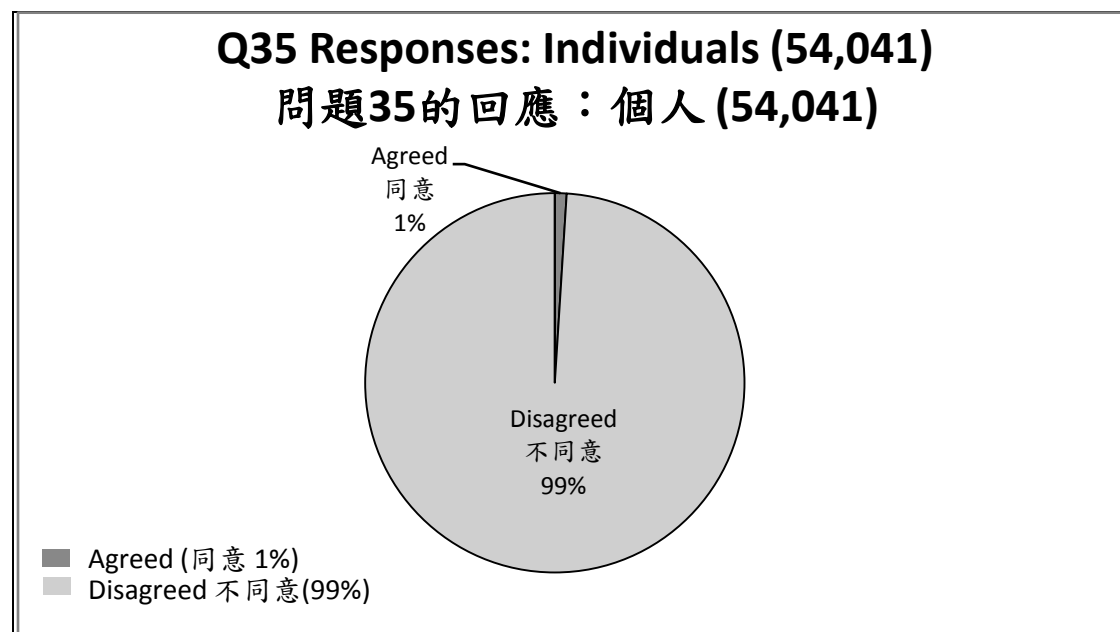


6.07. 39 organisations expressed views on this question. In relation to organisations which agreed, there were a number of reasons provided including:

- (i) Evidence of people in Hong Kong being discriminated against by the Government on grounds of race in the exercise of their functions and powers;
- (ii) The current situation not being consistent with the protections under the other anti-discrimination Ordinances;
- (iii) The situation not being compliant with Hong Kong and international human rights obligations, and UN recommendations to the Government.

6.08. In relation to organisations that disagreed, there were no reasons of particular note provided.

### Individuals



6.09. 54,041 respondents expressed views on this question. A few respondents (637) were supportive with this question, the majority (53,398) raised their objection, while the rest (6) had other comments.

6.10. Of the respondents who agreed with this question, almost all respondents (636) gave no reason, while one (1) viewed that all public bodies should respect equality.

6.11. Of the respondents who disagreed with this question, over one-third of the respondents (19,435) gave no reason, while close to two-thirds (33,963) expressed the view that if the anti-discrimination law applied to all public authorities, it means mainland immigrants and persons from Hong Kong must be treated equally, and that new immigrants from the mainland would have the same civil rights as Hong Kong residents and could become civil servants.

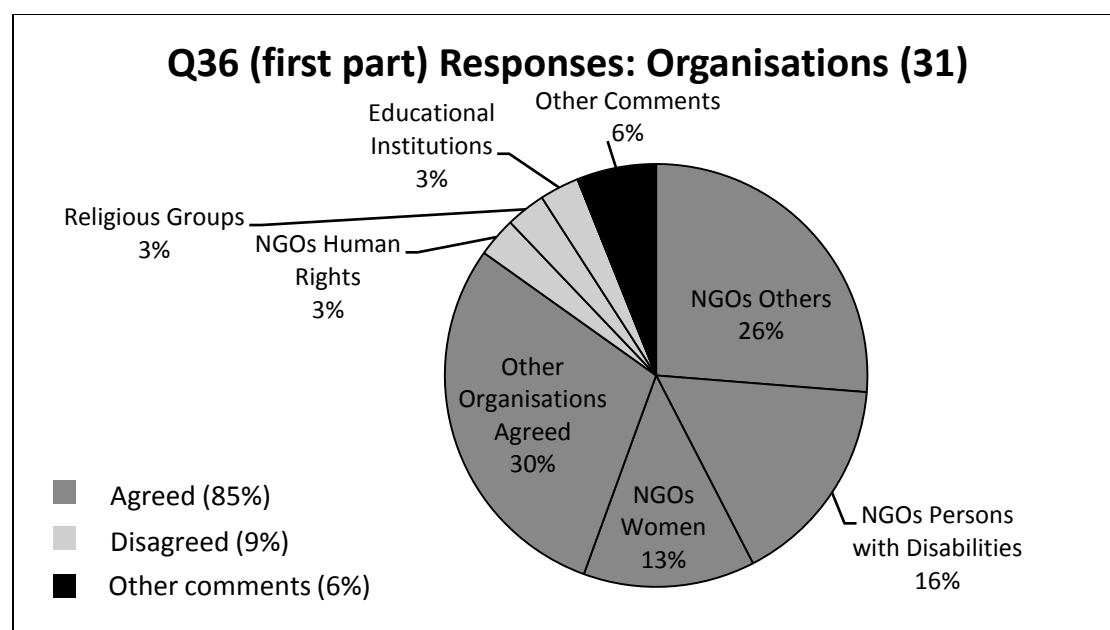
## Consultation Question 36

*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?*

### First Part of Consultation Question 36

*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?*

#### Organisations



6.12. 31 organisations expressed views on this part. In relation to the organisations that agreed with the proposal on the first part of the question regarding protection from discrimination, they provided a number of reasons including:

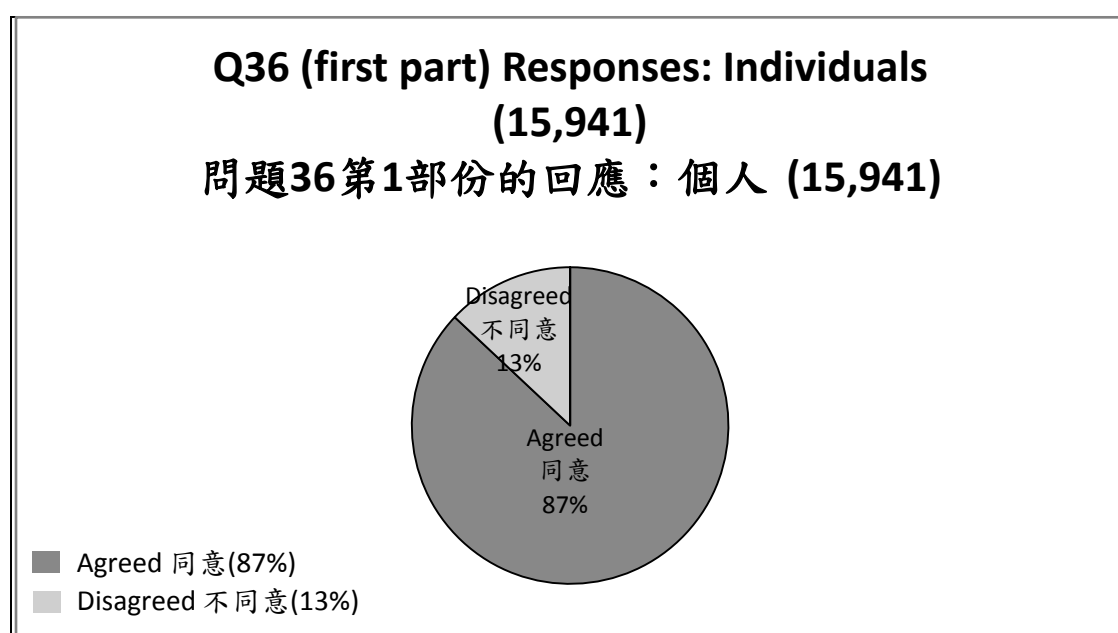
- (i) All persons with disabilities should be protected from discrimination in voting or standing for election, as it is an important aspect of public life;

- (ii) International human rights obligations require there to be such protection; and
- (iii) It would ensure consistency of protections from discrimination in the same areas on grounds of sex, race and family status.

6.13. In relation to organisations that disagreed with the first part of the question, there were no reasons of particular note provided.

6.14. In relation to the second part of the question and whether there should be an exception, some organisations who agreed said that it was proportionate to have an exception. In relation to organisations that disagreed with an exception, one human rights NGO stated that it would not be appropriate to have a general exception as that is not the approach under the Convention on the Rights of Persons with Disabilities. Rather, specific exceptions would need to be defined.

### **Individuals**



6.15. 15,941 respondents expressed views on this part. Many respondents (13,793) offered their support to this part, a small number (2,095) raised their objection, while the rest (53) had other comments. Of the respondents who agreed with this part, almost all respondents (13,793) gave no reason. Others mainly took these views:-

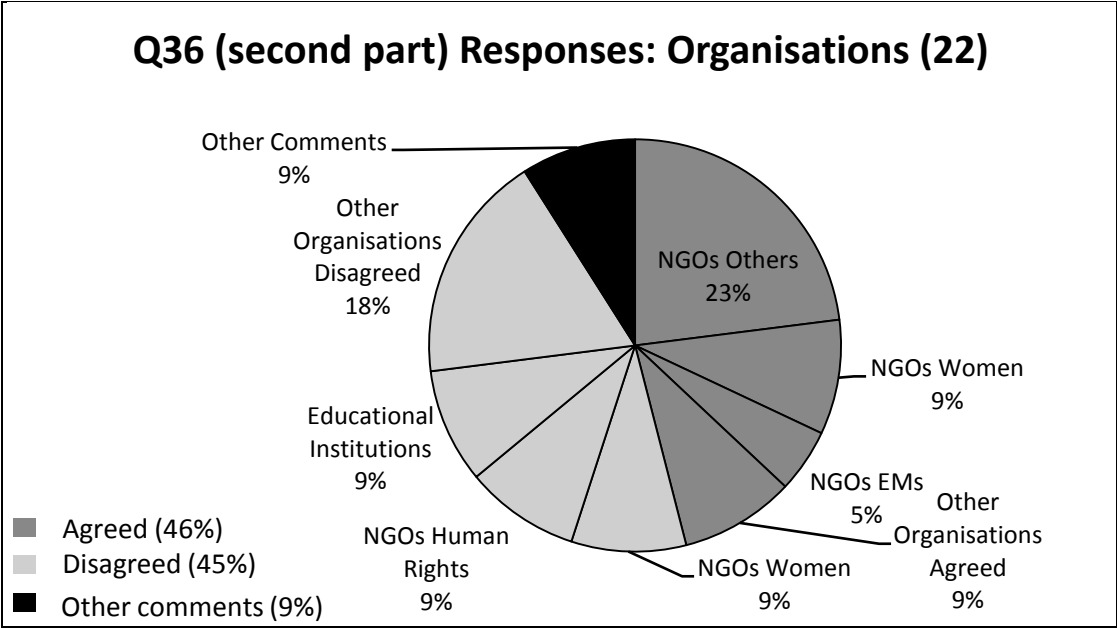
- (i) There should be Braille election information and voting facilities. (2 responses)
- (ii) Persons with mental disabilities should be able to vote if their judgment is not affected. (3 responses)

6.16. Of the respondents who disagreed with this part, almost all respondents (2,087) gave no reason, while a few (8) expressed reservations whether persons with long-term mental disabilities could decide relating to voting.

**Second Part of Consultation Question 36**

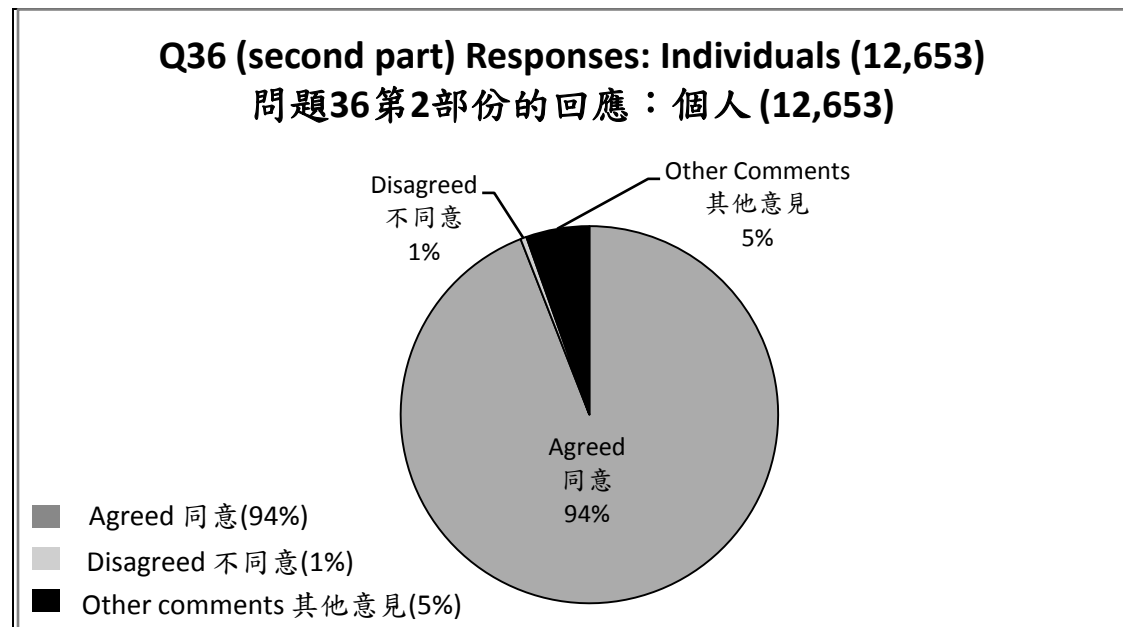
*If so, do you think that there should be an exception permitting disability discrimination but only where it is for a legitimate aim and proportionate?*

**Organisations**



6.17. 22 organisations expressed views on this part. Please see the first part of this question above for a summary of views provided.

## Individuals



- 6.18. 12,653 respondents expressed views on this part. The majority of the respondents (11,901) expressed their support for this part, a few (65) raised their objection, while a minority (687) had other comments.
- 6.19. Of the respondents who agreed with this part, almost all respondents (11,891) gave no reason, while a small fraction (10) opined that there should be an exception for persons with mental disabilities and cognitive disorders.
- 6.20. Of the respondents who disagreed with this part, almost all respondents (63) gave no reason, while two (2) expressed the view that it is difficult to determine the aim is legitimate and proportionate.

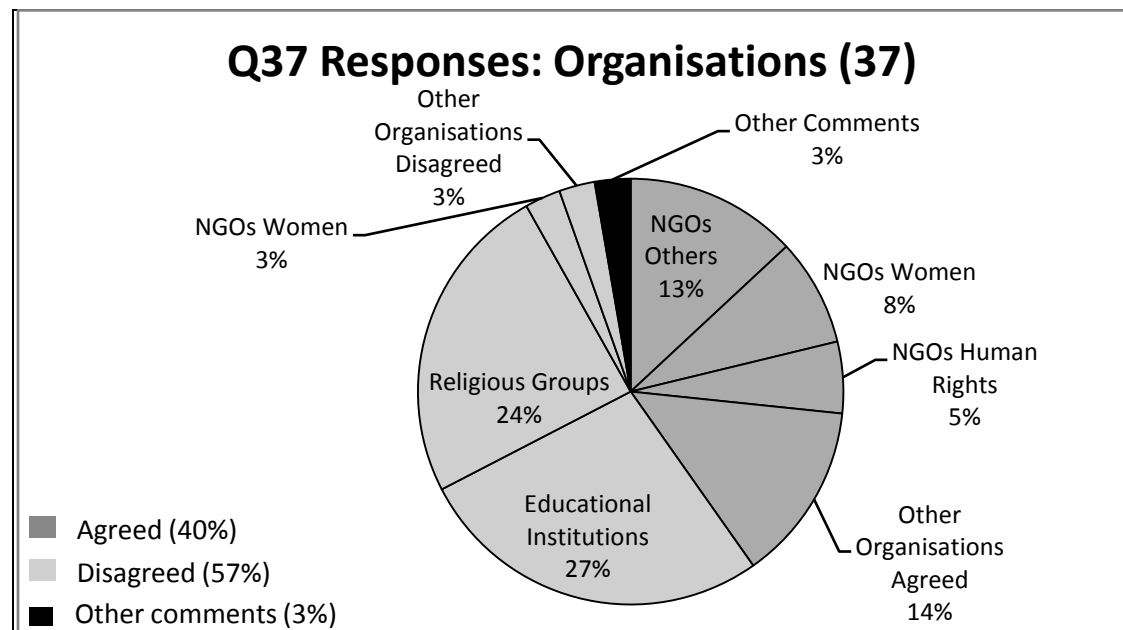


### (iii) Protection from discrimination in relation to sporting activity

#### Consultation Question 37

*Do you think that the current express protection from disability discrimination in sporting activity should be extended to all the protected characteristics?*

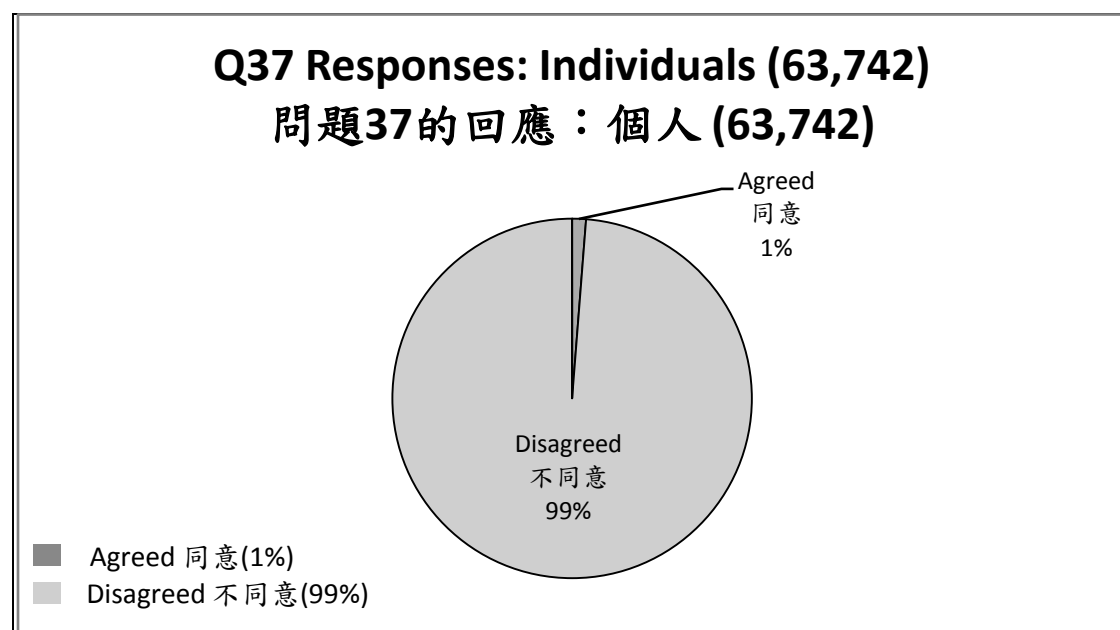
#### Organisations



6.21. 37 organisations expressed views on this part. In relation to organisations that agreed with the proposal, a number stated that it would be important for reasons of consistency to have protection from discrimination in sporting activity across all the protected characteristics.

6.22. In relation to organisations that disagreed, some believed the current protections are sufficient because, for example, some sporting activity would be covered by the provisions prohibiting discrimination in the provision of services.

## Individuals



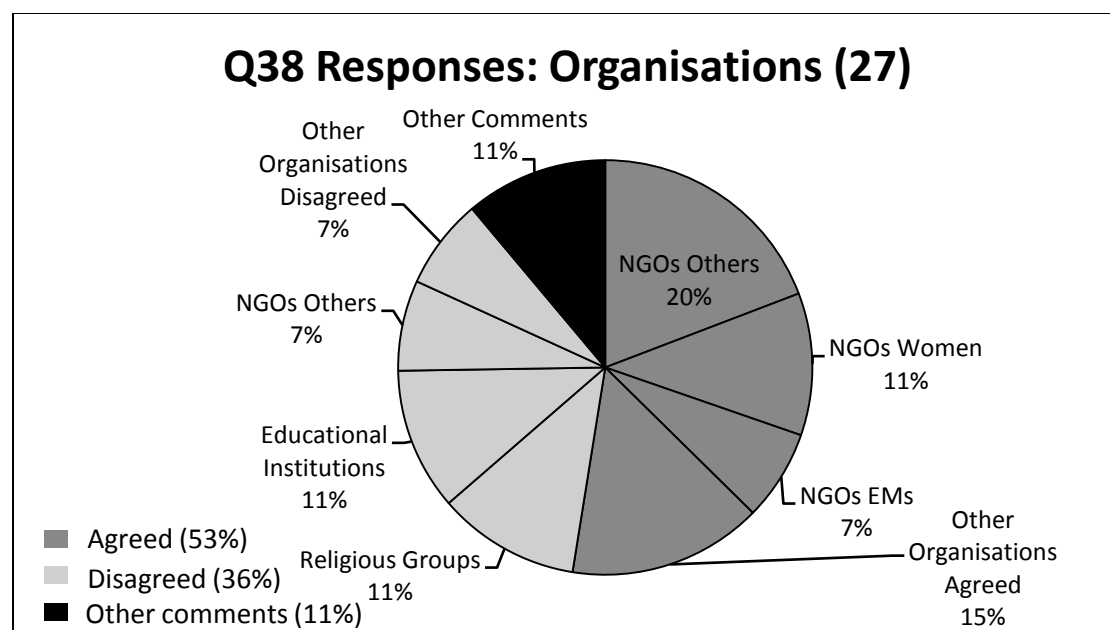
- 6.23. 63,742 respondents expressed views on this question. A small proportion of respondents (791) indicated their support to this question, the majority (62,947) raised their objection, while the rest (4) had other comments.
- 6.24. Of the respondents who agreed with this question, almost all respondents (790) gave no reason, while one (1) expressed the view that protection should be extended to all areas.
- 6.25. Of the respondents who disagreed with this question, nearly half of the respondents (29,554) gave no reason, while more than half (33,393) expressed the view that the purpose of the extension would be to allow new immigrants from the mainland to enjoy government subsidies.

## C. RDO limitations regarding medium of instruction in the fields of education and vocational training

### Consultation Question 38

*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?*

#### Organisations



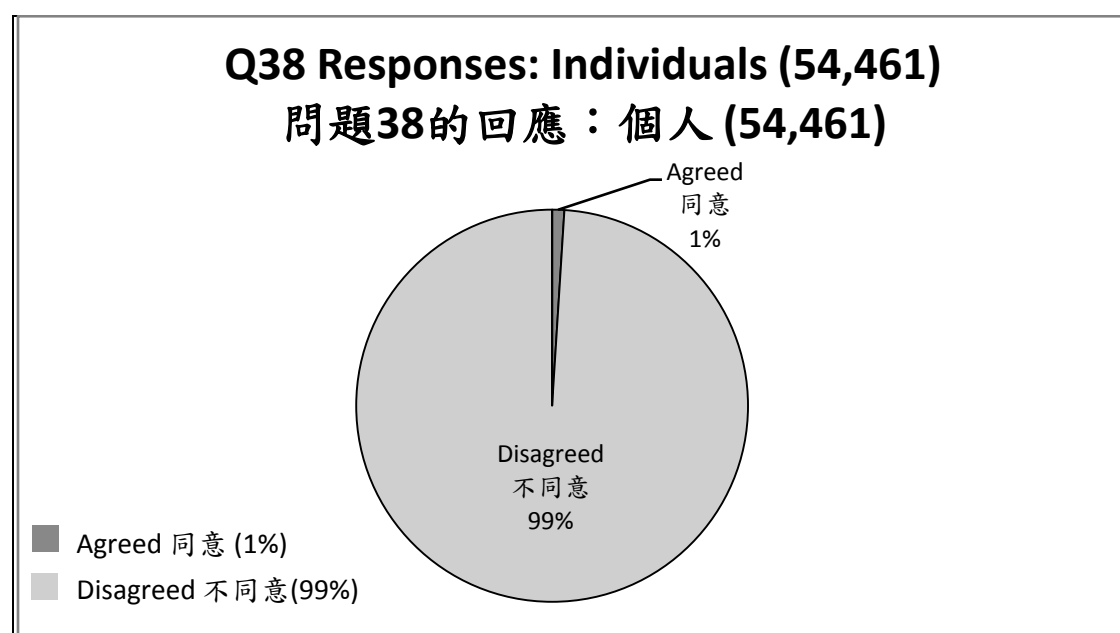
6.26. 27 organisations expressed views on this question. In relation to organisations that agreed with proposal, a number of reasons were provided including:

- (i) There is evidence of discrimination on grounds of language in the provision of vocational training and education, which may amount to indirect race discrimination and therefore there should be protection from discrimination;
- (ii) The exception is not consistent with Hong Kong's human rights obligations which prohibit discrimination on grounds of language.

6.27. In relation to the organisations who disagreed with the proposal, several reasons were provided including:

- (i) A secondary schools body was concerned that the effect of the removal of the exception would mean that ethnic minorities could require schools to teach in their particular ethnic minority language;
- (ii) In relation to vocational training, a vocational training body stated that the exception was important as there may be situations where it is appropriate to only teach in Chinese, given, for example, the nature of the course or limited resources.

### **Individuals**



6.28. 54,461 respondents expressed views on this question. A few respondents (763) were supportive with this question, the majority (53,694) raised their objection, while the rest (4) had other comments.

6.29. Of the respondents who agreed with this question, almost all respondents (761) gave no reason, while two (2) expressed the view that ethnic minorities can be better supported, and the government would be encouraged to offer courses targeted at them.

6.30. Of the respondents who disagreed with this question, over one-third of the respondents (19,812) gave no reason. Others mainly took these views:-

- (i) If the exception were repealed, all schools in Hong Kong would use Putonghua as the medium of instruction to accommodate mainland

people or be sued for race discrimination by mainlanders. (33,861 responses)

(ii) It would cause "PRC colonisation". (21 responses)

## **D. Expanding the fields and scope of the protection from harassment**

### **(i) Employer liability for employee being harassed by a third party**

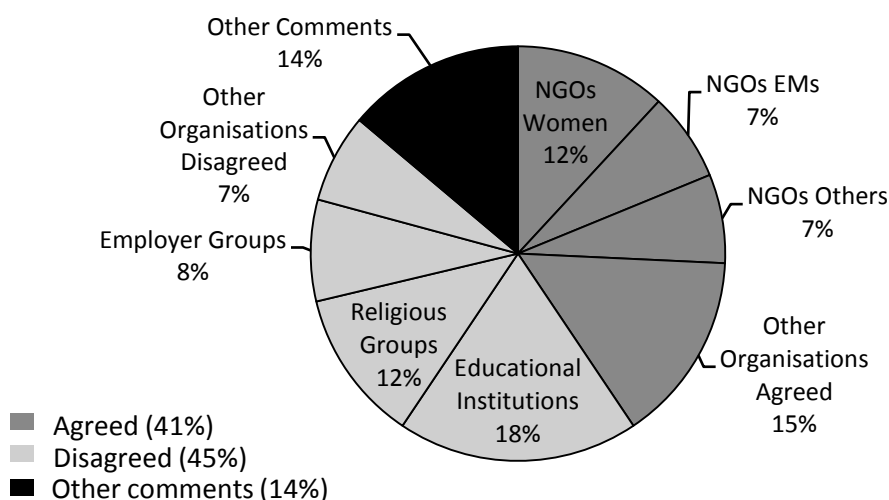
#### **Consultation Question 39(1)**

*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;.....*

#### **Organisations**

#### **Q39(1) Responses: Organisations (59)**

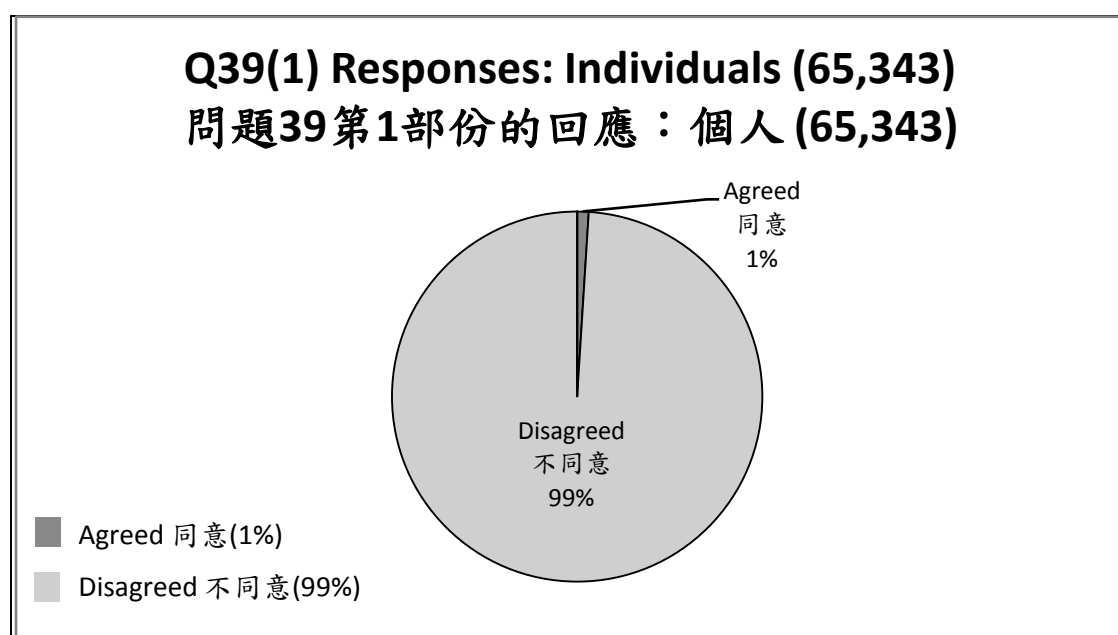


6.31. 59 organisations expressed views on this part. In relation to organisations which agreed with the proposal, a number stated that there was evidence of sexual harassment of employees by third parties, and it was therefore important for employers to be liable where they fail to take reasonable steps to prevent harassment. Of note, one organisation working with foreign

domestic workers stated it was important for there to be liability, given there is currently no liability where a domestic worker is sexually harassed by friends or relatives not living at the domestic workplace.

- 6.32. In relation to organisations which disagreed with the proposal, a number were employer groups who were concerned that it would impose too much liability on employers, for example given that it can be difficult for an employer to control the actions of customers and other third parties.

### **Individuals**



- 6.33. 65,343 respondents expressed views on this part. A few respondents (865) indicated their support for this part, the majority (64,463) expressed their objection, while the rest (15) had other comments.
- 6.34. Of the respondents who agreed with this part, almost all respondents (864) gave no reason, while one (1) viewed that the law can be made clearer.
- 6.35. Of the respondents who disagreed with this part, many respondents (26,636) gave no reason. Others mainly took these views:-
- (i) Employers should not be responsible for acts not within the employment relationship and to make them liable would coerce them to stop Hong Kong people from opposing mainlanders. (29,983 responses)
  - (ii) Too much liability. (7,987 responses)

### (iii) Liability of persons in common workplaces

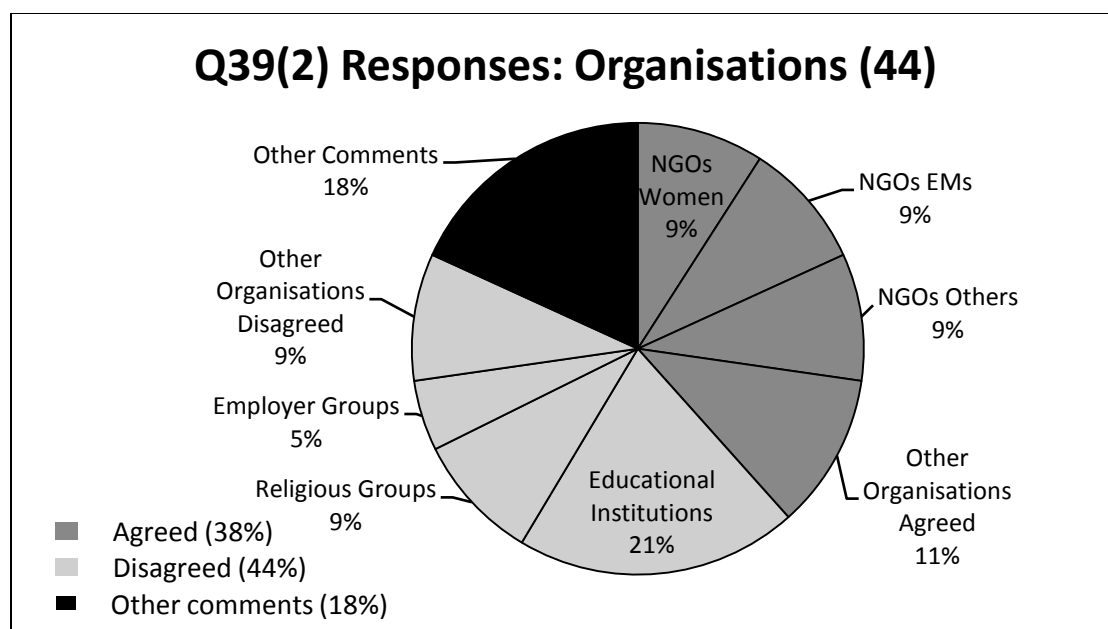
#### Consultation Question 39(2)

*Do you think that new harassment provisions should be introduced for all the protected characteristics which provide:*

.....

*(2) common workplace liability on the person harassing but there is no employer/employee relationship (e.g. volunteers harassed by another volunteer);*

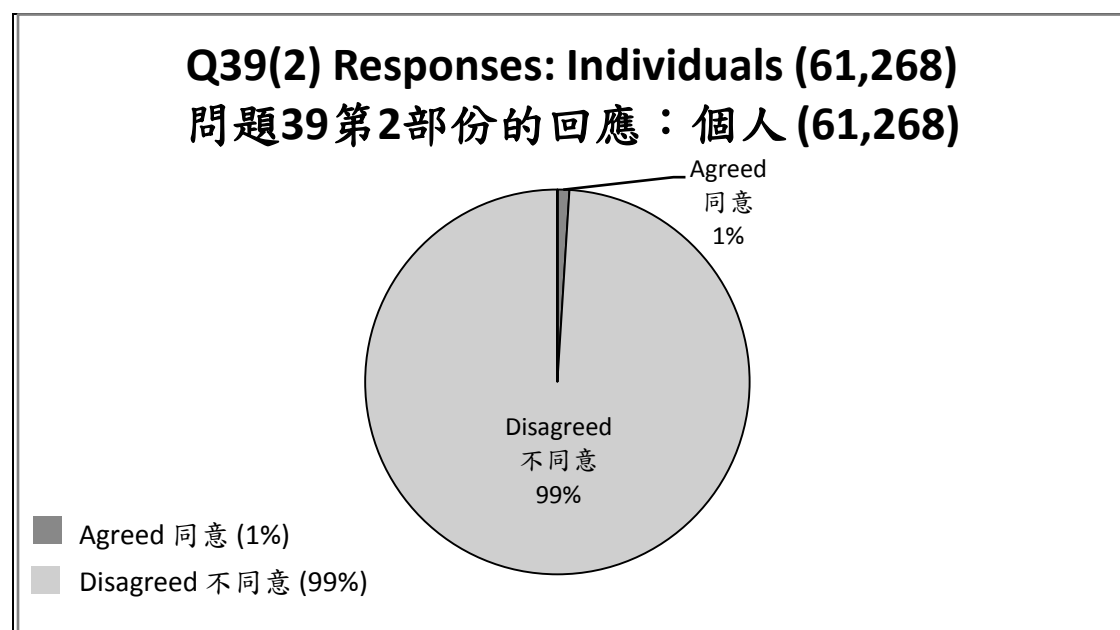
#### Organisations



6.36. 44 organisations expressed views on this part. In relation to organisations which agreed with the proposal, some referred to the importance of protecting women from sexual harassment in common workplaces, including volunteers.

6.37. In relation to organisations that disagreed, one corporation said that there should be criminal liability in such circumstances which would, in their view, be a more effective deterrent.

## Individuals



- 6.38. 61,268 respondents expressed views on this question. A small proportion of respondents (874) agreed with this question, the majority (60,384) expressed their objection, while the rest (10) had other comments.
- 6.39. Of the respondents who agreed with this part, almost all respondents (873) gave no reason, while one (1) viewed that the law can be made clearer.
- 6.40. Of the respondents who disagreed with this part, many respondents (28,785) gave no reason. Others mainly took these views:-
- (i) There is no legal relationship between volunteers so it should not be covered. (29,135 responses)
  - (ii) Too much liability (2,604 responses)



(iii) **Liability of educational establishments where a student harasses another student**

**Consultation Question 39(3)**

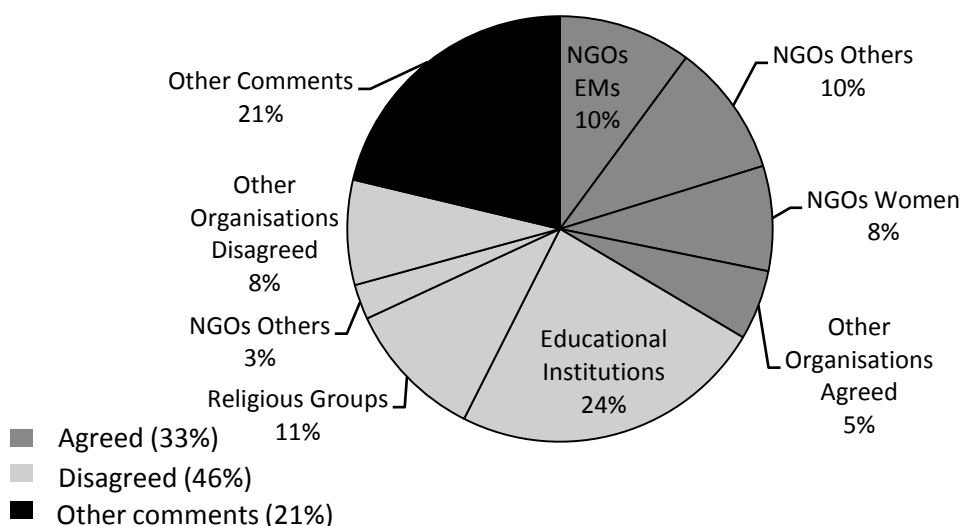
*Do you think that new harassment provisions should be introduced for all the protected characteristics which provide:*

.....

*(3) liability on educational establishments where they are put on notice of harassment between students and fail to take reasonable action;*

**Organisations**

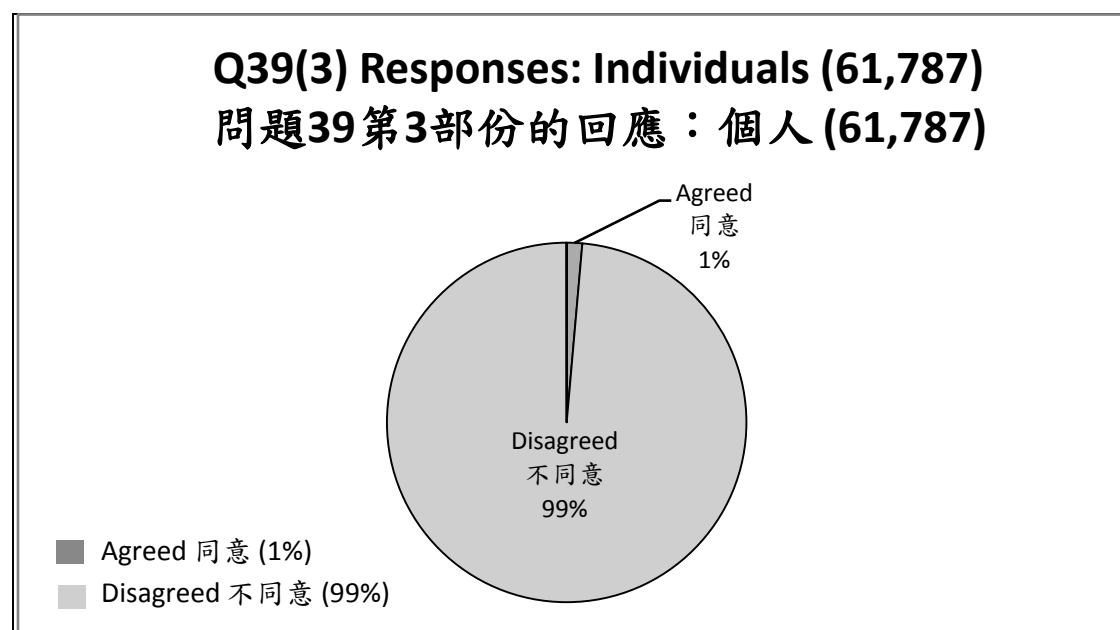
**Q39(3) Responses: Organisations (38)**



6.41. 38 organisations expressed views on this part. In relation to organisations which agreed with the proposal, some stated that educational institutions should be liable in a similar way to how employers are liable for the harassment of employees by another employee.

6.42. In relation to organisations that disagreed, a large number were educational institutions. One educational institution believed that only the person who did the act of harassment should be liable, not the educational institution.

## Individuals



- 6.43. 61,787 respondents expressed views on this part. A small fraction of respondents (860) indicated their support for this part, the majority (60,919) expressed their objection, while the rest (8) had other comments.
- 6.44. Of the respondents who agreed with this part, almost all respondents (859) gave no reason, while one (1) viewed that the law can be made clearer.
- 6.45. Of the respondents who disagreed with this part, many respondents (28,798) gave no reason. Others mainly took these views:-
- (i) Educational establishments should not be liable as that would coerce them to stop Hong Kong students from opposing mainlanders. (28,938 responses)
  - (ii) Too much liability. (3,324 responses)

### **(iv) Liability of service users harassing service providers**

#### **Consultation Question 39(4)**

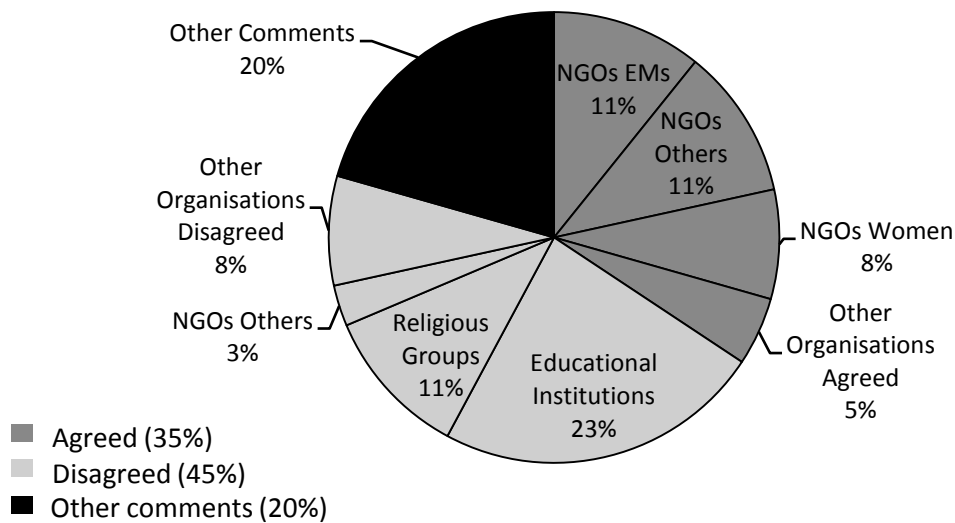
*Do you think that new harassment provisions should be introduced for all the protected characteristics which provide:*

.....

