

活動及成果

Activities and Achievements



查詢

平等機會委員會自1996年成立以來確實已經走了漫長的路。委員會接獲的查詢和投訴數字，反映市民對平等機會的認識程度。由1996年9月至1997年3月，委員會僅接獲2,000多宗查詢，其中包括1,079宗一般查詢和937宗具體查詢。但是在2001/02年度，查詢數字上升至12,428宗，其中包括7,137宗一般查詢和5,291宗具體查詢，分別較前一年度上升了20%和13%。

一般查詢涵蓋與委員會相關的工作；而具體查詢則與反歧視條例有關。在2001/02年度的5,291宗具體查詢當中，2,787宗查詢關乎《性別歧視條例》、1,787宗關乎《殘疾歧視條例》及165宗關乎《家庭崗位歧視條例》，另有36宗關於委員會的工作，其餘516宗則涉及年齡、種族、性傾向和宗教等方面的歧視問題，並不屬於委員會的權限之內(詳情見表1)。

需進行調查及調解的投訴

根據反歧視條例規定，任何人士如認為受到違法的歧視，可親身或授權代表向委員會提出書面投訴。委員會在研究個案的情況後，會讓投訴雙方有機會就所指稱的事宜提出意見和回應，並致力透過調解方式協助雙方和解。假若未能和解，委員會可應投訴人的申請，考慮給予其他形式的協助，例如提供法律意見、法律協助或任何委員會認為適當的協助。

經處理的投訴

在某些情況下，委員會可能基於有關行為並不違法、投訴人不願意繼續投訴、或所指稱的行為已發生超過12個月，而考慮不進行或終止某個案的調查工作。此外，如投訴不屬於代表投訴、投訴已提早解決、或委員會認為該投訴屬於瑣碎無聊、無理取鬧、基於錯誤理解或缺乏實質等，委員會亦不會對個案進行調查。

由於委員會接獲很多有關「中學學位分配辦法」可能構成性別歧視的投訴，委員會於2001/02年度接獲的投訴數字上升一倍多至1,649宗。在這1,649宗個案中，有1,210宗投訴關乎《性別歧視條例》、391宗關乎《殘疾歧視條例》及48宗關乎《家庭崗位歧視條例》。連同上年度未完結的個案，本年度共處理1,976宗投訴，較2000/01年度上升98%。就算不計算有關「中學學位分配辦法」的832宗投訴，投訴數字仍較上年度增加15%(詳情見表2)。

表1.

2001年4月1日至2002年3月31日的具體事項查詢分類
(總數: 5,291 宗)

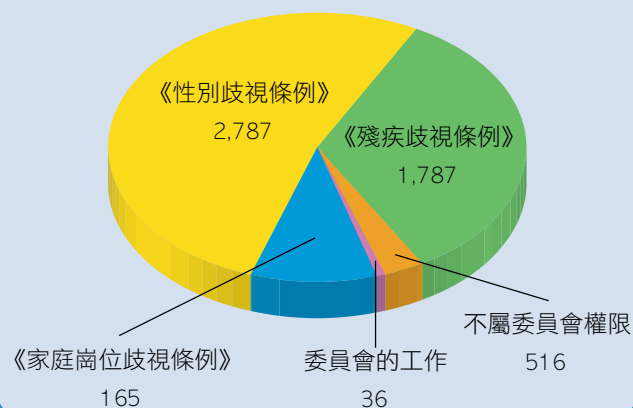
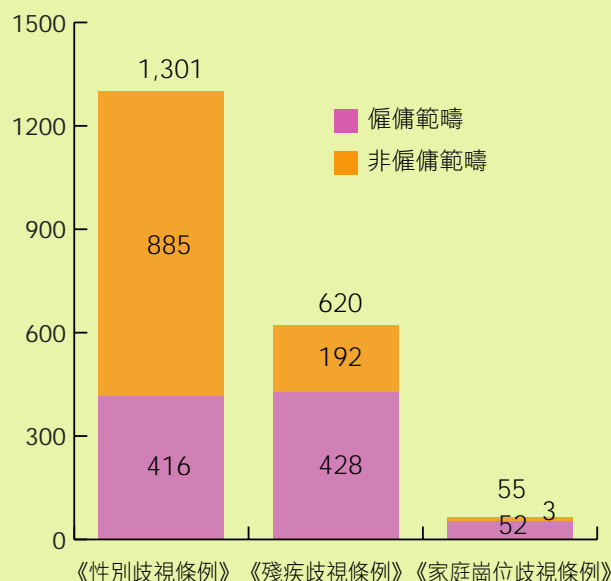


表2.

2001年4月1日至2002年3月31日需進行及調解的投訴
(已處理總數: 1,976 宗)



Enquiries

If the number of enquiries and complaints we receive reflects the degree of awareness in equal opportunities, we have indeed come a long way since our establishment in 1996. From September 1996 to March 1997, we recorded a total of just over 2,000 enquiries consisting of 1,079 general and 937 specific enquiries. During the 2001/02 financial year, this number had grown to 12,428, comprising 7,137 general and 5,291 specific enquiries. These figures have grown significantly year on year, with those of 2001/02 reflecting increases of over 20% for general enquiries and 13% for specific enquiries over the previous year.

