

HONG KONG
RETAIL MANAGEMENT
ASSOCIATION

香港零售管理協會

HONG KONG RETAIL MANAGEMENT ASSOCIATION

Submission on the Discrimination Law Review

31 October 2014

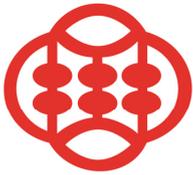
The Hong Kong Retail Management Association (“the Association”) appreciates the good intention of the Equal Opportunities Commission (“EOC”) to conduct a comprehensive review on the discrimination laws in Hong Kong (“the Review”). However, the Association is concerned about a number of key proposals in the Review that are apparently drawn up without a comprehensive assessment of its far-reaching implications and impacts on different sectors of Hong Kong people, the business community and the economy. As a result of such, we worry the proposals may lead to undesired costs both in terms of societal and monetary that would be borne by Hong Kong people at large.

We take this opportunity to highlight our concerns on some of these proposals as follows:

1. Marital Status

The EOC is seeking the public’s views on whether to expand the scope of marital status discrimination to include “de facto relationships” as well. While the Association has no particular view on the suitability of treating de facto partners as married spouses, we worry that if marital status discrimination were to cover “de facto relationships”, it would inevitably lead to a new definition of marital relationships causing a whole range of complications and diverse interpretations on the subject at different levels.

For example, many employers now provide benefits for an employee’s spouse, but not for a de facto partner. When expanding the discrimination protection to de facto relationships, the employers would be required to provide benefits for a growing number of partners who might enjoy potential entitlement to those benefits. To avoid direct marital or relationship status discrimination, the employers would have to conduct an overall review on the benefit package of all staff in order to accommodate for this change, which would create



tremendous workload and call for much extra financial outlays.

In addition, the EOC also proposed to change the term “family status” to “family responsibilities” under the current Family Status Discrimination Ordinance (FSDO) so as to accommodate de facto relationships, which however would mean the number of partners that people have to care for or support might increase substantially, and it would again lead to significant increase in staff cost.

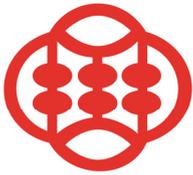
At the forefront, we would like to see the EOC and the community not to underestimate the huge cost implications to the employers resulting from the proposal, and its unavoidable negative impact on Hong Kong’s competitiveness. We urge the Government to conduct a thorough business impact assessment to evaluate the implications of these proposed amendments before moving towards legislation.

More importantly, we see that the proposal would imply a fundamental shift in family system and relations that would affect all facets of people’s life. For that we call for the Government to take the lead to evaluate such an important policy change that might cover the entire society instead of making piece meal amendments to various Discrimination Ordinances as suggested by the EOC.

2. Disability Discrimination

The EOC is considering whether to introduce a new duty for the employers, which requires them to make “reasonable accommodation” for persons with disabilities. With this new duty, employers might have to find a new role for an employee who becomes unable to continue in the job for which he/she was hired due to disability. We urge the EOC to take into serious consideration of the huge impact and costs to employers of the proposal.

The proposal also seems to include access to services but it is not clear how the scope of the duty to make “reasonable accommodation” for people with disabilities applies to service providers. Our members are concerned to understand the implications on the retail sphere, especially given the geographical and physical constraints of many buildings in Hong Kong,



where it simply may not be practicable to make any physical adjustments to the premises to cater for disabled customers. Further clarification is needed on what would be deemed 'reasonable' for access to services and what practical factors would be taken into account.

3. Nationality and Citizenship

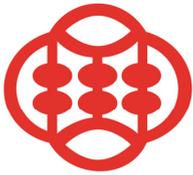
In considering a new provision to address discrimination based on nationality and citizenship, the EOC used an example in the consultation document to illustrate a case in which Hong Kong permanent resident was said being treated less favourably (Example 10 under Paragraph 2.83 of Chapter 2).

We consider that this example might be interpreted as preventing businesses from providing any special promotion/discounts targeted for tourists from different origins. Hong Kong retailers in general honor a fair pricing policy and dedicate same service standard to all customers irrespective of nationality and/or whether they are tourists or local residents but retailers should not be prevented from providing targeted promotions to certain customer groups (whether they be male / female, youth or elderly etc). In the light of such, we are worried the example in the consultation document might be interpreted to an extent that it is no longer legitimate for retailers to devise and implement vibrant and creative marketing strategies to cope with diverse needs of different customer segments, for example, providing loyalty programme to a target segment amidst a competitive market environment.

On a macro level, as Hong Kong is an international tourist hub, it is a common practice for our inbound tourism industry to benchmark our global counterparts to provide special discounts/offers for tourists from different origins in order to attract them to visit their country. With the cited example in mind, we doubt that whether likewise promotion activities would be regarded as discriminative against local consumers.

4. Conclusion

In view of the far-reaching effects of the proposals in the Review, we think that the EOC should be more cautious yet open enough by taking into account of various impacts that its



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Review may produce on societal level as well as down to daily operation of entities involved.

Otherwise, we worry the recommendations drawn from the Review may only lead to unnecessary piecemeal legislations that are not only difficult to enforce but also seriously undermine Hong Kong's most treasured core values such as respect for free market practice, high regard for societal harmony and a hardworking workforce.

And the EOC should not overlook the fact that if the proposals were to be implemented, it would certainly raise substantially the cost of doing business and undermine the competitiveness of our economy. In the end, it may defeat the original intent of EOC in fostering a more equal and harmonious society in Hong Kong.

In sum, we think it is of paramount importance for the Government to take the lead to conduct an overall business impact assessment on these proposals before moving to amending existing legislations.

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About Hong Kong Retail Management Association

The Hong Kong Retail Management Association (HKRMA) was founded in 1983 by a group of visionary retailers with a long-term mission to promote Hong Kong's retail industry and to present a unified voice on issues that affect all retailers. Established for 31 years, the Association has been playing a vital role in representing the trade, and raising the status and professionalism of retailing through awards, education and training.

Today, HKRMA is the leading retail association in Hong Kong with membership covering more than 7,800 retail outlets and employing over half of the local retail workforce. HKRMA is one of the founding members of the Federation of Asia-Pacific Retailers Associations (FAPRA) and is the only representing organization from Hong Kong. FAPRA members cover 17 Asian Pacific countries and regions.