*(4) liability of service users for harassing the service providers;*

## Organisations

### Q39(4) Responses: Organisations (38)

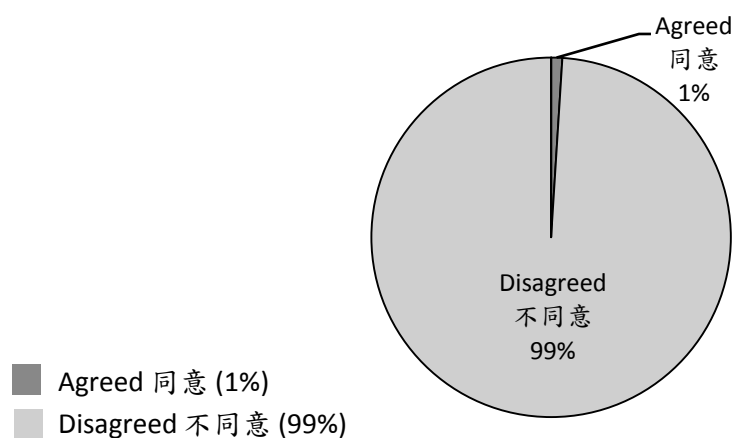


6.46. 38 organisations expressed views on this part. In relation to organisations who agreed with the proposal, a number were women's organisations that stated it was important that service providers are protected from sexual harassment by service users such as customers. In relation to organisations that disagreed, there were no reasons of particular note provided.

## Individuals

### Q39(4) Responses: Individuals (61,664)

### 問題39第4部份的回應：個人 (61,664)



- 6.47. 61,664 respondents expressed views on this question. A few respondents (801) expressed their agreement to this question, the majority (60,852) raised their objection, while the rest (11) had other comments.
- 6.48. Of the respondents who agreed with this part, almost all respondents (800) gave no reason, while one (1) viewed that the law can be made clearer.
- 6.49. Of the respondents who disagreed with this part, most respondents (57,345) gave no reason. Others (3,507) viewed that introducing new harassment provision will impose too much liability.

## (v) Liability of service users for harassing other service users

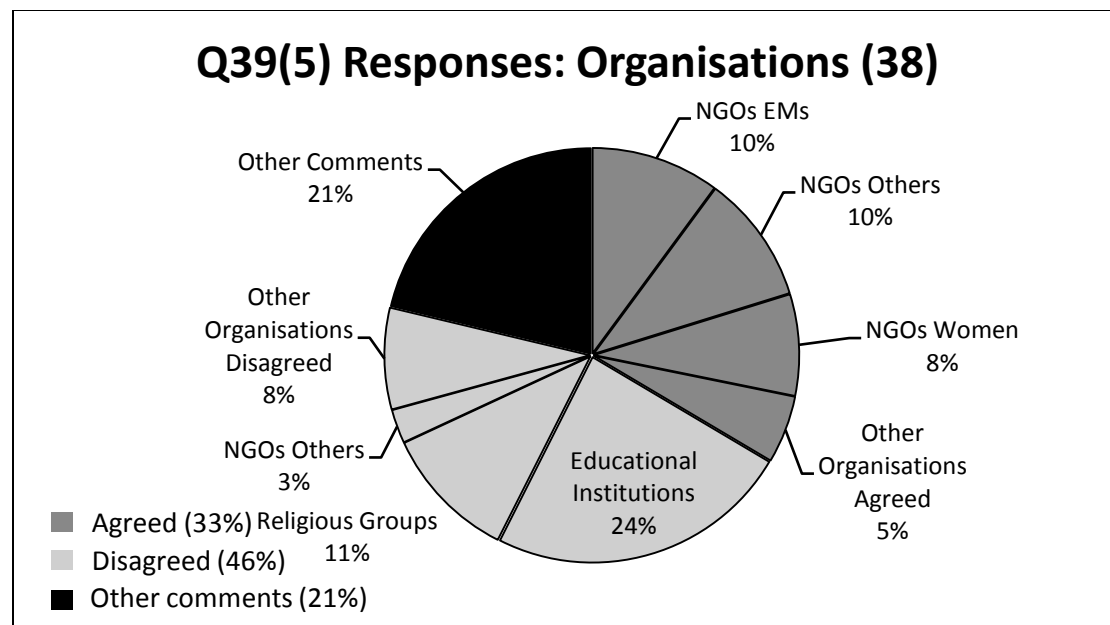
### Consultation Question 39(5)

*Do you think that new harassment provisions should be introduced for all the protected characteristics which provide:*

.....

*(5) liability of service users for harassing other service users*

### Organisations

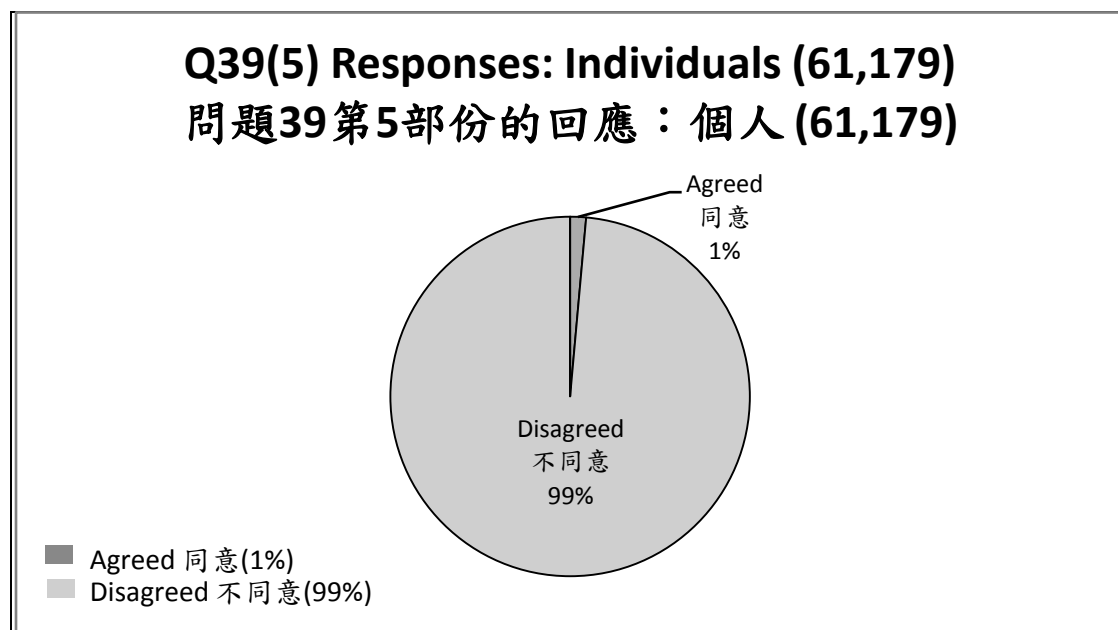


- 6.50. 38 organisations expressed views on this part. In relation to organisations that agreed with the proposal, some referred to the fact that it is common for

women to be sexually harassed in public, for example on transport such as the MTR.

6.51. In relation to those that disagreed, there were no reasons of particular note provided.

### **Individuals**



6.52. 61,179 respondents expressed views on this part. A few respondents (873) indicated their support for this part, the majority (60,298) raised their objection, while the rest (8) had other comments.

6.53. Of the respondents who agreed with this part, almost all respondents (872) gave no reason, while one (1) viewed that the law can be made clearer.

6.54. Of the respondents who disagreed with this part, the majority of respondents (57,279) gave no reason. Others mainly took these views:-

- (i) introducing new harassment provision will impose too much liability. (1,665 responses)
- (ii) introducing new harassment provision will not solve the problem of sexual harassment. (1,497 responses)

**(vi) Liability for harassment on ships and aircraft in relation to the provision of goods facilities and services**

**Consultation Question 39(6)**

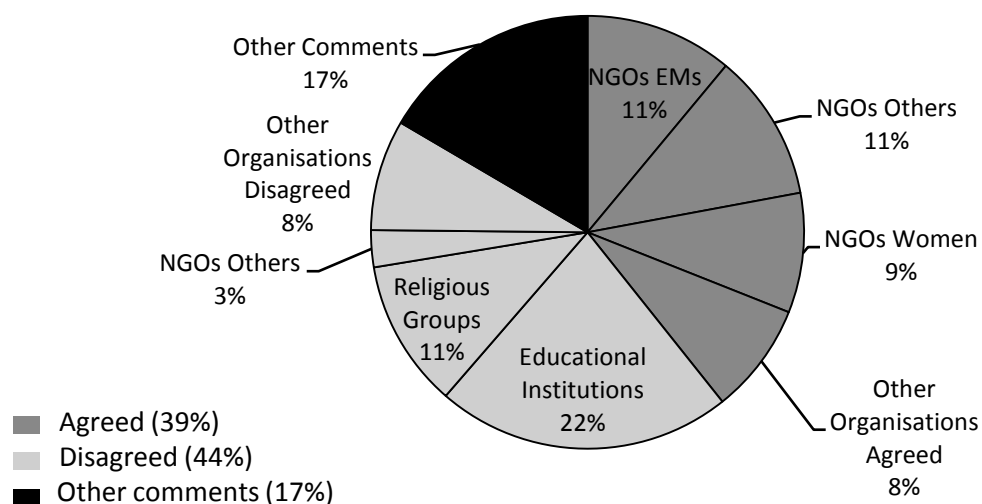
*Do you think that new harassment provisions should be introduced for all the protected characteristics which provide:*

*.....*

*(6) liability for harassment on ships and aircraft in relation to the provision of goods, facilities and services;*

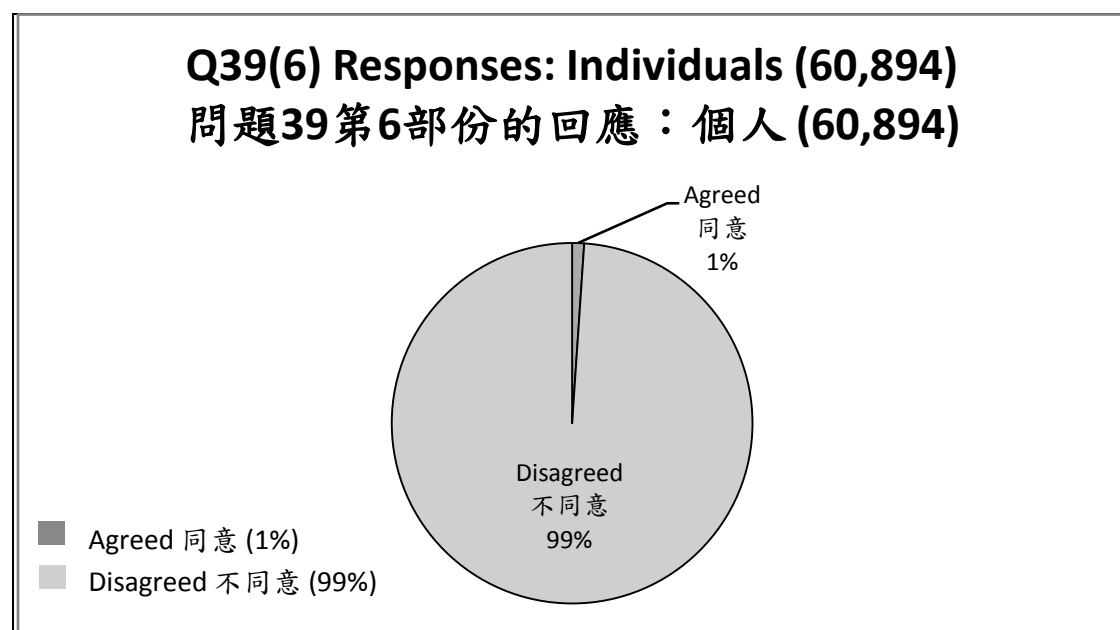
**Organisations**

**Q39(6) Responses: Organisations (36)**



6.55. 36 organisations expressed views on this part. The reasons provided for organisations agreeing or disagreeing with the proposal were similar to those for Question 39(4), which relates to the same issue.

## Individuals



- 6.56. 60,894 respondents expressed views on this part. A few respondents (651) indicated their support to this question, the majority (60,024) raised their objection, while the rest (219) had other comments.
- 6.57. Of the respondents who agreed with this part, almost all respondents (650) gave no reason, while one (1) viewed that the law can be made clearer.
- 6.58. Of the respondents who disagreed with this question, the majority of respondents (57,256) gave no reason, while others (2,768) viewed that introducing new harassment provision will impose too much liability.

**(vii) Harassment of tenants and subtenants by other tenants or subtenants**

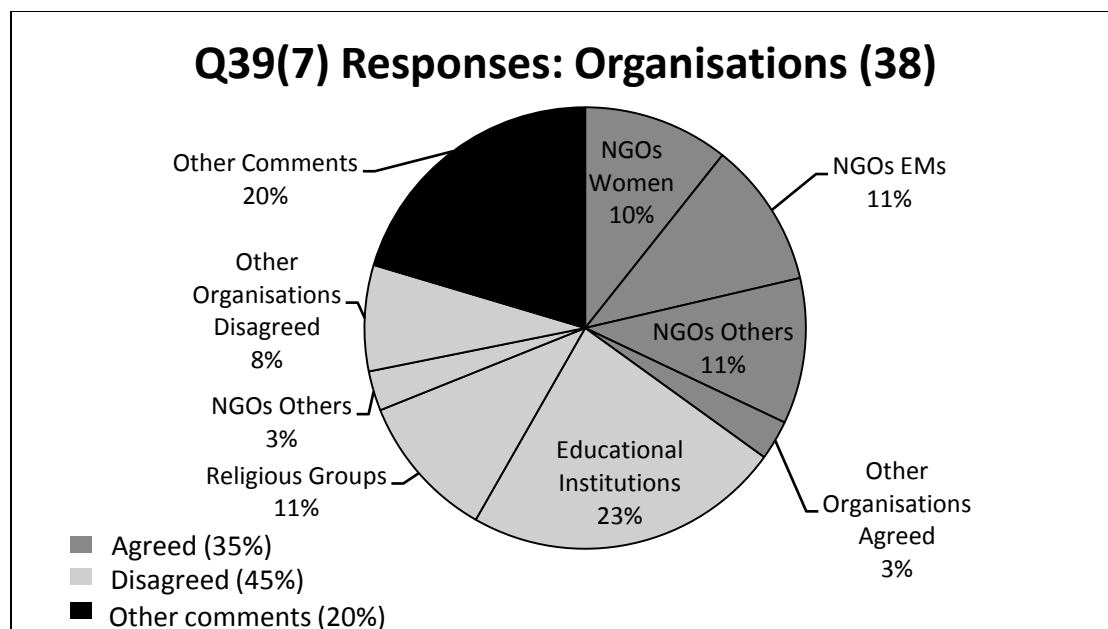
**Consultation Question 39(7)**

*Do you think that new harassment provisions should be introduced for all the protected characteristics which provide:*

*.....*

*(7) liability of tenants and subtenants for harassing other tenants or subtenants; and*

**Organisations**



6.59. 38 organisations expressed views on this part. In relation to organisations that agreed with the proposal, one expressed the view that protection should be extended to not just tenants and sub-tenants, but anyone living in the premises.

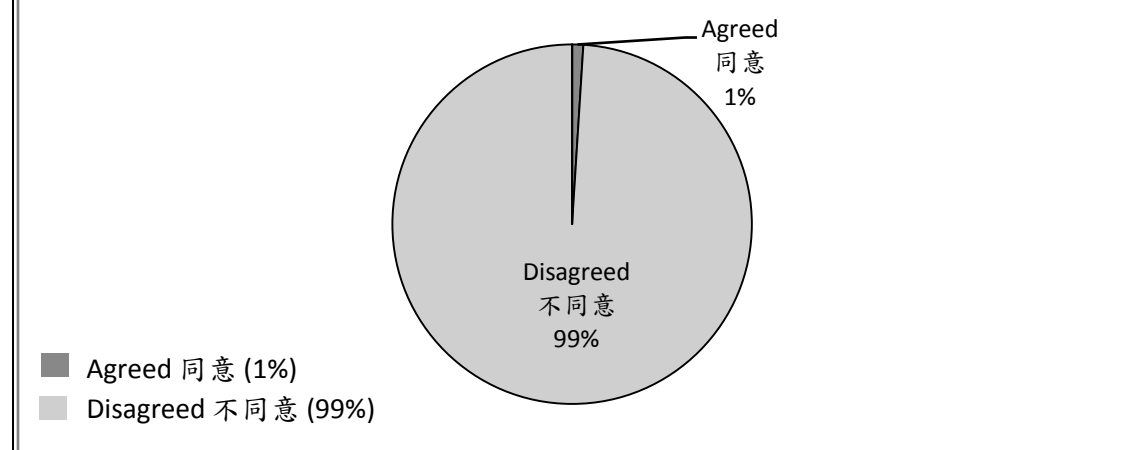
6.60. In relation to organisations that disagreed, there were no reasons of particular note provided.



## Individuals

### **Q39(7) Responses: Individuals (60,893)**

### **問題39第7部份的回應：個人 (60,893)**



- 6.61. 60,893 respondents expressed views on this part. A few respondents (866) indicated their support for this part, the majority (60,019) raised their objection, while the rest (8) had other comments.
- 6.62. Of the respondents who agreed with this part, almost all respondents (865) gave no reason, while one (1) viewed that the law can be made clearer.
- 6.63. Of the respondents who disagreed with this part, the majority of respondents (57,252) gave no reason, while others (2,767) viewed that introducing new harassment provision will impose too much liability.

**(viii) Harassment of members or prospective members by members of club management**

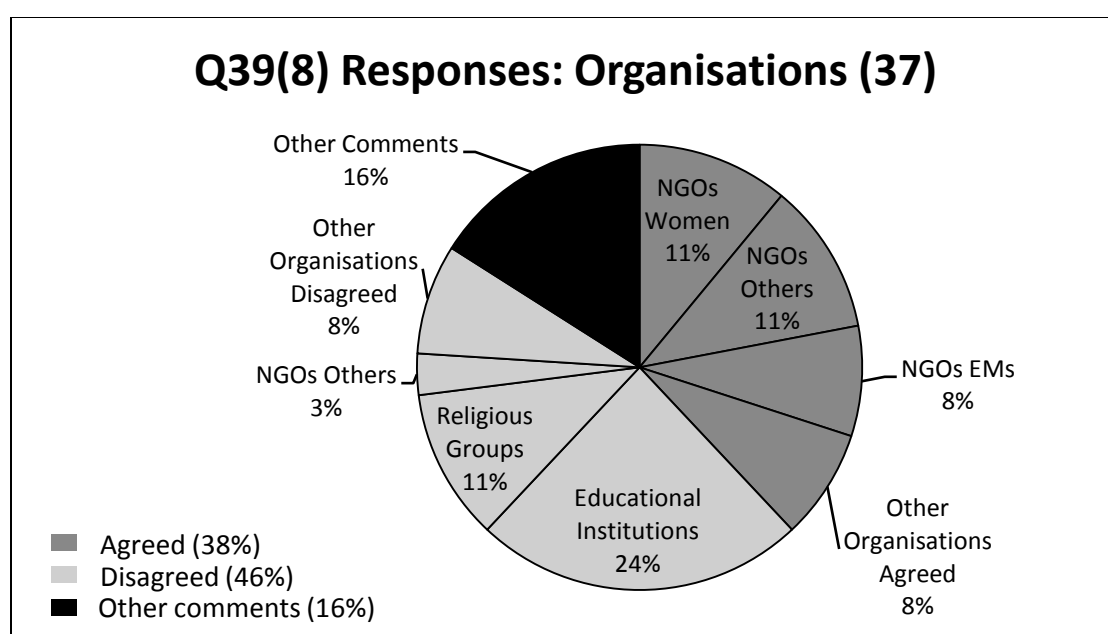
**Consultation Question 39(8)**

*Do you think that new harassment provisions should be introduced for all the protected characteristics which provide:*

.....

*(8) liability of the management of clubs for harassing members or prospective members?*

**Organisations**

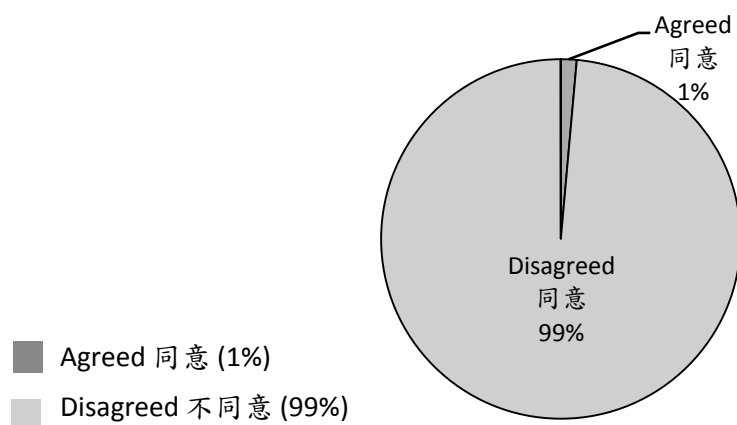


6.64. 37 organisations expressed views on this part. In relation to organisations that agreed with the proposal, one stated that they believe the law should be extended to protect members from harassing other members or prospective members.

6.65. In relation to organisations which disagreed, there were no reasons of particular note provided.

## Individuals

### **Q39(8) Responses: Individuals (60,882)** **問題39第8部份的回應：個人 (60,882)**



- 6.66. 60,882 respondents expressed views on this part. A small proportion of respondents (864) expressed their agreement to this part, the majority (60,010) raised their opposition, while the rest (8) had other comments.
- 6.67. Of the respondents who agreed with this part, almost all respondents (863) gave no reason, while one (1) viewed that the law can be made clearer.
- 6.68. Of the respondents who disagreed with this question, the majority of respondents (57,246) gave no reason, while others (2,764) viewed that introducing new harassment provision will impose too much liability.

## Chapter 7 Promoting and Mainstreaming Equality

7.01. This Chapter describes the responses to Chapter 5 of the Consultation Document on promoting and mainstreaming equality. It examines in particular proposals regarding special measures and the possibility of a public sector equality duty.

### A. Special measures

#### Consultation Question 40

*Do you think that:*

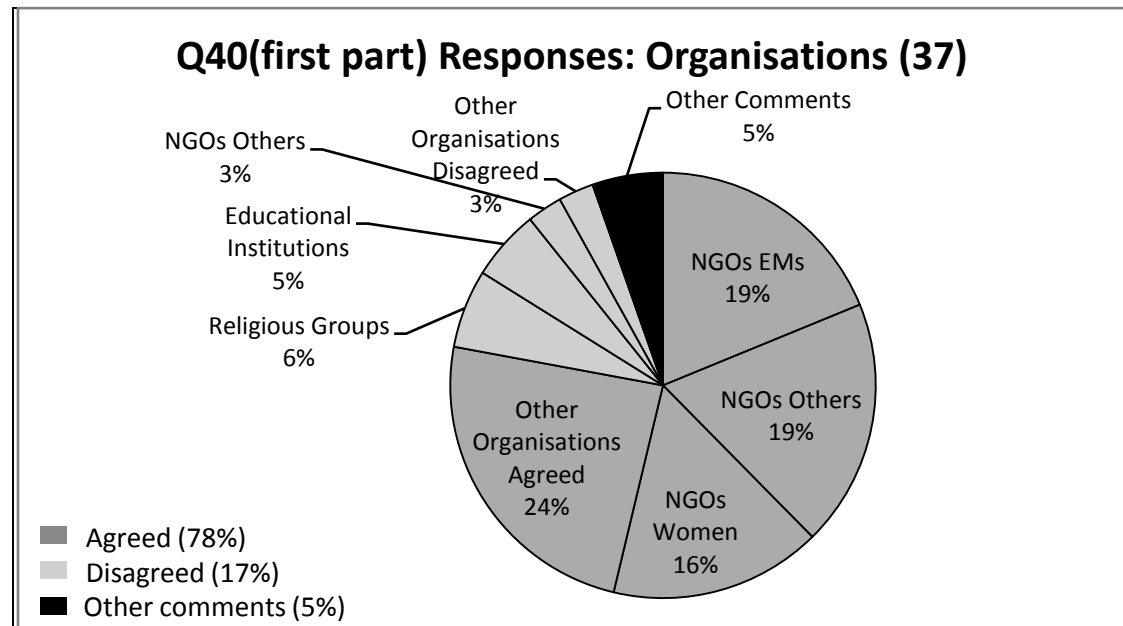
- *Special measures provisions should be conceptualised and positioned within the discrimination legislation as measures to promote substantive equality rather than exceptions to non-discrimination; and*
- *The definition of special measures should be made clearer as suggested in paragraph 5.18 in terms of their purpose, circumstances in which they can be used and when they should end?*

#### First Part of Consultation Question 40

*Do you think that:*

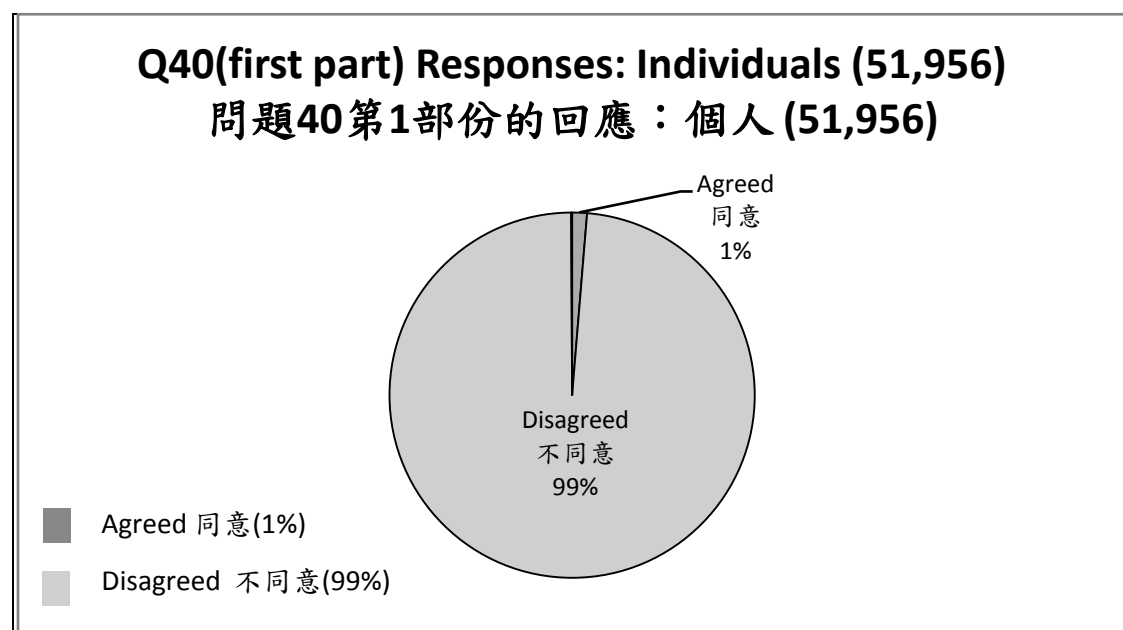
- *Special measures provisions should be conceptualised and positioned within the discrimination legislation as measures to promote substantive equality rather than exceptions to non-discrimination;.....?*

## Organisations



7.02. 37 organisations expressed views on this part. In relation to the organisations which agreed with the proposal, a number believed that, given special measures are an important method to achieve substantive equality, they should be conceptualised as such and more clearly defined. In relation to organisations which disagreed, they generally believed that the current provisions are sufficient, and it is unnecessary to change them.

## Individuals



- 7.03. 51,956 respondents expressed views on this part. A few respondents (681) were supportive with this question, the majority (51,235) indicated objection, while the rest (40) had other comments.
- 7.04. Of the respondents who disagreed with this part, almost all the respondents (680) gave no reason, while one (1) viewed that further research is needed.
- 7.05. Of the respondents who disagreed with this part, over one-third of the respondents (19,589) gave no reason, while nearly to two-thirds (31,646) took the view there should not be measures to promote equality. They queried whether it would mean that mainland Chinese people would be hired for all the work in Hong Kong.

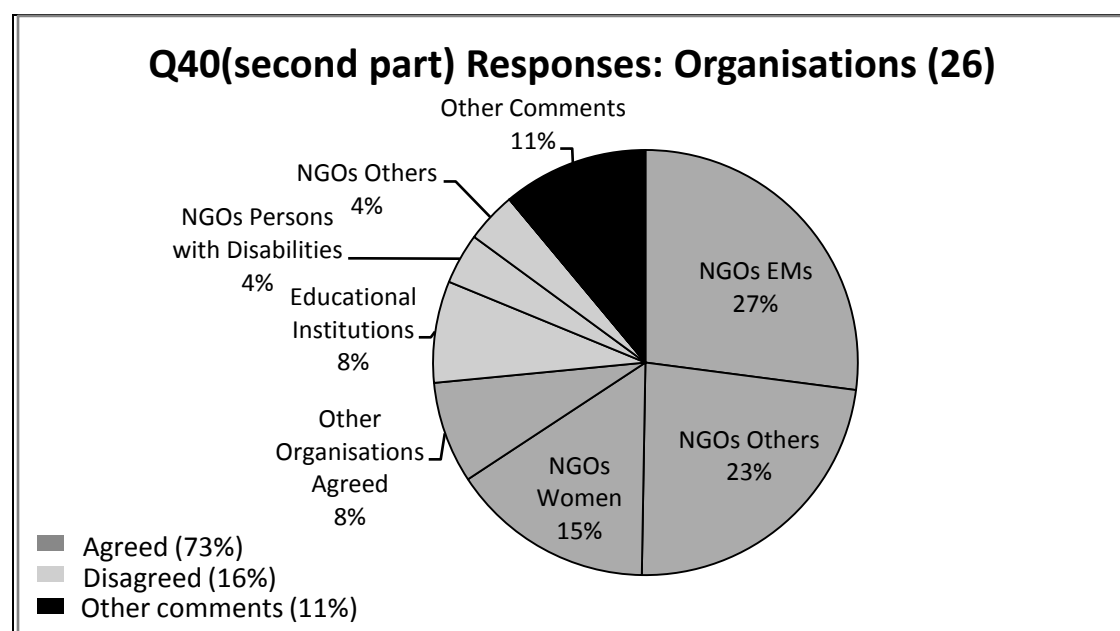
## **Second Part of Consultation Question 40**

***Do you think that:***

.....

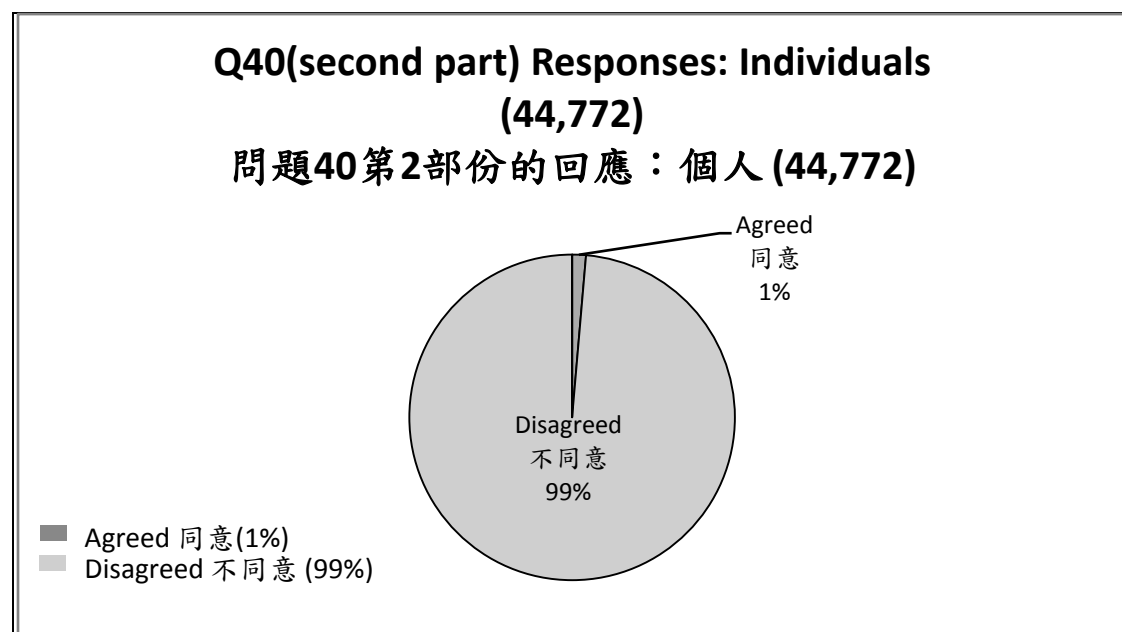
- ***The definition of special measures should be made clearer as suggested in paragraph 5.18 in terms of their purpose, circumstances in which they can be used and when they should end?***

## **Organisations**



- 7.06. 26 organisations expressed views on this part. Please the first part of this question above.

## Individuals



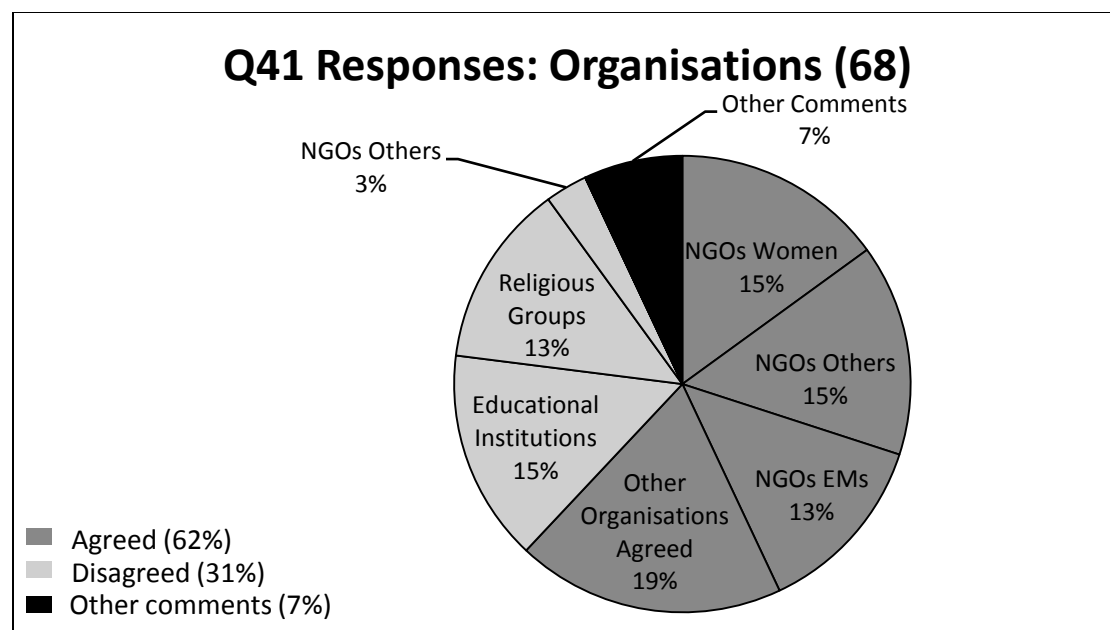
- 7.07. 44,772 respondents expressed views on this part. A few respondents (611) indicated their support to this question, the vast majority (44,160) raised their objection, while one respondent (1) made other comments. All respondents who agreed with this question gave no reason.
- 7.08. Of the respondents who disagreed with this question, the majority of the respondents (44,143) gave no reason, while a few (17) opined that the measures will assist mainlanders to get jobs in Hong Kong.

## B. Public sector equality duty

### Consultation Question 41

*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?*

#### Organisations



7.09. 68 organisations expressed views on this question. In relation to organisations that agreed with the proposal, a number of reasons were provided including:

- (i) The current Government measures to promote equality within Government and public authorities are not sufficient;
- (ii) There is evidence in Hong Kong that some groups such as ethnic minorities and persons with disabilities face substantial inequality and discrimination, which require addressing in a systematic manner;
- (iii) International human rights obligations include obligations to take proactive measures to address systemic inequality.

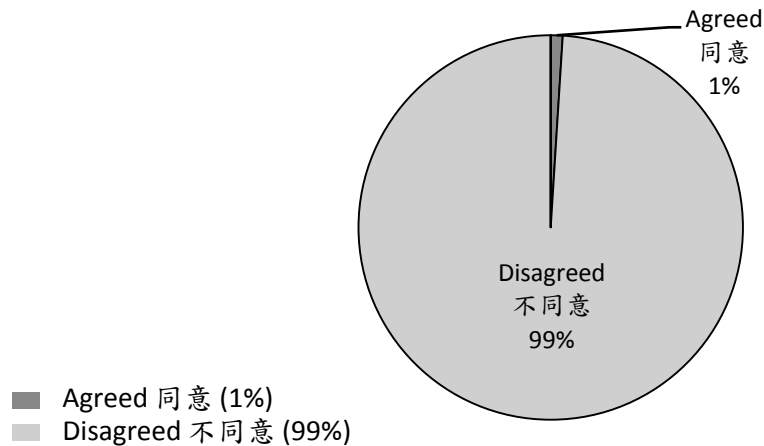
7.10. In relation to organisations that disagreed or provided other comments, one public body questioned the need for such a duty, given that public bodies must already comply with the anti-discrimination Ordinances. They believed that it would be difficult to define with clarity the requirements under the duty.



## Individuals

### Q41 Responses: Individuals (53,514)

#### 問題41的回應：個人 (53,514)



- 7.11. 53,514 respondents expressed views on this question. A small fraction of respondents (799) expressed their support to this question, the majority (52,663) indicated their objection, while the rest (52) had other comments. All respondents who agreed with this question gave no reason.
- 7.12. Of the respondents who disagreed with this question, some respondents (18,959) gave no reason, while many (33,704) expressed the view there is no need to promote mainstream equality. They queried the meaning of “mainstreaming” and whether the proposal is “mainlandisation”.

## Chapter 8 Court Proceedings, Powers and Constitution of the EOC

8.01. This Chapter describes the responses to Chapter 6 of the Consultation Document on court proceedings, the powers and constitution of the EOC, and the possible establishment of a Human Rights Institution.

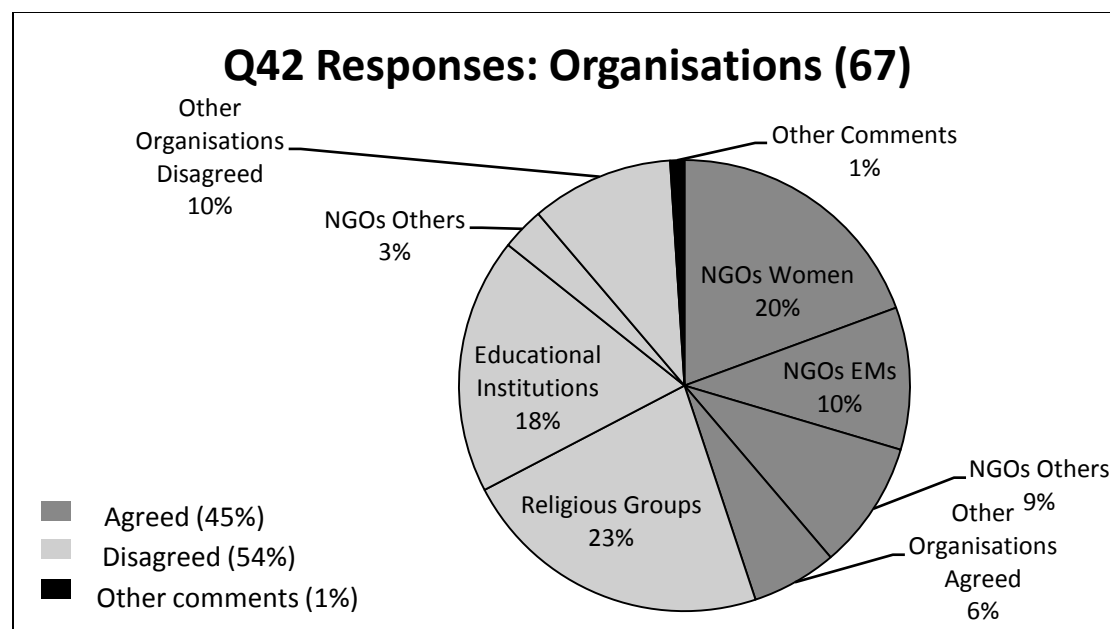
### Part I: Aspects of court proceedings

#### A. Standard and burden of proof

##### Consultation Question 42

*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?*

##### Organisations



8.02. 67 organisations expressed views on this question. In relation to organisations that agreed, there were a number of reasons provided including:

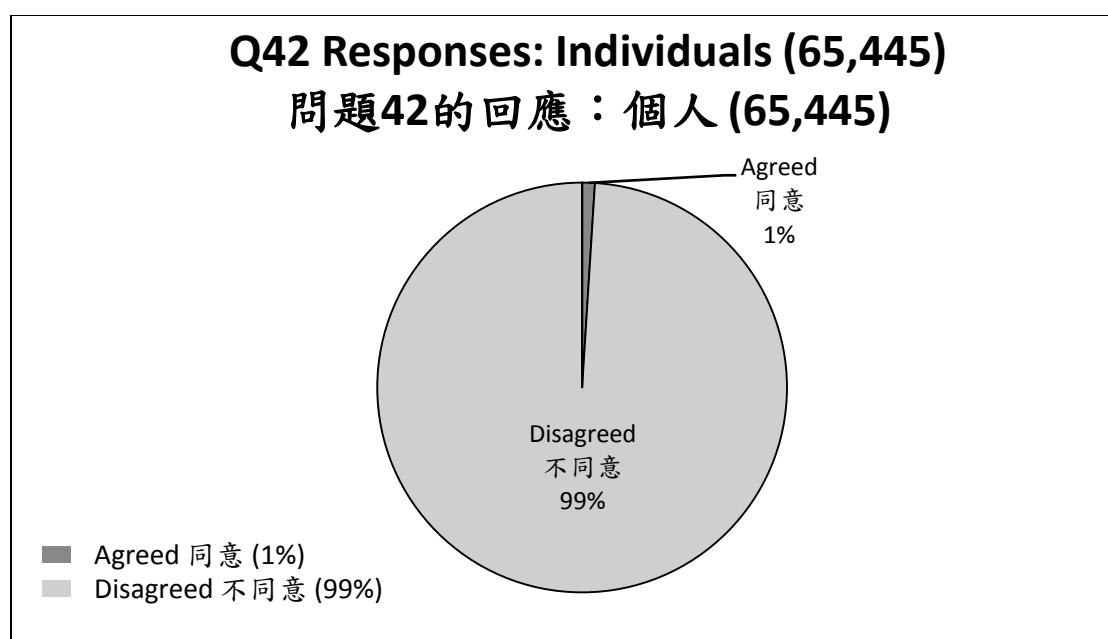
- (i) Discrimination claims are difficult to prove;

- (ii) Discrimination claims are civil law a not criminal law. Therefore, claims have to be proved on a balance of probabilities, not beyond a reasonable doubt as in criminal cases;
- (iii) International human rights obligations consider it appropriate for there to be a shift in the burden of proof once the claimant establishes some evidence of discrimination; and
- (iv) Similar international jurisdictions include in their legislation provision on the burden of proof.