General enquiries cover enquiries related to our overall activities while specific enquiries relate directly to the anti-discrimination ordinances. Of the 5,291 specific enquiries, 2,787 related to the Sex Discrimination Ordinance (SDO), 1,787 to the Disability Discrimination Ordinance (DDO) and 165 to the Family Status Discrimination Ordinance (FSDO). An additional 36 covered the work of the EOC while a further 516 enquiries covered areas falling outside our jurisdiction, referring to age, race, sexual orientation and religion (See Figure 1).

Complaints for Investigation and Conciliation

Any persons who feel that they have been treated unlawfully under Hong Kong's anti-discrimination legislation can seek redress by making a complaint in writing, either personally or through a representative, with the EOC. After examining the facts of each case, both parties are given the opportunity to comment and respond to the allegations. Every attempt is made to resolve the matter through conciliation. If this fails, further forms of assistance can be granted if the complainant applies to take the matter further. Assistance granted can include advice, legal assistance or any other assistance which is considered appropriate.

Complaints Handled

There are times when we may decide not to conduct, or to discontinue an investigation - this can be because the act in question is not unlawful, the complainant no longer wants to pursue the complaints, or if a period of over 12 months has passed since the act was committed. Investigation may also cease if the complaint, lodged as a representative complaint should not be one, is resolved through early resolution, or if the EOC considers the complaint frivolous, vexatious, mis-conceived or lacking in substance.

During the year we received a record number of complaints, with figures more than doubled to 1,649 from the year before, due to the large number of complaints and concerns with re-

gard to the possibility of sex discrimination in the allocation of the Secondary School Places Allocation (SSPA) System. Of the 1,649 cases, 1,210 complaints were received under the SDO, 391 under the DDO and 48 under the FSDO. Together with complaints carried forward from previous years, we handled a total of 1,976 complaints, representing an increase of 98% compared to 2000/01 (See Figure 2). Excluding the 832 SSPA complaints from this category, the records still show a 15% annual increase (See Figure 2).

Figure 1.

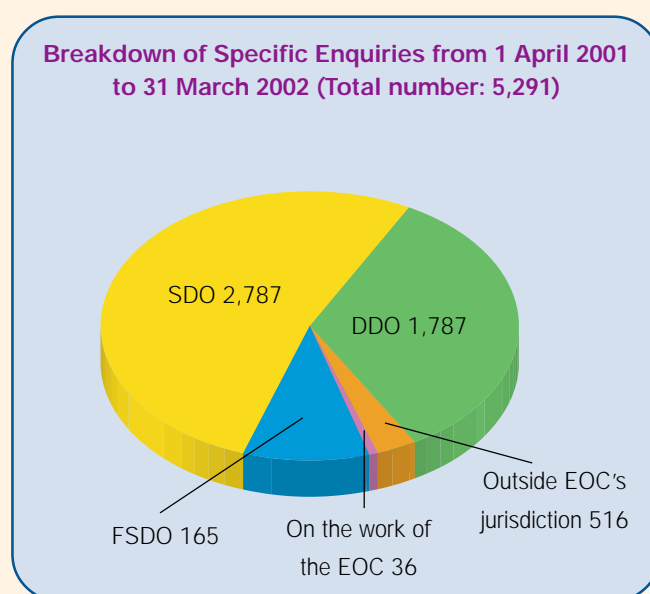
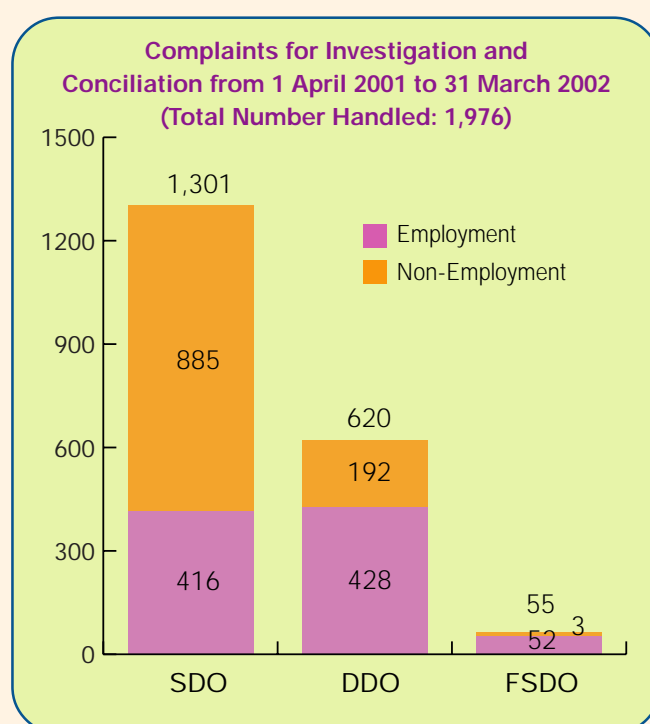


Figure 2.



於 2001 /02 年度完成處理的個案共有 1,190 宗(較前一年上升113%)，當中297宗進行了調解(上升0.68%)。在這些個案中，186 宗(下降8%)成功和解，而其餘的111 宗個案(上升 20.6%)則調解失敗。

餘下的個案已經根據不同的原因而終止調查，其中很多是由於投訴人撤銷投訴，或投訴缺乏實質所致(詳情見表 3)。

與《性別歧視條例》相關之投訴

- 本年度共處理了416宗涉及僱傭範疇的投訴個案，較前一年增加10%，數目最多的是懷孕歧視(44%)，其次是性騷擾(29%) (詳情見表4)。
- 本年度共處理了885宗涉及非僱傭範疇的投訴個案，其中832宗(94%) 關乎「中學學位分配辦法」，而不涉及「中學學位分配辦法」的投訴亦大多與性別歧視相關(詳情見表5)。
- 「中學學位分配辦法」
 - 委員會共接獲 843 宗關乎 2001 年「中學學位分配辦法」的投訴，當中投訴教育署的佔420宗，投訴個別學校的則佔423宗，個案涉及男生和女生。在這些投訴當中，委員會發現其中一些個案於調整後，學生可從第三組別重新分配到第一組別。

表 4.

