

# ADMINISTRATION OF THE EQUAL OPPORTUNITIES COMMISSION

## Executive Summary

1. The Government is committed to promoting equal opportunities for all and eliminating all forms of discrimination. Four ordinances, namely the Sex Discrimination Ordinance (SDO — Cap. 480), the Disability Discrimination Ordinance (DDO — Cap. 487), the Family Status Discrimination Ordinance (FSDO — Cap. 527) and the Race Discrimination Ordinance (RDO — Cap. 602), have been enacted in order to prohibit the most common discrimination on the grounds of sex, marital status, pregnancy, breastfeeding, disability, family status and race in prescribed areas of activities. The Equal Opportunities Commission (EOC) is an independent statutory body tasked with the implementation and enforcement of the four anti-discrimination ordinances. The Constitutional and Mainland Affairs Bureau (CMAB) is the housekeeping bureau of EOC. In 2022-23, the estimated recurrent expenditure of EOC was \$137.4 million. The Audit Commission (Audit) has recently conducted a review to examine the administration of EOC.

### Complaint handling and provision of legal assistance

2. *Room for improvement in investigation and reporting of case progress.* The procedures for handling complaints are set out in the Internal Operating Procedures Manual (IOPM). EOC has set a performance pledge of concluding 75% of complaint cases within six months. From 2018 to 2022, EOC received 5,014 complaint cases and it met the performance pledge with actual achievements ranging from 80% to 86% (paras. 2.3 to 2.5). Audit found that:

- (a) as at 30 September 2022, of the 2,800 complaint cases received since 2018 and concluded between 1 January 2020 and 30 September 2022, there were 128 (5%) cases which took more than 365 days to conclude. The average time required to conclude the 128 cases was 551 days, ranging from 369 to 1,064 days (para. 2.6); and

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- (b) of the 25 complaint cases which took a long time to conclude/investigate examined by Audit, the following irregularities were noted:
- (i) ***Investigation Plan not prepared.*** According to IOPM, when EOC decides to investigate a complaint, the case officer should prepare an Investigation Plan, specifying details of the complaint (including the handling factors requiring priority action and source of further evidence that may be required) for supervisor's endorsement. However, Investigation Plans were only prepared in 4 (16%) of the 25 cases, contrary to the requirement in IOPM; and
  - (ii) ***Reporting to Legal and Complaints Committee (LCC) on progress of complaint handling not always comprehensive.*** The status of all complaints, including the reasons for lengthy process of complaints remaining active after six months and complaints for follow-up actions, would be reported to LCC. Notwithstanding this, in 5 (20%) of the 25 cases, the reporting to LCC on progress of complaint handling was not comprehensive (para. 2.8).
3. ***Need to improve customer satisfaction level.*** EOC has engaged external consultants to conduct customer satisfaction survey to gauge feedback from users on the complaint handling and enquiry services biennially. Audit noted that:
- (a) the overall customer satisfaction level remained stable at 69% in 2017 and 68% in 2019 but dropped to 62% in 2021;
  - (b) the customer satisfaction levels of complainants (ranging from 51% to 57%) were lower than that of respondents (ranging from 79% to 81%) in the three surveys conducted in 2017, 2019 and 2021. However, the customer satisfaction levels were not reported separately for complainants and respondents in CMAB's Controlling Officer's Reports (CORs); and
  - (c) the customer satisfaction levels of enquirers in 2017, 2019 and 2021 were 68%, 68% and 63% respectively, which were also not reported in CMAB's CORs (paras. 2.11 and 2.12).

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4. ***Decrease in number of applications for legal assistance.*** Pursuant to the anti-discrimination ordinances, when a complaint has been lodged but not settled, the complainant may apply to EOC for legal assistance to bring legal proceedings against the respondent. From 2018 to 2022, a total of 127 legal assistance applications were received. Audit's analysis found that the number of applications received decreased from 54 in 2018 to 10 in 2022. Moreover, the number of legal assistance applications as a percentage to the number of complaint cases with unsuccessful conciliation was on a decreasing trend, from 79% in 2018 to 50% in 2022 (paras. 2.19 and 2.20).