8.03. In relation to organisations that disagreed, several reasons were provided including:

- (i) The system in Hong Kong does not require a shift in the burden of proof.
- (ii) It would go against the presumption of innocence of a defendant.

### **Individuals**



8.04. 65,445 respondents expressed views on this question. A minority of respondents (775) expressed their agreement to this question, the majority (64,667) raised their objection, while the rest (3) had other comments. All respondents who agreed with this question gave no reason.

8.05. Of the respondents who disagreed with this question, over one-third of the respondents (22,552) gave no reason. Others mainly took these views:-

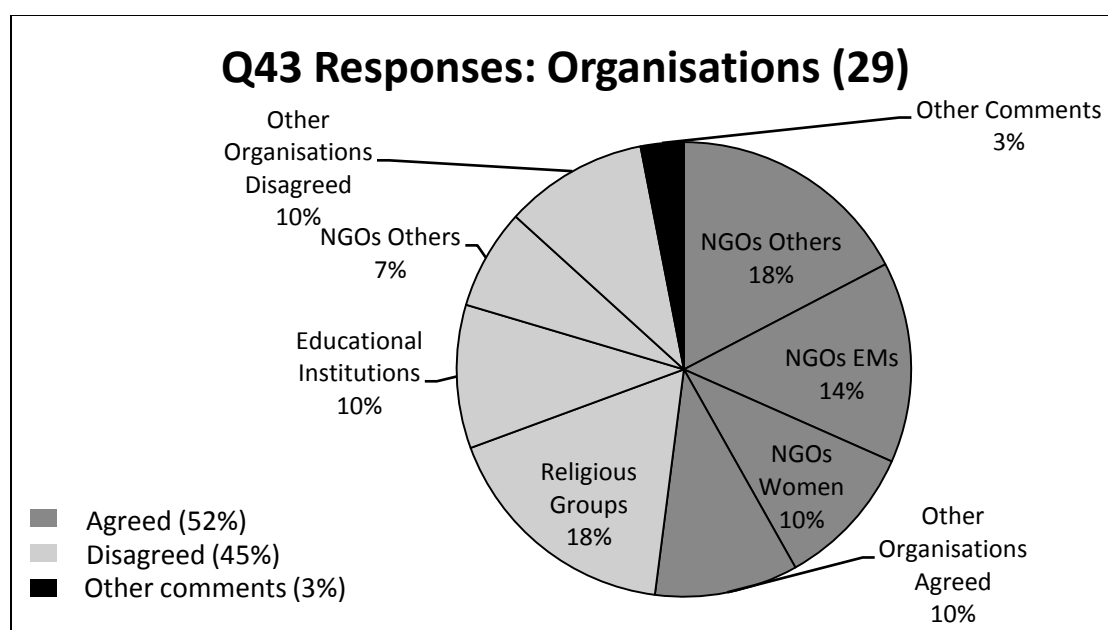
- (i) How come the respondent must show they are innocent while the claimant need not submit evidence. It is wrong to destroy the legal system of Hong Kong for helping mainlanders. (33,038 responses)
- (ii) It would be unfair to the defendant if the burden shifted to them. (4,831 responses)
- (iii) It would go against Hong Kong established a legal system where the plaintiff always has the burden of proof. (4,501 responses)

## B. Damages for indirect discrimination

### Consultation Question 43

*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?*

#### Organisations

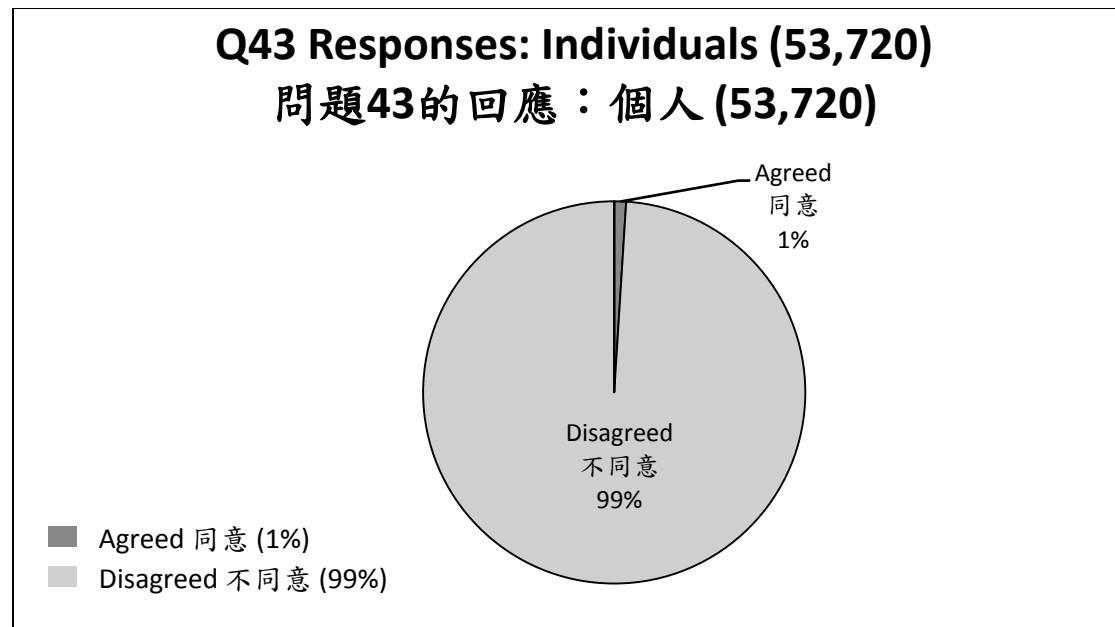


8.06. 29 organisations expressed views on this question. In relation to organisations which agreed, some referred to the fact that, as there is no requirement to prove intention in a discrimination claim, the current provisions should be amended.

8.07. In relation to organisations which disagreed or provided other comments, one legal institution stated that caution should be exercised on removing the

requirement of intention, given that discrimination may, for example, be accidental.

### **Individuals**

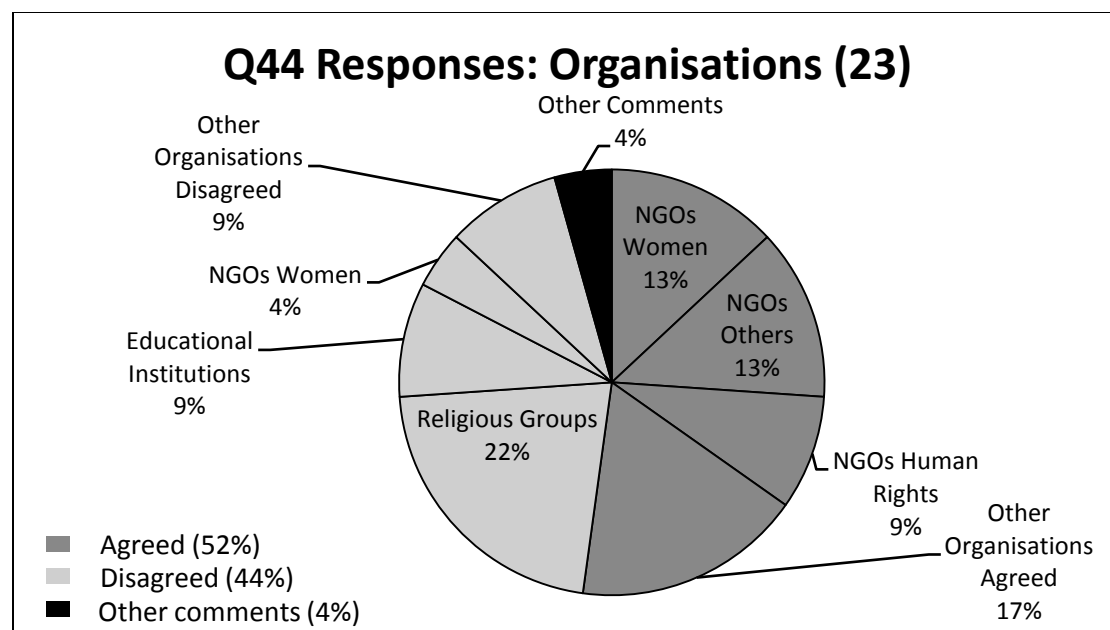


- 8.08. 53,720 respondents expressed views on this question. A few respondents (518) indicated their support to this question, the vast majority (53,199) raised their objection, while the rest (3) had other comments.
- 8.09. Of the respondents who agreed with this question, almost all respondents (517) gave no reason, while one (1) expressed the view that further study on this issue is necessary.
- 8.10. Of the respondents who disagreed with this question, some respondents (7,007) gave no reason. Others mainly took these views:-
- (i) Hong Kong people must rely on intention as an element that must be proved, especially when the Hong Kong government could sue Hong Kong people for discriminating against mainlanders. (34,782 responses)
  - (ii) intention should be an element that must be proved in discrimination claims. (11,506 responses)

## Consultation Question 44

*Do you think that the discrimination laws should be amended to ensure the EOC can recover its legal costs where claimants are awarded costs?*

### Organisations

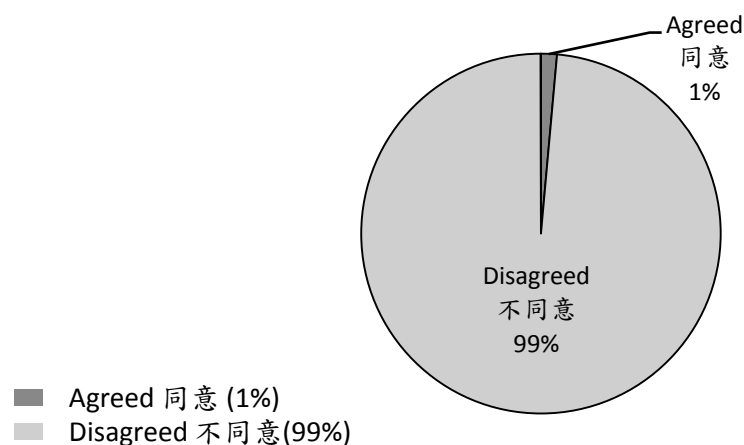


8.11. 23 organisations expressed views on this question. In relation to the organisations that agreed or disagreed, not many reasons were provided. Of note, one human rights organisation which agreed with the proposal noted that in Great Britain, there is a provision in the Equality Act 2010 permitting the Equality and Human Rights Commission (EHRC) to recover its legal costs where it provides legal assistance. They believed such a provision is important as it ensures the EHRC is not discouraged from providing legal assistance or suffers financially when doing so.

## Individuals

### Q44 Responses: Individuals (54,294)

#### 問題44的回應：個人 (54,294)



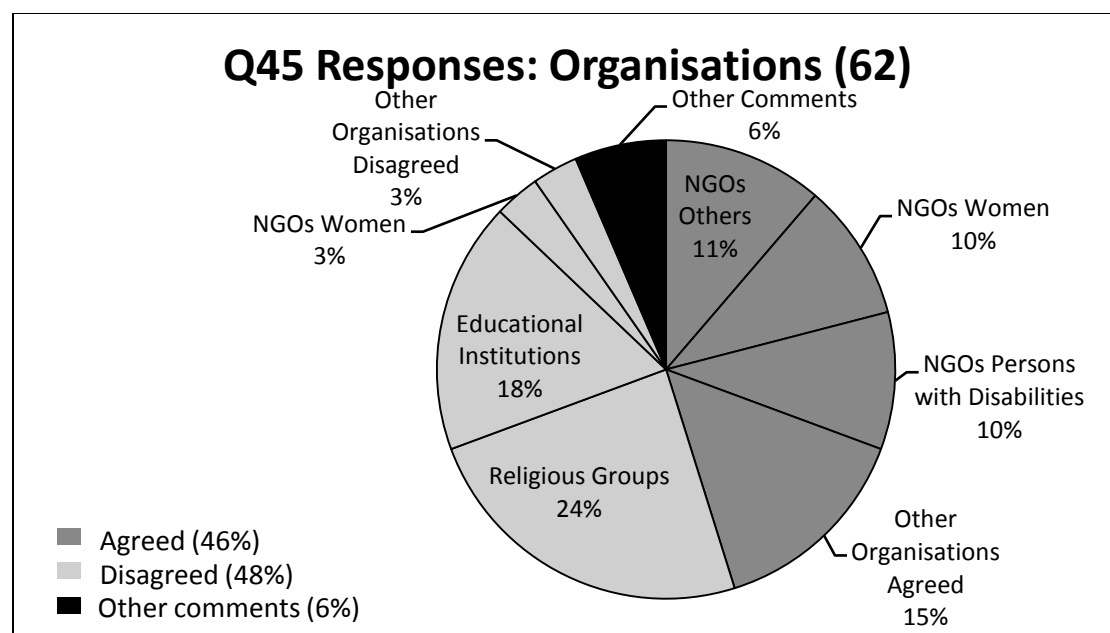
- 8.12. 54,294 respondents expressed views on this question. A few respondents (776) were supportive with this question, the majority (53,507) raised their objection, while the rest (11) had other comments.
- 8.13. Of the respondents who agreed with this question, almost all respondents (771) gave no reason, while a few (5) expressed the view there should be a law to safeguard the effectiveness of the EOC.
- 8.14. Of the respondents who disagreed with this question, close to two-fifths of the respondents (20,905) gave no reason, while a large number (32,602) queried why the EOC can recover its legal costs from Hong Kong people after it helps mainlanders to win legal cases.

## D. Proceedings that may only be brought by the EOC

### Consultation Question 45

*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?*

#### Organisations



8.15. 62 organisations expressed views on this question. In relation to organisations which agreed, several referred to the fact that the EOC should be able to initiate proceedings in its own name for discriminatory practices where, for example, a person does not wish to make a complaint themselves, but the practice is discriminatory.

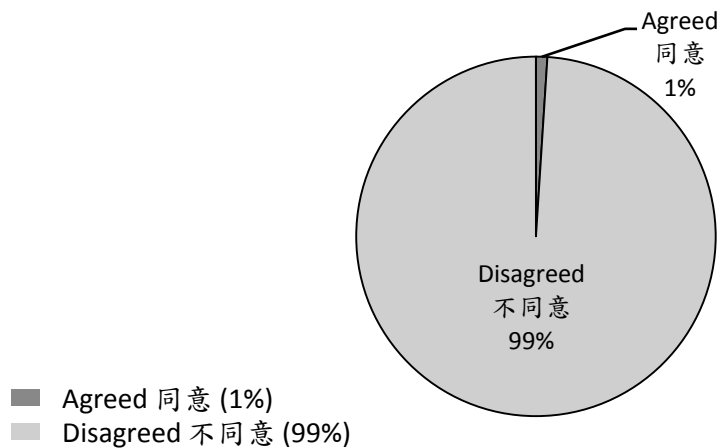
8.16. In relation to organisations which disagreed, there were no reasons of particular note provided.



## Individuals

### Q45 Responses: Individuals (70,930)

#### 問題45的回應：個人 (70,930)



- 8.17. 70,930 respondents expressed views on this question. A few respondents (721) agreed with this question, the majority (70,207) raised their objection, while the rest (2) had other comments. All respondents who agreed with this question gave no reason.
- 8.18. Of the respondents who disagreed with this question, nearly half of the respondents (34,854) gave no reason, while more than half (35,353) took the view that initiating proceedings are the work of the judiciary, not the EOC, which is an administrative body, and there should be a separation between the judiciary and administrative functions. They questioned whether the Communist Party of China wants to sue Hong Kong people for discriminating against mainland Chinese people with the help of the EOC.

## **Part II: Powers and constitution of the EOC**

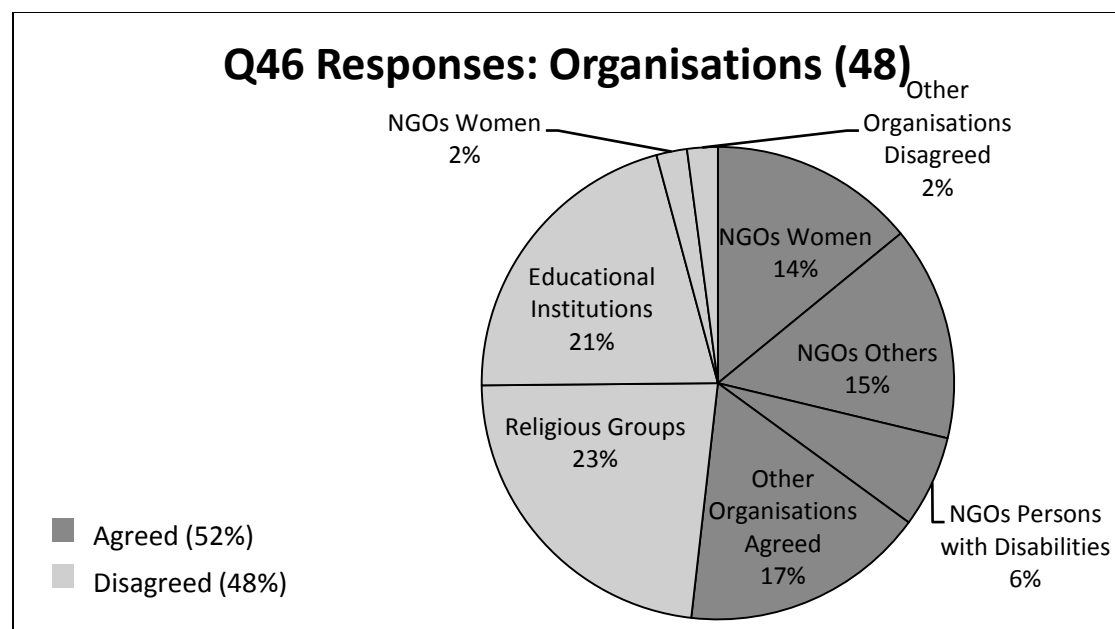
### **A. Powers of the EOC**

#### **(i) Codes of practice and other guidance**

#### **Consultation Question 46**

*Do you think that the discrimination law should contain an express power that the EOC may produce non-statutory guidance?*

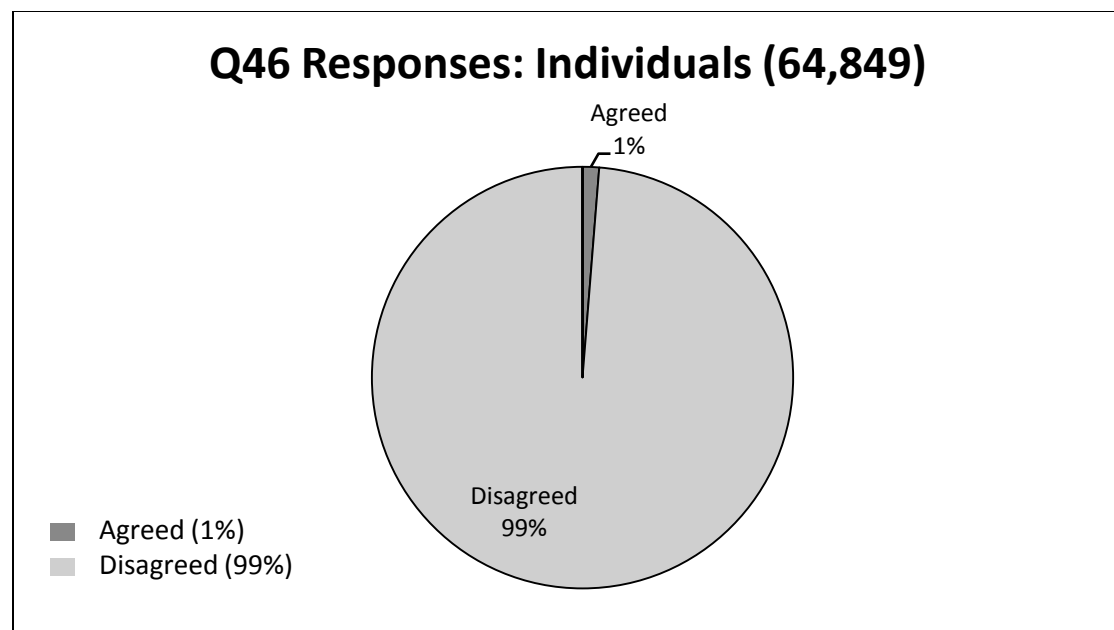
#### **Organisations**



8.19. 48 organisations expressed views on this question. In relation to organisations which agreed, one human rights organisation referred to the fact that it would make the powers of the EOC clearer by referring to the power to produce non-statutory guidance.

8.20. In relation to organisations which disagreed, they generally believed that the current provisions on the powers of the EOC are sufficient.

## **Individuals**



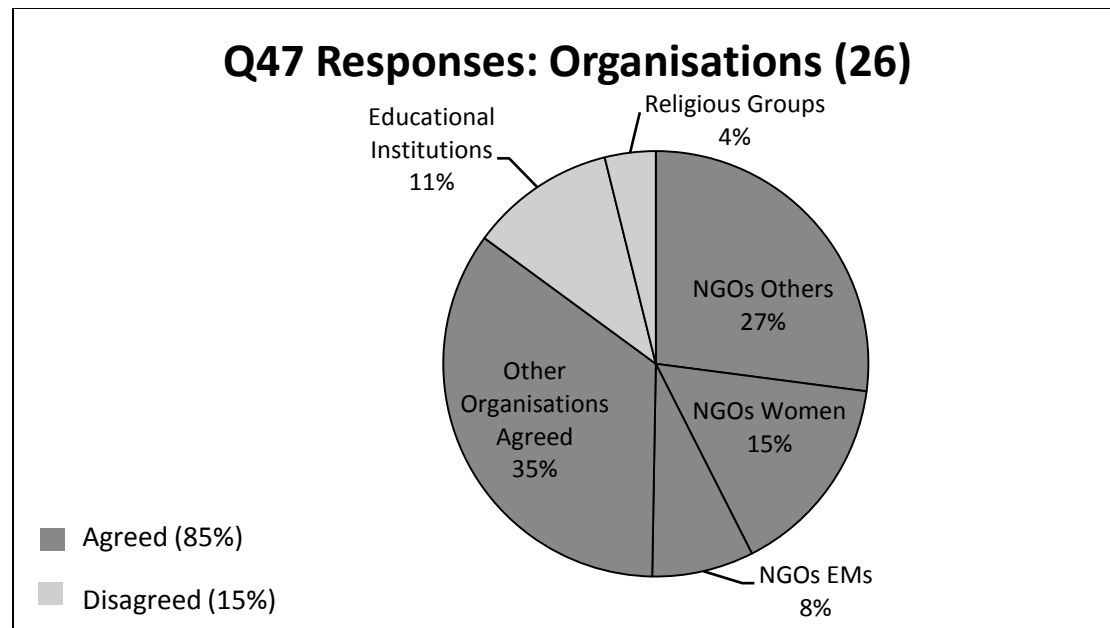
- 8.21. 64,849 respondents expressed views on this question. A few respondents (823) expressed their agreement to this question, the majority (64,024) raised their objection, while the rest (2) had other comments. All respondents who agreed with this question gave no reason.
- 8.22. Of the respondents who disagreed with this question, close to a quarter of the respondents (15,314) gave no reason, while the over three quarters (48,710) viewed that interpretation of statutory provisions is the work of judges. If the EOC issues non-statutory guidance, it means the EOC is interpreting the contents of the Ordinances.

## (ii) Formal investigations

### Consultation Question 47

*Do you think that the formal investigation provisions should set out more clearly the distinction between general and specific investigations?*

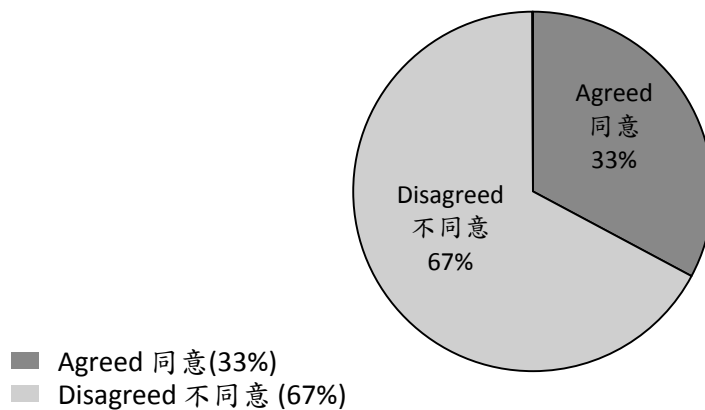
#### Organisations



8.23. 26 organisations expressed views on this question. In relation to the organisations which agreed, a number referred to the fact that it would be better to make clearer the distinction between general and specific investigations. One legal institution stated this would be important as currently, if a general investigation involves a person, they would not have to be given the normal notice methods. An amendment would therefore be fairer for individuals. In relation to the organisations which disagreed, they generally believed that the current provisions on the powers of the EOC are sufficient.

## Individuals

### Q47 Responses: Individuals (9,175) 問題47的回應：個人 (9,175)

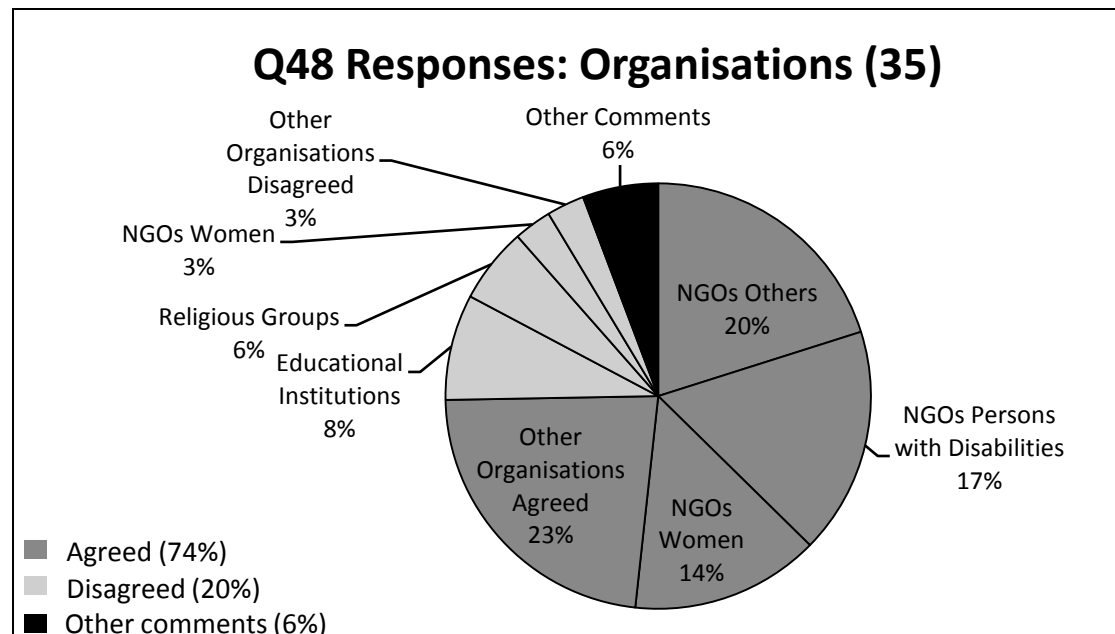


- 8.24. 9,175 respondents expressed views on this question. Approximate one-third of the respondents (3,009) indicated their support to this question, approximate two-thirds (6,161) raised their objection, while the rest (5) had other comments. All respondents who agreed with this question gave no reason.
- 8.25. Of the respondents who disagreed with this question, almost all respondents (5,225) gave no reason, while the rest (936) opined that the EOC should use the same, consistent method to investigate all discrimination cases.

## Consultation Question 48

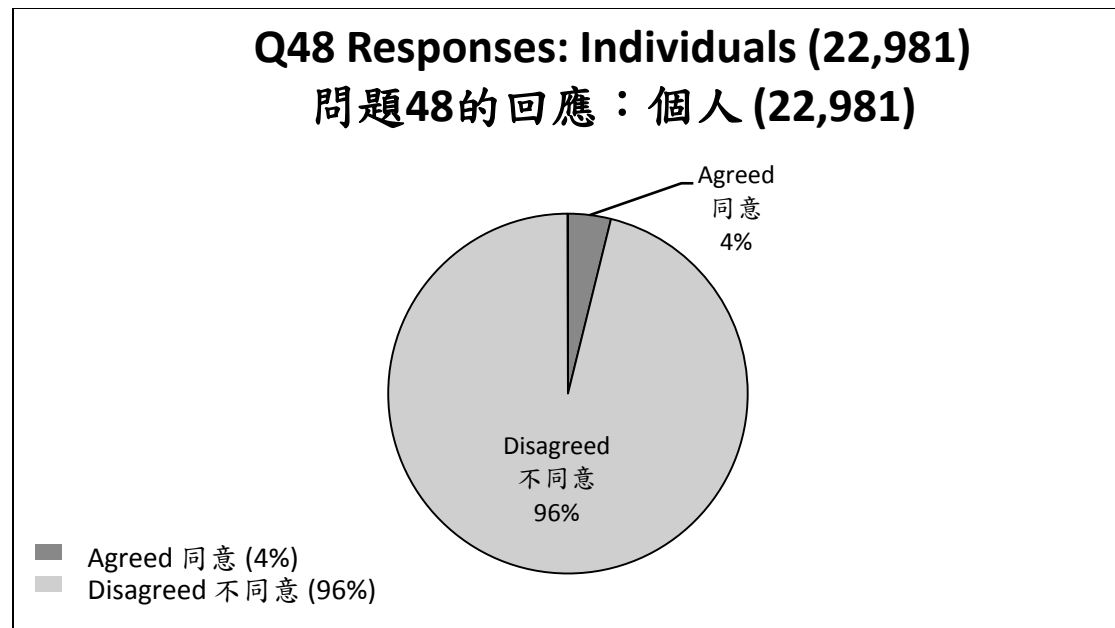
*Do you think that for reasons of consistency with the EOC's other powers, the EOC should be able to issue enforcement notices relating to discriminatory practices against persons with disabilities?*

### Organisations



8.26. 35 organisations expressed views on this question. In relation to organisations which agreed, of note was one NGO working with people with the disability of HIV which stated that, as such persons who experience discrimination may not wish to disclose their identity by bringing a discrimination claim, it is important for the EOC to have powers to issue enforcement notices for discriminatory practices. In relation to organisations that disagreed, there were no reasons of particular note provided.

## Individuals

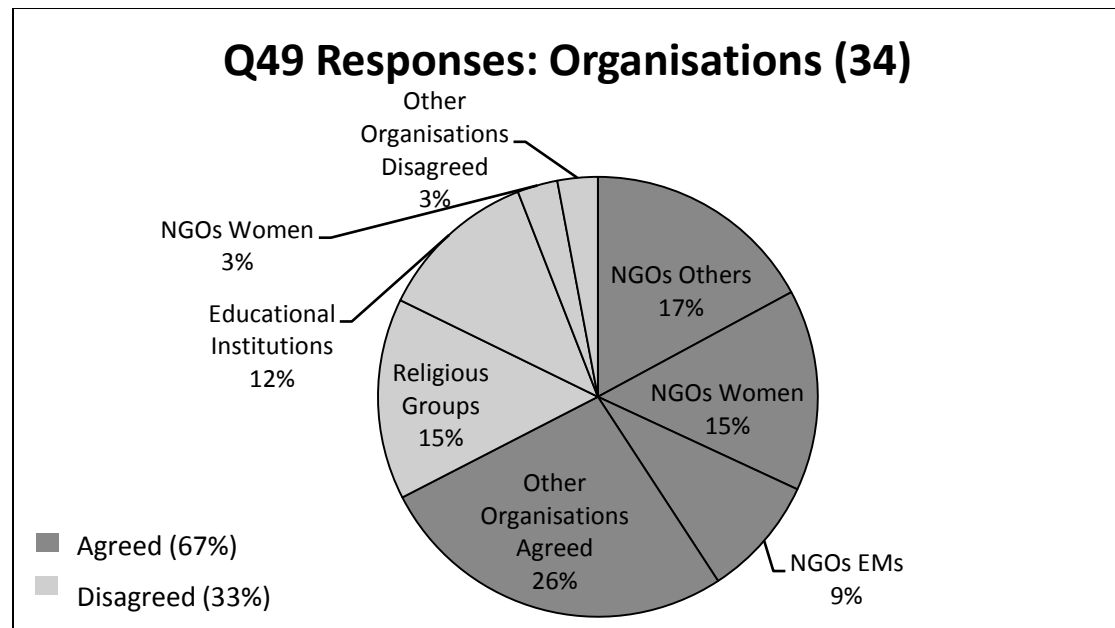


- 8.27. 22,981 respondents expressed views on this question. A minority (885) agreed with this question, the majority (22,090) raised their objection, while the rest (6) had other comments.
- 8.28. Of the respondents who agreed with this question, almost all respondents (884) gave no reason while one (1) expressed the view this can enable the EOC to deal with more discrimination cases.
- 8.29. Of the respondents who disagreed with this question, over a quarter of the respondents (7,047) gave no reason, while close to three-quarters (15,043) expressed the view that enforcement notices should be issued by courts.

## Consultation Question 49

*Do you think that in relation to formal investigations provisions, permitting voluntary binding undertakings should be introduced and be enforceable by the EOC?*

### Organisations



8.30. 34 organisations expressed views on this question. In relation to organisations that agreed, of note was one legal institution, which supported the proposal because they believed that voluntary and binding undertakings are a flexible alternative to claims being brought. This is in their view because the parties can negotiate the terms of the agreement, enhancing the likelihood of compliance.

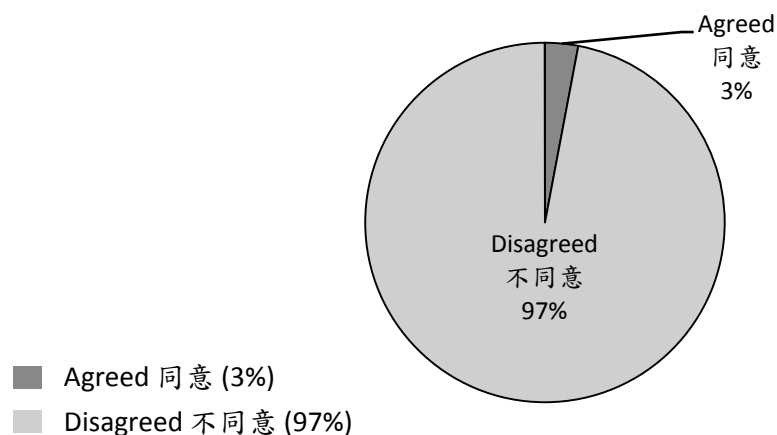
8.31. In relation to organisations that disagreed, they generally believed that the current provisions on the powers of the EOC are sufficient.



## Individuals

### Q49 Responses: Individuals (22,853)

#### 問題49的回應：個人 (22,853)



- 8.32. 22,853 respondents expressed views on this question. A small proportion of the respondents (680) expressed their support for this question, the majority (22,170) raised their objection, while the rest (3) had other comments. All respondents who agreed with this question gave no reason.
- 8.33. Of the respondents who disagreed with this question, the majority of the respondents (22,089) gave no reason, while a few (81) expressed the view that the EOC should not be given too much enforcement power.

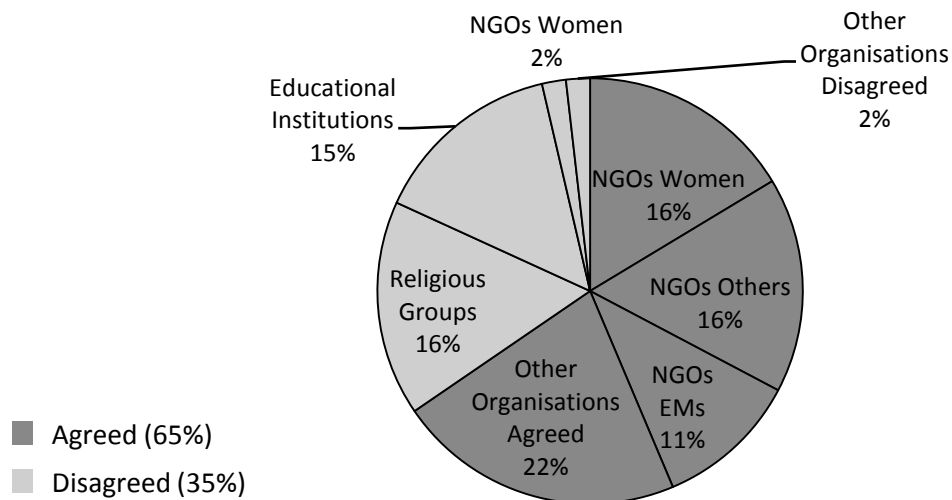
### (iii) Research and education

#### Consultation Question 50

*Do you think that the discrimination law should expressly provide the EOC has powers to conduct research and education in relation to all the protected characteristics?*

## Organisations

### Q50 Responses: Organisations (55)



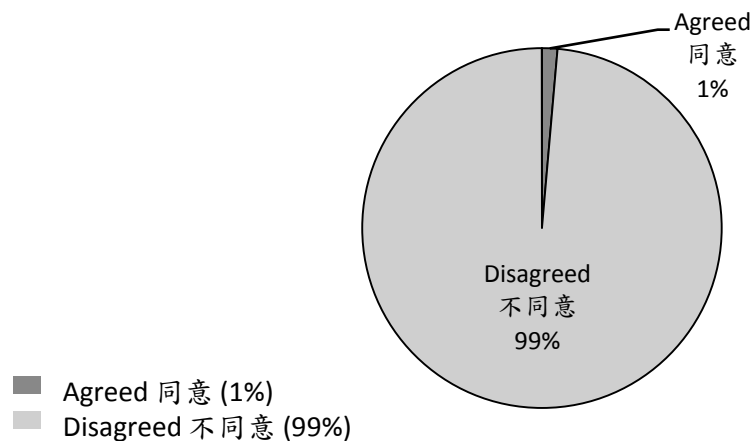
8.34. 55 organisations expressed views on this question. In relation to organisations that agreed, many believed it was important for the legislation to set out clearly that the powers of research and education apply to all protected characteristics for reasons of clarity and consistency.

8.35. In relation to organisations which disagreed, they generally believed that the current provisions on the powers of the EOC are sufficient.

## Individuals

### Q50 Responses: Individuals (64,759)

#### 問題50的回應：個人 (64,759)



- 8.36. 64,759 respondents expressed views on this question. A small fraction of the respondents (945) indicated their support to this question, the majority (63,808) expressed opposition, while the rest (6) had other comments. All respondents who agreed with this question gave no reason.
- 8.37. Of the respondents who disagreed with this question, some respondents (15,921) gave no reason, while many (47,887) expressed the view that the jurisdiction of the EOC is to handle complaints. In their view, the EOC is not an educator, and education should be left to schools.

#### (iv) Other existing powers exercised by the EOC

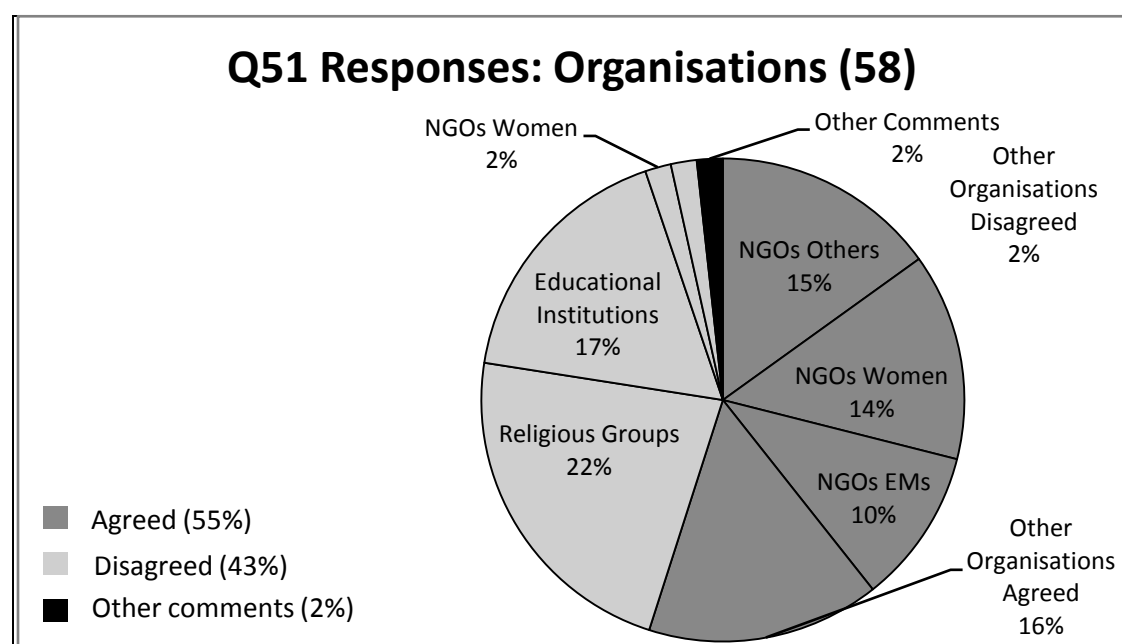
##### (a) Monitoring and advising on legislation or international human rights obligations

#### Consultation Question 51

*Do you think that reformed discrimination laws should expressly provide that the EOC has powers to monitor and advise:*

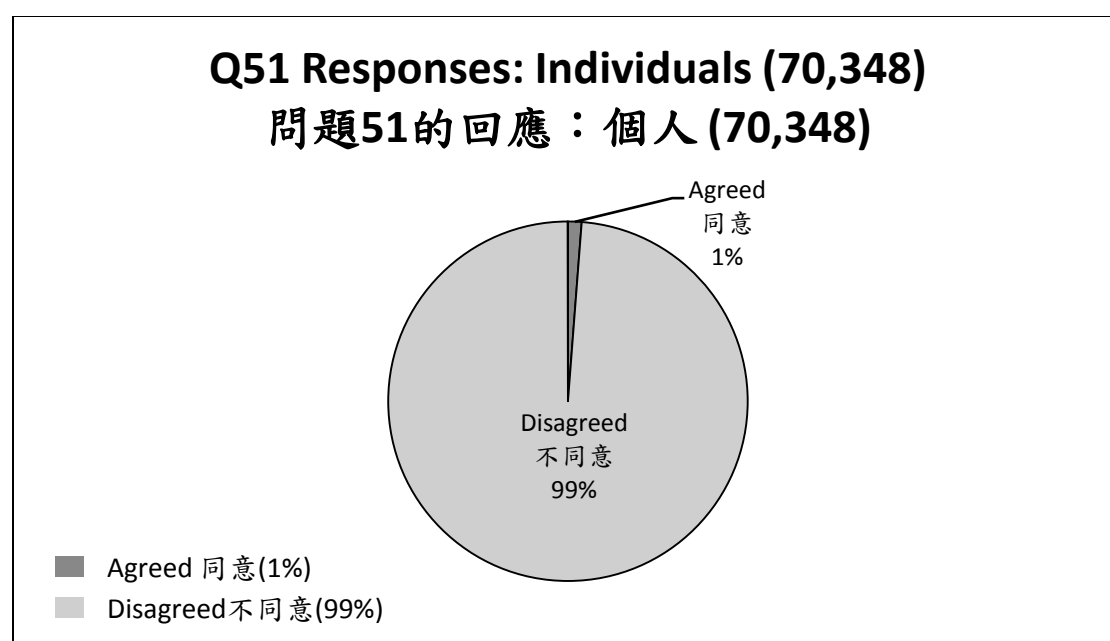
- *The Government on relevant existing and proposed legislation and policy; and*
- *On the Government's compliance with international human rights obligations relating to equality and discrimination?*

#### Organisations



- 8.38. 58 organisations expressed views on this question. Of the organisations that supported the EOC's proposal, several noted that it was important for Hong Kong to meet international human rights standards and comply with its human rights obligations. For instance, one NGO working with people with disabilities supported strengthening the EOC's authority in order to promote equal opportunity and monitor whether the Convention on the Rights of Persons with Disabilities (CRPD) is implemented.
- 8.39. Of the organisations that disagreed with the proposal, they generally believed that the current provisions on the powers of the EOC are sufficient.