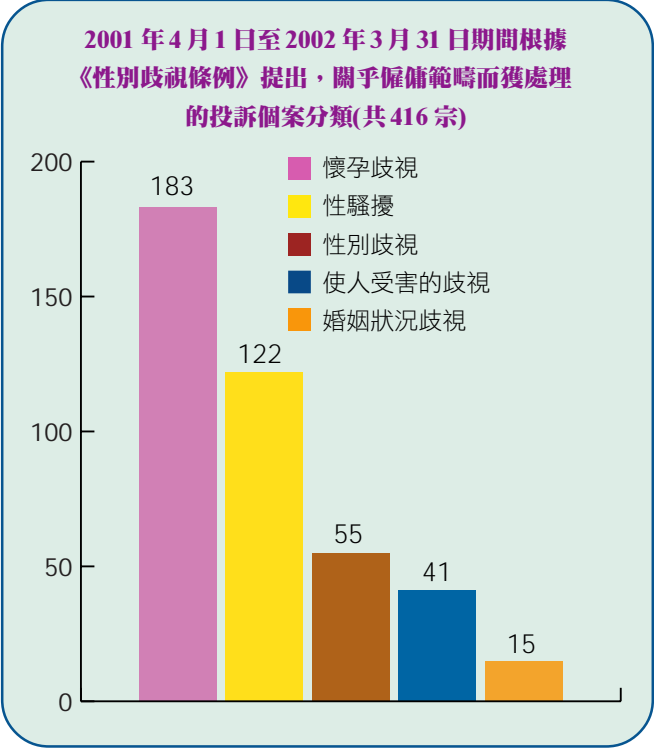


表 3. 2001 年 4 月 1 日至 2002 年 3 月 31 日 個案終止調查的原因

Figure 3. Discontinued Cases by Reason from 1 April 2001 to 31 March 2002

	不屬違法行為 No unlawful acts	瑣屑無聊 或缺乏實質 Frivolous or lacking in substance	投訴人不願 繼續調查 Complainants did not wish to pursue	投訴得到 提早解決 Complaint resolved through early resolution	超過十二個月 Beyond 12-month time bar	總數 Total
殘疾歧視條例 DDO	10	157	82	4	18	271
性別歧視條例 SDO	16	128	267	182	15	608
家庭崗位歧視條例 FSDO	1	9	3	1	0	14
總數 Total:	27	294	352	187	33	893

During the year, 1,190 cases (113% increase over previous year) were completed, with 297 (0.68% increase) proceeding to conciliation. Of this number 186 (8% decrease) were successfully conciliated with efforts for the remaining 111 cases (20.6% increase) being unsuccessful.

Investigations in the remaining complaints were discontinued for a variety of reasons. The large number of discontinued complaints was caused by a large number of complaint withdrawals, as well as a significant increase in the number of complaints lacking in substance (See Figure 3).

SDO-related Complaints

- There were a total of 416 employment-related complaints handled, an increase of 10% over the previous year. Pregnancy discrimination (44%) continued to be the major cause for complaint followed by sexual harassment (29%) (See Figure 4).
- A total of 885 non-employment related complaints were handled; 832 (94%) relating to the SSPA. The majority of non-SSPA complaints were also related to sex discrimination (See Figure 5).

Figure 4.