### Community participation and publicity

5. ***Public awareness of equal opportunities.*** From time to time, EOC commissions consultancy firms to conduct surveys on public perceptions about equal opportunities awareness and EOC's work. The most recent round of survey was conducted in 2021 (para. 3.2). Audit's examination of the report of the survey revealed the following areas for improvement:

- (a) ***Need to enhance public awareness of EOC's educational, promotional and publicity activities.*** The total awareness level of EOC's educational, promotional and publicity activities during the 12 months before enumeration was only 60%, representing a decrease of over 20 percentage points as compared with those of the previous two rounds of surveys conducted in 2012 and 2015 respectively (para. 3.3(a)); and
- (b) ***Need to step up efforts in raising awareness of FSDO.*** Among the four anti-discrimination ordinances in Hong Kong, the awareness of FSDO remained the lowest, ranging from 25.8% in 2021 to 30% in 2012 (para. 3.6).

6. ***Community Participation Funding Programme on Equal Opportunities.*** According to EOC, through the Community Participation Funding Programme on Equal Opportunities launched in September 1996, EOC has supported different projects carried out by non-governmental organisations, community groups and schools to promote public understanding of equal opportunities, and the principles and applications of SDO, DDO, FSDO and RDO (para. 3.11). Audit's examination revealed the following areas for improvement:

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- (a) ***Need to consider developing marking scheme.*** Audit reviewed the assessment of 37 applications by the Community Participation and Publicity Committee at its meeting held in April 2022 and noted that there was no documentary evidence showing that all the criteria for funding (e.g. the expenditure and cost-effectiveness of the project) had been duly considered, and that no score was assigned to individual projects for determining the funding priority (paras. 3.12 and 3.13); and
- (b) ***Need to improve evaluation of funded organisations' performance.*** Audit's sample check of the application forms and final reports of 10 completed projects approved from 2019-20 to 2021-22 revealed that there was room for improvement in EOC's evaluation of the funded organisations' performance, as follows:
- (i) ***No measurable targets set.*** In the application form of the Funding Programme, an applicant is required to specify the expected results and effects of the proposed project, and explain the evaluation methods to be adopted. Audit noted that in 2 (20%) projects, the funded organisations only specified the evaluation methods without proposing any measurable targets; and
- (ii) ***No evaluation of effectiveness against expected results and effects mentioned in application form.*** Audit noted that among the 8 projects with measurable targets set, the funded organisations of 6 (75%) had not included in their final reports the level of achievement of all the expected results and effects mentioned in their application forms. In particular, 3 had not made any report (para. 3.19).
7. ***Need to consider setting requirements on topics of school drama performances.*** According to EOC, from 2017/18 to 2021/22 school years, three local theatrical troupes were engaged to stage plays and puppet shows on equal opportunities and diversity values at schools. According to EOC's letters engaging Troupe C, while Troupe C was required to stage at least 100 Chinese and 50 English performances for schools in each school year, there was no requirement on the topics of performances to be staged. Audit noted that during the above-mentioned period, the topics of 230 (34%) of the 681 Chinese performances and 212 (64%) of the 332 English performances staged by Troupe C were not related to equal opportunities or disability issues (paras. 3.24 and 3.25).

### Legal studies and research projects

8. *Legal studies.* In March 2016, EOC made its submissions to the Government on the discrimination law review. The submissions contained some relatively complex and sensitive issues which EOC had suggested further consultation, research and education thereon (para. 4.3), including:

- (a) *Discrimination between Chinese people in Hong Kong.* In June 2020, EOC undertook a legal study to examine the possible legal provisions for tackling discrimination, harassment and vilification between Chinese people in Hong Kong (i.e. between Hong Kong Chinese and Mainland Chinese). In March 2021, EOC submitted the study report to CMAB. As of March 2023, the discussion between EOC and CMAB was on-going (paras. 4.4 to 4.6);
- (b) *Enhancing protection from sexual harassment under SDO.* In November 2020, EOC commenced to conduct a holistic review of the current legal protection against sexual harassment under SDO. In October 2021, EOC submitted the study report to CMAB. In view of the sensitivity and complexity of the issue, CMAB was examining the submission of EOC. EOC needs to keep in view the latest development of sexual harassment while maintaining close dialogue with CMAB on the way forward in enhancing legal protection against sexual harassment (para. 4.8);
- (c) *Discrimination on grounds of sexual orientation, gender identity and intersex status.* In December 2019, EOC embarked on a follow-up study to explore the possible options for providing legal protections from discrimination on the grounds of sexual orientation, gender identity and intersex status based on the existing framework of the anti-discrimination laws, which was expected to be completed by June 2021. In May 2022, the Chairperson, EOC informed the Legislative Council Panel on Constitutional Affairs that given the contentious and controversial nature of the issue, EOC would handle it with care (para. 4.10); and
- (d) *Age discrimination.* In addressing the issue of age discrimination, EOC considered it appropriate to conduct further exploratory legal studies, focusing on the scope of protections against age discrimination in other jurisdictions. Such work was included in EOC's 2020 to 2022 strategic

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plan. Up to March 2023, the preliminary study was in progress (para. 4.11).

9. **Research projects.** Research projects may be conducted by EOC's in-house resource or out-sourced to third parties (referred to by EOC as commissioned research projects) (para. 4.15). Audit found that:

(a) **Room for improvement in conducting in-house research projects.** From 2013 to 2020, 12 in-house research projects were determined. All the 12 research projects only covered the issues relating to SDO but not the other three anti-discrimination ordinances. While 11 projects were completed in about one year, the remaining one took more than two years to complete. There were no documentary records showing the objectives and scopes of the projects as well as the work plan and timeframe for completing in-house research projects (paras. 4.17 and 4.18); and

(b) **Delays in completing commissioned research projects.** From 2016-17 to 2021-22, EOC had commissioned 12 research projects. While 2 projects involving only out-sourcing of data collection were completed by May 2022, there were delays in completing all the remaining 10 projects, with delays (up to 31 December 2022) ranging from 2.4 to 27 months, averaging 10.9 months. For the 3 projects still in progress as of December 2022, only the findings of 1 project were published as of March 2023 (paras. 4.19, 4.20 and 4.22).

10. **Need to maintain a pool of experienced staff engaging in research work.** Among the 5 staff engaged in research related work, the Senior Research Manager (SRM) was the only officer who carried out research work on a full-time basis. Audit noted that EOC placed heavy reliance on SRM in conducting research work and the resignation of SRM in August 2022 had a negative impact on EOC's research work (paras. 4.30 and 4.31).

### Other administrative issues

11. **Transaction of Board and Committee meetings.** Audit's examination found that:

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- (a) **Issue of meeting minutes.** According to the Notes for Guidance for Members on Procedures for Meetings and Related Matters (NGPM), meeting minutes should be issued as soon as possible after each meeting and one month has been set as a target. From 2018 to 2022, there were cases in which meeting minutes were issued more than 1 month after the meetings. For example, for the meetings of LCC, the average time required to issue all the 20 meeting minutes was 81 days (ranging from 42 to 294 days) (para. 5.7); and
- (b) **Declaration of interests.** As stipulated in NGPM, EOC adopted a “two-tier” reporting system on declaration of interests. From 2018 to 2022, for the 85 occasions in which the Members were required to declare interests, no declaration forms were found in the records in 19 (22%) occasions and there were no signatures on the submitted declaration forms in 2 (2%) occasions. Moreover, the declaration mechanism for the co-opted Members deviated from the requirements of the “two-tier” reporting system (paras. 5.8 and 5.9).
12. **Procurement of goods and services.** Audit sample checked 20 procurement of values above \$50,000 from 2018 to 2022 and found room for improvement in 2 cases:
- (a) **Office renovation.** Procurement of renovation services amounted to \$180,270 and three subsequent additional renovation works totalling \$88,870 were approved by the Division Head. While the final value amounted to \$267,070 exceeded the purchase authority of the Division Head (up to \$250,000), there were no documentary records showing that the approval from the next higher authority as stipulated in the Procurement of Stores and Services Manual was obtained; and
- (b) **Procurement of office furniture.** For the procurement of meeting tables, while the lowest quotation among the 10 quotations received was \$21,300, the second highest quotation of \$95,504 was recommended and approved due to a safety-lock herein and 8 years’ warranty provided. However, such requirements had not been specified in the purchase requisition (para. 5.20).