### **Individuals**



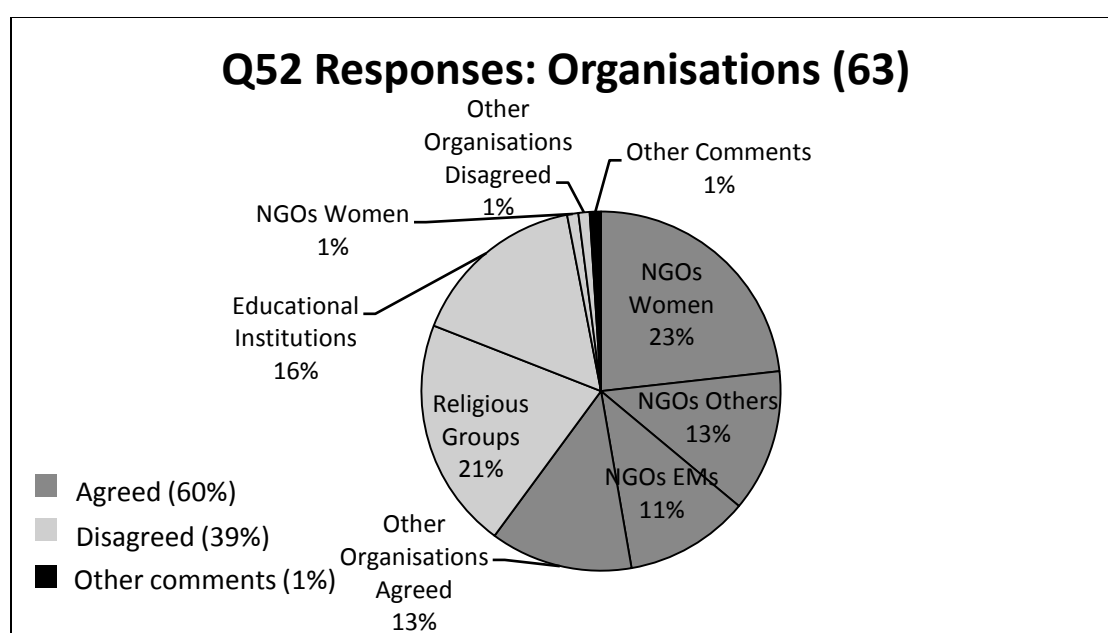
- 8.40. 70,348 respondents expressed views on this question. A minority of the respondents (859) supported this question, the majority (69,478) expressed disagreement, while the rest (11) had other comments. All respondents who agreed with this question gave no reason.
- 8.41. Of the respondents who disagreed with this question, some (20,882) gave no reason, while many (48,596) opined that the examination of Ordinances is the work of the Legislative Council and the EOC should focus on its own work.

**(b) Intervening in or appearing as amicus curiae in court proceedings**

**Consultation Question 52**

*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?*

**Organisations**

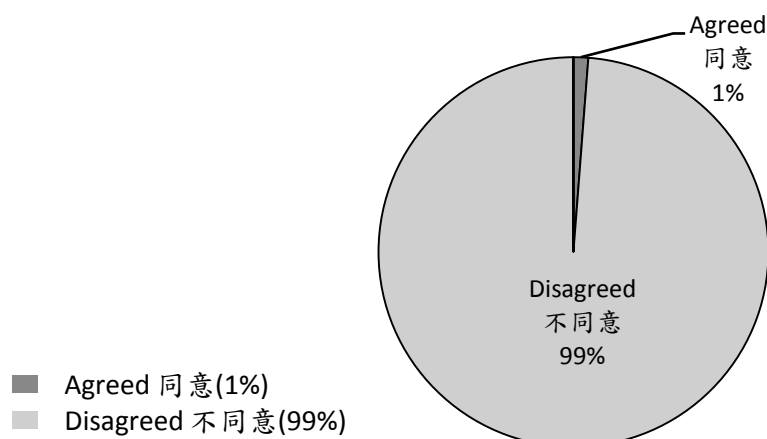


8.42. 63 organisations expressed views on this question. Of the organisations that supported the EOC's proposal, one organisation representing the legal profession agreed as it would make the powers of the EOC clearer, but that it should not result in the scope of the EOC's existing powers being extended. Another NGO noted that such powers are expressly provided in similar jurisdictions, and this could help the administration of justice.

8.43. Of the organisations that disagreed with the proposal, they generally believed that the current provisions on the powers of the EOC are sufficient.

## Individuals

### Q52 Responses: Individuals (67,475) 問題52的回應：個人 (67,475)



- 8.44. 67,475 respondents expressed views on this question. A few respondents (639) expressed their support to this question, the majority (66,826) raised their objection, while the rest (10) had other comments.
- 8.45. All respondents who agreed with this question gave no reason.
- 8.46. Of the respondents who disagreed with this question, over a quarter of the respondents (18,166) gave no reason, while close to three-quarters (48,660) took the view that handling legal proceedings is the jurisdiction of the judiciary and the EOC should not intervene.

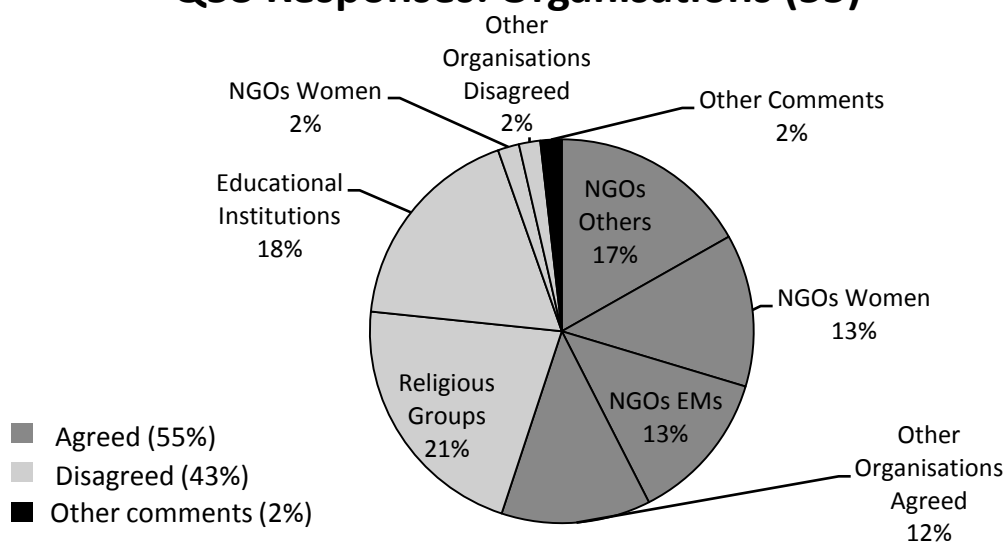
## (c) Judicial review proceedings

### Consultation Question 53

*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?*

## Organisations

### Q53 Responses: Organisations (55)



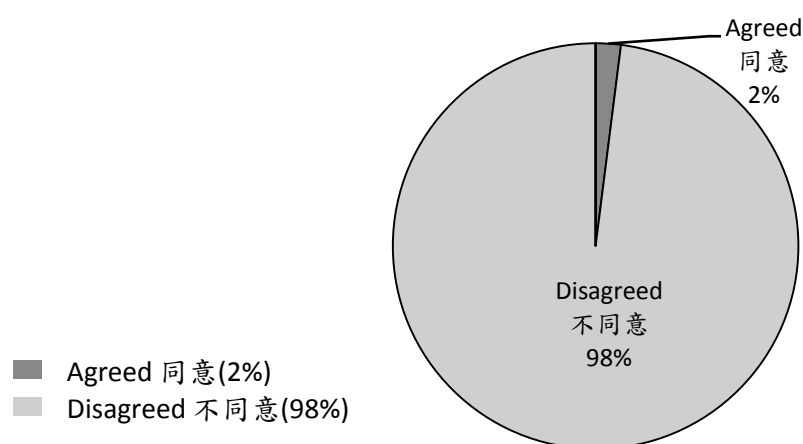
8.47. 55 organisations expressed views on this question. In relation to organisations that agreed with the proposal, they generally believed that it is important to more clearly set out the powers of the EOC in the anti-discrimination legislation.

8.48. Of the organisations that disagreed with the proposal, they generally believed that the current provisions on the powers of the EOC are sufficient.

## Individuals

### Q53 Responses: Individuals (36,572)

#### 問題53的回應：個人 (36,572)



- 8.49. 36,572 respondents expressed views on this question. A small proportion of the respondents (815) were supportive with this question, the majority (35,755) raised their objection, while the rest (2) had other comments.
- 8.50. Of the respondents who agreed with this question, almost all respondents (814) gave no reason, while one (1) viewed that all of the EOC's power should be clearly set out in the Ordinances.
- 8.51. Of the respondents who disagreed with this question, over one-half of the respondents (18,943) gave no reason, while the rest (16,812) opined that legal proceedings are the jurisdiction of the judiciary and the EOC should not intervene.

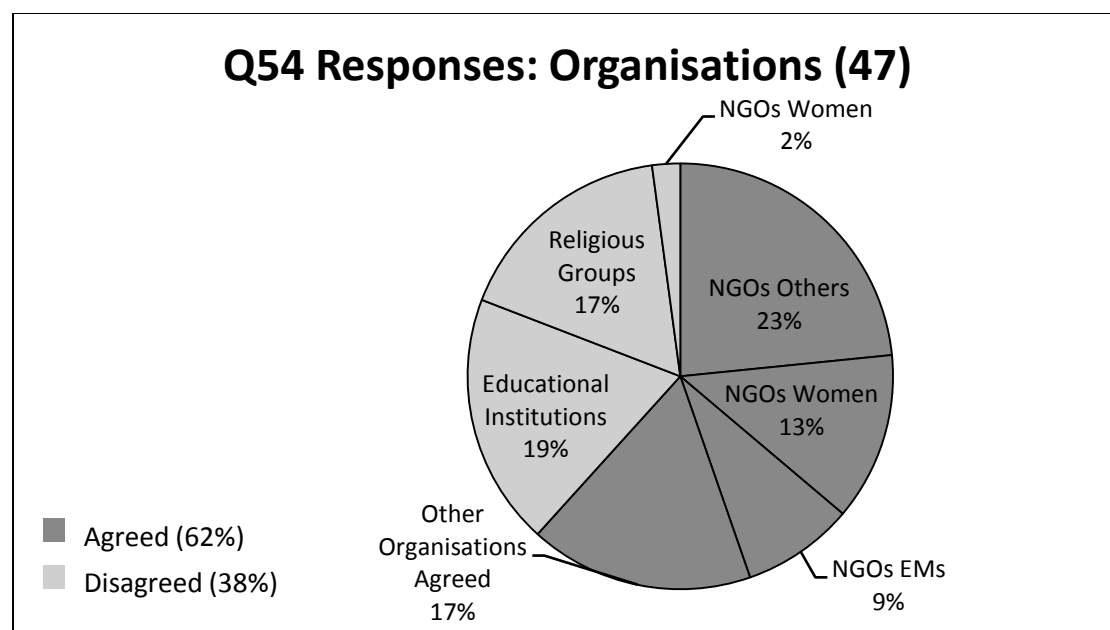
## B. Constitutional matters

### (i) Strategic Plans

#### Consultation Question 54

*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?*

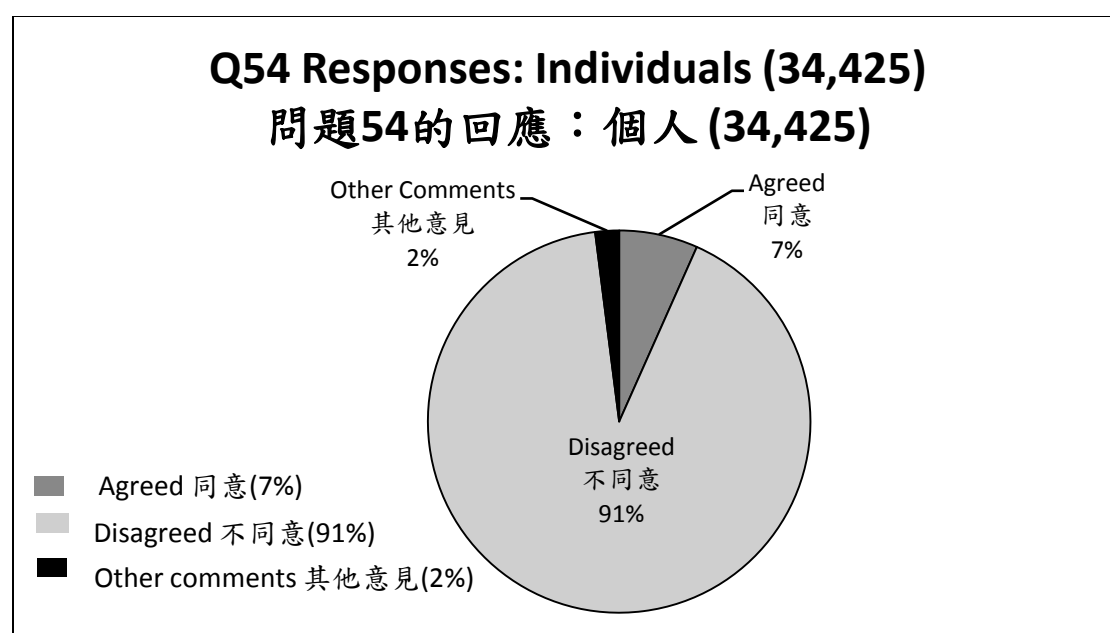
#### Organisations





- 8.52. 47 organisations expressed views on this question. Of the organisations that supported the EOC's proposal, one group representing the legal profession stated that the current approach of greater focus on conciliation only has a limited impact on advancing equality. The EOC's proposal would enable it to have a clearer direction and take a more proactive, rather reactive, approach to combating discrimination. Another NGO noted that although there is nothing which prevents the EOC from producing a Strategic Plan, or from consulting with the public on its production, there is benefit to setting it in legislation so as to ensure that such Strategic Plans are published on a regular basis. The NGO further noted that the EOC should be given wide discretion in determining who to consult, and on the method by which such consultation takes place.
- 8.53. Of the organisations that disagreed with the proposal, there were no reasons of particular note provided.

### **Individuals**



- 8.54. 34,425 respondents expressed views on this question. A few respondents (2,294) indicated their support to this question, the majority (31,438) raised their objection, while the rest (693) had other comments.
- 8.55. Of the respondents who agreed with this question, almost all respondents (2,247) gave no reason, while some (47) viewed that the EOC should have transparency.

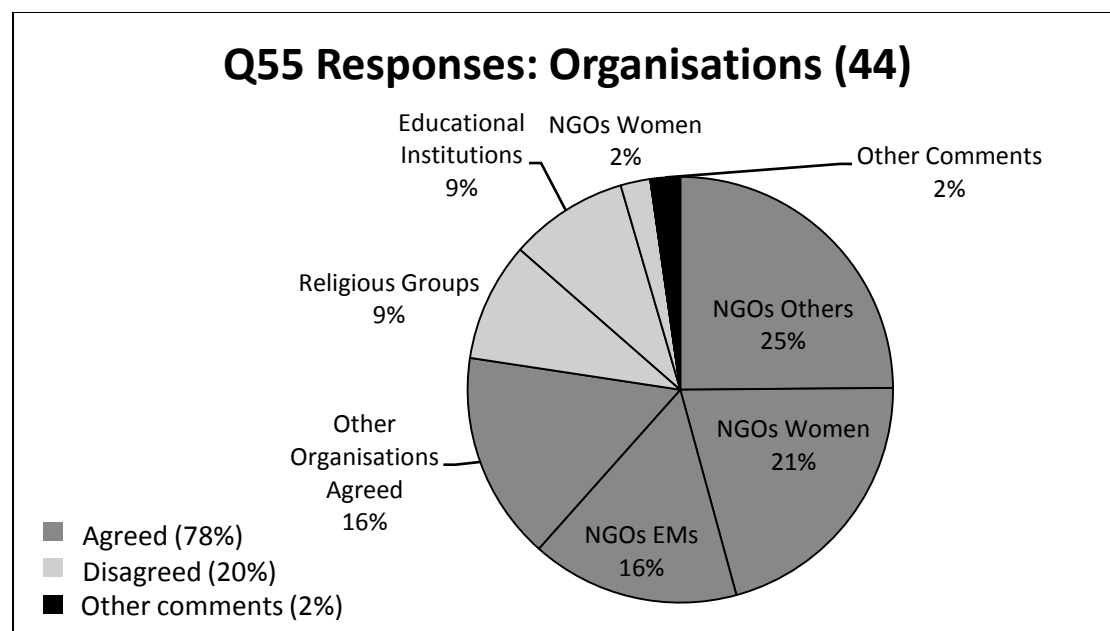
- 8.56. Of the respondents who disagreed with this question, the majority of the respondents (30,375) gave no reason, while the rest (1,063) expressed the view it is an unnecessary step as the general public does not involve in the EOC's work.

## (ii) Ensuring the independence of the EOC from Government

### Consultation Question 55

*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?*

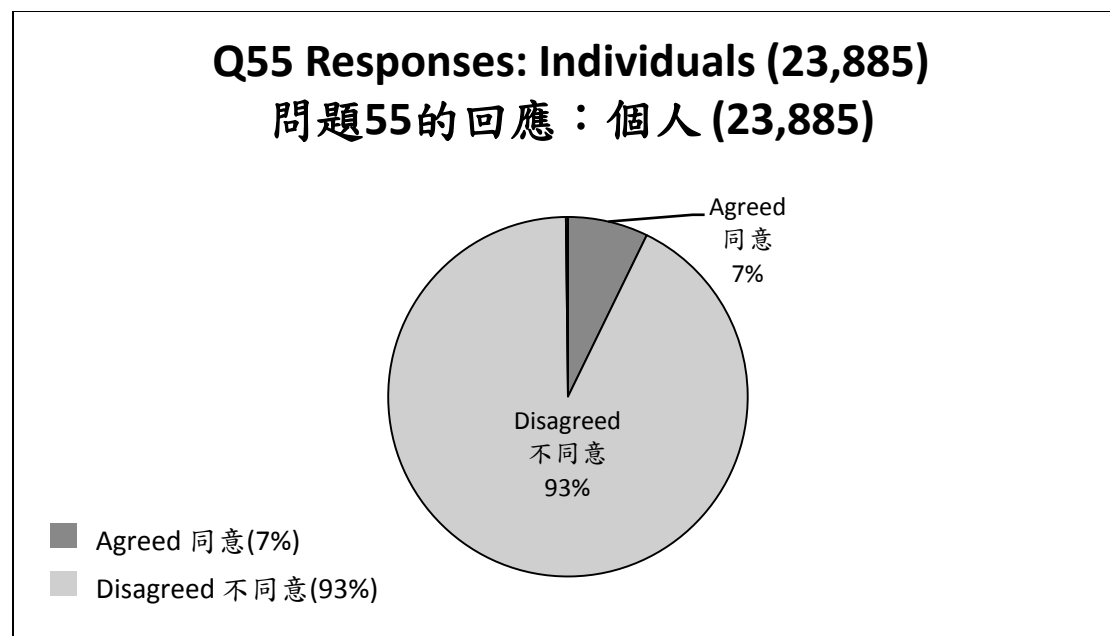
#### Organisations



- 8.57. 44 organisations expressed views on this question. Of the organisations that supported the EOC's proposal, one representative group of the legal profession cited the case of *Equal Opportunities Commission v Director of Education* [2001] 2 HKLRD 690 CFI, in which the EOC launched a judicial review of the Government's policy on secondary school placement allocation system, as evidence of why there was a need for stronger independence provisions. Another NGO agreed with the proposal, but disagreed that such provisions should be "similar to the independence provision in the United Kingdom discrimination laws", which only requires the Minister to "have regard" to the desirability of minimum interference.

- 8.58. Of the organisations that disagreed with the proposal, there were no reasons of particular note provided.

### **Individuals**

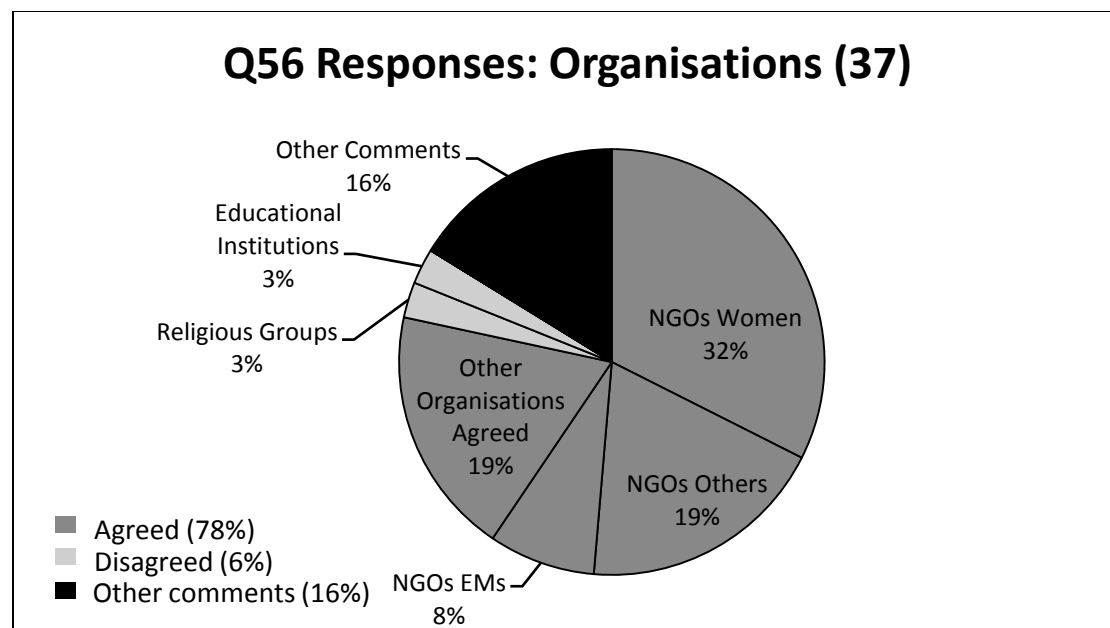


- 8.59. 23,885 respondents expressed views on this question. A small proportion of the respondents (1,726) expressed their support for this question, the majority (22,115) raised their objection, while the rest (44) had other comments.
- 8.60. Of the respondents who agreed with this question, almost all respondents (1,723) gave no reason, and a few (3) indicated that further study on this topic is necessary.
- 8.61. Of the respondents who disagreed with this question, over one-third of the respondents (7,967) gave no reason, while nearly two-thirds (14,148) expressed the view that adding a provision on independence would not mean the EOC is independent as the Chairperson is appointed by the Government.

### **Consultation Question 56**

***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?***

## Organisations



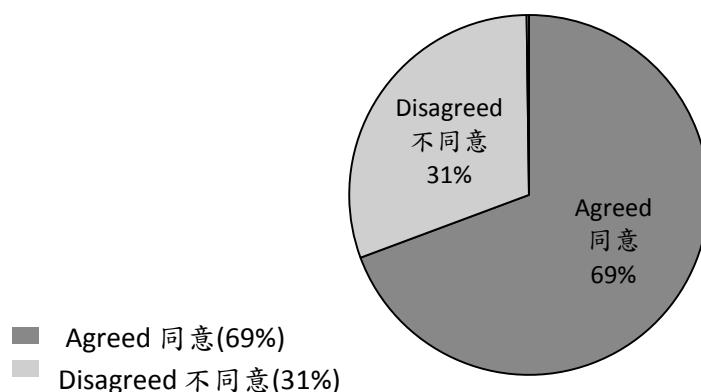
8.62. 37 organisations expressed views on this question. For organisations that agreed with the proposal, a key reason given for their support is the necessity of ensuring the EOC's independence from the Government, which means all Board members can discharge their duties independent of the influence of Government. Some other organisations expressed their support for a transparent and inclusive process for board selection, but noted that it may be beneficial to allow for some flexibility regarding the nature and method of the search process, depending on the situation and needs. One group from the legal profession noted that the the proposed reforms do not adequately address the concerns that commentators have expressed regarding independence and the lack of transparency for appointment of both the EOC Chairperson and members, and the lack of financial independence of the EOC. Another NGO noted that the independent search panel seems to be more necessary with regard to the appointment of the Chairperson, and less so for board members.

8.63. Of the organisations that disagreed with the proposal, they generally believed that the current system for appointment of EOC Board members is sufficient.

## Individuals

### **Q56 Responses: Individuals (24,057)**

#### **問題56的回應：個人(24,057)**

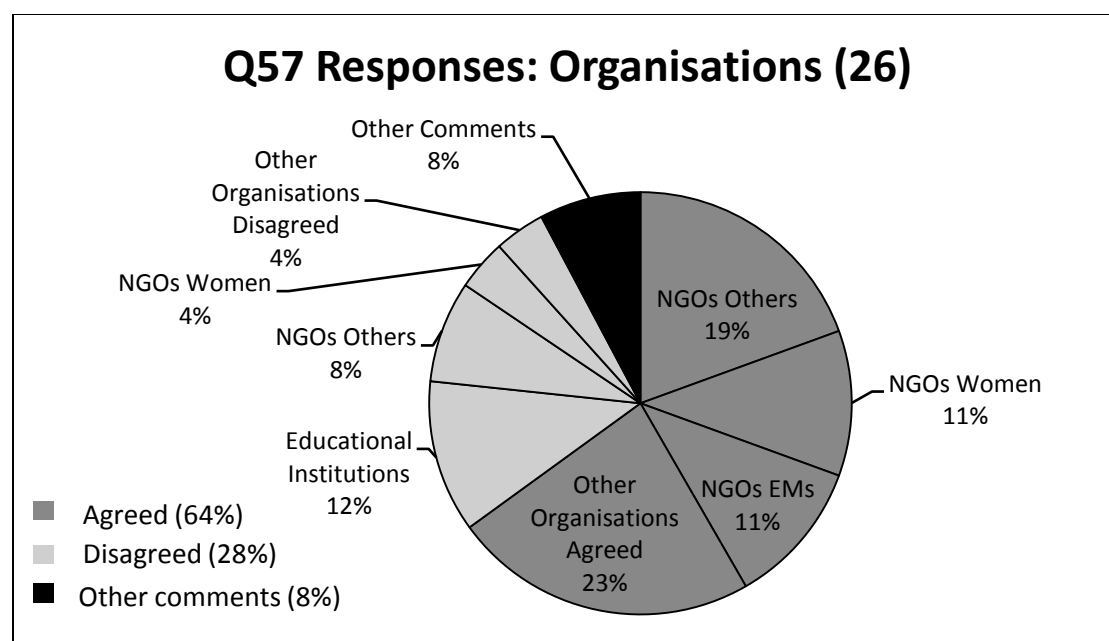


- 8.64. 24,057 respondents expressed views on this question. Over two-thirds of the respondents (16,677) supported this question, and nearly one-third (7,330) raised their objection, while the rest (50) had other comments.
- 8.65. Of the respondents who agreed with this question, the majority of the respondents (16,655). Others took these views:-
- (i) Board members should be appointed on their merit instead of being appointed by the Government, which would mean the EOC is influenced by the Government. (21 responses)
  - (ii) The Board should include professionals and groups that are often discriminated against such as workers, women, students, elderly, lawyers and social workers. (1 response)
- 8.66. Of the respondents who disagreed with this question, the majority of the respondents (6,419) gave no reason, while the rest (911) took the view that the Government is in a better position to appoint members from many backgrounds.

## Consultation Question 57

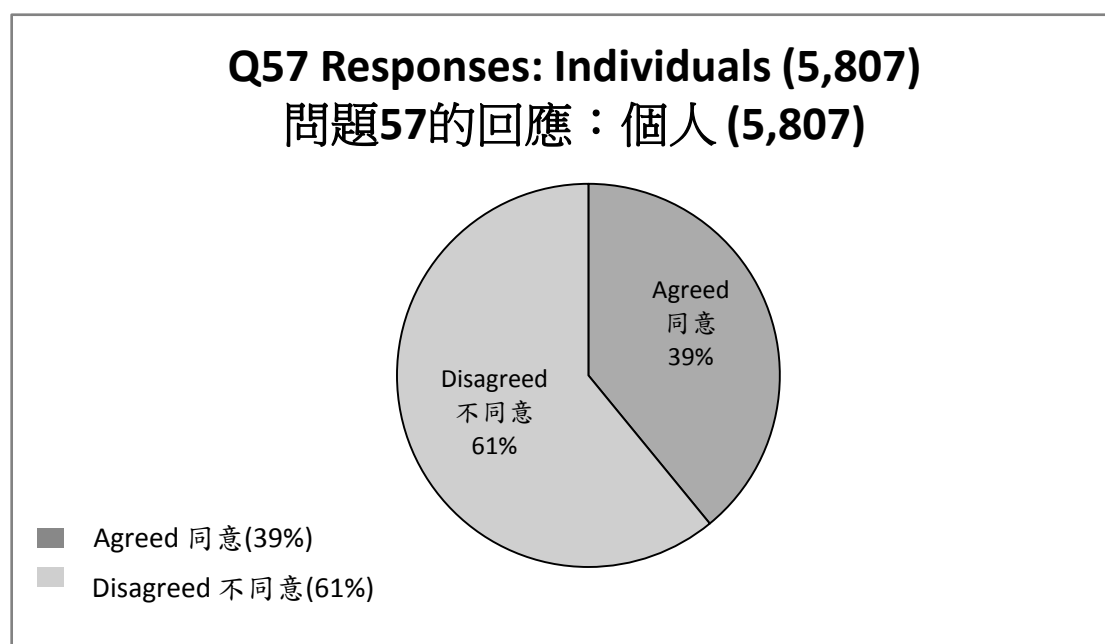
*Do you think that there should be a provision in the legislation requiring Board members to have suitable experience in any relevant area of discrimination or promoting equality?*

### Organisations



- 8.67. 26 organisations expressed views on this question. Of the organisations supportive of the EOC's proposal, one NGO noted that, given the EOC's role as a specialised equality body, its members should have suitable experience in the protection and promotion of the rights to equality and non-discrimination, whether generally or in relation to a specific group or area of life. They referred to the British model, under the Equality Act 2010, as an example. Another representative group of the legal profession and institutions cited paragraph 1 of the Paris Principles, that appointment of members should reflect pluralist representation of a broad range of civil society.
- 8.68. Of the organisations that disagreed, several noted that boards should reflect a diversity of perspectives relevant to the EOC's operations. While some EOC Board members should have relevant experience in discrimination or promoting equality, this is not necessary for all Board members, so long as there is willingness to learn and motivation to support the EOC's work.

## Individuals



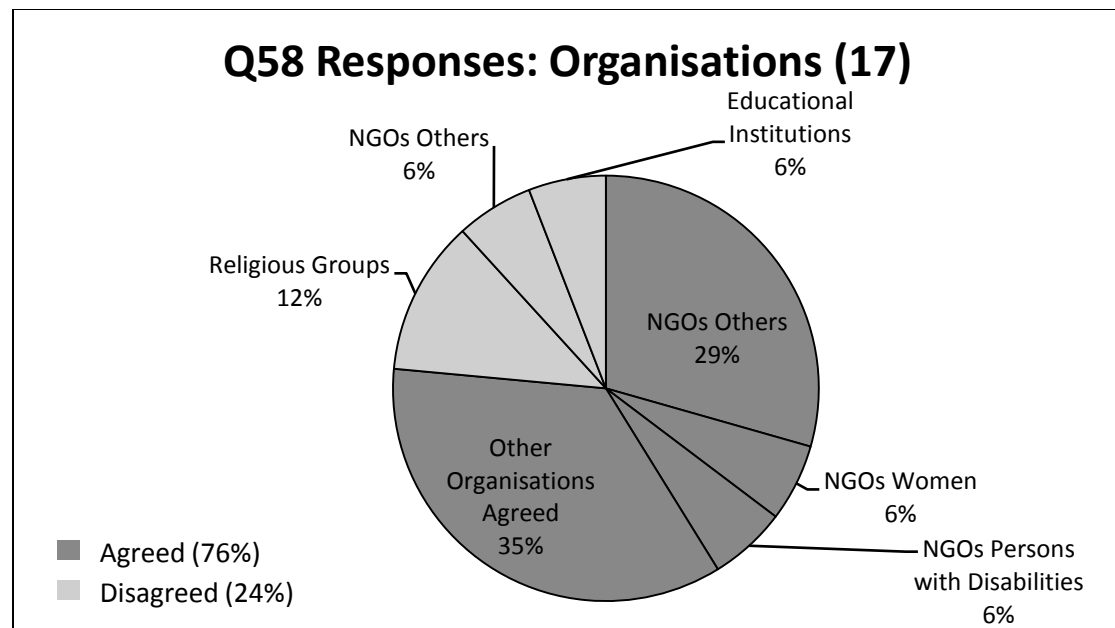
- 8.69. 5,807 respondents expressed views on this question. Over one-third of the respondents (2,264) expressed their agreement to this question, close to two-thirds (3,526) indicated objection, while the rest (17) had other comments.
- 8.70. All respondents who agreed on this question gave no reason.
- 8.71. Of the respondents who disagreed with this question, almost all respondents (3,521) gave no reason, while a few (5) viewed that requiring Board members to have relevant experience in discrimination or promoting equality will limit the choice of members.

### **(iii) Protection of EOC members and staff from personal liability**

#### **Consultation Question 58**

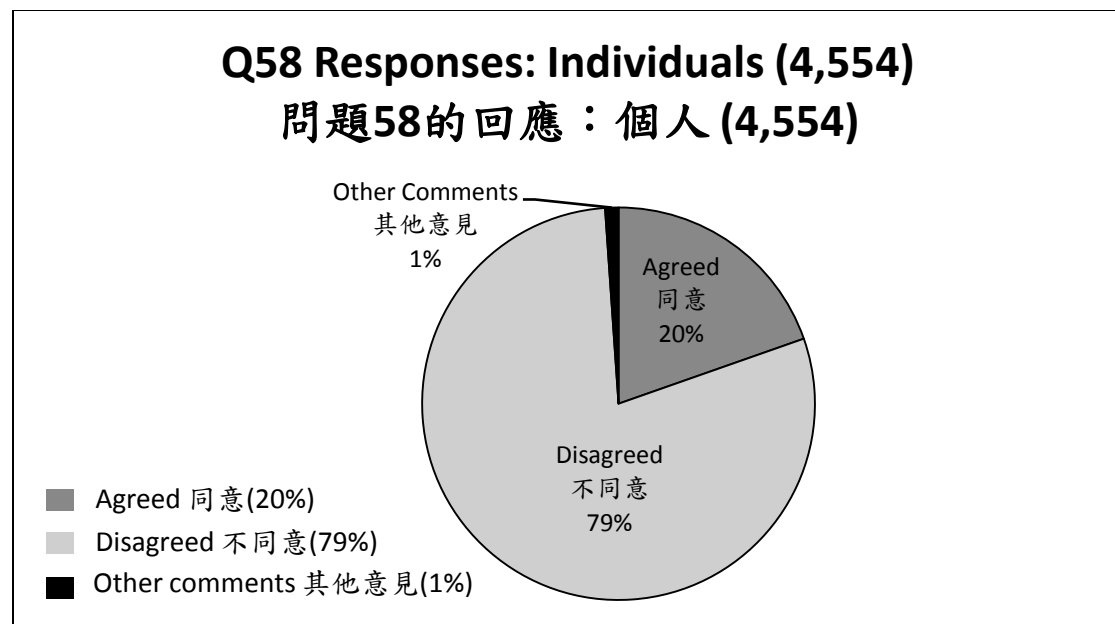
*Do you think that there should be a provision protecting EOC members and staff from personal liability where they act in good faith in relation to the DDO and FSDO, as is the case for the SDO and RDO?*

## Organisations



8.72. 17 organisations expressed views on this question. For this question, there were no reasons of particular note provided from either organisations that supported or opposed the EOC's proposal.

## Individuals



8.73. 4,554 respondents expressed views on this question. Nearly one-fifth of the respondents (894) expressed their support to this question, around



fourth-fifths (3,610) raised their objection, while the rest (50) had other comments.

8.74. All respondents who agreed on this question gave no reason.

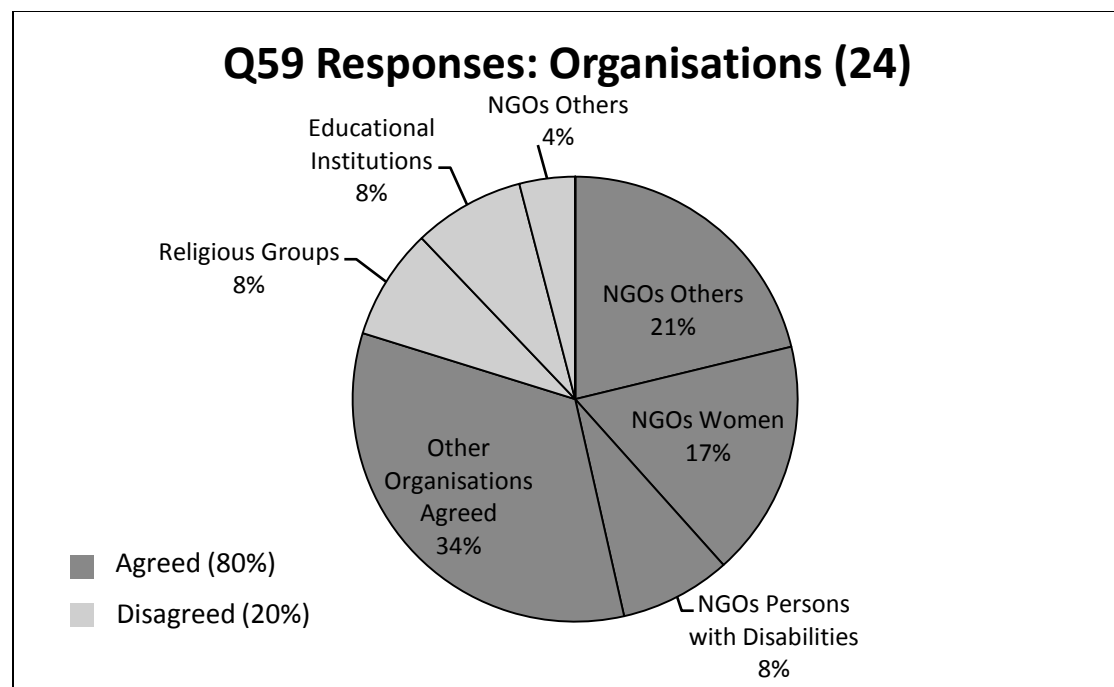
8.75. Of the respondents who disagreed with this question, almost all respondents (3,600) gave no reason, while a few (10) took the view they see no logical reason to support this question.

#### (iv) Disclosure of information arising from complaints

### Consultation Question 59

*Do you think that there should be express provision restricting disclosure of information arising from complaint handling in accordance with the principles of confidentiality?*

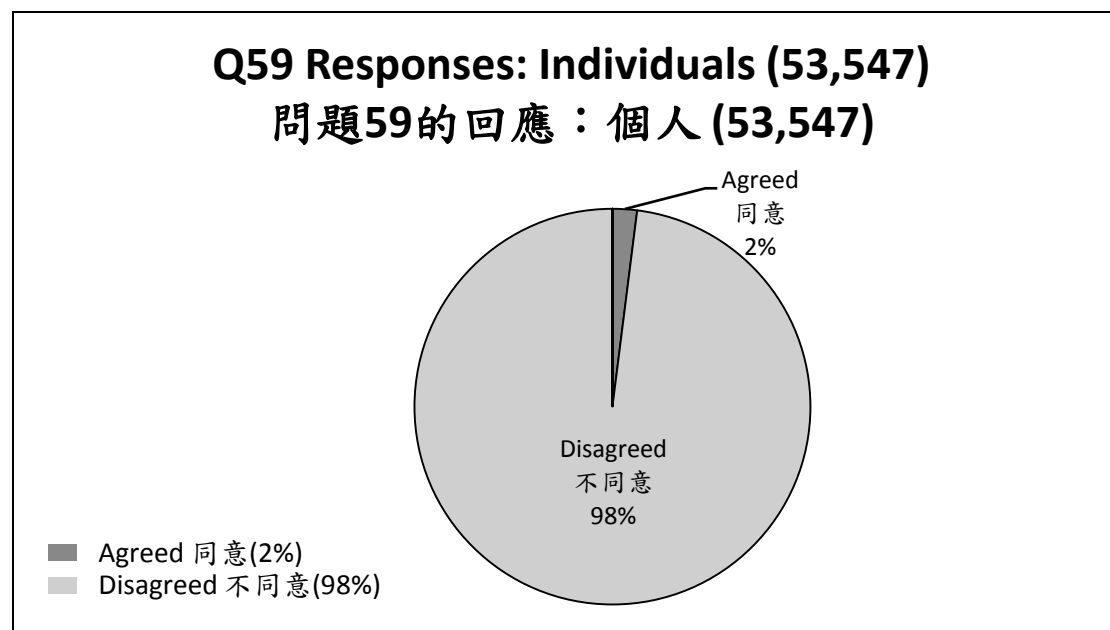
#### Organisations



8.76. 24 organisations expressed views on this question. Of the organisations that agreed with the EOC's proposal, one corporation cited that the EOC, like other statutory bodies, obtains information of a confidential or otherwise sensitive nature. This supports the need for an express prohibition on disclosure, subject to limited exceptions.