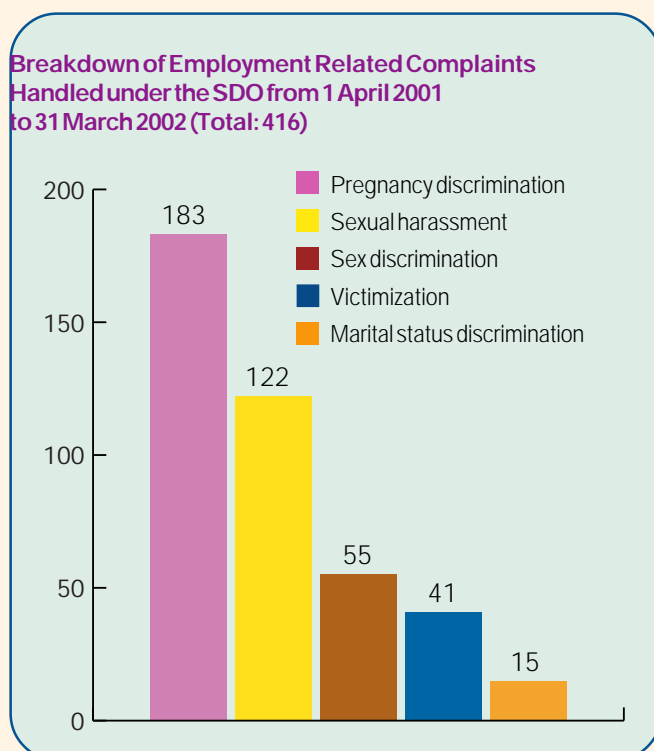
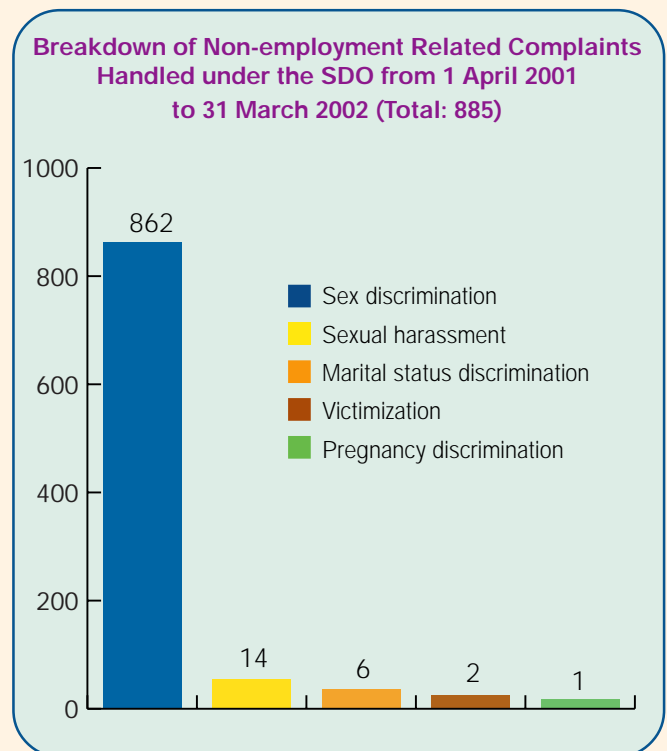
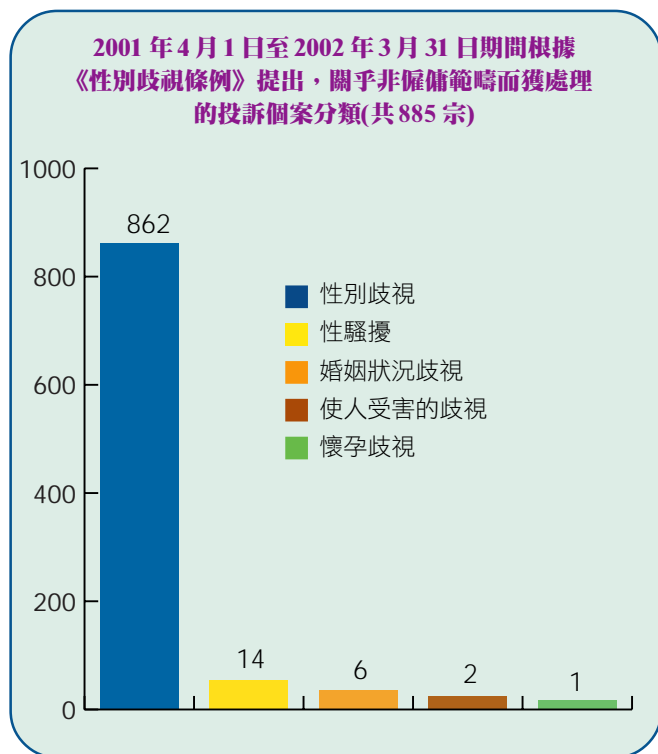


Figure 5.



- **The Secondary School Places Allocation (SSPA) System**
 - The EOC received a total of 843 complaints in relation to the 2001 Secondary School Places Allocation, 420 against the Education Department (ED) and 423 against individual schools. The cases involved both boys and girls. Of these complaints, there were examples of obvious discrepancy, as we discovered that in a few cases, the students would be reallocated from Band 3 to Band 1 after adjustment.
 - Among the 270 cases which the EOC intended to conciliate, 57 students preferred to stay in their current schools so no conciliation was conducted. The EOC conducted conciliations for 188 other cases, of which 176 were successful with 126 students admitted to their schools of choice. For the remaining 50 cases, admission tests were arranged for 14 students and three were placed on the waiting lists. Thirty-one complainants settled for acknowledgement letters; one for a verbal explanation as to why the child was not admitted to the school of choice. Another asked for a symbolic compensation and received a souvenir package. The high rate of success was due to the parties' willingness to resolve their differences.

表5.



- 在委員會擬調解的270宗個案中，57名學生因為較喜歡留在就讀的學校，所以最終並沒有進行調解。而於其他188宗曾進行調解的個案當中，176宗成功令126名學生入讀自己選擇的中學。其餘的50宗個案中，14名學生被安排考入學試，另外三名學生則列入後備名單中。有31名投訴人在獲得確認信件後願意和解，一名投訴人就有關其子女未能就讀自選學校的原因接受了口頭解釋，亦有投訴人要求象徵式補償而獲得一套紀念品。是次調解的成功率高，是基於雙方均願意解決彼此間的問題。
- 在12宗調解失敗的個案當中，有四宗個案要求金錢上的補償，七宗要求入讀指定的學校，一宗則保留來年追究的權利。
- 終止的個案有573宗，當中有230宗由於投訴人自己找到學校，所以撤回投訴；而另外的124宗投訴，因為投訴人滿意由教育署紓援機制所分配的學校，所以撤回投訴。此外，有六宗投訴因為投訴人所指稱的行為已發生超過12個月，所以委員會沒有展開調查。另一方面，49宗投訴不涉及歧視；而有164宗投訴學校的個案，由於投訴人在調解過程中已經找到學校，所以撤回投訴。

與《殘疾歧視條例》相關之投訴

- 委員會本年度處理620宗與《殘疾歧視條例》相關的投訴，比前一年增加17%。
- 經處理的僱傭範疇個案達428宗，比前一年(增加20.9%)；而經處理的非僱傭範疇個案為192宗(增加9.1%)。當中，殘疾歧視的個案佔最多，達523宗，佔總數的84.4% (詳情見表6及表7)。

表6.