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### **Audit recommendations**

13. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Chairperson, EOC should:**

#### *Complaint handling and provision of legal assistance*

- (a) **explore measures to reduce the time taken to conclude complaint cases as far as practicable (para. 2.14(a));**
- (b) **remind EOC staff to prepare Investigation Plans for investigation cases in future and improve the reporting to LCC with a view to facilitating LCC's role in monitoring of the progress in handling complaint cases (para. 2.14(b) and (c));**
- (c) **take measures to improve level of customer satisfaction on complaint handling and enquiry services (para. 2.14(e));**
- (d) **continue to monitor the decreasing trend in the number of legal assistance applications and take actions to gainfully deploy the staff engaged in providing legal assistance to other areas of work (e.g. legal studies) if the number of legal assistance applications continues to fall (para. 2.26(a));**

#### *Community participation and publicity*

- (e) **take measures to enhance the public awareness of EOC's educational, promotional and publicity activities, and keep in view the awareness of FSDO and if it remains low, step up efforts to address the issue (para. 3.9(a) and (b));**
- (f) **consider developing a marking scheme for the Community Participation Funding Programme on Equal Opportunities and improve the evaluation of the performance of funded organisations of the Programme (para. 3.21(a) and (e));**



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- (g) **consider setting requirements on the minimum number of school drama performances on topics relating to equal opportunities and prevention of discrimination when engaging local theatrical troupes (para. 3.30(b));**

### *Legal studies and research projects*

- (h) **continue to work closely with CMAB in formulating legislative proposals that can effectively tackle discrimination that may be encountered by people from the Mainland (para. 4.12(a));**
- (i) **keep in view the latest development of sexual harassment while maintaining close dialogue with CMAB on the way forward in enhancing legal protection against sexual harassment (para. 4.12(b));**
- (j) **keep in view the latest development of discrimination against sexual minorities (para. 4.12(c));**
- (k) **closely monitor the progress of the legal study and duly consult the stakeholders on the way forward in addressing age discrimination (para. 4.12(d));**
- (l) **keep proper records on the determination of research topics, objectives and scopes as well as the work plan and timeframe for completing in-house research projects (para. 4.32(a));**
- (m) **step up efforts in completing outstanding commissioned research projects and consider imposing penalty clause in service contracts of future research projects for delays in completing research work (para. 4.32(b));**
- (n) **improve oversight on EOC's research work and maintain a pool of staff with relevant experience so that EOC's research work will not be seriously hindered by the departure of a key staff (para. 4.32(e)); and**

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### *Other administrative issues*

- (o) **take measures to:**
  - (i) **ensure that meeting minutes are issued within the time target set in NGPM (para. 5.10(b));**
  - (ii) **enhance the compliance with the “two-tier” reporting system on declaration of interests (para. 5.10(c)); and**
  - (iii) **enhance EOC staff’s compliance with the Procurement of Stores and Services Manual, especially in relation to obtaining approval from appropriate authority and providing complete specifications in purchase requisitions (para. 5.22).**

14. **Audit has also *recommended* that the Secretary for Constitutional and Mainland Affairs should, in consultation with the Chairperson, EOC, consider publishing the customer satisfaction survey results of complainants, respondents and enquirers in CMAB’s CORs with a view to enhancing transparency in EOC’s performance (para. 2.15).**

### **Response from the Equal Opportunities Commission and the Government**

15. **The Chairperson, EOC and the Secretary for Constitutional and Mainland Affairs generally agree with the audit recommendations.**