8.77. Of the organisations that disagreed with the proposal, there were no reasons of particular note provided.

### **Individuals**



8.78. 53,547 respondents expressed views on this question. A minority of the respondents (936) indicated their support to this question, the overwhelming majority (52,596) expressed disagreement, while the rest (15) had other comments.

8.79. Almost all respondents (933) gave no reason, while a few (3) viewed this offers assurance that the EOC will observe the principles of confidentiality.

8.80. Of the respondents who disagreed with this question, some respondents (7,507) gave no reason. Others views provided were:-

- (i) These claims are potential legal claims. As the details of court cases are open to the public, discrimination complaints should not and need not be confidential. (44,661 responses)
- (ii) The public should have a right to know information about discrimination claims. (428 responses)

## C. Establishment of a Hong Kong Human Rights Commission

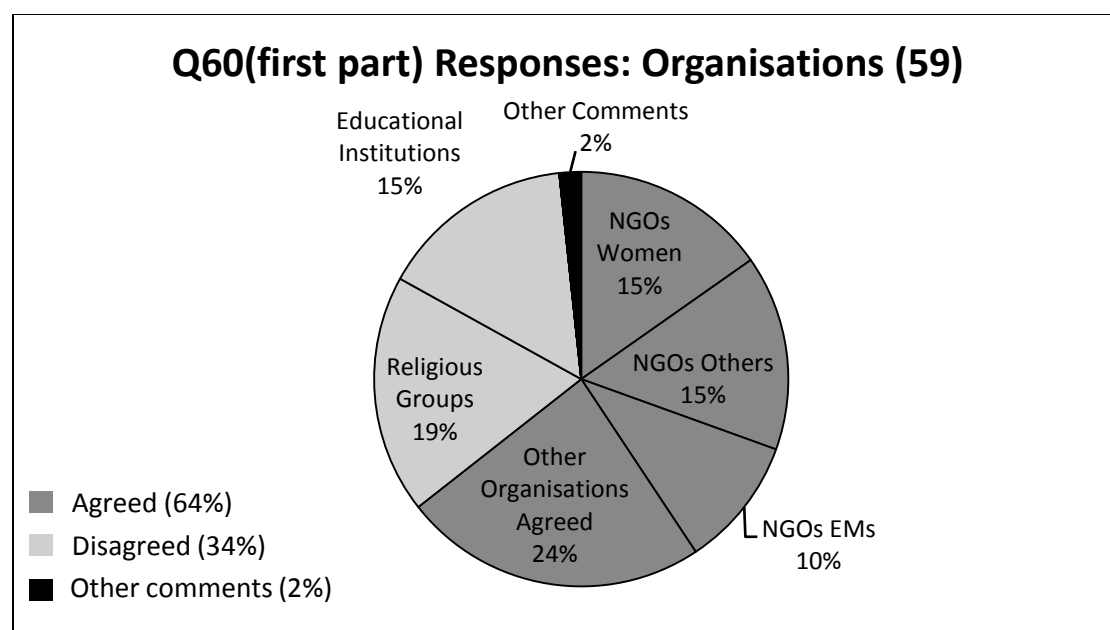
### Consultation Question 60

*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?*

### First Part of Consultation Question 60

*Do you think that Hong Kong should establish a Human Rights Commission fully compliant with the Paris Principles?*

#### Organisations



8.81. 59 organisations expressed views on this part. Of the organisations which agreed with the proposal, a number stated that any Human Rights Commission established should be fully compliant with the Paris Principles.

8.82. Of the organizations in agreement with the proposal, some of the reasoning provided for a Human Rights Commission included: arising issues resulting from changes in the socio-economic environment in recent years; the need for an organisation with the role of monitoring the Bill of Rights Ordinance and other human rights legislation; and the need to better protect some marginalised groups, such as foreign domestic workers, against human rights

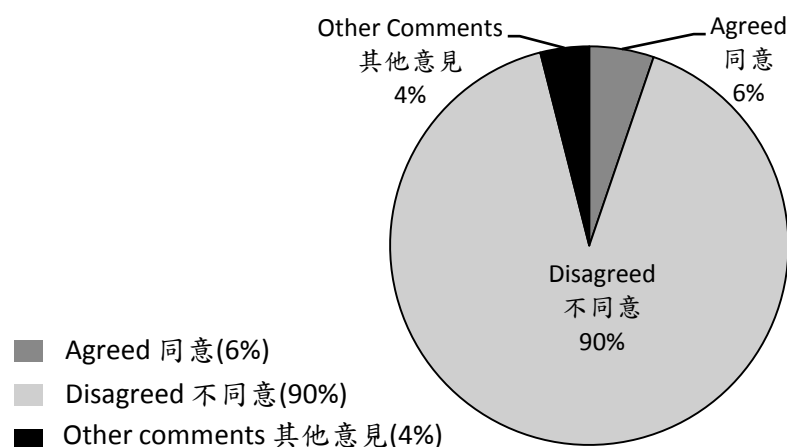
abuses. Another NGO also cited that the EOC is not compliant with the Paris Principles.

- 8.83. Some organisations felt that there should be a separate Human Rights Commission, with remit over the Basic Law, Bill of Rights, and other international human rights obligations, including monitoring the performance of Hong Kong in relation to the UN Conventions Hong Kong has or has not ratified. For these, a number stressed that the remit should be drafted in such a way as to avoid functional duplication with the EOC. One NGO noted that the mandate of the Human Rights Commission should also include public education, research, and complaints-handling, and that there should be a human rights tribunal.
- 8.84. One NGO submitted that, as the EOC already fulfills some of the responsibilities of a Human Rights Commission, a practical approach might be the expansion of the EOC's mandate to monitor and promote compliance with the Hong Kong Bill of Rights Ordinance and international human rights obligations.
- 8.85. One representative group of the legal profession noted that the EOC should have used the public consultation to explain to the public in detail the potential role and mandate of a Human Rights Commission, and the benefits and importance of establishing such an institution in Hong Kong. They also noted that the process of establishing a Human Rights Commission should be consultative, inclusive and transparent, and involve all relevant stakeholders from a wide variety of backgrounds.
- 8.86. Of the organisations that disagreed with the proposal, there were no reasons of particular note provided.

## Individuals

### **Q60 (first part) Responses: Individuals (17,580)**

### **問題60第1部份的回應：個人 (17,580)**



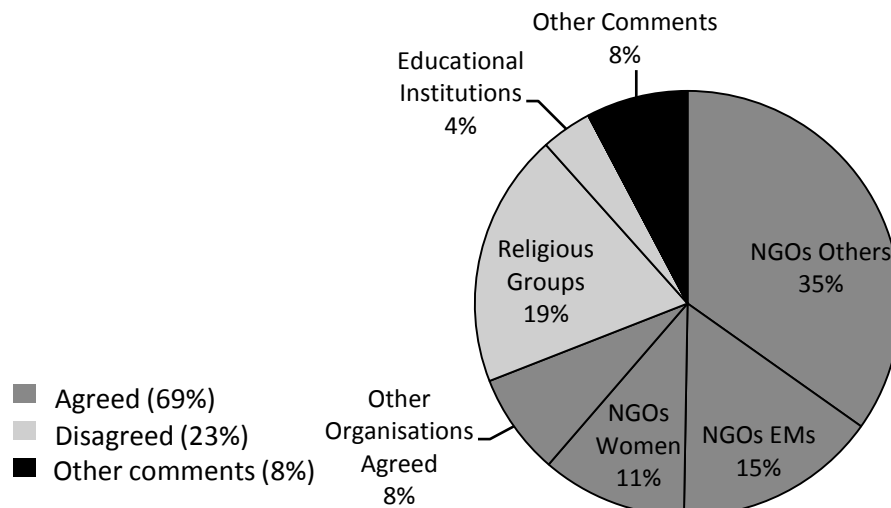
- 8.87. Of the submissions received, 17,580 respondents expressed views on this part. A minority of the respondents (1,004) indicated their support to this question, the majority (15,814) raised their objection, while the rest (762) had other comments.
- 8.88. Of the respondents who agreed with this part, almost all respondents (1,001) gave no reason, while a few (3) viewed that it should be fully independent with no Legislative Council Members or Government officials appointed to the Human Rights Commission.
- 8.89. Of the respondents who disagreed with this part, most respondents (14,824) gave no reason, while a small number (990) provided the reasoning that Hong Kong does not have universal suffrage.

## Second Part of Consultation Question 60

*If so what structure and mandate should the Human Rights Commission have?*

### Organisations

#### Q60 (second part) Responses: Organisations (26)

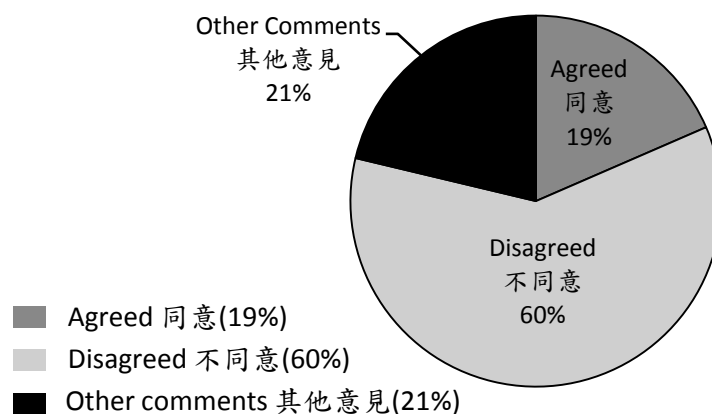


8.90. 26 organisations expressed views on this part. Please see the first part of the question above for a summary of views provided.

### Individuals

#### Q60 (second part) Responses: Individuals (1,649)

#### 問題60第2部份的回應：個人(1,649)



- 8.91. 1,649 respondents expressed views on this part. Although this is an open-ended question, many respondents did not answer what structure and mandate should the Human Rights Commission have, but only indicated “yes” or “no”.
- 8.92. Of the respondents who expressed views on this question, the EOC received the following:-
- (i) The EOC should refer to overseas examples for the structure, functions and powers. (4 responses)
  - (ii) Functions should include monitoring law enforcement and protecting the poor, so as to match international standards. (1 response)

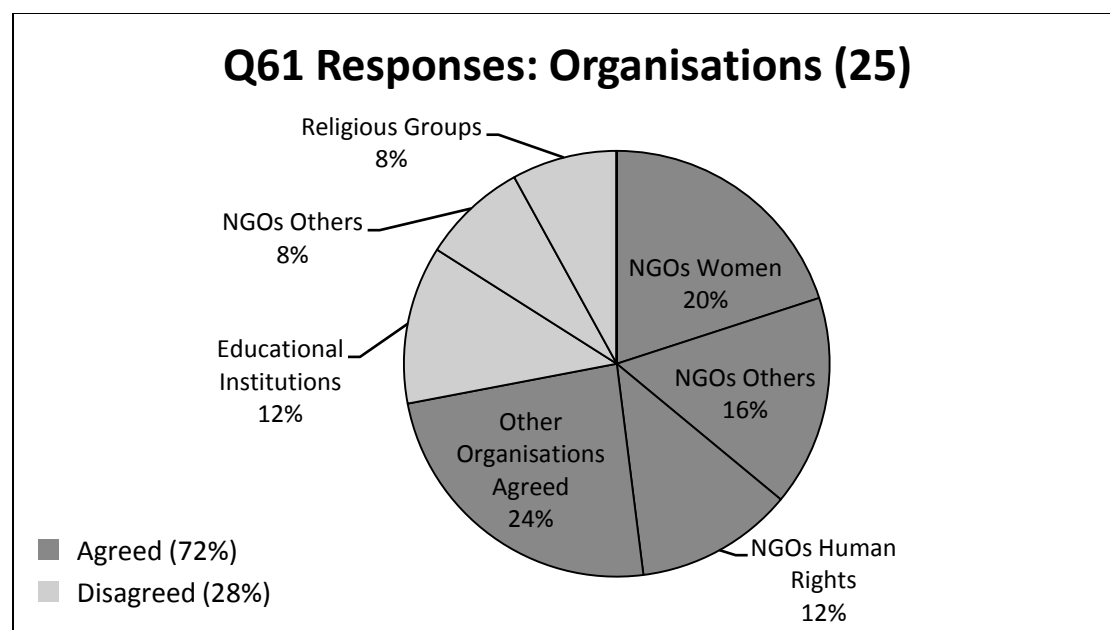
## Chapter 9 Exceptions

9.01. This Chapter describes the responses to Chapter 7 of the Consultation Document regarding exceptions to non-discrimination and in particular: Genuine Occupational Qualifications; discriminatory training; exceptions relating to charities; exceptions relating to New Territories Ordinance and Small House Policy; exceptions relating to sex; exceptions relating to marital status; exceptions relating to family status; exceptions relating to disability; and exceptions relating to race.

### Consultation Question 61

*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?*

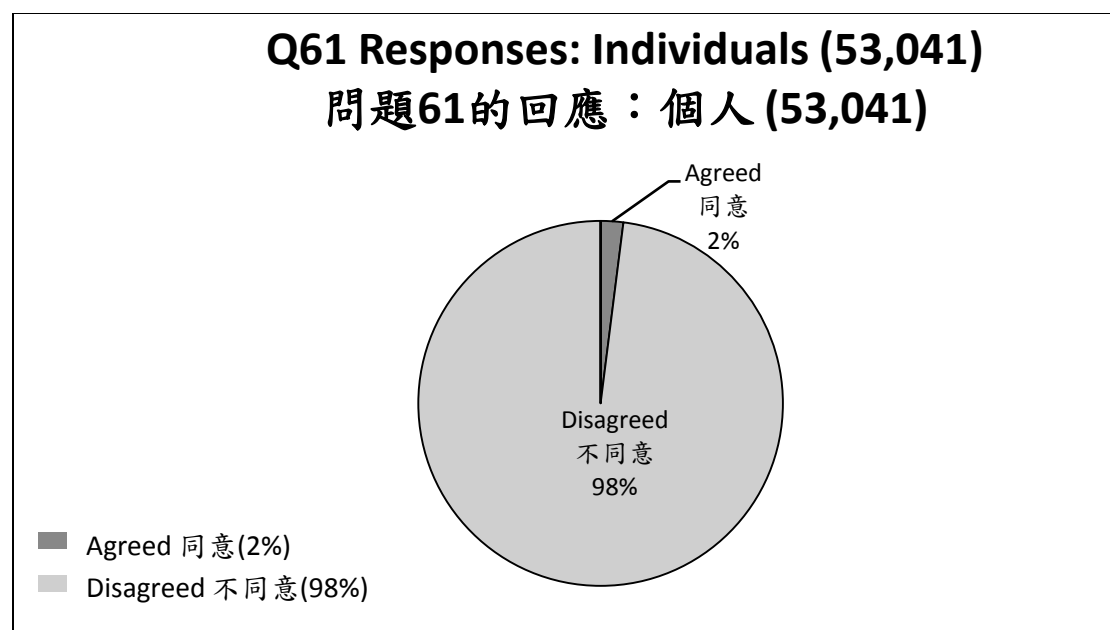
#### Organisations



9.02. 25 organisations expressed views on this question. Of the organisations that agreed, they generally believed that grouping the exceptions together would help to make the legislation clearer. Of the organisations which disagreed, they generally believe that the current structure of the legislation is satisfactory.



## Individuals



- 9.03. 53,041 respondents expressed views on this question. A minority of the respondents (920) indicated their support to this question, the majority (52,114) raised their objection, while the rest (7) had other comments.
- 9.04. Of the respondents who agreed with this question, almost all respondents (916) gave no reason, while a few (4) viewed that the exceptions should indicate which relate to different types of discrimination.
- 9.05. Of the respondents who disagreed with this question, over one-third of the respondents (18,341) gave no reason. Others took these views:-
- (i) Different exceptions are under different discrimination Ordinances. If they are grouped together, it will confuse the public and some exceptions under the RDO must be repealed to follow other discrimination Ordinances. Some situations which are not regarded as race discrimination would then be treated as race discrimination. (33,719 responses)
  - (ii) It would make the discrimination law too complex. (61 responses)

## A. Genuine Occupational Qualifications

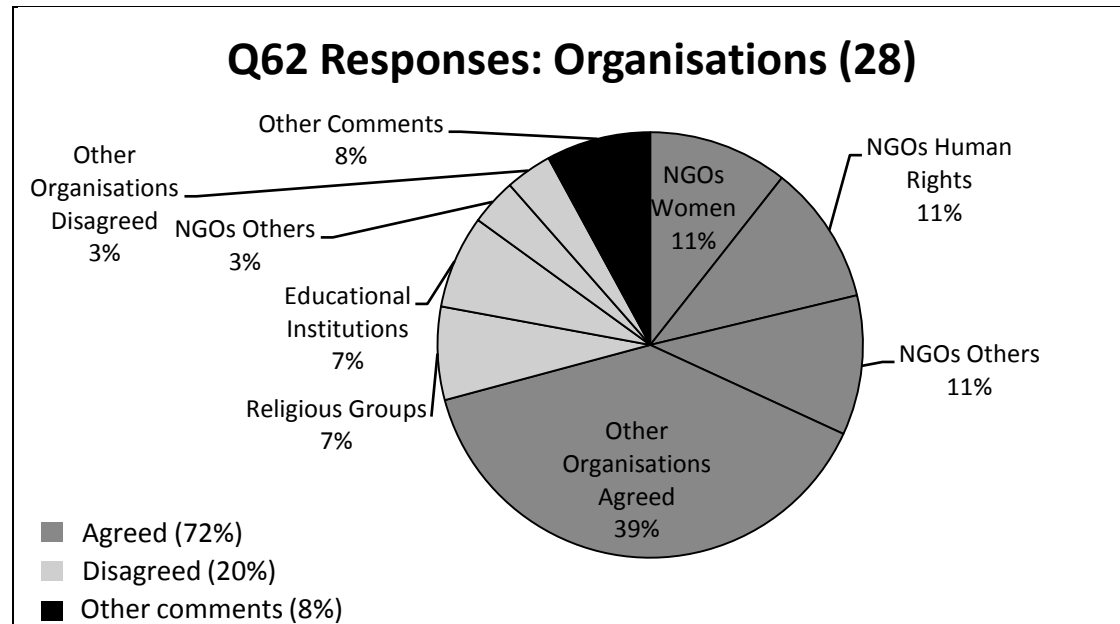
### Consultation Question 62

*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 employee has reasonable grounds for not being satisfied that the applicant or worker meets the requirement.*

*About the protected characteristic of disability, the exception does not apply where a reasonable accommodation can be made to perform the occupational requirement?"*

### Organisations

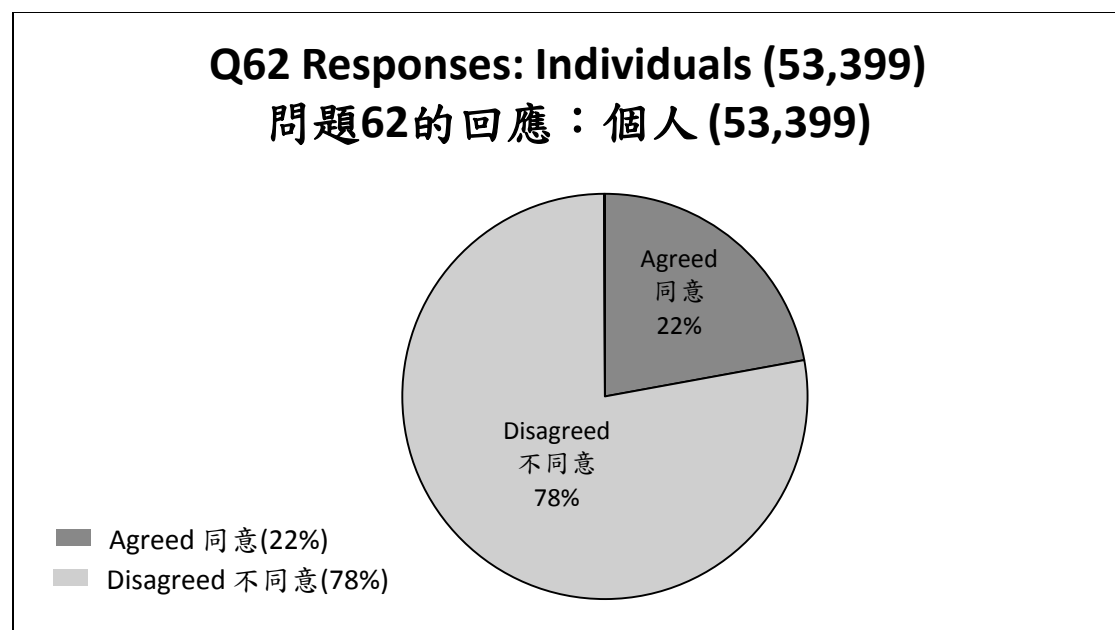


9.06. 28 organisations expressed views on this question. For organisations that agreed with the proposal, several noted the need to harmonise the exceptions across the various anti-discrimination Ordinances. One NGO cited that the specific formulation in the EOC's proposal is consistent with international best practices, particularly the caveat that the exception will not

apply in respect of disability if reasonable accommodation can be provided. Another human rights NGO noted that some specific defences in the current legislations, such as dramatic performance or photographic modelling, can be maintained together with the newly added general formula. This can increase the certainty of the law.

- 9.07. Notably, some groups representing musicians and the music industry expressed their concern about race discrimination in the music industry, wherein some clients stipulate a racial condition of “no Filipino or Chinese” musicians as a GOQ, and urged reform to protect musicians from discrimination.
- 9.08. Of the organisations that disagreed with the proposal, they generally believed that the current GOQ provisions are sufficient and do not require amendment.

### **Individuals**



- 9.09. 53,399 respondents expressed views on this question. Some respondents (11,818) indicated their support to this question, over three-quarters (41,542) raised their objection, while the rest (39) had other comments.
- 9.10. All respondents who agreed on this question gave no reason.
- 9.11. Of the respondents who disagreed with this question, close to one-fifth of the respondents (7,674) gave no reason. Others (33,868) took the view that if the provision of GOQs is applied to all the discrimination Ordinances and nationality, residency status and length of residence are added as protected

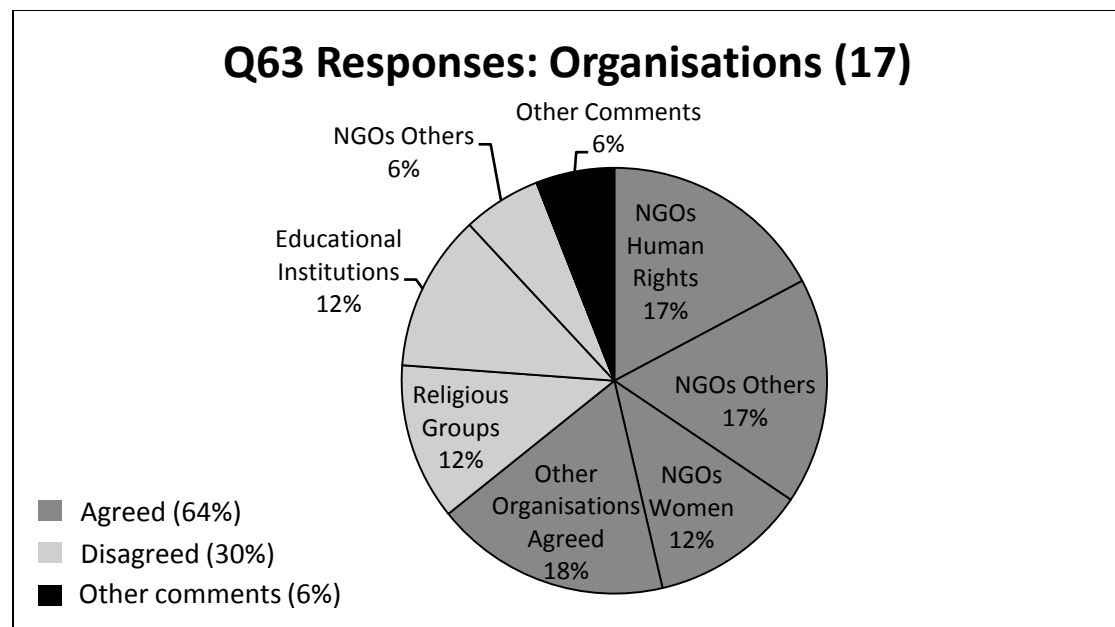
characteristics, employers might face discrimination claims if they require job applicants to speak English or be Hong Kong residents.

## B. Discriminatory training

### Consultation Question 63

*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?*

#### Organisations



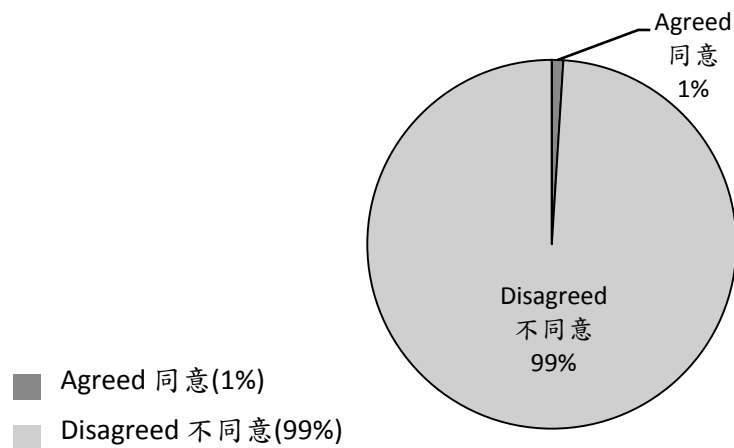
9.12. 17 organisations expressed views on this question. Of the organisations which agreed with the proposal, one representative group of the legal profession, queried if the proposal would create an additional exception, as there is currently no exception relating to other discriminatory training under the FSDO.

9.13. Of the organisations which disagreed with the proposal, they generally believed that the current provision is satisfactory and does not require repeal.

## Individuals

### Q63 Responses: Individuals (53,176)

#### 問題63的回應：個人(53,176)



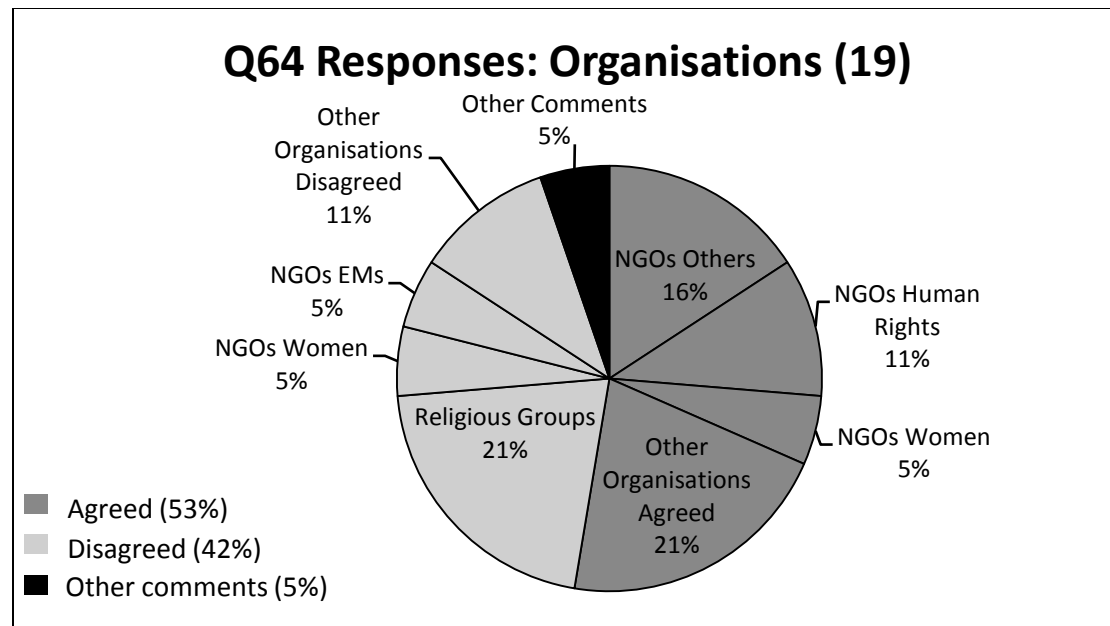
- 9.14. 53,176 respondents expressed views on this question. A few respondents (474) express their agreement to this question, the majority (52,694) raised their objection, while the rest (8) had other comments.
- 9.15. All respondents who agreed on this question gave no reason.
- 9.16. Of the respondents who disagreed with this question, over one-third of the respondents (17,964) gave no reason, while others (34,730) shared the view that if the discriminatory training exceptions are repealed and incorporated within the definition of special measures, it would mean employers must show “reasonable intention” for their action or they would be in breach of the anti-discrimination Ordinances.

## C. Exceptions relating to charities

### Consultation Question 64

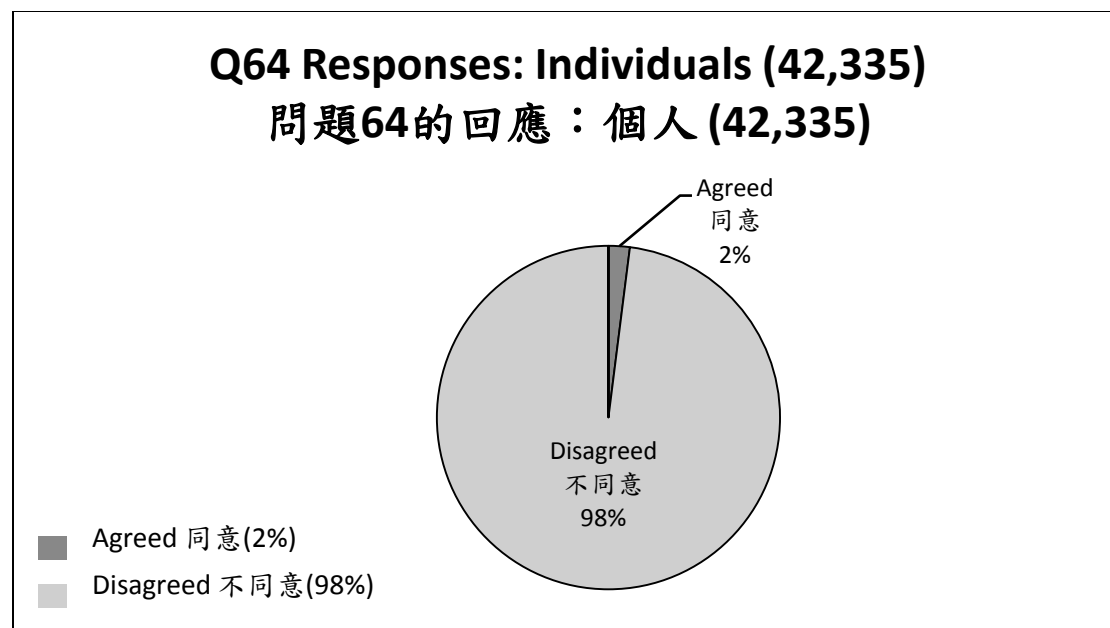
*Do you think that the charities exceptions should be amended to require a legitimate aim and proportionality in order to be lawful?*

#### Organisations



- 9.17. 19 organisations expressed views on this question. Of the organisations which agreed with the proposal, several emphasised that there is a need for a clear definition of “charity”, without which there were reservations about the proposal. One NGO cited as a potential reference the British model under the Equality Act 2010, which provides for such an exception only in certain limited circumstances where: the charity is providing a benefit (and not a service); the provision of the benefit to a particular group of persons is a proportionate means of achieving a legitimate aim or for the purpose of preventing or compensating for a disadvantage linked to a protected characteristic; and the group is not classified by their colour.
- 9.18. In relation to organisations which disagreed with the proposal, one cited the limited resources of charities as a reason for why they should be free to determine who should benefit from their programmes, provided they qualify as a charity under section 88 of the Inland Revenue Ordinance.

## Individuals



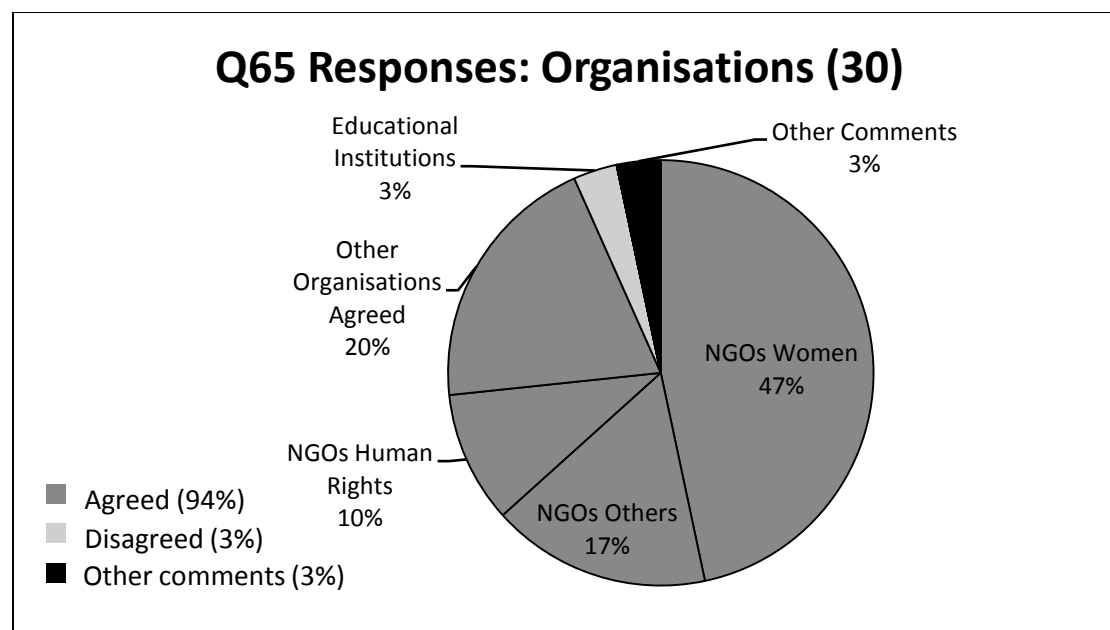
- 9.19. 42,335 respondents expressed views on this question. A small proportion of respondents (833) expressed their support to this question, the vast majority (41,490) raised opposition, while the rest (12) had other comments.
- 9.20. All respondents who agreed on this question gave no reason.
- 9.21. Of the respondents who disagreed with this question, some respondents (7,144) gave no reason. Others generally took the view that:-
- (i) These exceptions should not be discrimination and should not be amended to require “a legitimate aim and proportionality” to be lawful. (34,343 responses)
  - (ii) Deterring donation for persons within a particular protected group. (5 responses)

## D. Exceptions relating to New Territories Ordinance and small house policy

### Consultation Question 65

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

#### Organisations



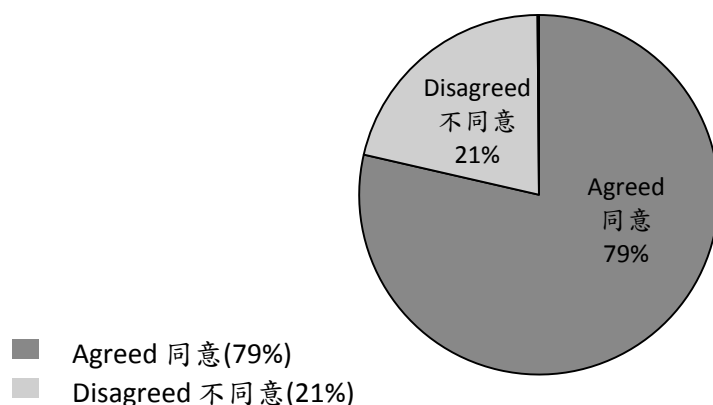
9.22. 30 organisations expressed views on this question. Of organisations that agreed with the proposal, a number believed that the policy clearly discriminates against women and breaches their fundamental human rights, and therefore should be reviewed as to whether it should be repealed. Several organisations working with women also stressed that the policy should neither be defensible as “Chinese tradition”, nor as a legal right of those living in the New Territories.

9.23. Of the organisations that disagreed with the proposal, there were no reasons of particular note provided.



## Individuals

### Q65 Responses: Individuals (5,479) 問題65的回應：個人 (5,479)



- 9.24. 5,479 respondents expressed views on this question. Nearly four-fifths of the respondents (4,305) supported this question, over one-fifth (1,167) raised their objection, while the rest (7) had other comments.
- 9.25. Of the respondents who agreed with this question, the majority of the respondents (4,171) gave no reason. Others generally took these views:-
- (i) The Government should abolish the Small House Policy. (118 responses).
  - (ii) The policy discriminates against both women and non-indigenous permanent residents. (20 responses)
- 9.26. Of the respondents who disagreed with this question, almost all respondents (1,163) gave no reason, while a few (4) expressed the view the abolishing the Small House Policy will cause discrimination against indigenous permanent residents.

## E. Exceptions relating to sex

### Consultation Question 66

*Do you think that the Government should as soon as possible repeal the exceptions in the 8 SDO relating to sex and:*

- *requirements for height or weight;*
- *granting pension benefits to surviving spouses and children of deceased public officers?*

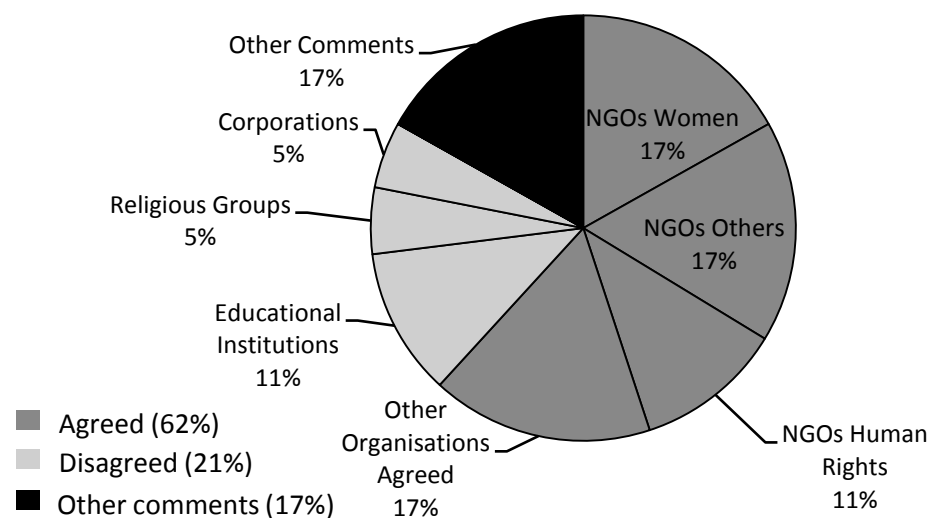
### First Part of Consultation Question 66

*Do you think that the Government should as soon as possible repeal the exceptions in the 8 SDO relating to sex and:*

- *requirements for height or weight;.....?*

### Organisations

#### Q66 (first part) Responses: Organisations (18)

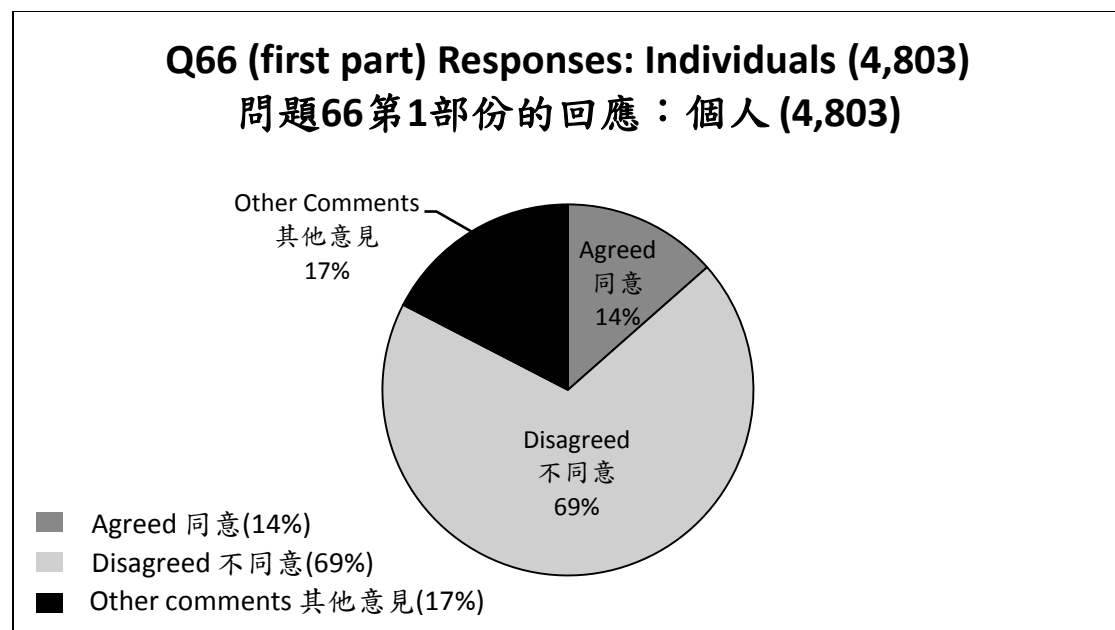


9.27. 18 organisations expressed views on this part. For organisations agreeing with the EOC's proposals, several noted that a blanket exception relating to sex and requirements for height and weight was not necessary, as such situations can be dealt with on a case-by-case basis under the existing GOQ provisions. For the exception relating to granting pension benefits to surviving spouses and children of deceased public officers, one NGO noted that the current provisions directly discriminate on the ground of sex, and there is no persuasive justification for retaining the exception. One

representative group of the legal profession also noted that this particular exception will eventually become redundant when there are no surviving spouses and children of officers appointed pre-1993.

- 9.28. Of the organisations that disagreed with the proposal, there were no reasons of particular note provided.

## **Individuals**



- 9.29. 4,803 respondents expressed views on this part. Some respondents (649) expressed their agreement to this question, many (3,318) raised their objection, while the rest (836) had other comments. All respondents who agreed or disagreed with this question gave no reason.

## **Second Part of Consultation Question 66**

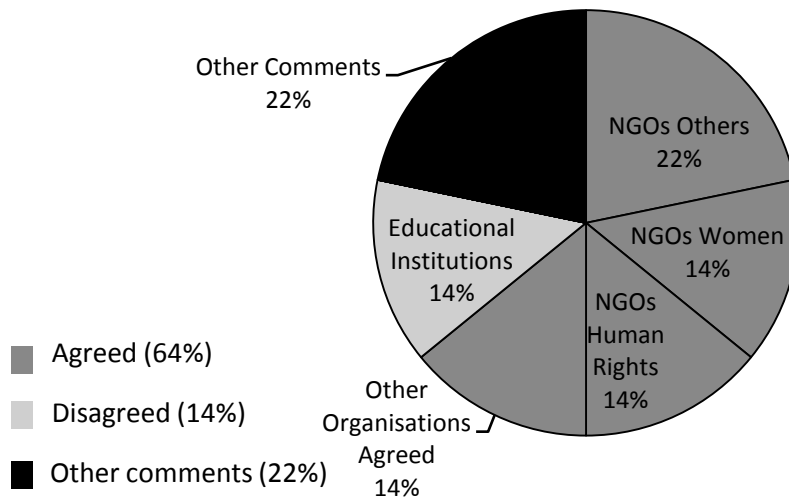
***Do you think that the Government should as soon as possible repeal the exceptions in the 8 SDO relating to sex and:***

.....