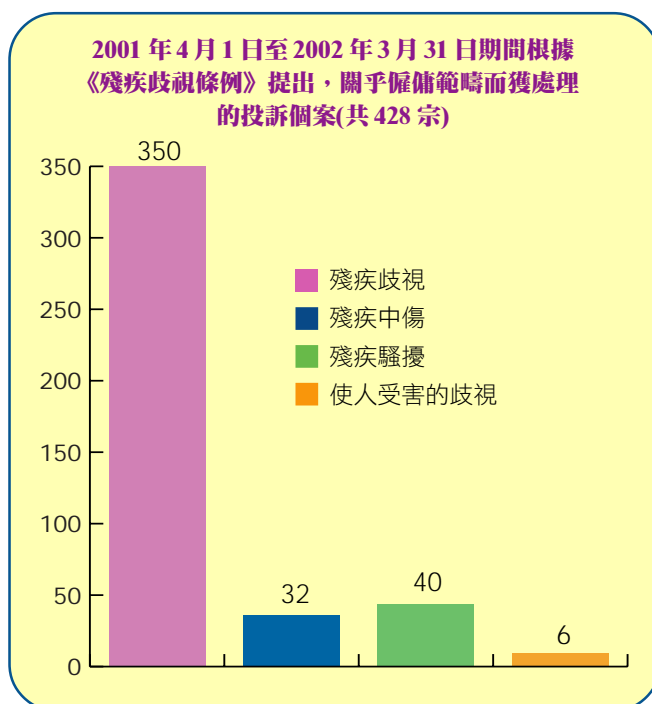
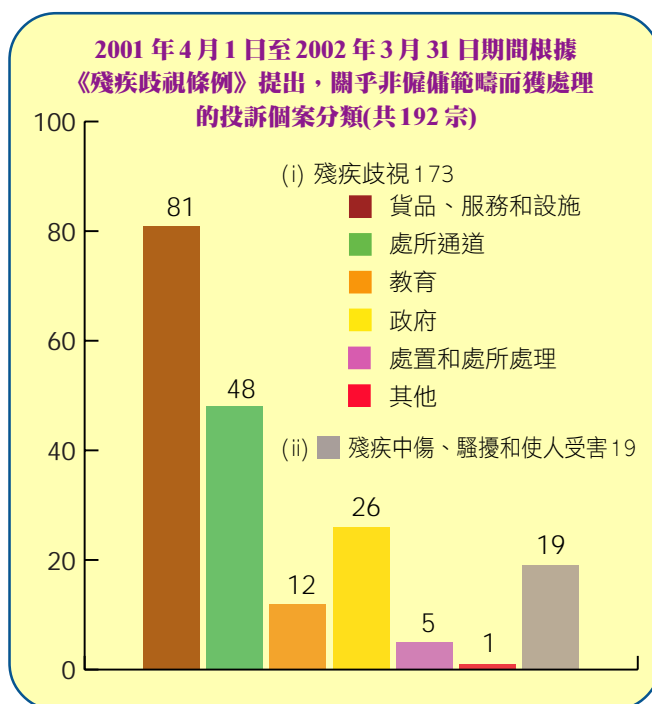


表7.



- Of the 12 unsuccessful conciliations, four asked for monetary compensation, seven for admission into a specific school, and one asked to reserve the right to pursue the case in the years to come.
- Five hundred and seventy-three complaints were discontinued. Two hundred and thirty had withdrawn as they had found schools on their own. Another 124 withdrew their complaints as they were satisfied with the schools allocated to them through ED's Relief Mechanism. The EOC declined to investigate six cases as these were lodged after 12 months had elapsed. No discrimination was found in 49 cases and 164 complaints were withdrawn against schools as the complainants had found schools through the conciliation process.

DDO-related Complaints

- A total number of 620 complaints were handled, representing a 17% increase over the previous year.
- Among both the 428 employment-related (20.9% increase over previous year) and 192 non-employment related (9.1% increase) cases handled, disability discrimination was the single largest cause for complaint, accounting for 523 cases (84.4%) of the total (See Figures 6 and 7).

Figure 6.

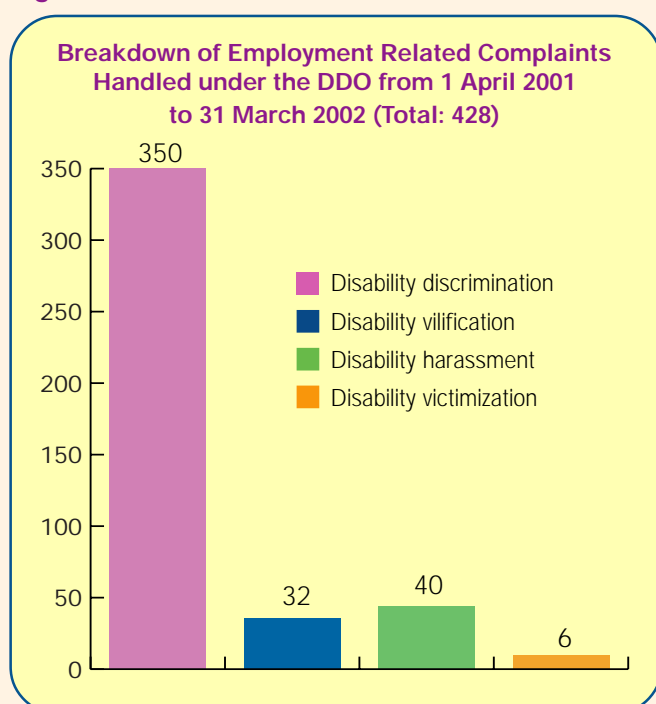
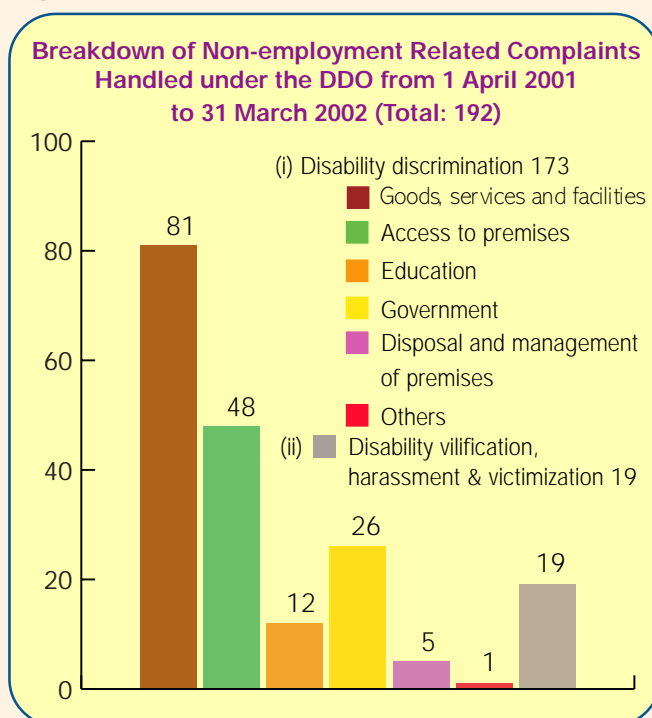


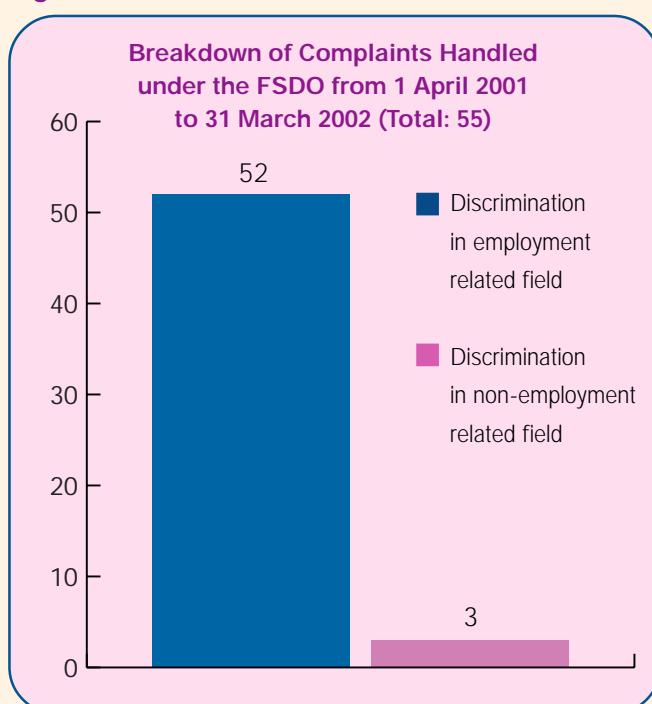
Figure 7.



FSDO-related Complaints

- During the year, a total of 55 FSDO complaints were handled, of which 52 (95%) were employment-related and three (5%) were non-employment related (See Figure 8). The majority (71%) of the employment-related complaints were related to dismissal on the grounds of family status.

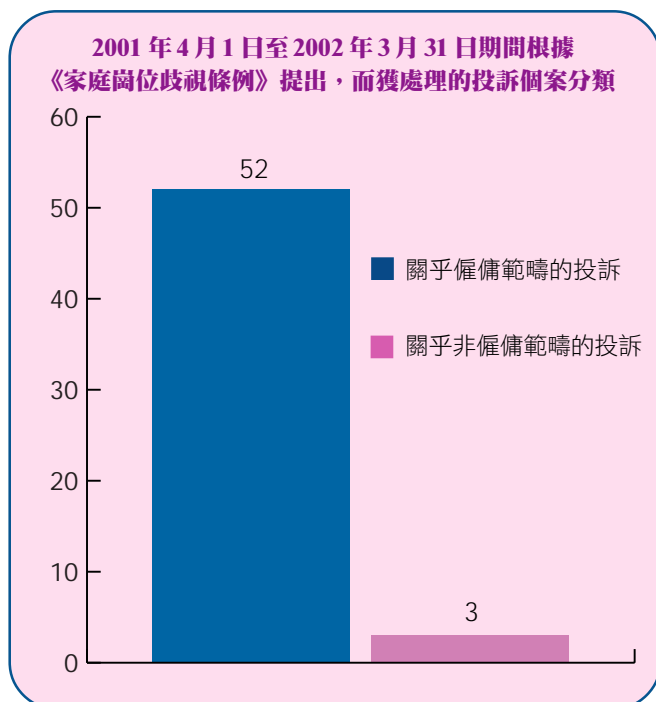
Figure 8.