- ***granting pension benefits to surviving spouses and children of deceased public officers?***

## Organisations

### Q66 (second part) Responses: Organisations (14)

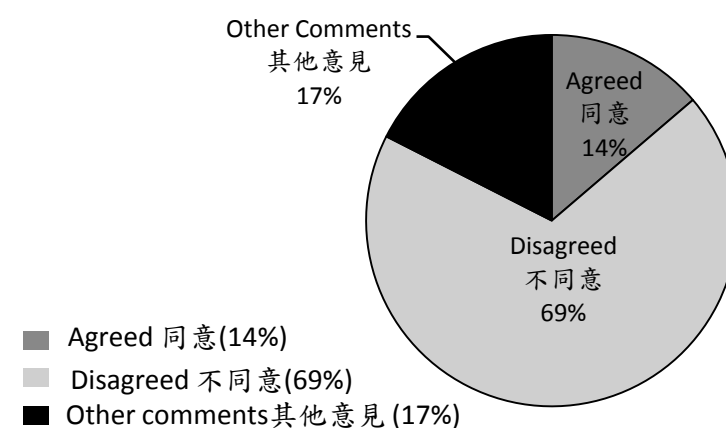


9.30. 14 organisations expressed views on this part. Please see the first part of the question above for a summary of views provided.

## Individuals

### Q66 (second part) Responses: Individuals (4,750)

#### 問題66第2部份的回應：個人 (4,750)



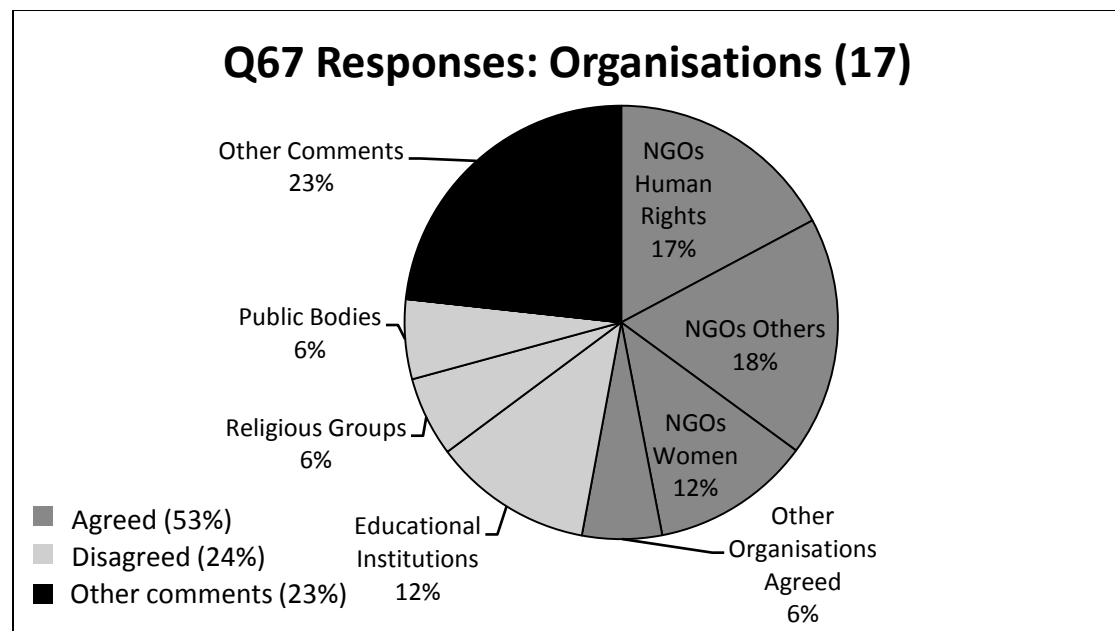
9.31. 4,750 respondents expressed views on this part. Some respondents (653) were supportive with this question, many (3,265) raised their objection, while

the rest (832) had other comments. All respondents who agreed or disagreed with this question gave no reason.

## Consultation Question 67

***Do you think that the exception for numbers of men and women employed in the Correctional Services Department is unnecessary and should be repealed?***

### Organisations



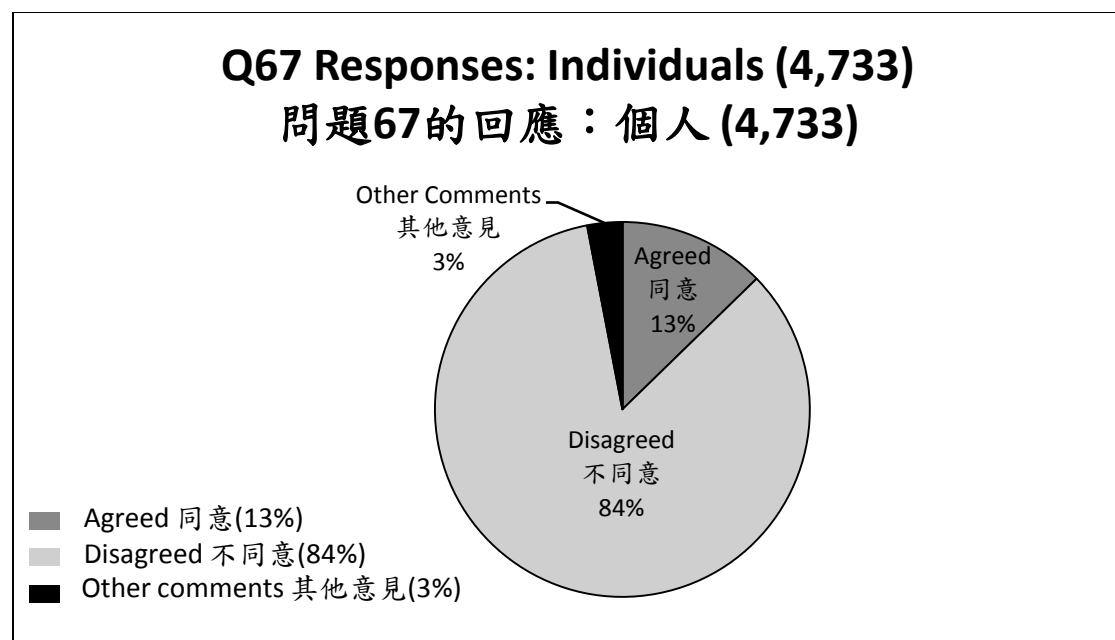
9.32. 17 organisations expressed views on this part. Of the organisations that agreed with the proposal to repeal the exception, some believed that the current GOQ exception would be able to be applied in relation to numbers of female or male staff working in prisons, and therefore the exception is unnecessary.

9.33. Of the organisations that disagreed with the proposal, several pointed to the need to allocate proportional numbers of male and female officers in day-to-day management, pursuant to the Prison Rules, by which persons in custody shall only be attended to or searched by an officer of the same sex. They noted that such rules are appropriate in order to avoid embarrassment, eliminate risk of sexual abuse and respect privacy of persons in custody. In addition, it would be a breach of the law if those requirements were not adhered to.

9.34. One organisation also noted that there are two other connected exceptions, under the SDO, namely in relation to GOQ (under section 12(2)(e) of the SDO) and existing statutory provisions (section 38(2)(b) of the SDO). They

submitted that although section 12(2)(e) largely provides an exception to their employment needs, the EOC's Code of Practice on Employment in relation to the SDO provides that the GOQ is not an automatic exception, and in, every case, it would be necessary for the employer to show that it applies to the job in question. As a result they believed it is still necessary to retain the exception in Item 1(b) of Part 2 Schedule 5 of the SDO to exempt other posts which are neither covered by s38(2)(b) or s12(2)(e).

## **Individuals**

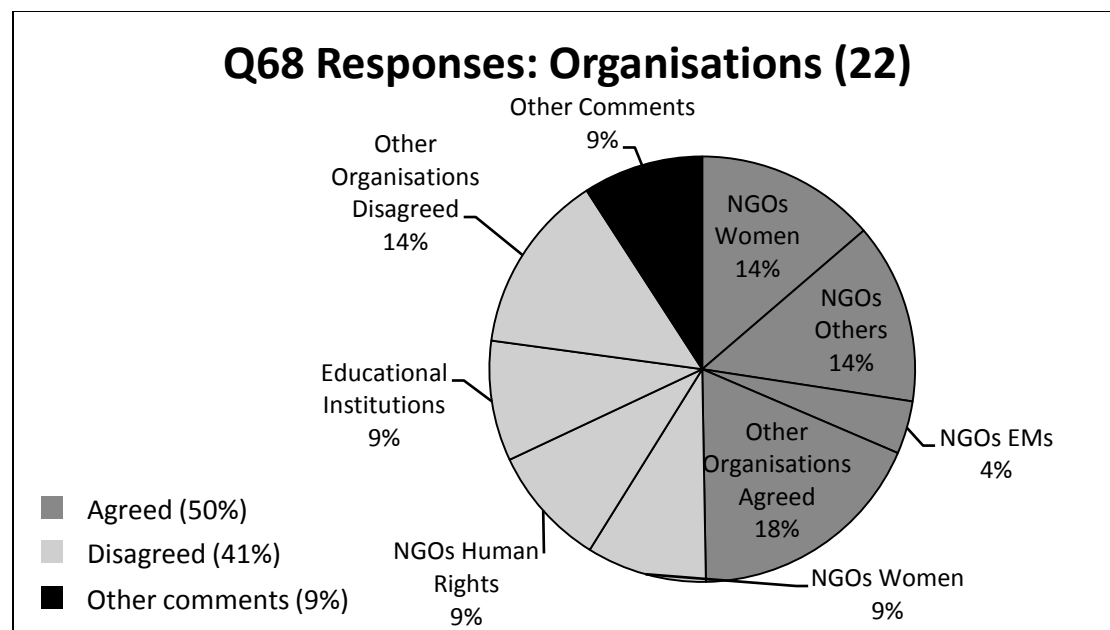


- 9.35. 4,733 respondents expressed views on this question. A few respondents (602) expressed their support to this question, a significant number (3,988) raised their objection, while the rest (143) had other comments.
- 9.36. Of the respondents who agreed with this question, almost all respondents (599) gave no reason. Others (3) agreed to repeal unless the Correctional Service Department can show there is a significant impact.
- 9.37. Of the respondents who disagreed with this question, almost all respondents (3,979) gave no reason. Others generally view that:-
- (i) Should not repeal due to security considerations. (5 responses)
  - (ii) Male staff should not supervise female inmates. (4 responses)

## Consultation Question 68

*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?*

### Organisations



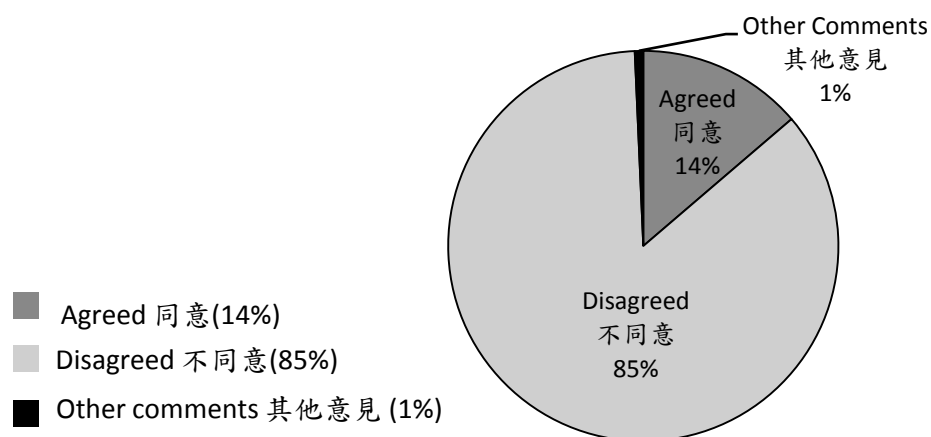
9.38. 22 organisations expressed views on this question. Of the organisations who agreed with the EOC's proposal to amend the exception, some of the reasons cited included: the exception does not apply to any of the other Ordinances, and the exception is unnecessary given that the Government can rely on the existing GOQ exception. A few organisations also noted that if exception is to be retained, there should be an amendment to require proportionality, so as to ensure that it is only used in practice when appropriate.

9.39. In relation to organisations that disagreed with the proposal, they generally believed that national security is an important area where an exception should be retained and is satisfactory.

## Individuals

### Q68 Responses: Individuals (4,274)

#### 問題68的回應：個人 (4,274)



9.40. 4,274 respondents expressed views on this question. Some respondents (587) were supportive with this question, many (3,657) raised their objection, while the rest (30) had other comments. All respondents who agreed or disagreed with this question gave no reason.

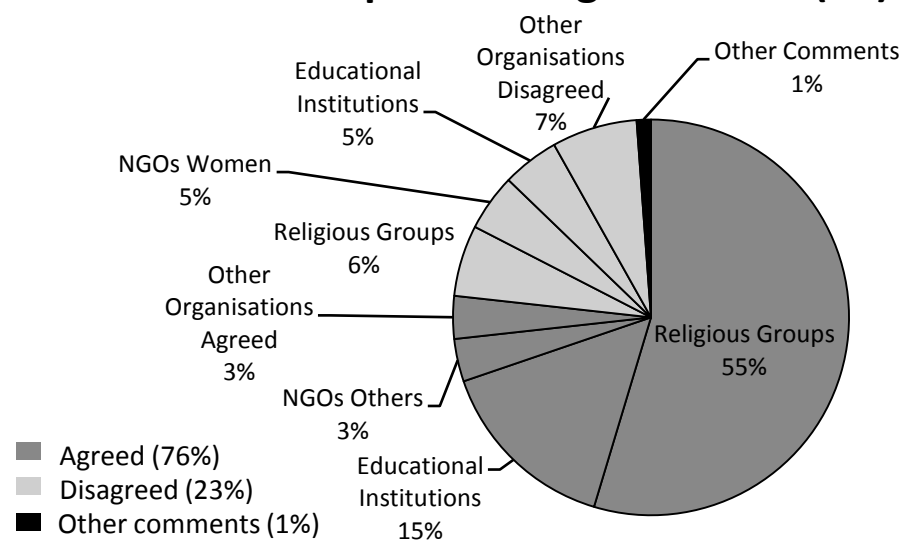
## Consultation Question 69

***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?***



## Organisations

### Q69 Responses: Organisations (86)



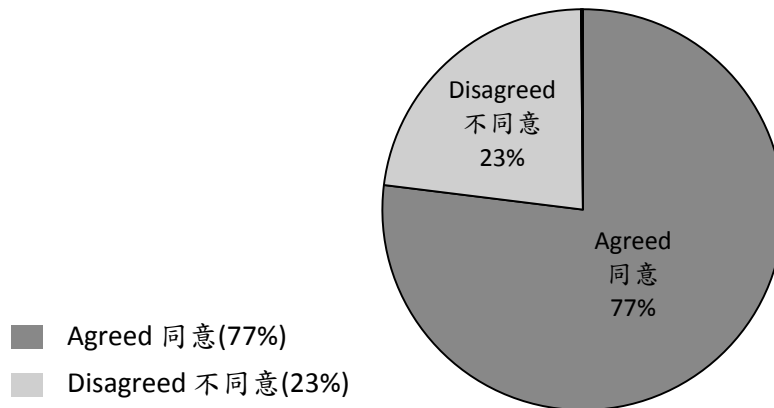
9.41. 86 organisations expressed views on this question. Of the organisations who agreed with the EOC proposal to extend the exception permitting discrimination in employment and qualification bodies for religious purposes, their main reasons provided were related to protection of their rights to freedom of religion and to manifest their religious beliefs. Generally speaking, they felt that the belief that “marriage is divine” is a fundamental principle of their religion, and they should not face possible discrimination claims for such belief. One religious group also cited that freedom of religion is protected under local and international human rights obligations. Another expressed that the exception should extend beyond non-employment contexts, such as education and service provision.

9.42. Of the organisations who disagreed with the EOC proposal, the primary concerns were that both the current exception and proposed extension of the exception are too broad. In order to balance the right to freedom of religion with the right of others to non-discrimination and the wider goals of promoting equality in society, the exception should be narrowly defined. For example, one human rights NGO stated that, in their view, although the exception should apply to employment positions such as Ministers of a Church, it should not apply to positions such as cleaners working at a church where compliance with religious doctrines should not be essential for the position.

## Individuals

### Q69 Responses: Individuals (18,463)

#### 問題69的回應：個人(18,463)



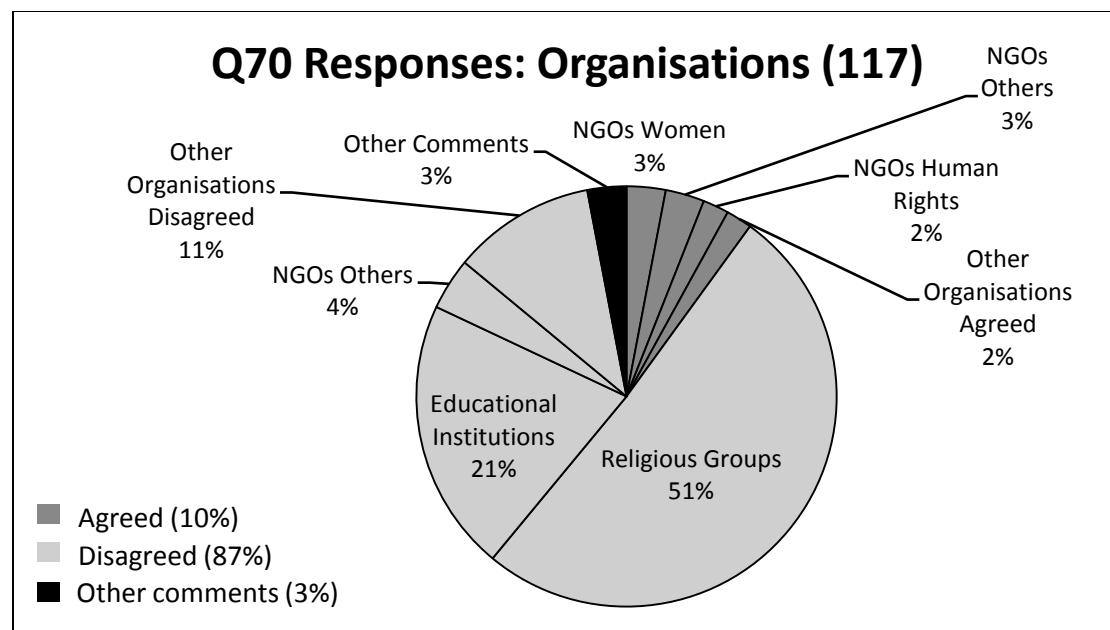
- 9.43. 18,463 respondents expressed views on this question. Over three-quarters of the respondents (14,209) expressed their agreement to this question, close to one quarter (4,225) raised their objection, while the rest (29) had other comments.
- 9.44. Of the respondents who agreed with this question, many respondents (8,468) gave no reason, while others (5,741) took the view it can protect freedom of religion.
- 9.45. Of the respondents who disagreed with this question, almost all respondents (4,207) gave no reason, while a few (18) took the view that religious bodies and believers should not be given privilege.

## F. Exceptions relating to marital status

### Consultation Question 70

*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?*

#### Organisations



9.46. 117 organisations expressed views on this question. Of the organisations who agreed with the EOC's proposal, several pointed out that it should be subject to provision of evidence of a genuine de facto relationship similar to marriage. They expressed that there should be clear statutory wordings or guidance issued by the EOC on the definition, specifying the required proof of a de facto relationship. One corporation from the insurance industry provided an example of acceptable proof, such as a statutory declaration by the partners regarding the history and details of their relationship, including their domestic arrangements (how they support each other financially, physically and emotionally and when this level of commitment began); any periods of separation (when and why the separation occurred, for how long and how they maintained their relationship during the period of separation); and their future plans.

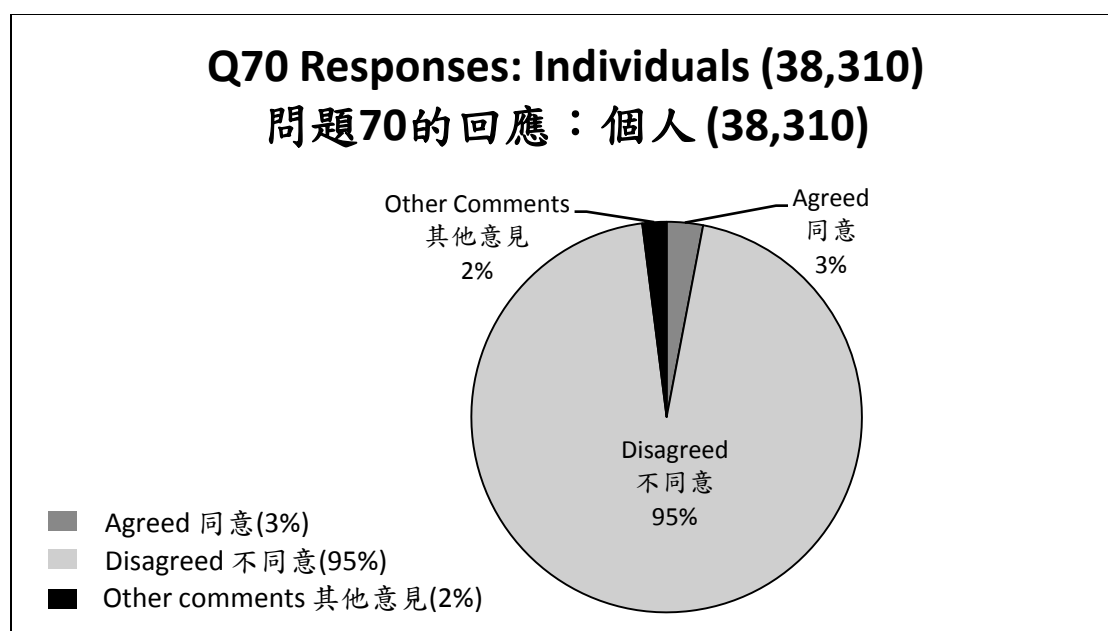
9.47. For organisations who disagreed, various concerns were expressed that the proposal would:

- (i) Cause abuse of the welfare system;

- (ii) Add financial burden to companies and employers and cause litigation;
- (iii) Affect public resource allocation in Hong Kong;
- (iv) Have negative impact on the stability of families.
- (v) Would “completely destroy the existing marriage system.”

9.48. One religious group further remarked that as family is the foundation of society, it is reasonable for the Government to restrict resources and welfare to legally valid marriages. Another employer group expressed that the topic of de facto relationship requires an in-depth public discussion.

## **Individuals**



9.49. 38,310 respondents expressed views on this question. A minority (1,287) indicated support to this question, the majority (36,304) raised their objection, while the rest (719) had other comments.

9.50. Of the respondents who agreed with this question, almost all respondents (1,284) gave no reason. A few (3) provided the view that people in de facto relationships should be given equality.

9.51. Of the respondents who disagreed with this question, almost four-fifth of the respondents (28,919) gave no reason. Others generally took these views:-

- (i) Persons in de facto relationships are fundamentally different from married couples; it is a personal choice not to get married, and

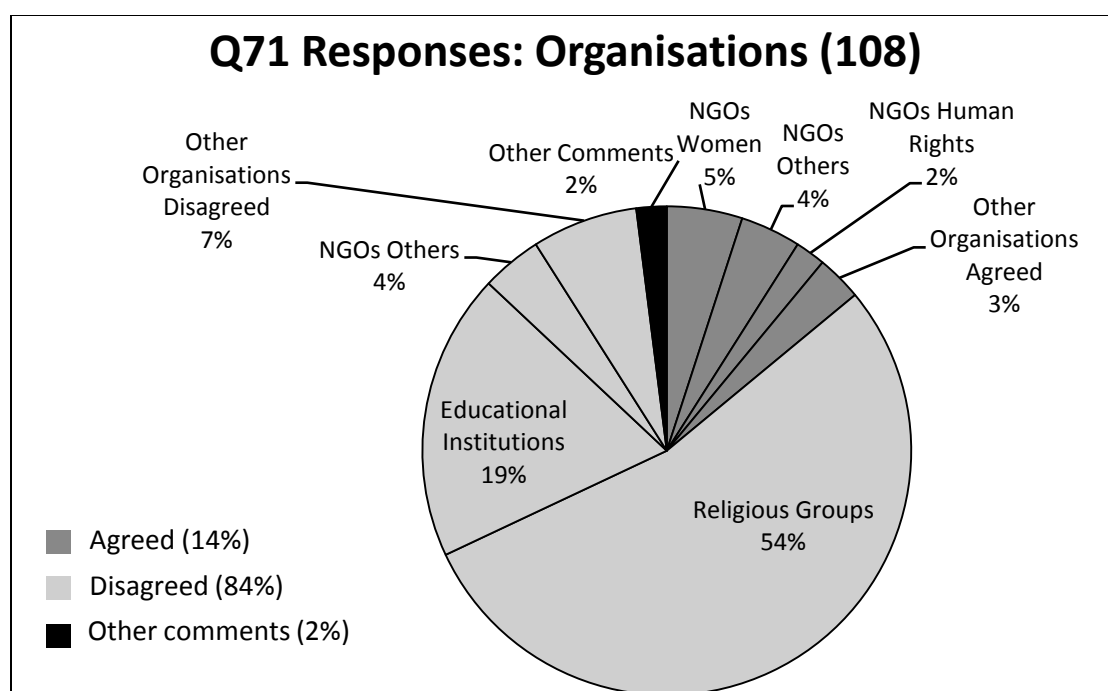
- persons in de facto relationships are aware of the consequences when they start de facto relationships. (1,938 responses)
- (ii) Increase social and/or financial burden. (5,610 responses)

## Consultation Question 71

**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?***

### Organisations

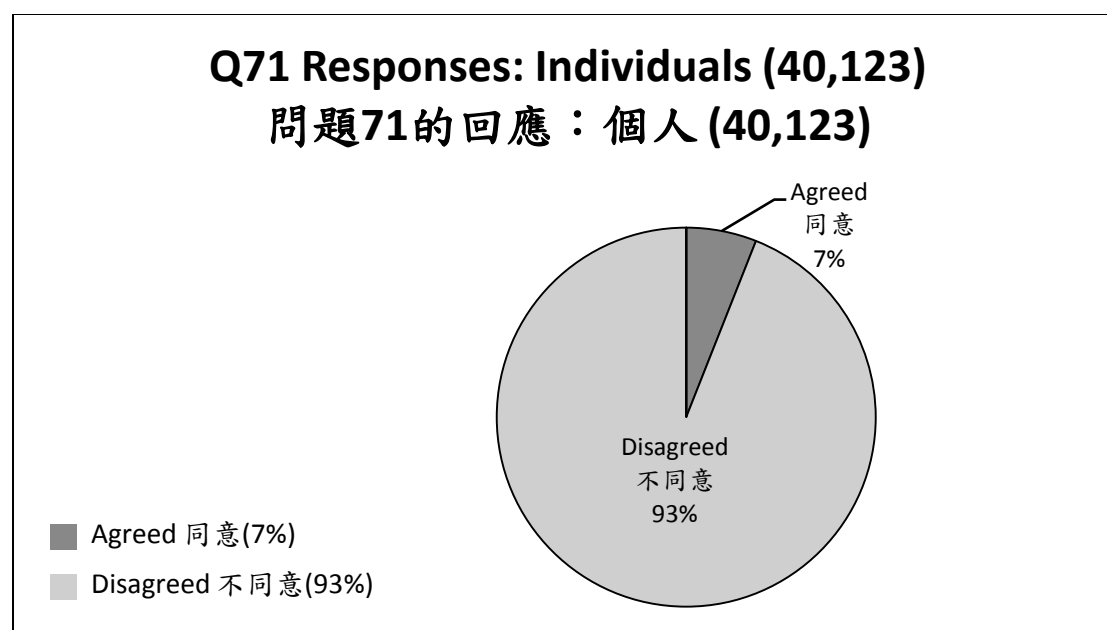


9.52. 108 organisations expressed views on this question. Of the organisations which agreed with the proposal, one organisation stated that the current wording of the Ordinances permit unjustified marital status discrimination, and noted the wording of the UK's Human Fertilisation and Embryology Act 1990, as amended in 2008, which takes into account the needs of the child in terms of parenting.

9.53. Of the organisations who disagreed with the proposal, the main reasons provided included:

- (i) The practice of IVF violates human dignity and fails to consider the sanctity of human life;
  - (ii) Allowing unmarried couples access to IVF would contravene the Convention on the Rights of the Child;
  - (iii) IVF and allowing unmarried couples access to the practice disregard the welfare of the child and treats children as commercial products.
- 9.54. One religious organisation also noted in their comments their strong concern about artificial human reproductive technologies, including, but not limited to, IVF.
- 9.55. One public body also noted the need to assess what impact the removal of the requirement to be married would have on the ability to accommodate those services with sufficient resources, facilities and manpower.

## **Individuals**



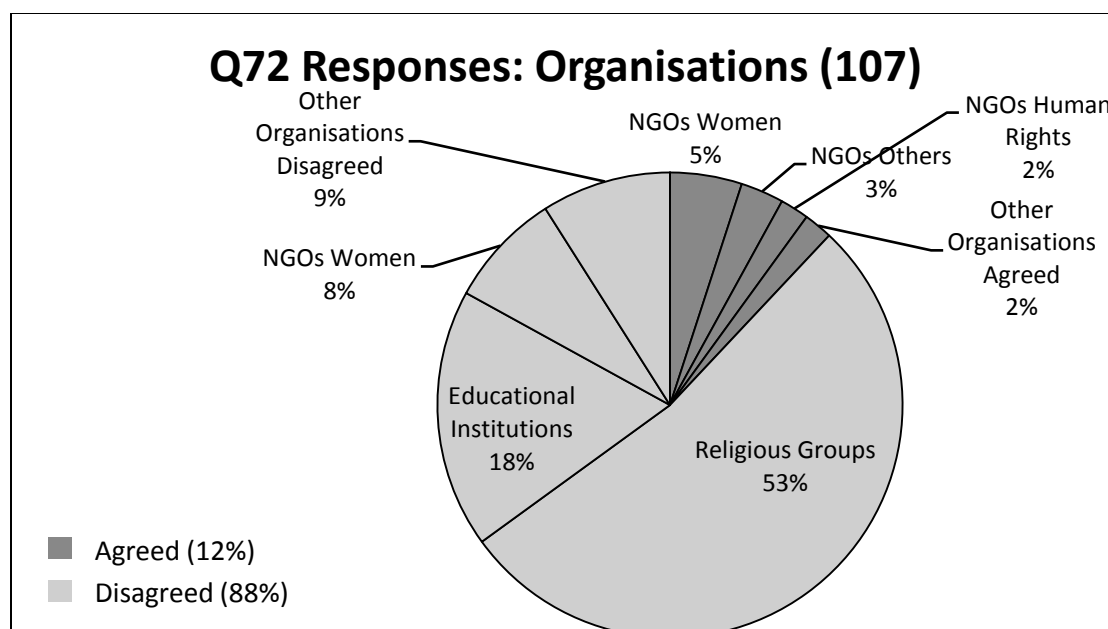
- 9.56. 40,123 respondents expressed views on this question. A minority of the respondents (2,634) indicated support to this question, the majority (37,482) raised their objection, while the rest (7) had other comments.
- 9.57. All respondents who agreed on this question gave no reason.
- 9.58. Of the respondents who disagreed with this question, more than half of the respondents (22,846) gave no reason. Others generally took these views:-
- (i) Should not as it would create legal problems after a break up regarding guardianship and financial responsibilities. (867 responses)

- (ii) Against children welfare and well-being / family values. (13,358 responses)
- (iii) Only married persons should be able to receive IVF treatment and only heterosexual married couples. (1,717 responses)

## Consultation Question 72

*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?*

### Organisations

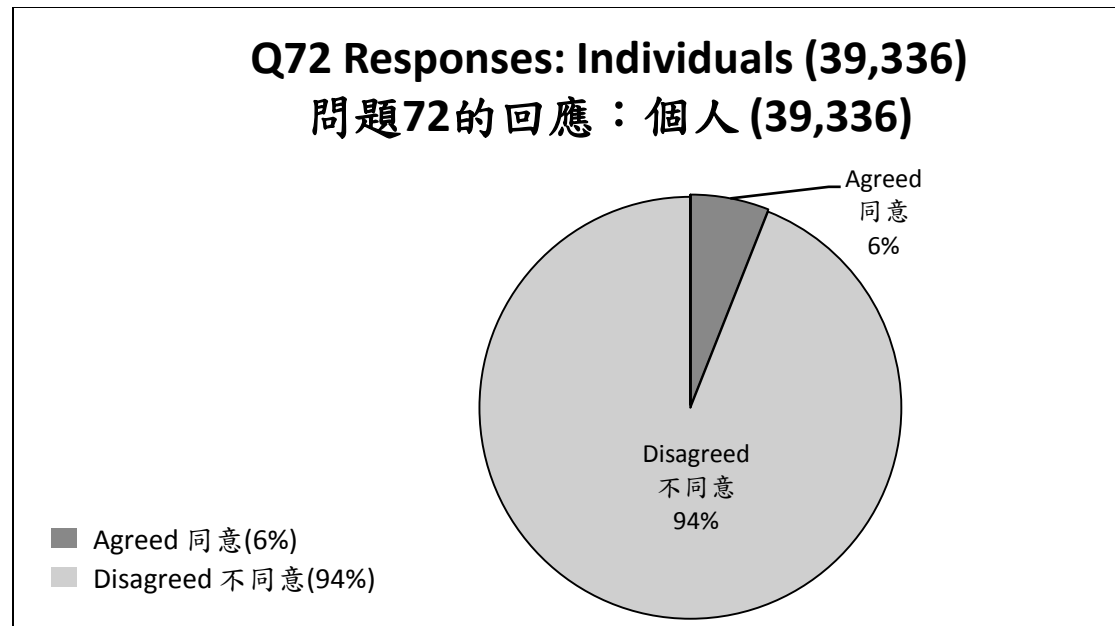


9.59. 107 organisations expressed views on this question. Of the organisations who agreed with the EOC's proposal, several stated it is not appropriate for couples to be discriminated against in adopting children because they are not married. One also cited the fact that, as the amended adoption conditions no longer require persons to be married to adopt, the exception is redundant and should be repealed.

9.60. Of the organisations who disagreed with the proposal, a number expressed that the proposal would be contrary to the interest and welfare of the child, as they view that the best family environment for the child is with married heterosexual couples. For example, one religious group remarked that allowing same-sex couples to adopt children would negatively impact their sense of security and lead them to engage in high-risk behaviours. Others expressed that there should be strict criteria to select adopting families in the

interest of the adopted child. Allowing unmarried, cohabiting couples to adopt would encourage irresponsible behaviours; cohabiting couples should get married to be eligible to adopt, in order to demonstrate their sincerity.

## **Individuals**



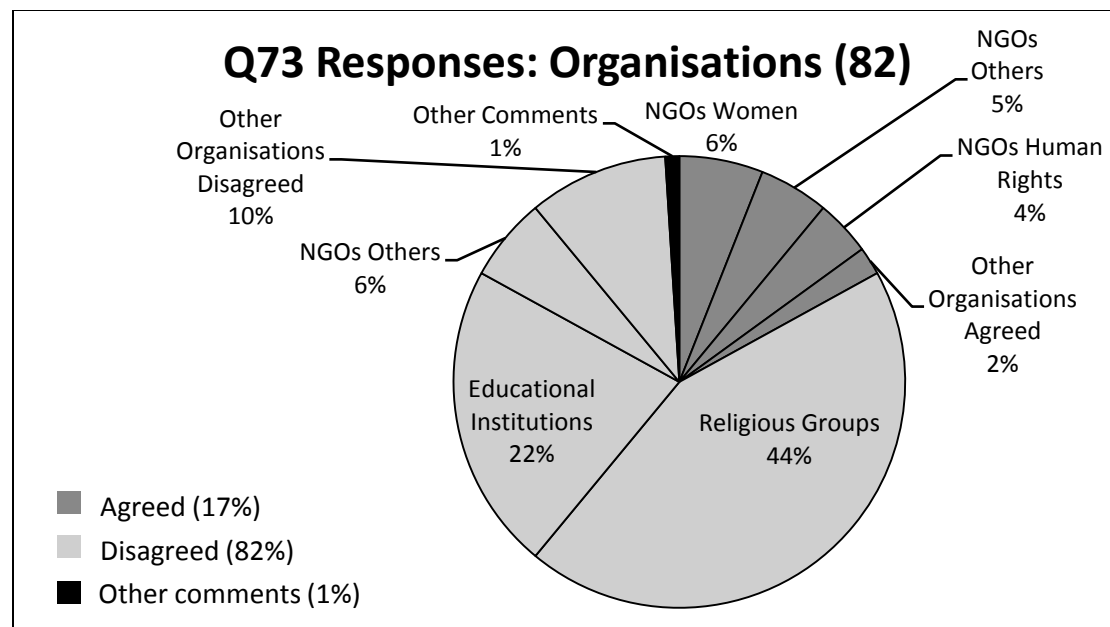
- 9.61. 39,336 respondents expressed views on this question. A few respondents (2,471) supported this question, the majority (36,851) raised their objection, while the rest (14) had other comments.
- 9.62. Of the respondents who agreed with this question, almost all respondents (2,470) gave no reason, while one (1) viewed that further study on this subject is necessary.
- 9.63. Of the respondents who disagreed with this question, close to fourth-fifths of the respondents (28,868) gave no reason, the rest (7,983) took the view that only married persons should be able to adopt children which is for the healthy development of the next generation.



## Consultation Question 73

***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?***

### Organisations



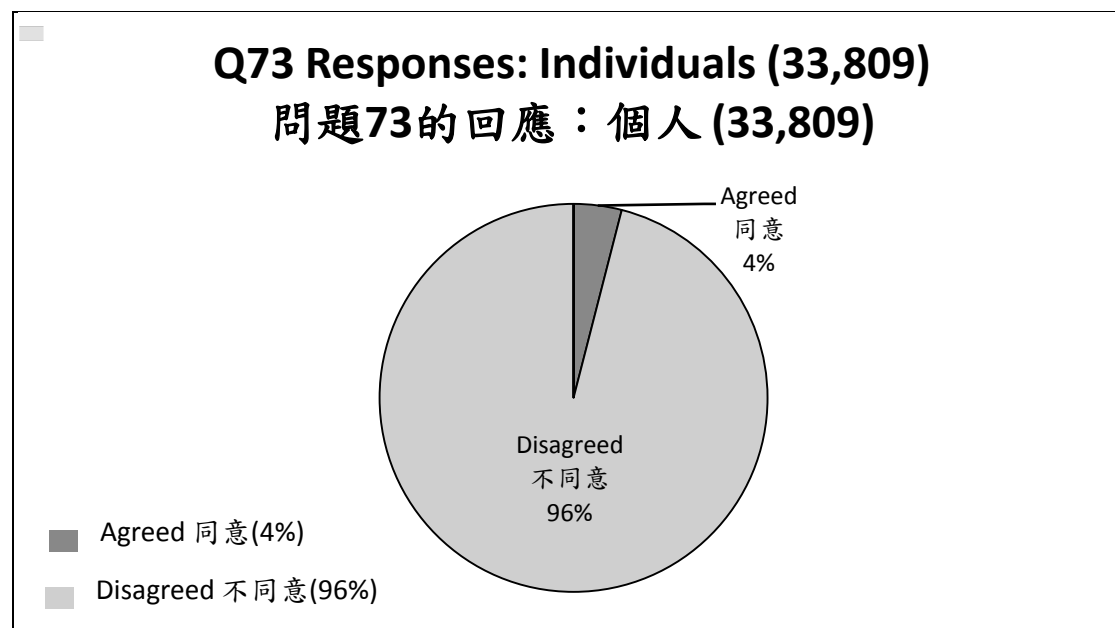
9.64. 82 organisations expressed views on this question. Of the organisations who agreed with the EOC's proposal, they believed that it is not justified to discriminate against persons in relation to public housing on the grounds of their marital status. One human rights NGO stated that public housing should be allocated based on whether people are in families, and therefore marital status is not relevant.

9.65. Of the organisations who disagreed with the proposal, the main reasons provided were:-

- (i) Families should be prioritised over cohabitants or single applicants in housing application;
- (ii) Public housing resources in Hong Kong are limited;
- (iv) The proposal would delay the waiting time for public housing and create social disturbances;
- (v) The proposal would lead to a huge increase in demand for public housing, with significant socio-economic implications.

9.66. One religious group noted that the Government had previously rejected an EOC submission on this issue, which indicates that preference should be given to nuclear families rather than single applicants.

## Individuals



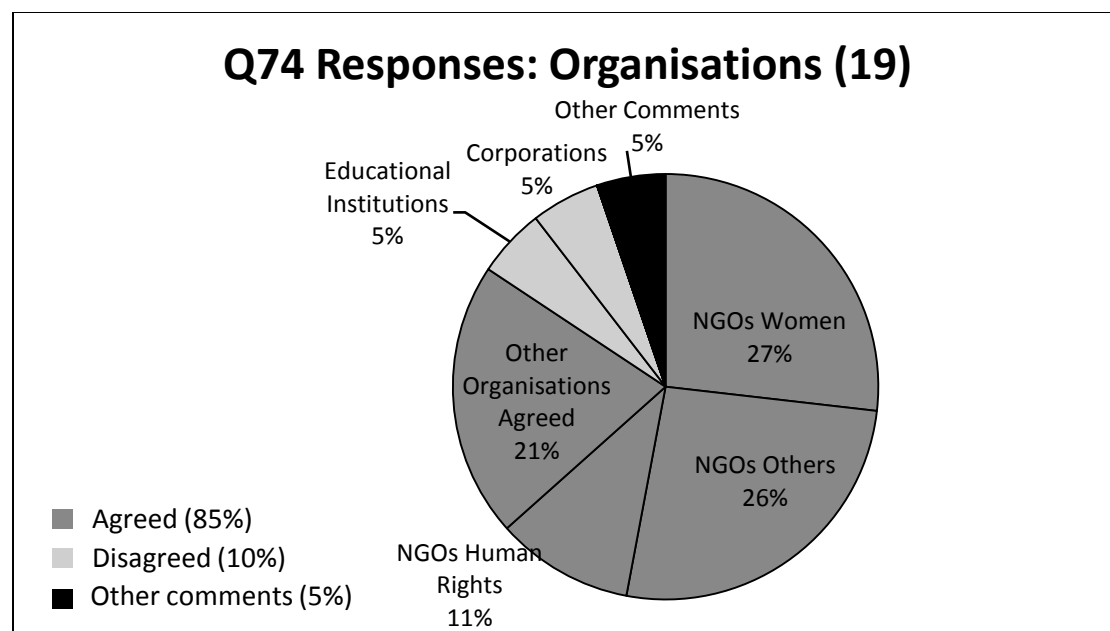
- 9.67. 33,809 respondents expressed views on this question. A small proportion of the respondents (1,516) indicated their support to this question, the majority (32,281) raised their objection, while the rest (12) had other comments.
- 9.68. All respondents who agreed with this question gave no reason.
- 9.69. Of the respondents who disagreed with this question, most respondents (25,336) gave no reason. Others generally took the view that:-
- (i) People with different marital status have different needs and priorities for public housing. (1,380 responses)
  - (ii) Increase social and/or financial burden. (5,682 responses)

## G. Exceptions relating to family status

### Consultation Question 74

*Do you think that the exception relating to family status which permits difference in insurance premiums based on family status should be repealed?*

#### Organisations

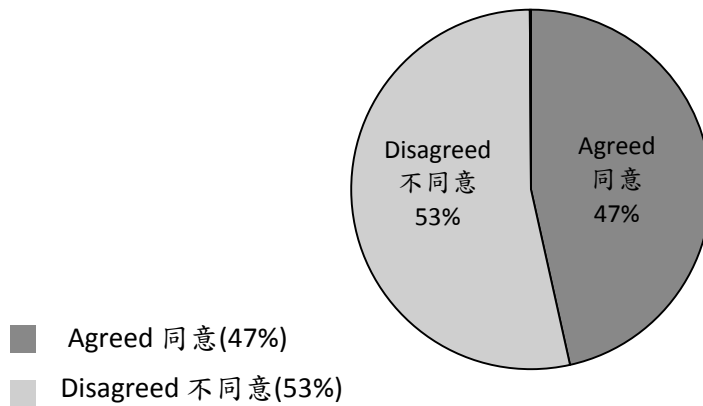


9.70. 19 organisations expressed views on this question. Of the organisations that agreed with the proposal, one human rights NGO stated that although there may be legitimate exceptions relating to insurance, for example for persons with disabilities, there is no reasonable justification for having the exception in relation to persons who care for family members.