與《家庭崗位歧視條例》相關之投訴

- 委員會本年度處理有關《家庭崗位歧視條例》的投訴達55宗，當中52宗(95%)關乎僱傭範疇，三宗(5%)關乎非僱傭範疇(詳情見表8)。大部份(71%)關乎僱傭範疇的投訴與基於家庭崗位的解僱有關。

表 8.



需跟進之投訴

對於由第三者或不想參與調查或調解的受屈人士所提出有關違法行為的投訴，委員會亦會採取行動。在這種情況下，委員會會聯絡有關人士，向他們解釋相關法例，並建議他們加以糾正。這些需跟進的投訴往往因為受屈人士不願公開自己的身份而起，但有關投訴數字近年卻有所遞減，相信是由於投訴人已經不介意公開自己的身份。委員會於本年度僅處理了62宗需跟進的投訴，其中19宗關於《性別歧視條例》，43宗關於《殘疾歧視條例》。

嶄新的投訴處理系統

由於委員會接獲的投訴與日俱增，故有需要加強現有的投訴處理系統。委員會與香港浸會大學攜手發展嶄新的投訴處理系統，不僅能儲存投訴人的必要資料，還可以監察每一個個案的進展。該儲存資料的功能有助於收集數據及整理投訴報告。透過使用這些嶄新的功能，公眾人士將可透過委員會的網頁，獲取有關成功調解的投訴個案的資料，使大眾對調解的結果更加了解，以及加強透明度。



法律協助

如投訴調解失敗，委員會可向有意提出法律訴訟的申請人提供多種形式的協助。在收到協助申請後，委員會的律師會先行評估有關申請，然後建議委員會應否給予協助。協助的形式包括：由委員會的律師給予法律意見、為申請人取得進一步的資料或證據、以至由委員會律師或由委員會延聘私人執業大律師，在法律訴訟中擔任申請人的法律代表等。

在2001/02年度，委員會共收到34宗申請，其中14宗獲委員會給予協助。詳情請參閱《附錄5：法律協助》

獲委員會給予法律協助的個案

在2001/02年度，共有七宗獲協助個案在未展開法律程序前已經解決(包括自前一年度延續至本年度的個案)，當中包括委員會因各種原因而撤回法律協助的個案，例如委員會研究過證據後，認為不宜繼續給予協助；或個案的發展使委員會毋需繼續給予法律協助。

截止2001/02年度結束為止，仍有15宗已獲委員會給予協助的個案尚未展開法律程序(當中包括自前一年度延續至本年度的個案)。

Complaints for Follow-up Action

We also take action on complaints with regard to unlawful acts brought to our attention by third parties or aggrieved individuals who do not wish to be involved in the investigation or conciliation process. Under such circumstances, the Commission approaches the concerned parties to explain the relevant legislation and advise them to rectify the situation. These complaints for follow-up action, where the aggrieved person prefers to keep his or her identity unknown, have decreased in recent years, as it seems that complainants are no longer afraid to file complaints under their own name. During the year only 62 complaints for follow-up actions were handled, 19 under the SDO and 43 under the DDO.

New Complaints Management System

With the increasing number of complaints we received every year, there was a need to enhance our Complaints Management System (CMS). Developed in cooperation with the Hong Kong Baptist University, the new CMS not only stores essential information on the complaints, it also monitors the progress of each case. The information storage function helps to compile data and prepare reports on the complaints we receive and handle. Using these new features, a registry of complaints which have been successfully conciliated is now under construction for public access on our website. The aim is to give the public a better understanding of the outcome of conciliation, and provide greater transparency.

Legal Assistance

Where a complaint has been lodged and conciliation has not been successful, the EOC has power to grant various forms of assistance to applicants who wish to take legal proceedings with regard to the complaint. When an application for assistance is received, our lawyers will conduct an assessment of the application before advising the Commission whether to grant assistance. The assistance granted by the EOC may take the form of legal advice by the Commission's lawyers, services for obtaining further information or evidence, or representation in legal proceedings by the EOC's lawyers, or by barristers in private practice briefed by the Commission.

During 2001/02, we received 34 applications for assistance and granted assistance in 14 of them. A breakdown of the cases can be found under "Appendix 5: Legal Assistance".

Legally Assisted Cases

During 2001/02, seven cases in which legal assistance had been granted (including cases carried over from previous years) were resolved without commencing legal proceedings. These included cases in which the Commission withdrew assistance

for various reasons, for example, where upon further examination of the evidence it was considered not appropriate to continue assistance, or when subsequent development between the parties made it unnecessary for assistance to continue.

There were 15 other on-going cases, where legal assistance had been granted (including cases carried over from previous years), but legal proceedings had not yet commenced by the end of 2001/02.

Court Cases

During the year, the District Court commenced the trial of a case in which the EOC had granted the plaintiff legal assistance. In this case, a restaurant waitress alleged sexual harassment. In the course of the trial, the parties reached agreement whereby the plaintiff withdrew her claim.

During the year, the Court of Final Appeal (CFA) heard a case where the appellant had received legal assistance from the EOC. This case concerned disability harassment of a passenger by a taxi driver. The argument before the CFA was whether the District Court had the power to order a defendant in a discrimination case to make an apology. Having considered the balance between the right not to be discriminated against and other basic human rights such as freedom of thought and freedom of speech, the CFA held that the District Court has the power to order an apology even from an unwilling defendant in appropriate circumstances. However, the CFA felt that the appropriate circumstances should be rare. The CFA took the view that in the ordinary case where an apology is sought by the plaintiff, the defendant should first be asked if he/she is willing to apologize, if he/she is not, then this may be taken into account in assessing the amount of compensation to be awarded to the plaintiff. The EOC later assisted the passenger to take enforcement proceedings in respect of the damages awarded to her at the end of 2001/02.

Legal proceedings commenced in six cases where plaintiffs were receiving EOC assistance, three were settled during the year, with the remaining three pending further proceedings.

A case of pregnancy discrimination in employment, which commenced before 2001/02 with the EOC's assistance, was settled during the year. Two cases, which commenced before 2001/02, were still pending further proceedings at the end of March 2002. One of these cases was a disability discrimination case relating to the recruitment of an officer in the disciplinary services, which is pending further proceedings in the



法庭訴訟

本年度有一宗原告人獲委員會協助的案件在區域法院進行審訊，案中一名酒樓女侍應指稱受到性騷擾，然而在審訊期間，雙方同意原告人撤銷其申訴。

本年度有一宗上訴人獲委員會協助的上訴案在終審法院進行聆訊。案中一名的士司機被控殘疾騷擾其乘客。終審法院需考慮的爭訟，是究竟區域法院是否有權力命令歧視案中的被告人向原告人道歉。終審法院衡量過「免受歧視」權利與其他基本人權（如思想自由和言論自由）後裁定，在合適的情況下，即使被告人不願意，區域法院仍有權命令被告人向原告人道歉。不過，終審法院認為，這類情況應不常見。它又認為，在一般案件中，如原告人要求道歉，應先詢問被告人是否願意道歉；若被告人不肯道歉，法庭在評估原告人應得的賠償時，可把不肯道歉列為其中一項考慮因素。委員會其後亦協助該乘客提出「執行判令訴訟」，以便取回法庭於2001/02年底判她應得的損害賠償。

原告人獲委員會協助展開法律程序的案件共有六宗，其中三宗已於本年度和解，其餘三宗則等候進一步的法律程序。

有一宗於2001/02年度前已獲委員會協助的僱傭範疇懷孕歧視案件，亦於本年度達成和解。另兩宗於2001/02年度前已展開法律程序的案件，至2002年3月仍等候進一步的法律程序，其中一案涉及紀律部隊招聘方面的殘疾歧視，將在區域法院進行進一步的法律程序；而另一宗案件則涉及退休安排的性別歧視。

委員會進行的法律訴訟

委員會除了給予申請人法律協助，由他們以自己的名義提出法律訴訟外，在合適的情況下，委員會亦會自行提出法律訴訟。

如委員會就教育署的「中學學位分配辦法」提出司法覆核，高等法院就於2001年6月22日裁定委員會勝訴。

委員會亦秉承過往以「法庭之友」身份協助法院的傳統，委派英國御用大律師Eleanor Sharpston以「法庭之友」的身份出席上訴庭一宗有關退休安排的性別歧視聆訊。

由於沒有收到涉及含歧視廣告的投訴，因此，委員會於本年度沒有提出任何與此有關的法律訴訟。

委員會法律活動摘要 — 2001/02

申請法律協助的個案	接獲的申請	34
	獲給予協助	14
獲給予法律協助的個案	法律訴訟前已解決	7
	本年度完結前仍未展開法律訴訟	15
獲委員會協助在區域法院審理的個案		1
獲委員會協助在終審法院審理的個案		1
獲委員會協助並在本年度內開始程序的法庭訴訟	已和解	3
	處理中	3
獲委員會協助並在本年度之前開始程序的法庭訴訟	已和解	1
	處理中	2
由委員會自行提出的法律訴訟		2

District Court, while the other concerns a sex discriminatory retirement arrangement.

Legal Proceedings Undertaken by the EOC

Apart from giving assistance to applicants to take legal proceedings in their own names, we also undertake legal proceedings in the name of the EOC in appropriate circumstances.

On 22 June 2001, the High Court gave judgment in the EOC's favour in a judicial review undertaken by the EOC against the Education Department in respect of the Secondary School Places Allocation (SSPA) System.

In the Commission's tradition to provide *amicus curiae* to assist the Courts, we instructed Eleanor Sharpston QC from the United Kingdom as *amicus curiae* in a Court of Appeal hearing of a sex discrimination case concerning discriminatory retirement arrangements.

No legal proceedings on discriminatory advertisements were instituted by the EOC during the year as there were no complaints.

Summary of the EOC's Legal Activities 2001/02

Applications for legal assistance	Received	34
	Granted	14
Legally assisted cases (without commencement of legal proceedings)	Resolved	7
	Ongoing	15
District Court cases assisted by the EOC		1
Court of Final Appeal cases assisted by the EOC		1
EOC assisted court cases which commenced during the year	Settled	3
	Ongoing	3
EOC assisted court cases which commenced prior to the year	Settled	1
	Ongoing	2
Legal proceedings undertaken by the EOC		2