9.71. Of the organisations who disagreed with the proposal, there were no reasons of particular note provided.

## Individuals

### **Q74 Responses: Individuals (4,928)** **問題74的回應：個人 (4,928)**



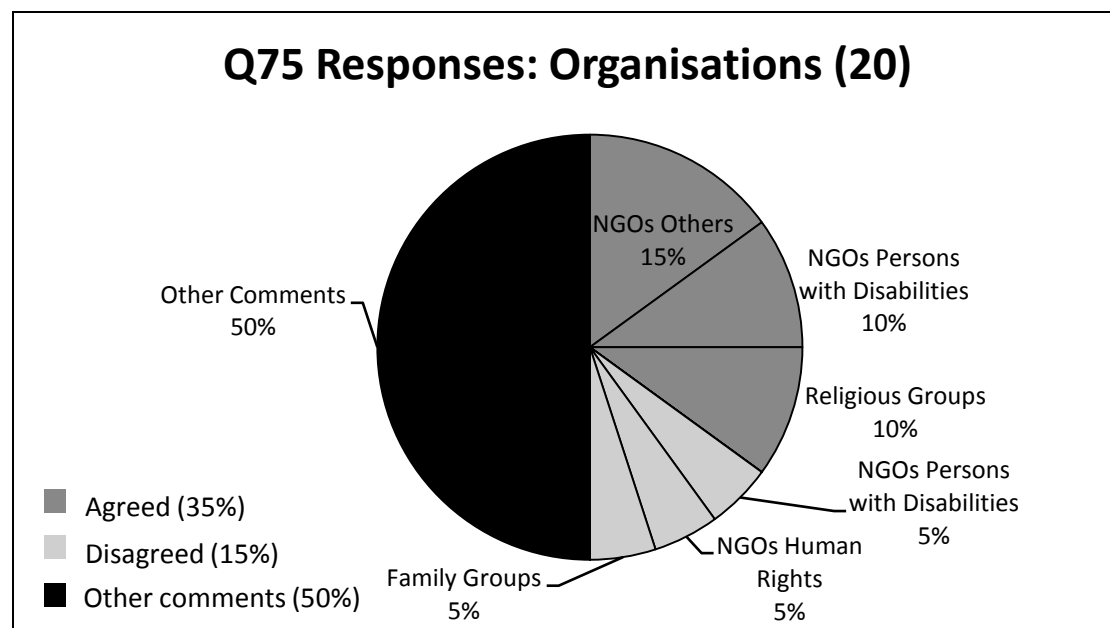
- 9.72. 4,928 respondents expressed views on this question. Nearly half of the respondents (2,292) expressed their agreement to this question, over half (2,631) raised their objection, while the rest (5) had other comments. All respondents who agreed or disagreed with this question gave no reason.

## H. Exceptions relating to disability

### Consultation Question 75

*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?*

#### Organisations

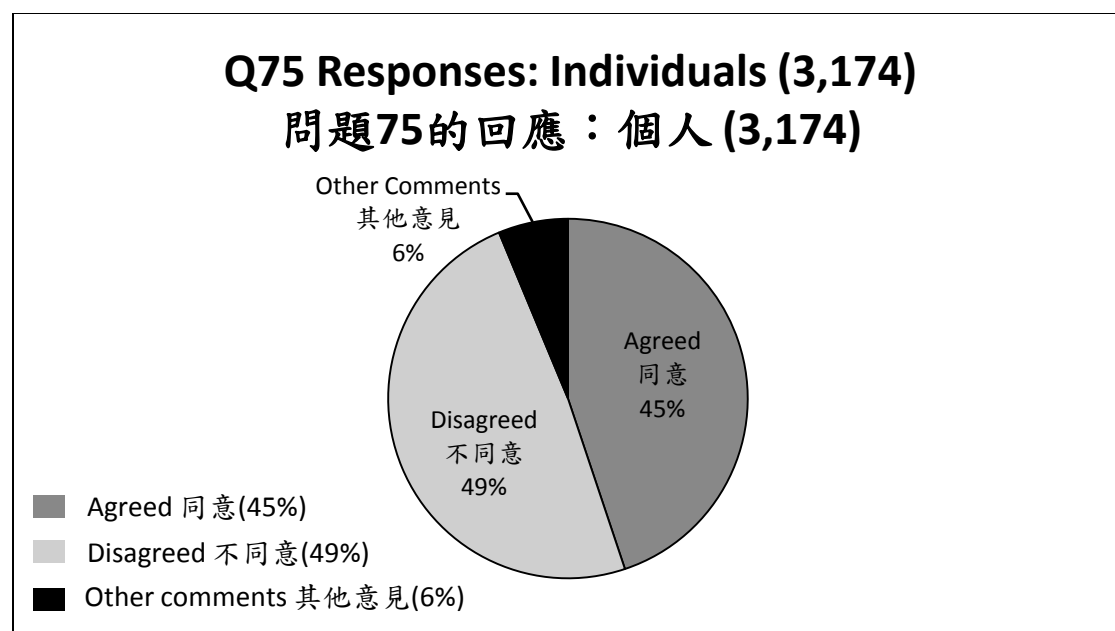


9.73. 20 organisations expressed views on this question. The EOC notes that there were divergent views expressed, including from NGOs working with people with disabilities. Of the organisations who agreed to repeal the system, there were a number of reasons and comments provided:

- (i) The system assumes that people with disabilities have lower productivity, which is a violation of the spirit of equality;
- (ii) The system has not worked effectively and is rarely used by people with disability;
- (iii) It violates the spirit of the Minimum Wage Ordinance to protect all employees from exploitation if employees with disability can be paid a salary lower than the minimum wage;
- (iv) The Government should implement more disability-related employment policies before repealing the productivity assessment mechanism;
- (vi) There should be employment quota and tax reduction given to people with disabilities.

9.74. For organisations who supported the retention of the productivity assessment system, a few working with people with disabilities expressed the view that the assessment model has worked well and can help people with disabilities to get jobs. Some favoured keeping the system while adding improvements on how to evaluate the productivity of people with disabilities, including the provision of clearer guidelines.

## **Individuals**



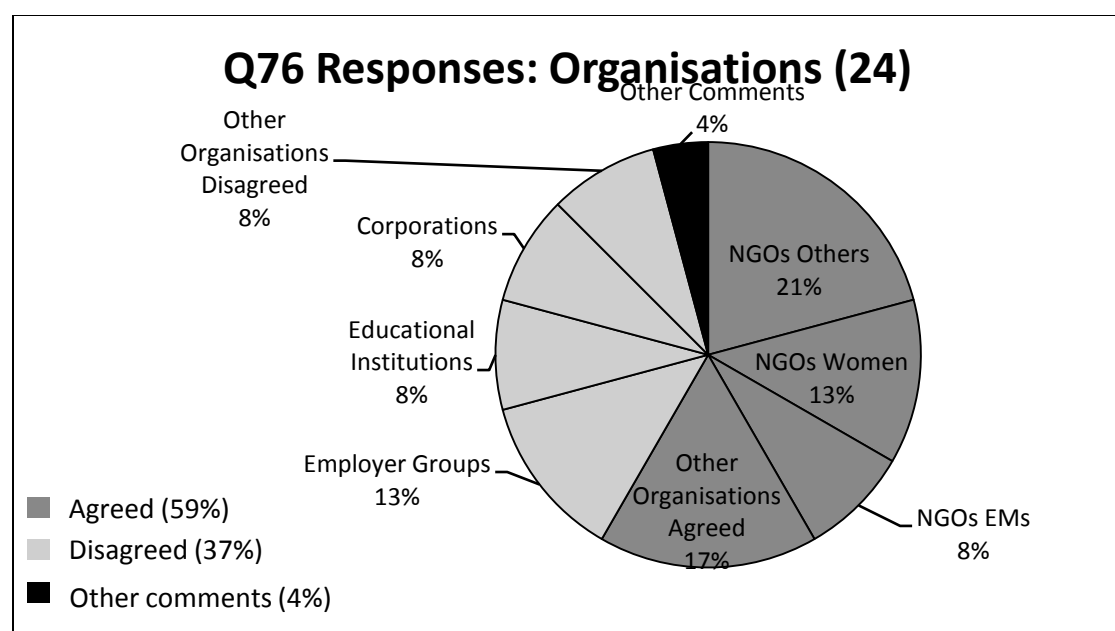
9.75. 3,174 respondents expressed views on this question. Nearly half of the respondents (1,424) expressed their agreement to this question, over half (1,551) raised their objection, while the rest (199) had other comments. All respondents who agreed or disagreed with this question gave no reason.

## I. Exceptions relating to race

### Consultation Question 76

*Do you think that the exception permitting discrimination in employment conditions for persons from overseas with special skills, knowledge or experience should be repealed?*

#### Organisations



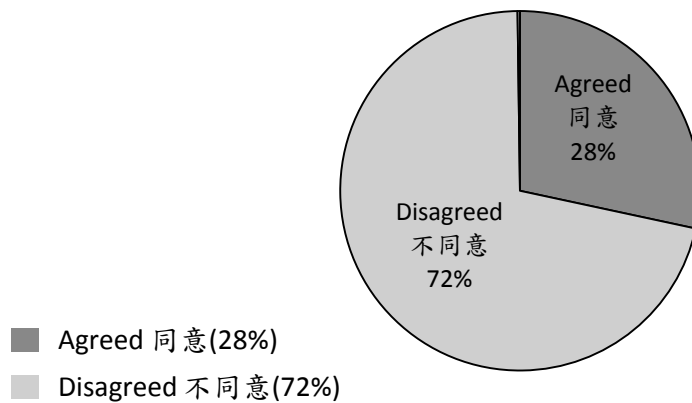
9.76. 24 organisations expressed views on this question. Of the organisations that agreed with the EOC's proposal, several pointed out that the blanket exception is too broad, and each claim should be decided individually on a case-by-case basis, subject to the GOQ exception and whether it is justified as a proportionate means of achieving a legitimate aim. Another employee group expressed that the exception permits discrimination against local employees.

9.77. Of the organisations that disagreed with the EOC's proposal, the main reasons provided were:

- (i) The proposal ignores practical needs of industries to attract and retain talent from overseas with special skills, knowledge or expertise; and
- (ii) The proposal would have significant impact on businesses and existing commercial practices.

## Individuals

### **Q76 Responses: Individuals (4,645)** **問題76的回應：個人(4,645)**



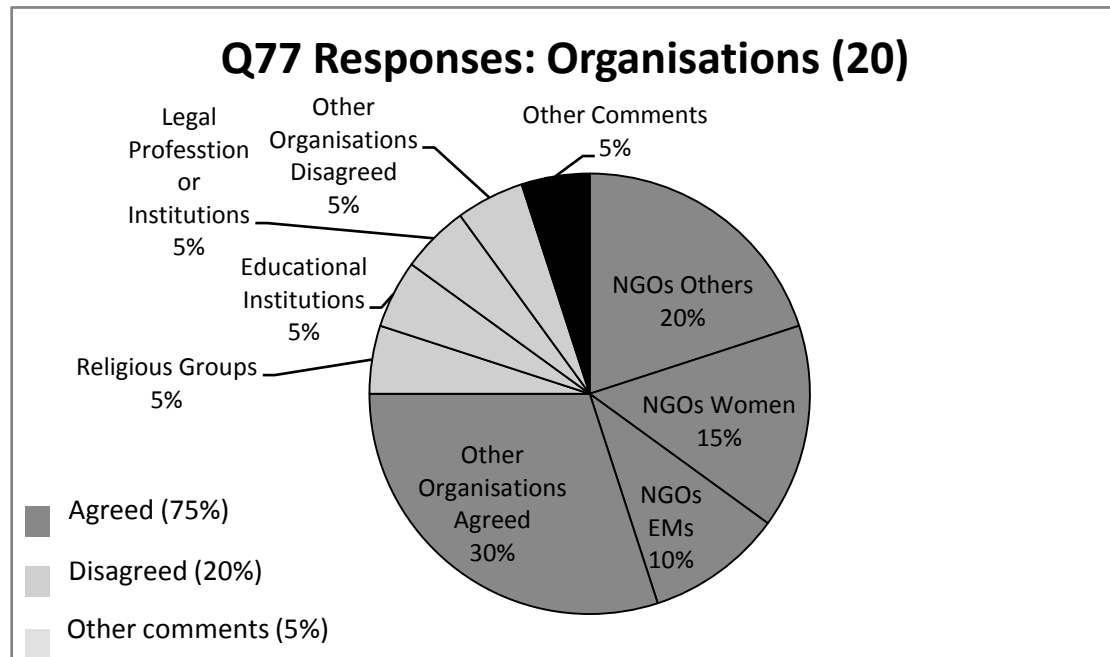
- 9.78. 4,645 respondents expressed views on this question. Over a quarter of the respondents (1,321) indicated their support to this question, over two-thirds (3,314) raised their objection, while a few (10) had other comments.
- 9.79. All respondents who agreed with this question gave no reason. Of the respondents who disagreed with this question, almost all respondents (3,283) gave no reason, while some (31) opined that it is reasonable to request different employment terms.



## Consultation Question 77

*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?*

### Organisations



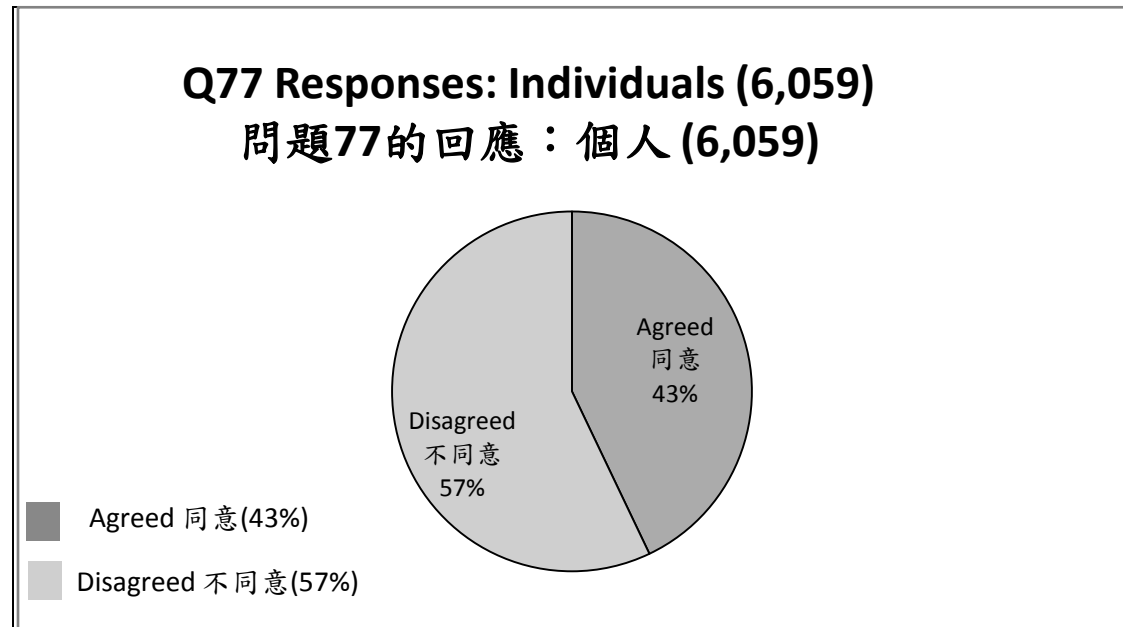
9.80. 20 organisations expressed views on this question. Of the organisations that agreed with the EOC's proposal, the following main reasons were provided:

- (i) Whether or not different terms of employment is unlawfully discriminatory should be addressed on a case-by-case basis, subject to its justification as a proportionate means of achieving a legitimate aim, and not a blanket exception;
- (ii) If employees recruited from overseas enjoy better employment conditions, it is discrimination against local employees. The organisation supported that local employees shall be given priority in term of employment;
- (iii) The policy should not merely be reviewed, per the EOC's proposal, but repealed.

9.81. Of the organisations that disagreed with the proposal, of note one legal institution stated that the exception was appropriate, and the Immigration

Department determines on a case-by-case basis whether a person from overseas has special skills when granting them a working visa.

### **Individuals**



- 9.82. 6,059 respondents expressed views on this question. Many respondents (2,592) indicated their support to this question, over half of the respondents (3,448) raised their objection, while the rest (19) had other comments.
- 9.83. Of the respondents who agreed with this question, almost all respondents (2,588) gave no reason, while a few (4) took the view that everyone should be employed on the same terms and conditions whether they are from overseas or are local.
- 9.84. All respondents who disagreed with this question gave no reason.

# Appendices

## Appendix 1: Public Forums and meetings with stakeholders

### Public Forums

Date	Stakeholders	Numbers of people <sup>7</sup>
<b>General Public Forums</b>		
9.8.2014 (10:30am-12:30pm) (HK Central Library: conducted in Cantonese)	Various (Individuals and representatives of organisations)	130
16.8.2014 (2:30pm-4:30pm) (Mong kok Community Hall: conducted in Cantonese)	Various (Individuals and representatives of organisations)	154
23.8.2014 (2:30pm-4:30pm) (Equal Opportunities Commission, Taikoo Shing: conducted in English)	Various (Individuals and representatives of organisations)	90
30.8.2014 (2:30pm-4:30pm) (Tuen Mun Town Hall: conducted in Cantonese)	Various (Individuals and representatives of organisations)	102
<b>Ethnic Minorities</b>		
3.8.2014 (4:30pm – 6:30pm)	Filipino Community	50
10.8.2014 (3:00pm-5:00pm)	Nepalese Community	40
17.8.2014 (2:30pm-4:30pm)	Sikh Community	34
24.8.2014 (2:00pm-4:00pm)	Pakistani Community	40
27.8.2014 (6:30pm-8:30pm)	Indian Community	24
7.9.2014 (10:30am-1:30pm)	Indonesian Community	21
7.9.2014 (2:00pm-4:00pm)	Thai Community	38

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<sup>7</sup> This refers to either the approximate numbers of people or organisations represented at the forums or meetings.

## **Meetings with stakeholder organisations**

<b>Date</b>	<b>Stakeholders</b>	<b>Numbers of Organization(s)</b>
21.7.2014 (3:00pm-5:00pm)	關注中港家庭聯席	9
29.7.2014 (2:30pm – 4:30pm)	Non-government organisations: women's groups	9
30.7.2014 (2:30 pm– 4:30pm)	Non-government organisations: persons with disabilities groups	12
4.8.2014 (2:30pm – 4:30pm)	Non-government organisations: ethnic minority groups	11
6.8.2014 (8:00am-9:00am)	Australian Chambers of Commerce	5
13.8.2014 (2:30pm – 4:30pm)	Employer/Chambers of Commerce	2
18.8.2014 (10:00am – 11:00am)	Justice Centre	
19.8.2014 (2:30pm – 4:30pm)	Trade Unions	1
25.8.2014 (4:30pm-6:30pm)	Law Society	
2.9.2014 (2:30pm-4:30pm)	Hong Kong Council of Social Services (Ethnic Minority issues)	18
2.9.2014 (6:30pm-8:00pm)	Women's Foundation & Herbert Smith	80
3.9.2014 (4:00pm – 6:00pm)	Hong Kong Institute of Human Resource Management	80
7.9.2014 (10:30am-1:30pm)	Indonesian Community	21
7.9.2014 (2:00pm-4:00pm)	Thai Community	38
8.9.2014 (11:00am – 1:00pm)	PILnet	
11.9.2014 (9:30am-10:30am)	Rehabilitation Advisory Committee	
12.9.2014 (2:30pm-4:30pm)	Hong Kong Council of Social Services (Agencies)	31
17.9.2014 (10:00am-11:30am)	Women's Commission	
17.9.2014 (7:30pm-9:30pm)	卓新力量	
19.9.2014 (2:00pm-4:00pm)	Joint Council for Persons with Disabilities	17
24.9.2014 (10:30am-12:00 noon)	Democratic Party	
26.9.2014 (10:30am-12:00 noon)	DAB (Democratic Alliance for the Betterment and Progress of Hong Kong)	
27.9.2014 (2:30pm 4:30pm)	香港失明人協進會 (Hong Kong Blind Union)	

6.10.2014 (10:30am-12:30pm)/ (2:30pm-4:30pm)	Educational institutions (Universities, schools and Vocational Training)	9
8.10.2014 (4:00pm-5:00pm)	Committee on the Promotion of Civic Education	
13.10.2014 (3:00pm-5:00pm)	Hong Kong Christian Service	
27.10.2014 (2:30pm-4:30pm)	Various disability groups arranged by Hon Fernando Cheung:- 龍耳 聽障學生權益會 香港弱智人士家長聯會 專注不足/過度活躍症(香港)協會 香港失明人互聯會 自強協會 妍康會 香港基督教服務處智愛家長會 香港復康會研究及倡議中 香港融合教育關注協會 香港職業傷病聯盟 嚴重弱智人士家長協會 聾人資訊	13
3.10.2015 (6:30pm-8:30pm)	SOGI groups: 香港女同盟會 彩虹行動 大同	3
21.10.2014 (Luncheon)	Rotary Club	
28.10.2014 (3:30pm-5:30pm)	Society of Truth and Light	3
26.11.2014 (Luncheon)	The Institute of Print-Media Professionals (IPP) <sup>8</sup>	
16.4.2015 (10am-11am)	Small and Medium Enterprises Committee <sup>9</sup>	

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<sup>8</sup> Note this meeting was held after the official public consultation period.

<sup>9</sup> Note this meeting was held after the official public consultation period.

## Appendix 2 Organisations which sent written responses to the consultation<sup>10</sup>

### 附錄 2 就公眾諮詢遞交了書面意見書的機構<sup>11</sup>

#### Responses in Chinese

#### 以中文書寫意見書的機構

Number 項目	Organisation 機構
1.	香港社區組織協會 (Society for Community Organisation)
2.	香港九龍塘基督教中華宣道會天耀堂 (Kowloon Tong Alliance Church Tin Yiu Church)
3.	天主教聖雅各伯幼稚園 (St James Catholic Kindergarten)
4.	民建聯家庭事務委員會 (DAB)
5.	五旬節聖潔會靈恩堂 (Pentecostal Holiness Church Ling Yan Assembly)
6.	香港婦聯 (Hong Kong Women Development Association Limited)
7.	基督教香港崇真會元朗堂 (Tsung Tsin Mission of Hong Kong)
8.	五旬節聖潔會筲箕灣堂有限公司基列社會服務中心 (Pentecostal Holiness Church Hong Kong)
9.	鮑思高慈幼會 (Salesians of Don Bosco Provincial Office)
10.	Salesian Cooperators China Province
11.	寶血會嘉靈學校 (Ka Ling School of the Precious Blood)
12.	基督教香港崇真會 (Tsung Tsin Mission of Hong Kong)
13.	路得團契 (The Lutheran Church Hong Kong)
14.	觀塘平安福音堂 (Kwun Tong Peace Evangelical Center)

<sup>10</sup> It is to be noted that a number of organisations indicated that they did not wish to be identified, and as a result those organisations have not been listed.

<sup>11</sup> 請注意有 22 間機構表示，希望名稱能保密，故有關機構並不在此名錄。

<b>Number 項目</b>	<b>Organisation 機構</b>
15.	環球宣愛協會 (Alliance Global Serve)
16.	香港九龍塘基督教中華宣道會大坑堂(Kowloon Tong Church of The Chinese Christian and Missionary Alliance Tai Hang Tung Church)
17.	柴灣平安福音堂 (Chai Wan Peace Evangelical Centre)
18.	香港女障協進會 (Association of Women with Disabilities Hong Kong)
19.	北宣下一代關注組
20.	上水平安福音堂 (Sheung Shui Peace Evangelical Centre Limited)
21.	基磐浸信會 (Christ Baptist Church)
22.	九龍灣平安福音堂 (Kowloon Bay Peace Evangelical Center)
23.	大埔平安福音堂 (Tai Po Peace Evangelical Centre)
24.	基督教香港崇真會富善堂 (Tsung Tsin Mission of Hong Kong Fu Shin)
25.	大埔浸信會 (Tai Po Baptist Church)
26.	基督教香港崇真會深水埗堂 (Tsung Tsin Mission of Hong Kong Shamshuipo Church)
27.	香港浸信會聯會 (The Baptist Convention of Hong Kong)
28.	香港中小企總會 (Hong Kong General Chamber of Small and Medium Business)
29.	基督教會活石堂 (九龍堂) (The Church of Livingstones (Kowloon))
30.	救恩學校 (Kau Yan School)
31.	天主教香港教區關顧同性吸引人士牧民小組 (Diocesan Committee for the Pastoral Care of Persons with Same Sex Attraction)
32.	香港社區組織協會 Society for Community Organization)
33.	香港公教婚姻輔導會 (The Hong Kong Catholic Marriage Advisory Council)
34.	香港潮州商會 (H.K. Chiu Chow Chamber of Commerce)
35.	張超雄立法會議員辦事處, 張國柱立法會議員辦事處, 殘疾人士監察特首施政大聯盟, 自強協會有限公司,

Number 項目	Organisation 機構
	正言匯社, 香港失明人互聯會, 聽障學生權益會, 龍耳有限公司, 香港失明人服務機構職工會, 香港融合教育關注協會 SEN Cares, 特殊學習需要家長協會, 香港唐氏綜合症協會, 專注力不足/過度活躍症(香港)協會, 聾人資訊, 嚴重弱智人士家長協會, 特殊學習需要權益會, 香港紅十字會甘迺迪中心校友會
36.	香港工會聯合會 (The Hong Kong Federation of Trade Unions)
37.	香港復康聯盟 (Rehabilitation Alliance Hong Kong)
38.	教區婚姻與家庭牧民委員會 (Diocesan Pastoral Commission For Marriage and The Family)
39.	香港珠石玉器金銀首飾業商會 (Hong Kong Jewellers' & Goldsmiths' Association)
40.	香港家庭福利會 (Hong Kong Family Welfare Society)
41.	香港失明人協進會 (Hong Kong Blind Union)
42.	香港社會服務聯會 (Hong Kong Council of Social Services)
43.	香港失明人協進會 (Hong Kong Blind Union)
44.	香港婦女基金會有限公司 (Hong Kong Women Foundation Ltd.)
45.	香港專業及資深行政人員協會 (Hong Kong Professionals and Senior Executives Association)
46.	香港中華總商會 (Chinese General Chamber of Commerce)
47.	出生權維護會有限公司 (The Birthright Society Limited)
48.	寶血會嘉靈學校
49.	救恩堂粉嶺分堂 (Tsun Tsin Mission of Hong Kong Kau Yan (Fanling) Church)
50.	大埔主恩浸信會 (Tai Po Grace Baptist Church)
51.	順德聯誼總會鄭裕彤中學 (Shun Tak Fraternal Association)



<b>Number 項目</b>	<b>Organisation 機構</b>
	Cheng Yu Tung secondary School)
52.	九龍婦女聯會 (Kowloon Women's Organisation Federation)
53.	靈火天地慈善基金有限公司
54.	石籬天主教 中學 (Shek Lei Catholic Secondary School)
55.	城巴有限公司/新世界第一巴士服務有限公司 (Citybus Limited/New World First Bus Services Limited)
56.	葵涌平安福音堂 (Kwai Chung Peace Evangelical Centre)
57.	定向新世代
58.	愛護家庭家長協會 (Parents for the Family Association)
59.	第一城浸信會 (City One Baptist Church)
60.	高主教小學部 (Raimondi College Primary Section)
61.	香港教育專業人員協會 (Hong Kong Professional Teachers' Union)
62.	基督教宣道會華基堂 (The C& M Alliance Wak Kee Church)
63.	香港特殊學習障礙協會 ( Hong Kong Association of Special Learning Disability )
64.	聾耳 (Slience)
65.	深水埗婦女聯會會有限公司 (Sham Shui Po Women's Organizations Federation Limited)
66.	救恩堂粉嶺分堂 ( Tsung Tsin Mission of Hong Kong Kau Yan (Fanling ) Church )
67.	明愛男士成長中心 (Caritas Men Centre)
68.	家庭議會 ( Family Counsel )
69.	網上大專生聯會
70.	深水埗平安福音堂 (Sham Shui Po Peace Evangelical Centre)
71.	香港公務員總工會 ( Hong Kong Civil Servants General Union )
72.	筲箕灣崇真學校 ( Shaukiwan Tsung Tsin School )
73.	基督教香港崇真會救恩堂( Tsung Tsin Mission of Hong Kong Kau Yan Church )
74.	中華宣道會天澤堂學生團契 (The Chinese Christian and Missionary Alliance Tin Chak Church student fellowship)
75.	中華宣道會天澤堂翼風團契 (The Chinese Christian and

<b>Number 項目</b>	<b>Organisation 機構</b>
	Missionary Alliance Tin Chak Church fellowship)
76.	五旬節聖潔會三門仔堂有限公司 (Sam Mun Tsai Pentecostal Holiness Church Limited)
77.	基督教崇真會大埔堂 (Tsung Tsin Mission of Hong Kong Tai Po Church)
78.	基督教崇真會荃葵崇真堂(Tusen Kwai Tsun Tsin Church Tsung Tsin Mission of Hong Kong)
79.	中華傳道會劉永生中學 (CNEC Lau Wing Sang Secondary School)
80.	榮恩浸信教會福音堂 (Glory Baptist Church)
81.	香港華人基督教聯會 (The Hong Kong Chinese Christian Churches Union)
82.	寶達婦女會 (Po Tat Women's Association)
83.	香港家連家精神健康倡導協會 (Hong Kong Family Link Mental Health Advocacy Association)
84.	基督教恩典堂 (Christian Grace Church)
85.	爭取性傾向歧視立法陣線 (The Sexual Orientation Discrimination Legislation Front) 香港女同盟 (Women Coalition of Hong Kong) 大同 (Gay Harmony) 彩虹行動 (Rainbow Action) 香港彩虹 (Rainbow of Hong Kong) 跨性別權益會 (Association of Transgender Rights) 香港同志遊行 (Hong Kong Pride Parade) 同志反家暴聯盟 (LGBT Against Domestic Violence Alliance)
86.	藩籬以外—認識及關愛雙性人 (Beyond the Boundary – knowing and concerns the Intersex)
87.	屯門婦聯 (Tuen Mun District Women's Association Limited)
88.	香港旅遊發展局 (Hong Kong Tourism Board)
89.	中華婦女事業協會 (Chung Yeh Women Association)
90.	沙田婦女會 (Shatin Women's Association)
91.	互聯網專業協會 (Internet Professional Association)
92.	德雅中學 (Tak Nga Secondary School) 法團校董會
93.	德雅中學 (Tak Nga Secondary School) 中學教師
94.	美孚婦女會 (Mei Foo Women Association Limited)

<b>Number 項目</b>	<b>Organisation 機構</b>
95.	懲教事務職員協會 ( Correctional Services Officers' Association )
96.	香港鑽石總會有限公司( Diamond Federation of Hong Kong, China Limited )
97.	聖母玫瑰書院 ( Our Lady of the Rosary College )
98.	深水埗婦女協會 ( Sham Shui Po Women's Society )
99.	翠屏婦女會 ( Tsui Ping Women Association )
100.	九龍婦女聯會油塘聚賢坊 (Kowloon Women's Organisation Federation Yau Tong Tsul Yin Fong)
101.	卓妍社 (Excellent Women Association)
102.	石籬天主教中學 ( Shek Lei Catholic Secondary School )
103.	香港潮語浸信會 (Hong Kong Swatow Baptist Church)
104.	葵涌新生命堂 ( The Kwai Chung New Life Temple )
105.	香港婦女基金會有限公司 ( Hong Kong Women Foundation Ltd )
106.	香港藥行商會 ( The Hong Kong Medicine Dealers' Guild )
107.	尖沙咀平安福音堂有限公司 (TST Peace Evangelical Centre Limited)
108.	香港單親協會 ( Hong Kong Single Parents Association )
109.	國富浩華 ( 香港 ) 會計師事務所有限公司 ( Crowe Horwath (HK) CPA Limited )
110.	牛頭角平安福音堂有限公司(Ngau Tau Kok Evangelical Centre Ltd.)
111.	香港基督教服務處 ( Hong Kong Christian Service )
112.	香港復健協會 ( Hong Kong Phah Association )
113.	天主教郭得勝中學 (Kwok Tak Seng Catholic Secondary School)
114.	天水圍新來港婦女反歧視小組 Tin Shui Wai Women New Immigrants Anti Discrimination Group
115.	香港婦女中心協會 (Hong Kong Federation of Women's Centres)
116.	香港各界婦女聯合協進會 (Hong Kong Federation of Women)
117.	新福事工協會有限公司 (Mission To New Arrival Ltd)

<b>Number 項目</b>	<b>Organisation 機構</b>
118.	美孚新邨第一期業主立案法團 (The Incorporated Owners of Mei Foo Sun Chuen – Stage I)
119.	香港婦女聯盟 (HK Federation of Women's Centre)
120.	香港傷殘青年協會 (Hong Kong Federation of Handicapped)
121.	彩虹之約共建同志友善教會行動 The Covenant of the Rainbow
122.	天水圍照顧者支援社區設施關注組
123.	香港九龍塘基督教中華宣道會宣中堂 (Kowloon Tong Church of The C.C. & M.A. The Christian Alliance College Church)
124.	香港基督教協進會社會公義與民生關注委員會 Hon Kong Christian Council (Social Justice and Livelihood Commission)
125.	香港職工會聯盟 (Hong Kong Confederation of Trade Unions)
126.	真理浸信會榮光幼兒園 (Truth Baptist Church Glory Nursery)
127.	平等機會婦女聯席 (Hong Kong Women's Coalition on Equal Opportunities)
128.	香港藥行商會 (Hong Kong Medicine Dealers' Guild)
129.	基督教香港崇真會新翠堂 (TTM Sun Chui Church)
130.	國泰航空公司空中服務員工會 (FAU)
131.	新婦女協進會 (The Association for the Advancement of Feminism)
132.	香港社會工作人員協會 (Hong Kong Social Workers Association)
133.	將軍澳平安福音堂 (Tseung Kwan O Peace Evangelical Centre)
134.	惠妍婦女會 (Fragrant Women Association)
135.	香港性文化學會 (Hong Kong Sex Culture Society Ltd)
136.	民間監察平機會小組 (Hong Kong People's Alliance on EOC)
137.	香港基督徒學會 (Hong Kong Christian Institute)
138.	真理浸信會榮光幼稚園 (Truth Baptist Church Glory Nursery)
139.	中華基督教會灣仔堂「健康家庭關注組」(The Church of

<b>Number 項目</b>	<b>Organisation 機構</b>
	Christ in China Wanchai Church, Healthy Family Concern Group)
140.	中華基督教福恩堂有限公司 (The Chinese Christian God Blessed Church Limited)
141.	荃新姊妹網
142.	天水圍平安福音堂 (Tin Shui Wai Peace Evangelical Centre)
143.	香港天主教勞工事務委員會 (Hong Kong Catholic Commission for Labour Affairs)
144.	基督教香港崇真會元朗堂 (Tsung Tsin Mission of Hong Kong Un-Long Church)
145.	黃竹街平安福音堂 Wong Chuk Street Peace Evangelical Centre Ltd
146.	中國基督教播道會恩福堂 (Evangelical Free Church of China Yan Fook Church)
147.	香港天主教母佑會(Daughters of Mary Help of Christians)
148.	中小型企業委員會(Small and Medium Enterprises Committee)
149.	基督教宣道會愛光堂 (C & MA Ruth Hitchcock Memorial Church)
150.	香港經濟民生聯盟秘書處 (Business and Professionals Alliance for Hong Kong)
151.	香港九龍塘基督教中華宣道會上水堂 Kowloon Tong Church of the C.C. & M.A. Sheung Shui Church
152.	天水圍婦聯 Tin Shui Wai Women Association Limited
153.	維護家庭基金 (Family Value Foundation)
154.	明光社(The Society for Truth and Light)
155.	自由黨 Liberal Party
156.	香港人權監察 (Hong Kong Human Rights Monitor)
157.	跨境學童政策關注組 (Cross Broader Pupils Policy Concern Group)
158.	香港盲人輔導會(Hong Kong Society for the Blind)
159.	香港弱智人士家長聯會 (The Hong Kong Joint Council of Parents of the Mentally Handicapped)
160.	以利亞敬拜隊@香港基督教崇真會救恩堂 (粉嶺分堂) (Elijah Worship Team)

<b>Number 項目</b>	<b>Organisation 機構</b>
161.	天主教粉嶺聖若瑟堂 家庭牧民小組
162.	香港復康聯會/香港社會服務聯會 (The Hong Kong Joint Council for People with disabilities / The Hong Kong Council of Social Science)
163.	家庭價值關注組 (Family Value Concern Group)
164.	公民黨 (Civic Party)
165.	香港天主教母乳育嬰會 (Hong Kong Catholic Breastfeeding Association)
166.	沙田崇真學校 (Shatin Tsung Tsin School)
167.	香港戒毒會
168.	家校及各界反對扭曲婚姻制度群組
169.	香港男士關注組
170.	香港中學校長會(Hong Kong Association of the Heads of Secondary Schools)
171.	新民黨 (New People's Party)
172.	香港小童群益會 (The Boys' & Girls' Clubs Association of Hong Kong)
173.	女青年會女聲舊生會 (HKYWCA)
174.	卓新力量 (Chosen Power)
175.	香港唐氏綜合症協會－家長委員會 (Integrated Family Support Services, The Hong Kong Down Syndrome Association)
176.	新生精神康復會 (New Life Psychiatric Rehabilitation Association)
177.	迪高（香港）發展有限公司
178.	油尖旺婦女會 (Yau Tsim Mong Women Association)
179.	網報 (HK Media Watch)
180.	香港基督教循道衛理聯合教會牧師部暨社會服務部社會事務關注小組
181.	西灣河平安福音堂 (Sai Wan Ho Peace Evangelical Centre)
182.	香港基督教循道衛理聯合教會 (The Methodist Church, Hong Kong)
183.	牧愛福音堂
184.	中華基督教禮賢會香港區會 (The Chinese Rhenish Church Hong Kong Synod)

<b>Number 項目</b>	<b>Organisation 機構</b>
185.	中華宣道會翼風團契
186.	明愛家長資源中心
187.	元朗天主教中學
188.	靈光堂 (Emmanuel Church)
189.	中華宣道會鞍盛堂 (Chinese Alliance On Shing Church)
190.	香港基督教播道會聯會社會服務辦事處 (Social Service Office, The Association of Evangelical Free Churches of Hong Kong)
191.	香港精神健康議會 (Hong Kong Mental Health Council)
192.	關注中港家庭權利聯席(CMHKFR)
193.	中國國家行政學院（香港）工商專業同學會 (Chinese Academy of Governance (HK) Industrial and Commercial Professionals Alumni Association)
194.	香港青年協會 (Hong Kong Federation of Youth Groups Building)
195.	香港展能藝術會 (Arts with the Disabled Association Hong Kong)
196.	香港仔工業學校法團校董會 (Aberdeen Technical School Incorporated Management Committee)
197.	元朗區基督教聯會 (Yuen Long District Christian Churches Union Ltd)
198.	香港工人健康中心 (Hong Kong Workers' Health Centre)
199.	生命樹宣教網絡使命堂 (Tree of Life)
200.	明愛康復服務家長諮詢聯會（就業關注組）
201.	創世紀學會早慧兒童教育中心 (Wise Children Education Centre, Society of Genesis Limited)
202.	香港房地產協會 (The Hong Kong Real Property Federation)
203.	基督教中華宣道會華貴堂 (Wah Kwai Alliance Church)
204.	Eternity Diamond & Jewellery Ltd
205.	Girija Global

## Responses in English

### 以英文書寫意見書的機構

Number 項目	Organisation 機構
1.	SENS RIGHTs (特教平權)
2.	New Arrival Women League, concern group on legislation for protection of new arrival women from discrimination (同根社－保障新來港婦女免受歧視立法關注組)
3.	Hodfords.com Ltd
4.	Hong Kong Musician's Union
5.	HKSAR Ethnic Minorities Concern Group Association
6.	The Chinese Manufacturers' Association of Hong Kong (香港中華廠商聯合會)
7.	Mission for Migrant Workers
8.	Zurich Insurance Company Ltd (蘇黎世保險)
9.	Aids Concern (關懷愛滋)
10.	Correctional Services Department (懲教署)
11.	Thai Migrant Workers' Union (泰國移工工會)
12.	Association Concerning Sexual Violence Against Women (關注婦女性暴力協會)
13.	Hospital Authority (醫院管理局)
14.	Yuen Long Minorities Parents Concern Group Association
15.	Hong Kong Housing Society (香港房屋協會)
16.	Catholic Diocese of Hong Kong (天主教香港教區)
17.	Hong Kong Institute of Human Resource Management (香港人力資源管理學會)
18.	The Dairy Farm Company Ltd (牛奶有限公司)
19.	Employers' Federation of Hong Kong (香港僱主聯合會)
20.	The Amnesty International Hong Kong (國際等赦組織香港分會)
21.	PathFinders- Migrant Children Matter
22.	The Law Society of Hong Kong (香港律師會)
23.	Centre for Comparative and Public Law, Faculty of Law, HKU
24.	Vocational Training Council (職業訓練局)
25.	The British Chamber of Commerce in Hong Kong (香港英商會)



Number 項目	Organisation 機構
26.	Justice Centre, Hong Kong
27.	Hong Kong Unison Limited (香港融樂會有限公司)
28.	MTR Corporation Limited (香港鐵路有限公司)
29.	Housing Managers Registration Board (房屋經理註冊管理局)
30.	Travel Industry Council of Hong Kong (香港旅遊業議會)
31.	The Women's Foundation (婦女基金會)
32.	Community Business (社商賢滙)
33.	Missionary Sisters of Our Lady of Angels (天神之后傳教女修會)
34.	Emmanuel Christian Church (基督教以馬內利教會)
35.	New Lantau Bus Co. (1973) Ltd. (新大嶼山巴士(一九七三) 有限公司)
36.	The Family Planning Association of Hong Kong (香港家庭計劃指導會)
37.	Family Health Service, Department of Health (衛生署家庭健康服務)
38.	Hong Kong General Chamber of Commerce (香港總商會)
39.	CUHK JD Student Group
40.	Tsim Sha Tsui Residents Concern Group (尖沙嘴居民關注組)
41.	The Guild of St Luke, St Cosmas and St Damian Hong Kong (香港天主教醫生協會)
42.	Bethune House Migrant Women's Refuge
43.	The Hong Kong Federation of Insurers (香港保險業聯會)
44.	Equal Rights Trust
45.	Baby Friendly Hospital Initiative Hong Kong Association (愛嬰醫院香港協會)
46.	Catholic Pro-life Alliance
47.	Asia Pacific Mission for Migrants (APMM)
48.	United Filipinos In Hong Kong (UNIFIL-MIGRANTE-HK) (在港菲律賓移民工聯會)
49.	Hong Kong Association of Banks (香港銀行公會)
50.	The Church of Jesus Christ of Latter-day Saints (耶穌基督末世聖徒教會)
51.	Asian Migrants' Coordinating Body (AMCB) (亞洲移居人士聯盟)
52.	SOSA Group Limited
53.	Zubin Foundation
54.	Zonta Club of Hong Kong (香港崇德社)
55.	Citizens for Equality
56.	Sexual Orientation Discrimination Legislation Front (爭取性傾向歧視立法陣線)

**Appendix 3**  
附錄 3

**Examples of Pro forma Responses  
and Social Media used for  
individual responses**

個人意見所用的公式回應及社交  
媒體舉例

## 修訂歧視條例公眾諮詢意見書

### Leave a reply

問題 1. 在改革現行歧視法例時，你認為政府應否把現時所有歧視條例合併成單一歧視條例？

答案：不應該。合併所有歧視條例將會令到一些不屬於種族歧視的情況會因為殘疾或其他歧視的保障而被政府藉故刪除對它們的豁免，從而變成歧視情況。最明顯就係香港人批評大陸人的行為，以及大陸新移民因為未係香港公民而沒有公民權利。

問題 11. 有關種族歧視，你認為國籍、公民身份、居民身份或相關身份等應加入為受保障特徵嗎？

答案：不應該。種族歧視條例第 8(1)已經將“種族”解釋得非常清楚。這幾樣東西根本跟種族完全無關，不應該被當作種族歧視。一直以來國籍、公民身份、居民身份或相關身份等都不會被當作受歧視條例保障的特徵。為何現在要改變？

將這些東西加入種族歧視條例，第一，以後香港人對大陸人的行為作出批評，就有可能觸犯法例；第二，從此大陸人可以以歧視的理由來享有香港人所有公民權利。

問題 12. 關於居民身份或相關身份，若你認為應有保障，那麼應如何定義居民身份或相關身份？

答案：我不認同居民身份或相關身份應該獲得歧視條例保障，所以無須討論他們的定義。

問題 13. 你認為應否廢除第 8(3)(b)(i)及(ii)條有關香港永久居民身份和居留權的例外情況？

答案：不應該廢除，居民身份和居留權根本同種族無關，不應該被當作種族歧視。絕對應該繼續將這兩樣東西當作歧視的例外情況。

問題 14. 你認為應否廢除第 8(3)(c)條有關香港居住年期的例外情況？

答案：不應該廢除。居住年期與種族無關，不應該被當作種族歧視。絕對應該保留居住年期作種族歧視的例外情況。

問題 15: 你認為應否廢除第 8(3)(d)條有關某人在另一國家擁有國籍、公民身份或居民身份的例外情況？

答案: 不應該廢除。這幾樣東西根本與種族完全無關，不應該被當作種族歧視。絕對應該繼續保留這些東西當作歧視的例外情況。

問題 16: 你認為應否考慮制定基於居民身份給予待遇差別的例外情況，而有關例外情況必須有相稱且合理的目的？

答案: 完全不應該將“居民身份”加入為受歧視保障的特徵。

問題 26: 你認為所有受保障特徵的騷擾定義應為：

「若某甲—

(a)做出與受保障特徵相關的不受歡迎行徑；且

(b)該行徑的目的或效果是：

(iii)嚴侵犯某乙的尊嚴；或

(iv)製造一個令某乙感到具威嚇、敵意、貶低人格、受侮辱或冒犯的環境，

即屬某甲騷擾某乙。」嗎？

答案: 完全不同意。

第一，何謂“不受欢迎”？完全空泛，毫無準則。任何被批評的人都可以話批評自己的人做緊啲不受欢迎的行為。

第二，侵犯尊嚴都算犯法，有冇搞錯？咁以後鬧人“盜到死”咪都會犯法？

第三，“感到威嚇、敵意、貶低人格、受侮辱、冒犯”就算係騷擾？咁以後香港人咪唔使再講嘢？大陸人只要一句感到乜乜就可以告香港人騷擾？

問題 29: 你認為應否有多元交織的直接歧視、間接歧視和騷擾的條文？若是，你認為多元交織歧視的保障應否涵蓋兩個或以上的特徵？

答案：不應該。多元交織的目的就係等政府可以一次過用很多罪名去告香港人“歧視”大陸人。

問題 30. 你認為：

- 就所有受保障特徵而言，有聯繫人士都應受保障，免受直接歧視、間接歧視和騷擾？
- 若是，你認為「有聯繫人士」的定義應否擴闊至包括直系家庭成員、其他親屬、照顧者、朋友或工作關係？

答案：不應該。一個人被歧視，其他人關乜事呀？

問題 31. 你認為應否明確保障免受被假設擁有任何受保障特徵而起的直接歧視、間接歧視和騷擾？

答案：不應該。既然那個人根本沒有“受保障的特徵”，何來歧視？呢個立法建議的目的只有一個，就係為了阻止香港人辱罵大陸人。

問題 33. 你認為為達到歧視目的而索取資料的保障應否擴至所有現有受保障特徵？

答案：不應該。現行保障已經足夠，擴大保障只是為了以歧視為名阻止公眾獲得資訊。

問題 34.

你認為應否有明確條文規定歧視條例適用於所有公共機構，並訂明公共機構在執行職務和行使職權時的歧視屬違法行為？

答案：不應該。假如規定歧視條例適用於所有公共機構的話，當通過修訂將國籍、居民身份、居住年期變成受歧視條例保障的特徵後，公共機構就必須將大陸新移民和香港公民看齊。咁即係變相俾大陸新移民獲得香港公民權利，即使佢哋根本未係香港公民。

問 35

你認為種族歧視條文應否明確涵蓋政府職能及職權？

答案：不應該。假如規定歧視條例適用於所有公共機構的話，當通過修訂將國籍、居民身份、居住年期變成受歧視條例保障的特徵後，政府部門就必須將大陸新移民和香港公民看齊。咁

即係變相俾大陸新移民獲得香港公民權利，兼且做政府公務員，即使佢哋根本未係香港公民。

#### 問題 37

目前體育活動免受歧視的保障，只限於殘疾歧視。你認為應否延伸至所有受保障特徵？

答案：不應該。延伸至其他保障特徵的目的就是容許大陸新移民獲得政府資助。

#### 問 38

你認為應否廢除《種族歧視條例》於教育和職業訓練範疇的授課語言方面的例外情況，從而解決它在運作上的局限？

答案：不應該。廢除之後，香港所有學校變成都要用普通話授課來遷就大陸人，否則隨時會俾大陸人告種族歧視！

#### 問 39

你認為應否制訂新的騷擾條文，涵蓋所有受保障特徵，並規定：

- 僱主須對僱傭關係以外，已知而未有採取合理行動制止的騷擾，即由顧客、租戶及其他第三者對僱員所作的騷擾，負上法律責任；
- 騷擾者須對共同工作間內與其沒有僱傭關係人士的騷擾負上法律責任，例如一名職工騷擾另一名職工，則前者須負責；
- 教育機構須對學生之間已知而未有採取合理行動制止的騷擾負上法律責任；
- 服務使用者騷擾服務提供者須負上法律責任；
- 服務使用者騷擾其他服務使用者須負上法律責任；
- 與船舶及飛機有關的提供貨品、設施及服務範疇的騷擾的法律責任；
- 租戶及分租戶騷擾其他租戶及分租戶須負上的法律責任；及
- 會社管理層騷擾會員或準會員須負上的法律責任？

答案：不應該，簡直荒謬無比！

第一，僱主點解要對僱員在僱傭關係以外既事情負責呀？要僱主負上法律責任，無非就係要迫僱主出來幫手阻止香港人反大陸人！

第二，學校只需對學生在校內的安全負責，絕對沒有理由要求學校對學生之間的生活事情負上法律責任，唔通要學校全天候監控學生？要學校負法律責任無非就係要迫學校出來幫手阻止香港學生反大陸人。

第三，何謂“服務使用者”騷擾“服務提供者”？咁普通市民去大機構門口示威又算唔算犯了騷擾罪？

第四，義工同義工之間根本就沒有任何法律上的關係，點解要受歧視條例監管？

#### 問題 40

你認為：

- 應否把歧視法例的特別措施條文定位為促進實質平等的措施，而不是的例外情況？；及
- 特別措施的定義應否像第 5.18 節所建議般，清楚訂明其目的、使用情況和何時結束？

答案：不應該。種族歧視條例中所指的例外情況，就係話呢啲情況根本唔係歧視，咁仲要乜嘢“促進平等”呀？係唔係要將全香港所有工作都請晒大陸人就叫做“促進平等”？

#### 問 41

你認為應否規定所有公共機構在職能和政策上都有法定責任，為所有具受保障特徵人士促進平等及將之主流化和消除歧視？

答案：不應該。何謂“主流化”？定係大陸化？公共機構只需要依法辦事就足夠，無需要去“促進平等及將之主流化和消除歧視”。

#### 問 42

你認為應否加入明確條文，訂出歧視訴訟的舉證標準和舉證責任？若是，你認為條文應否說明申索人一旦確立事實基礎可作有歧視的推論，舉證責任應轉移到答辯人身上要其證明沒有歧視？

答案：不應該。簡直荒謬！告人歧視的人唔使提出證據，反而俾人告咁人要去證明自己清白？呢度係大陸呀？為了幫大陸人，竟然連香港的法律制度都破壞，有冇搞錯呀！

#### 問 43

你認為在間接性別、懷孕、婚姻狀況、家庭崗位和種族歧視等方面，判給申索人賠償時是否不需考慮歧視意圖，令其與間接殘疾歧視的條文一致？

答案：不應該。點解要放棄考慮歧視意圖？殘疾歧視係純粹歧視身體缺陷，沒有任何意圖可言，但其他歧視有可能係基於其他原因，在審訊時當然要考慮被告人行為的意圖。尤其今天港共政府隨時任意告香港人歧視大陸人，香港人更需要倚靠“意圖”來作辯護理由。

#### 問 44

你認為應否修訂歧視法例，以確保平機會在得到法律協助的申索人獲判給訟費時，能向被告辯人追回訟費？

答案：不應該。平機會走去幫大陸人打官司，大陸人呀咗場官司後，平機會仲想問香港人撙番錢？咁我哋香港納稅人做乜要出錢成立平機會？不如平機會執咗去啦！

問 45 你認為為求與平機會類似的其他執法權力看齊，平機會是否應可以自己名義對「歧視性的做法」展開法律程序？

答案：不可以。首先，起訴係司法機構既工作，平機會係屬於行政機構，司法和行政要絕對分開。仲有，連案署都沒有告人的權力，平機會點解要有告人的權力？乜歧視重要過廉潔咩？定係中共想借平機會來告死香港人歧視大陸人呀？

#### 問 46

你認為歧視法例應否賦予平機會明確權力，可發出非法定指引？

答案：不應該。解釋法例條文的內容係法官的工作，如果由平機會去出法定指引，咁即係變成由平機會去解釋條法例內容啦！

#### 問 50

你認為歧視條例應否明確規定平機會有權就所有受保障特徵進行研究及教育工作？

答案：不應該。平機會的職責係處理投訴，唔係教育工作者。教育工作留番俾學校去做啦。

#### 問 51



你認為改革後的歧視條例應否明確訂明平機會有權監察以下事宜並提出意見：

- 政府的現有及建議中的法例與政策；及
- 政府在平等及歧視事宜上是否符合國際人權責任？

答案：不應該。審議法例係立法會的工作，平機會絕不可以潛越立法會的工作。

問 52

你認為平機會應否有明確權力可就任何相關的歧視問題申請介入或以法庭之友身份出席法庭訴訟？

答案：不應該。處理訴訟是司法機構的職責，平機會不應干涉司法機構的工作。

問題 59. 你認為歧視條例應否按保密原則，明確列明限制平機會披露與投訴有關的資料？

答案：不應該。這些投訴並非單純的投訴個案，而是潛在的法律個案，一直以來香港所有法律個案的資料都會公開讓公眾知悉(除非特殊情況如性侵犯或幼童案件)，歧視投訴完全不應該、毫無需要保密。

問 61

為求清晰起見，你認為應否把歧視條例的所有例外情況放在同一部份(附表)中列出？

答案：不應該。不同的例外情況屬於不同種類的歧視，放在一起非但會令市民混淆，更令到一些種族歧視的例外情況為了要遷就其他歧視而被刪除，即係令到一些不是種族歧視的情況變成屬於種族歧視。

問 62

你認為應否革新「真正的職業資格」的定義，以一致適用於所有受保障特徵，即附合以下條件便為「真正的職業資格」：

- 「 - 某項職業要求與是否擁有受保障特徵有關；
- 引用該項要求是達到合理目標的相稱方法；
- 申請人或員工達不到該項要求；或僱主有合理理由信納有關申請人或員工達不到該項要求；

至於殘疾方面，若可透過合理的遷就而達到該職業要求，則例外情況並不適用。」？

答案: 絕不應該革新「真正的職業資格」的定義。將這個「真正的職業資格」條款套用在所有受歧視條例保障的情況的話, 當中共把國籍、居民身份和居住年期列入受保障情況後, 假如香港僱主提出要求申請人懂得說英文或擁有香港公民身份, 就隨時被控告歧視。

#### 問 63

你認為歧視性訓練的例外情況是否不必要, 應該廢除, 並將之納入特別措施的定義之中?

答案: 條例列明那些例外情況根本不屬於歧視, 何來「歧視性訓練»? 將那些例外情況廢除, 然後將它們納入「特別措施」的定義, 咁咪即係要求僱主以後為呢啲例外情況提供「合理意圖», 否則就觸犯歧視條例! 絕不應該廢除那些例外情況!

#### 問 64

你認為應否修訂關於慈善的例外情況, 規定所提供的福利必須有合理目標和相稱方法, 才算合法?

答案: 那些兒例外情況根本不屬於歧視, 為何還要要求它們「有合理目標和相稱方法, 才算合法」?! 荒謬! 絕不應該!

致平等機會委員會主席及各委員: 致平等機會委員會主席及各委員:

## 回應「歧視條例檢討」公眾諮詢文件

本人非常欣賞平機會過去十多年在執行反歧視法上的工作，幫助香港成為一個更平等及重視人權的地方，尤其是幫助懷孕婦女在工作上免受歧視。

可是，本人留意到平機會在今次檢討歧視條例內容中，加入未經社會討論的「事實婚姻關係」。婚姻狀況的定義，應該根據香港第181章《婚姻條例》的原則下訂定。符合本港婚姻法例的結合關係屬「已婚」，不論是情人或同居，都應屬於「未婚」。

在香港，如有異性伴侶的關係在事實上等同異性婚姻，卻因未有進入婚姻制度而不獲承認為婚姻，只須進入婚姻制度即可，毋須巧立「事實婚姻關係」的名目。

人人都有權利堅持同居而不進入婚姻制度，那就有義務不承擔制度所賦予的責任和不支取制度所賦予的福利。若將「伴侶關係」取代「婚姻關係」，只會模糊婚姻關係的獨特性與重要性。此外，這會影響宗教自由，譬如僱主被迫承認和提供福利給僱員的同居關係。宗教自由同樣是《世界人權宣言》肯定的基本人權，同樣應予以尊重。

再者，香港事實上沒有同性婚姻，在邏輯上同性的「事實婚姻關係」說不通。

由於本人不能認同同居關係等於婚姻關係或「事實婚姻關係」，因此，本人反對所有涉及「事實婚姻關係」的一切修訂建議，包括：

諮詢問題 6：本人反對

諮詢問題 8：本人反對

諮詢問題 9：本人反對

基於反對將事實婚姻關係納入婚姻狀況，因此反對這將下列例外狀況延伸，包括已婚人士福利、人類生殖科技、領養及公共房屋政策，本人認為保留這些例外狀況有其實際需要。

諮詢問題 70：本人反對

諮詢問題 71：本人反對

諮詢問題 72：本人反對

諮詢問題 73：本人反對

簽名: 

日期: 2014年10月6日

致平等機會委員會主席及各委員:

## 回應「歧視條例檢討」公眾諮詢文件

本人留意到平機會在諮詢文件中多條問題涉及或涵蓋了同居關係，雖然平機會強調這次諮詢並非為一些現時未受保障的特徵如性傾向、性別認同、雙性身份或年齡等，探討制定歧視法例，亦非討論同性婚姻應否合法化的問題，但卻建議將同居關係納入為「事實婚姻關係」，並包括同性同居。平機會表面上強調自己不是挑戰香港法例對婚姻的定義，但實際上透過引入「事實婚姻關係」，將婚姻的定義徹底改變，是移風易俗之重大舉措，因著「事實婚姻關係」，而給予一些同居人士(無論異性和同性)享有婚姻的福利及保障，間接瓦解整個婚姻制度，事前根本沒有廣泛諮詢社會上不同持份者的意見。

若香港社會要通過同性婚姻，必定要先經過長時間及廣泛的社會討論，平機會主席近年已變成同性戀運動的先鋒，但這樣「暗渡陳倉」，偷偷把同性同居關係納入「同性事實婚姻關係」，並建議給予制度性認可和保障，實在是在偷步推動同性婚姻，本人堅決反對所有涉及「事實婚姻關係」及因「事實婚姻關係」納入婚姻狀況的例外狀況之延伸，包括已婚人士福利、人類生殖科技、領養及公共房屋政策。

諮詢問題 6：反對

諮詢問題 8：反對

諮詢問題 9：反對

諮詢問題 70：反對

諮詢問題 71：反對

諮詢問題 72：反對

諮詢問題 73：反對

### 諮詢問題 69

本人贊成將該問題談及之性別歧視的例外情況擴闊至婚姻狀況，因為宗教自由是《基本法》第一百四十一條所保障的基本公民權利，和國際公約肯定的人權。基於本身宗教信仰的價值判斷，有組織宗教（例如教會）和頒授資格機構（例如神學院）按不同的婚姻狀況，提出相應的對待方式，只是實踐及表示信仰立場的做法，屬於法律所保障的基本權利。

婚姻是公共嘉許及認同的制度，相對人類各種關係，一男一女的結合，有生育下一代的可能，是延續社會不能取代的方式；良好的婚姻關係，對男女兩方及孩子皆有最大好處，因此婚姻制度備受世界各國政府所特別保障，而且對社會共善（common good）有一定貢獻。故此，上述建議並不是給予宗教團體特權，而是保障宗教自由的實踐，並促進社會共善。

簽名：

日期

<p>致：平等機會委員會</p> <p>地址：香港太古城 太古灣道 14 號 太古城中心三座 19 樓</p> <p>電郵： response@eocdlr.org.hk 或 eoc@eoc.org.hk</p> <p>傳真：2511 8142</p>	<p>由（姓名： [REDACTED] ）</p> <p>電話（可以不寫）： [REDACTED]</p> <p>電郵（可以不寫）： [REDACTED]</p> <p>日期（請填寫）： [REDACTED]</p>
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備注：(1) 平機會表示，若你不希望在諮詢報告中公布您的姓名或機構名稱，請於下列空格內加上 ✓ 號。請留意，您或機構的聯絡資料將不會被公布。

☒ 我不希望公布 本人 / 機構名稱

(2) 平機會表示，所有提交的個人資料，只會用於與本次公眾諮詢工作有關的用途，並會於公眾諮詢工作完成後 12 個月內銷毀。

就平機會於 2014 年 7 至 10 月進行的「歧視條例檢討諮詢」，本人／本機構對下列各諮詢問題的意見如下：（如有需要，可另紙書寫。）

1. 諮詢問題號碼 69 這是應該的，我贊成擴闊它。其實，擴闊的範圍應該再大，不限於有組織宗教，而該伸延至所有的界別（如：各行各業），而有組織宗教轄下的所有單位（如：教堂、學校、委員會、機構等等）及其每一個信徒，都應享有相同的豁免。

2. 諮詢問題號碼 3 我認為不應使用性別中立的字眼如「任何人」。

諮詢問題號碼 6、70、71、72、73 當然不應該！我強烈地反對在條例中加入「事實婚姻關係」和給予它們與婚姻同等的福利！理由是，若不幸作了這樣的修訂，婚姻制度必受損害。我十分反對任何會破壞婚姻制度的行徑、措施、建議！我認為一男一女的婚姻制度必須要維護，也不該有任何「類似婚姻」的「A 貨」與它一樣被納入社會的法律中，若是如此，「正貨」必被淡化、蠶食和受損害，甚至瓦解。正如包二奶不能等同婚姻，同樣，縱然同居日漸普遍，或已有許多人同居，但是，難道我們應該「集非成是」，就把它等同婚姻嗎？其實，就連諮詢文件第 2.26 的 1c 所說：「……如夫婦般……」，那就不等於夫婦，不等於婚姻了，那麼，怎能把「伴侶關係狀況」和／或「事實婚姻關係」

加進「婚姻狀況」中呢？它們完全是兩回事，決不應該將「伴侶關係狀況」和／或「事實婚姻關係」等同婚姻，更不應享有婚姻的任何對等地位 and 任何對等福利，甚至不應享有任何認可、權利、福利和法律保障。此外，值得特別一提的是問題號碼 72，這條問題很難看得明，我都不知道我的意思應算是「是」抑或「否」，總之，可以領養兒童的家庭，應該是由一男一女的婚姻所衍生的（已婚）家庭才是。

4. 諮詢問題號碼8、9 我認為不應該修訂，即是不同意將把「家庭崗位」修訂為「家庭責任」。

5. 諮詢問題號碼1、25、26、27、33、34 我覺得不應該作出這些合併和擴大，因為這有可能侵犯言論自由。

6. 諮詢問題號碼45、46、51、52、53、54、60 不應該！我不支持這些修改建議。

7. 諮詢問題號碼17、29、30、31、37、41、50 我認為不應該。我認為無需作出這些修訂！

8. 諮詢問題號碼39 當然不應該！我完全反對制訂新的騷擾條文，並作出題目所列出的規定！而且，這種猶如「一人犯罪，九族當誅」的做法，根本就應廢除！

9. 諮詢問題號碼 42 這是不應該的。我不支持加入條文，更不贊同改由答辯人去證明自己沒有作出歧視行為，即使申索人一旦確立事實基礎可作有歧視的推論。

10. 諮詢問題號碼

11. 其他意見：

致：平等機會委員會

本人對《歧視條例檢討公眾諮詢文件》的意見如下：

諮詢問題6：反對將「婚姻狀況」修訂為「伴侶關係狀況」，以免將「同居伴侶關係」當作「婚姻」般受條例保障原因。

諮詢問題9：反對更改「家庭崗位歧視範圍應」擴大保障至「事實婚姻關係」中成員，「直系家庭成員」定義不可改變。

諮詢問題70：反對「事實婚姻」伴侶有權申請福利。

諮詢問題71：反對「事實婚姻」伴侶有權申請生殖科技。

諮詢問題72：反對「事實婚姻」伴侶有權申請領養子女。

諮詢問題73：反對「事實婚姻」伴侶有權申請政府房屋。

其他意見：

姓名： 聯絡電話：



傳真號碼: 2511-8142

## 回應平機會《歧視條例檢討諮詢文件》

### 我的意見

姓名:

備注: (1) 個別人士的姓名或機構名稱可能會在諮詢報告中公布。若你不希望公布您的姓名或機構名稱, 請於下列空格內加上✓號。請留意, 您或機構的聯絡資料將不會被公布。

✓ 我不希望公布本人/機構名稱

我極度反對平等機會委員會濫用公帑, 在毫無必要的情況下, 透過檢討歧視法去破壞和摧毀在香港根深柢固的婚姻及家庭觀念。

平等機會委員會為「歧視條例檢討」展開了公眾諮詢, 並提出 77 條諮詢問題, 表面上是將現時“所謂”不完善的條例化繁為簡, 方便社會了解和閱讀, 惟卻衍生了不少新的問題, 特別是當中重新定義婚姻及家庭, 以及意圖將平機會條例定義適用範疇暗暗地擴闊、擴權等情況令人深表擔憂, 以下是我從關注香港社會婚姻、家庭, 以及平機會角色的角度作的回應。

1. 我確信婚姻制度是『一男一女, 一夫一妻, 一生一世』在法律下莊嚴的承諾, 夫妻願意彼此忠誠, 建立長久關係, 有利建立家庭及生兒育女, 並確保兒童得到最大的保障和育養。婚姻制度是每個人立足於現代社會最重要的基石, 而由『一男一女, 一夫一妻』組成的家庭則是和諧社會的根基。
2. 我們認為應堅守家庭乃由血緣、婚姻、領養或姻親而產生的關係。
3. 我們反對任何破壞婚姻和擴大家庭定義的企圖, 因為此舉破壞社會最根本的組織架構, 而平機會亦無權任意更改家庭和婚姻定義。
4. 我們反對平機會托辭重整條文, 任意擴闊條文所賦予的權力, 以替自身充權。
5. 我們認為平機會已經有足夠權力促進香港社會的平等機會, 反對平機會在完全沒有制衡的情況下提出任何擴權建議。



基於以上五點，我們就諮詢文件中的諮詢問題，嚴正地提出以下反對的回應：

# I. 個別檢討事項

諮詢問題編號（頁數）	回應
諮詢問題 1（諮詢文件第 22 頁） 在改革現行歧視法例時，你認為政府應否把現時所有歧視條例合併成單一歧視條例？	反對
諮詢問題 3（諮詢文件第 26 頁） 你認為與性別有關的條文應否使用性別中立的字眼如「任何人」？	反對
諮詢問題 11 至 16（諮詢文件第 44 頁） 有關種族歧視，你認為國籍、公民身份、居民身份或相關身份等應加入為受保障特徵嗎？	反對
諮詢問題 25（諮詢文件第 66 頁） 你認為應否禁止基於性別、懷孕、家庭崗位和婚姻狀況等方面的騷擾？	反對
諮詢問題 26（諮詢文件第 69 頁） 你認為所有受保障特徵的騷擾定義應為： 「若某甲— (a)做出與受保障特徵相關的不受歡迎行徑； 且 (b)該行徑的目的或效果是： (i) 侵犯某乙的尊嚴；或 (ii) 製造一個令某乙感到具威嚇、敵意、貶低人格、受侮辱或冒犯的環境， 即屬某甲騷擾某乙。」嗎？	反對
諮詢問題 30（諮詢文件第 74 頁） 你認為： — 就所有受保障特徵而言，有聯繫人士都應受保障，免受直接歧視、間接歧視和騷擾？ — 若是，你認為「有聯繫人士」的定義應否擴闊至包括直系家庭成員、其他親屬、照顧者、朋友或工作關係？	反對

諮詢問題 43 (諮詢文件第 114 頁) 你認為在間接性別、懷孕、婚姻狀況、家庭崗位和種族歧視等方面，判給申索人賠償時是否不需考慮歧視意圖，令其與間接殘疾歧視的條文一致？	反對
諮詢問題 45 (諮詢文件第 116 頁) 你認為為求與平機會類似的其他執法權力看齊，平機會是否應可以自己名義對「歧視性的做法」展開法律程序？	反對
諮詢問題 50 (諮詢文件第 122 頁) 你認為歧視條例應否明確規定平機會有權就所有受保障特徵進行研究及教育工作？	反對
諮詢問題 51 (諮詢文件第 124 頁) 你認為改革後的歧視條例應否明確訂明平機會有權監察以下事宜並提出意見： 政府的現有及建議中的法例與政策；及 政府在平等及歧視事宜上是否符合國際人權責任？	反對
諮詢問題 52 (諮詢文件第 125 頁) 你認為平機會應否有明確權力可就任何相關的歧視問題申請介入或以法庭之友身份出席法庭訴訟？	反對
諮詢問題 53 (諮詢文件第 126 頁) 你認為應否更清楚地列明平機會有獨立權力，可提出司法覆核程序？	反對
諮詢問題 54 (諮詢文件第 127 頁) 你認為平機會應否在諮詢公眾後制定一份策略性計劃，列明若干年內的策略性優先工作領域？	反對
諮詢問題 55 (諮詢文件第 129 頁) 你認為改革後的歧視條例應否加入新條文，指明平機會應維持獨立，不受政府左右？	反對

## II. 「事實婚姻關係」、「同性事實婚姻關係」及「前度事實關係」

我們反對「事實婚姻關係」、「同性事實婚姻關係」或「前度事實關係」。因此，我們在諮詢文件中問題 6、問題 9 和問題 70，此三項題目均表示反對。

諮詢問題編號（頁數）	回應
<p>諮詢問題 6（諮詢文件第 31 頁）</p> <p>你認為應否把婚姻狀況修訂為「伴侶關係狀況」，並列明保障有事實婚姻關係的人士？</p> <p>若同意，應如何定義「事實婚姻關係」呢？</p> <p>應否涵蓋異性事實婚姻關係和同性事實婚姻關係的保障？應否擴展至保障基於前度事實婚姻關係而所受的歧視？</p>	反對
<p>諮詢問題 8（諮詢文件第 37 頁）</p> <p>你認為應否以「家庭責任」一詞代替「家庭崗位」，以便更清晰指明這是關乎個人照顧直系家庭成員的責任？</p>	反對
<p>諮詢問題 9（諮詢文件第 37 頁）</p> <p>你認為家庭崗位歧視範圍應否擴大保障至需要照顧事實婚姻關係中直系家庭成員的人士？若是，應如何定義事實婚姻關係？再者，應否把保障擴大至包括需要照顧前度婚姻或前度事實婚姻關係的直系家庭成員的人士？</p>	反對
<p>諮詢問題 70（諮詢文件第 142 頁）</p> <p>你認為根據婚姻狀況而提供不同福利的例外情況，應否修訂至讓已婚人士和有事實婚姻關係的人士有同等福利？</p>	反對

## II. 生殖科技與領養

從生殖科技獲得嬰兒及領養家庭的考慮，均應以兒童的福祉為優先考慮。由於申請者的婚姻狀況確實直接影響將出生或被領養兒童的福祉，在申請中考慮申請者的婚姻狀況絕對為合理的差別對待。因此，我們在諮詢文件中問題 71 和問題 72，此兩項題目均表示反對。

諮詢問題編號（頁數）	回應
諮詢問題 71（諮詢文件第 143 頁） 你認為： <ul style="list-style-type: none"><li>• 應否修訂《人類生殖科技條例》，撤銷要求接受人工受孕治療的人必需已婚的規定？；及</li><li>• 應否廢除《性別歧視條例》中關乎生殖科技的例外情況？</li></ul>	反對
諮詢問題 72（諮詢文件第 144 頁） 你是否認為基於《領養條例》的條文，關於領養的婚姻狀況歧視的例外情況沒有需要，應予廢除？	反對

## III. 房屋政策

我們認同平機會認為「讓家庭優先得到公共房屋的政策有合理目的」，因此容許婚姻狀況所出現的差別對待例外情況是有合理目的，我們對諮詢文件中問題 73 表示反對。

諮詢問題編號（頁數）	回應
諮詢問題 73（諮詢文件第 144 頁） 你認為在提供公共房屋方面容許婚姻狀況歧視的例外情況應否廢除？	反對

### 總結

請平機會不要就以上諮詢問題立法。

平等機會委員會主席：

我認為「歧視條例檢討諮詢」的諮詢期太短，應該在電視節目內討論，再加長諮詢期。其中問題25、26、27、29、33、34我認為不應該，因為這些條文很容易令人產生誤會，發生爭執而鬧上法庭。而問題6、70、71、72、73中「事實婚姻關係」給予隨便性關係與婚姻同等的福利，這樣的修訂是錯誤的。中國人倫理不能接受同居等於夫婦、同性戀人等於夫婦，難道「包二奶」都可以申請公屋、拿綜援嗎？絕對不可。

現時歧視條例行之有效，所以對於問題1、7、29、30、31、37、41、45、46、50、51、52、53、54、60我的意見是不應該作出這些修改。問題39提到的法律責任不應該屬於香港的僱主、義工、教育機構、服務使用者、租戶、分租戶及會社管理層。在訂立這些關係時，根本與歧視行為風馬牛不相干，這些角色也無法約束提到的騷擾行為。

最後，每一個人都應該有宗教自由，所以問題69提及的例外情況，應擴闊至每一個人、一切宗教團體、所有機構單位都適用。

姓名：

電郵：

日期：

☐ 我不希望公布本人姓名

致平等機會委員會：

日期：5.10.2014

本人認為理想的婚姻制度是一男一女在法律下莊嚴的承諾，夫妻願意彼此忠誠，建立長久關係，有利建立家庭和生兒育女，並確保兒童得到最大的保障和育養。理想的婚姻制度是每個人立足於現代社會最重要的基石。

本人就諮詢文件中的諮詢問題，有以下回應：

1. 「事實婚姻關係」、「同性事實婚姻關係」及「前度事實關係」

本人反對「事實婚姻關係」、「同性事實婚姻關係」或「前度事實關係」。因此，本人在諮詢文件中問題 6、問題 9 和問題 70，此三項題目均表示反對。

諮詢問題編號（頁數） 回應

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諮詢問題 6（諮詢文件第 31 頁）不應

你認為應否把婚姻狀況修訂為「伴侶關係狀況」，並列明保障有事實婚姻關係的人士？若同意，應如何定義「事實婚姻關係」呢？應否涵蓋異性事實婚姻關係和同性事實婚姻關係的保障？應否擴展至保障基於前度事實婚姻關係而所受的歧視？

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諮詢問題 9（諮詢文件第 37 頁）不應

你認為家庭崗位歧視範圍應否擴大保障至需要照顧事實婚姻關係中直系家庭成員的人士？若是，應如何定義事實婚姻關係？再者，應否把保障擴大至包括需要照顧前度婚姻或前度事實婚姻關係的直系家庭成員的人士？

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諮詢問題 70（諮詢文件第 142 頁）不應

你認為根據婚姻狀況而提供不同福利的例外情況，應否修訂至讓已婚人士和有事實婚姻關係的人士享有同等福利？

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## II. 生殖科技與領養

從生殖科技獲得嬰兒及領養家庭的考慮，均應以兒童的福祉為優先考慮。由於申請者的婚姻狀況確實直接影響將出生或被領養兒童的福祉，在申請中考慮申請者的婚姻狀況絕對為合理的差別對待。因此，本人在諮詢文件中問題 71 和問題 72，此兩項題目均表示反對。

諮詢問題編號（頁數） 回應

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諮詢問題 71（諮詢文件第 143 頁）不應

你認為：

- 應否修訂《人類生殖科技條例》，撤銷要求接受人工受孕治療的人必需已婚的規定？；及
  - 應否廢除《性別歧視條例》中關乎生殖科技的例外情況？
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諮詢問題 72（諮詢文件第 144 頁）不應

你是否認為基於《領養條例》的條文，關於領養的婚姻狀況歧視的例外情況沒有需要，應予廢除？

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## III. 房屋政策

本人認同平機會認為「讓家庭優先得到公共房屋的政策有合理目的」，因此容許婚姻狀況所出現的差別對待例外情況是有合理目的。本人對諮詢文件中問題 73 表示反對。

諮詢問題編號（頁數） 回應

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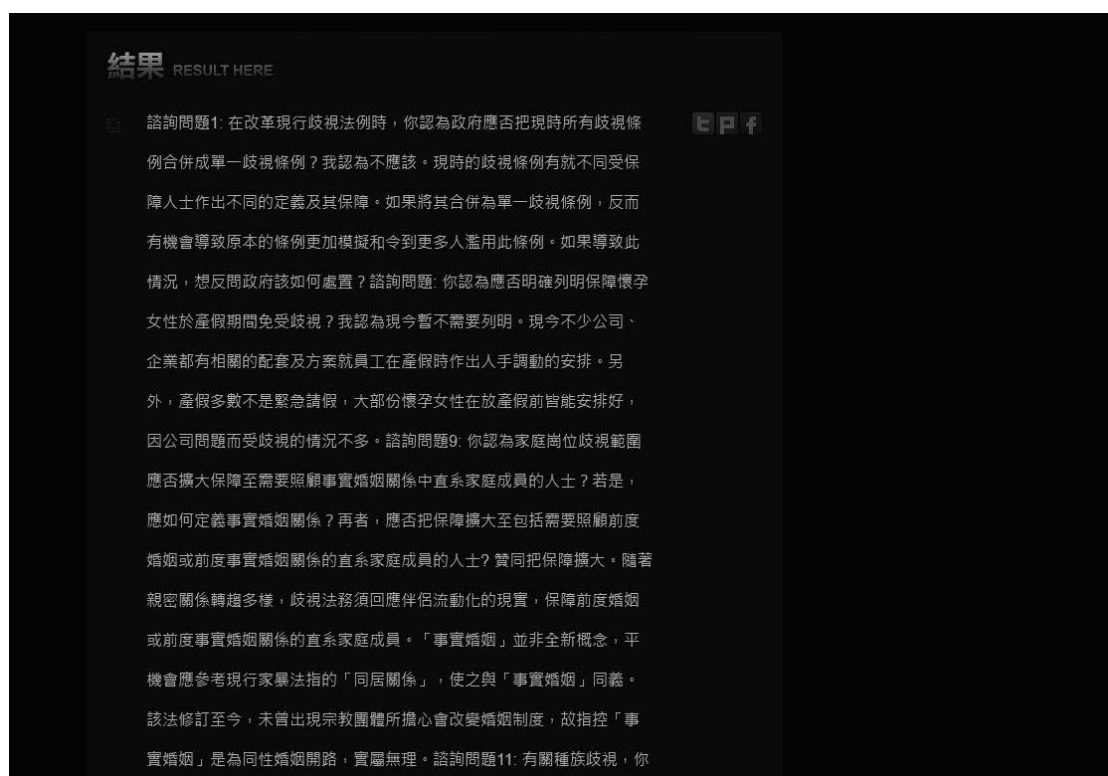
你認為在提供公共房屋方面容許婚姻狀況歧視的例外情況應否廢除？

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





認為國籍、公民身份、居民身份或相關身份等應加入為受保障特徵嗎？

我強烈認為不應該。首先，國籍及居民並不一定和種族有關。相同種族可以不同國籍，條例本身要受保障的範疇的受保障人群本來已經不盡是相同。另外，以美國為例，新移民(綠卡)大部份都是沒有選舉投票權及美國護照，原因是要確保持綠卡者並非以申請到美國護照為最大前提。由此可見，即使不論任何種族，都要接受國籍，公民身份等部份限制。

諮詢問題16: 你認為應否考慮制定基於居民身份給予待遇差別的例外情況，而有關例外情況必須有相稱且合理的目的？我認為本題目具有很大的引導性。我本人認為歧視條例當中不應該牽涉到居民身份。因為基本法都有很清晰地提到不同居民身份之間的權利。而本問題亦沒需要刻意想為其他居民身份作出保障。諮詢問題20: 你認為間接歧視的定義應修訂為：- 適用於一項「規定、準則或措施」；及- 列明「有理由據」的意思就是一項規定、準則或措施「為某合法的目的而施加，並與該目的有合理和相稱的關連」？我不同意此修訂。回應問題第一點，規定及準則明顯是屬性強化和硬性的列明，假如觸犯了兩者其中一項，其實可算是已屬於直接歧視。而“措施”則多屬於配套方式或解決辦法，本身在實施上已非強制性，難以用不遵守某措施或某措施令人感覺有歧視成份而構成間接歧視。諮詢問題26: 你認為所有受保障特徵的騷擾定義應為：「若某甲 - (a)做出與受保障特徵相關的不受歡迎行徑；且(b)該行徑的目的或

認為國籍、公民身份、居民身份或相關身份等應加入為受保障特徵嗎？

我強烈認為不應該。首先，國籍及居民並不一定和種族有關。相同種族可以不同國籍，條例本身要受保障的範疇的受保障人群本來已經不盡是相同。另外，以美國為例，新移民(綠卡)大部份都是沒有選舉投票權及美國護照，原因是要確保持綠卡者並非以申請到美國護照為最大前提。由此可見，即使不論任何種族，都要接受國籍，公民身份等部份限制。

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根本唔係歧視，咁仲要乜嘢「促進平等」呀？係唔係要將全香港所有工仔都

請晒大陸人就叫做「促進平等」？諮詢問題41: 你認為應否規定所有公共機

構在職能和政策上都有法定責任，為所有具受保障特徵人士促進平等及

將之主流化和消除歧視？不應該。何謂「主流化」？定係大陸化？公共機構

只需要依法辦事就足夠，無需要去「促進平等及將之主流化和消除歧視」。

諮詢問題61: 為求清晰起見，你認為應否把歧視條例的所有例外情況放在

同一部份(附表)中列出？不應該。不同的例外情況屬於不同種類的歧視，

放在一起非但會令市民混淆，更令到一些種族歧視的例外情況為了要遷就

其他歧視而被刪除。即係令到一些不是種族歧視的情況變成屬於種族歧

視。諮詢問題62: 你認為應否革新「真正的職業資格」的定義，以一致適

用於所有受保障特徵，即符合以下條件便為「真正的職業資格」：「-

某項職業要求與是否擁有受保障特徵有關；- 引用該項要求是達到合理目

標的相稱方法；- 申請人或員工達不到該項要求；或僱主有合理理由信納

有關申請人或員工達不到該項要求；至於殘疾方面，若可透過合理的遷

就而達到該職業要求，則例外情況並不適用。」？絕不應該革新「真正

的職業資格」的定義。將這個「真正的職業資格」條款套用在所有受歧視

條例保障的情況的話，當中共把國籍、居民身份和居住年期列入受保障情

況後，假如香港僱主提出要求申請人懂得說英文或擁有香港公民身份，就

隨時被控告歧視。



平等機會委員會  
EQUAL OPPORTUNITIES COMMISSION

地址：香港太古城太古灣道 14 號太古城中心三座 19 樓  
Address：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  
電郵 Email：eoc@eoc.org.hk  
電話短訊查詢服務 SMS Enquiry Service: 6972566616538  
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