

Chapter 6

Credibility of the EOC and Institutional Issues

Introduction

6.1 We have presented the incidents affecting the credibility of the EOC in Chapters 4 and 5. This chapter continues to deal with our second term of reference by giving an overall review of the impact of the events in 2003 on the EOC's credibility and recommending measures to enhance such credibility through strengthening the EOC as an institution. The credibility and the future of the EOC should not hinge on a single event or person. As with other public bodies, the EOC needs a sound institutional framework with proper corporate governance, clearly articulated vision and mission, a strong team of capable and dedicated staff, an extensive support network and a cordial relationship with its stakeholders and the community at large.

Credibility of the EOC

Credibility of the EOC after the Events in 2003

6.2 What happened in the latter part of 2003 dealt a severe blow to the image of the EOC. Media reports seemed to depict an EOC troubled by various governance, human resources, management and operational issues. The EOC was portrayed as an organization in which its members and staff were engaged from time to time in open criticisms or personal attacks in public.

6.3 After the spate of events in 2003, the EOC front-line staff were faced with severe criticisms and distrust. Some of the EOC's clients began to doubt the EOC's ability to set its house in order. The EOC could no longer pride itself as an exemplary employer who adopted fair and non-discriminatory employment practices.

6.4 Despite the gloomy picture painted above, it would be unfair to conclude that the EOC is no longer a credible organization after the incidents in 2003. In fact, the EOC has been building up a solid track record since its inception in 1996, and its good work continues notwithstanding the events in late 2003.

6.5 It has been suggested that the significant drop in the number of complaints in 2004 points to the loss of public confidence in the EOC. However, this suggestion is open to interpretation. First, we cannot

compare the annual figures without qualification. The number of complaints in 2001 to 2003 experienced a sudden upsurge following the judicial review of the Secondary School Place Allocation (SSPA) System and the outbreak of SARS. Discounting these special factors, the complaint figures are more evenly distributed. Please see Table 6.1 below.

Table 6.1:
Number of complaint cases

	2000	2001	2002	2003	2004
No. of complainants (all cases)	494	873	430	497	445
No. of complaints	686	1,622	757	915	566
• Cases relating to SSPA and SARS	-	812	38	81	-
• Other cases	686	810	719	834	566
No. of respondents (all cases)	647	1,524	651	777	533
No. of complaints					
• per complainant	1.4	1.9	1.8	1.8	1.3
• per respondent	1.1	1.1	1.2	1.1	1.1

Source: the EOC Office

6.6 Secondly, as explained in paragraphs 5.44 to 5.53, the counting rule has been adjusted. The number of complainants has not dropped by the same magnitude as the decrease in the number of complaints.

6.7 Thirdly, there are inherent problems in adopting the number of complaints as an indicator of public confidence in the EOC. The EOC’s ongoing public education, publicity and proactive preventive measures should be able to cultivate respect towards equal opportunities and hence eliminate discriminatory practices. They also equip people with the skills to handle the matters by themselves in an amicable fashion, thereby reducing the number of complaints. On the other hand, these measures may arouse public awareness of the rights and responsibilities under the anti-discrimination legislation and alert people of the channels available for complaints. These different views show that there may be no direct correlation between the complaint figures and the credibility of the EOC.

6.8 In fact, there are positive signs that the EOC enjoys considerable recognition and support in the local and international community.

- (a) ***Survey on Public Perception 2003.*** According to the survey report³⁶ published in early 2004 regarding an independent survey to assess public awareness and perception of the EOC, there was a marked increase in the awareness of the EOC and its work in 2003, when compared with 1998, as shown below.

	<u>1998</u>	<u>2003</u>
• Could name the EOC as the organization responsible for promoting equal opportunities	26.2%	48.4%
• Heard of the EOC	86.7%	92.7%
• Fairly clear about the EOC's work	7.9%	13.4%

- (b) ***Requests for the EOC's training and consultancy service.*** The number of requests for the EOC's training and consultancy services in 2004 was 281, far exceeding the 131 requests in 2003.

- (c) ***Reputation of the EOC in the regional context.*** The EOC was invited to join the Asia Pacific Forum of National Human Rights Institutions as an Associate member. The feedback from the Forum seemed to suggest that the Hong Kong EOC enjoyed a good reputation regionally and internationally.

- (d) ***Legislation against racial discrimination.*** In the Consultation Paper on "Legislating against Racial Discriminations"³⁷, it was proposed that the EOC should be responsible for the administration of the proposed legislation against racial discrimination. This is arguably, an indicator of confidence in the EOC's capability in administering anti-discrimination ordinances.

³⁶ In 1998, the EOC conducted a survey on public awareness and perception of the EOC, its publicity programme and related anti-discrimination ordinances. To facilitate gauging the trend in public awareness, the EOC engaged ACNielsen to conduct another survey in 2003.

³⁷ Please refer to the consultation paper on "Legislating against Racial Discrimination" issued by HAB in September 2004.

Efforts taken by the EOC in Enhancing its Credibility

6.9 Since 2003, the EOC has been putting in extra efforts in enhancing its credibility by conducting two parallel reviews.

6.10 The first review focused on the EOC's role as well as its organizational and management structure (The Organizational Review). The idea of the review was proposed by Mr Michael WONG, former Chairperson, and endorsed by the Commission in September 2003. The Commission appointed two advisers³⁸ to carry out the review. In the context of the three anti-discrimination legislation, the review team was tasked to -

- (a) consider the EOC's role, policy direction, strategy and emphasis in carrying out its statutory functions and in meeting the expectations of the community, taking into account the culture, tradition and values of Hong Kong;
- (b) look into how equal opportunities (EO) are practised globally with particular reference to the Asian region for reference and possible adoption in Hong Kong;
- (c) explore ways and means on how to develop and improve ties with relevant local organizations and EO or equivalent bodies in the Mainland for the advancement of equal opportunities;
- (d) carry out an examination of the present organization and management structure of the EOC with the aim that focuses on improving the efficiency and effectiveness of the EOC in achieving its vision and mission. The exercise covered but was not limited to the priority, strategy, process, organization structure, resource allocation, performance measures and skills needs in the six functional areas of Operations (complaints handling), Legal Service, Policy Support & Research, Training & Consultancy, Promotion & Education and Planning & Administration; and
- (e) provide recommendations for consideration by the Chairperson for approval of the Commission.

³⁸ In September 2003, the EOC approved the appointment of Mrs Patricia CHU, BBS and Prof Nelson CHOW, JP as advisors to the EOC Chairperson. With the resignation of Mr Michael WONG on 6 November 2003 and the subsequent appointment of Mrs Patricia CHU as the EOC Chairperson with effect from 15 December 2003, Mrs Laura LING was appointed advisor in place of Mrs Chu in December 2003.

6.11 The Organizational Review commenced in September 2003 and was completed in July 2004. During the review, the review team conducted researches on equal opportunities practices in Asian and other countries. It also collected the views of EOC Members, EOC staff and stakeholders through briefings, focus group meetings, surveys, discussions and written submissions. At the meeting on 2 December 2004, the EOC agreed that the Report on the Organizational Review be accepted for further consideration by the Commission. This report contained 37 recommendations in the following areas -

- (a) Vision, mission and core values;
- (b) Communications and public education;
- (c) Complaints handling and legal assistance;
- (d) Establishing an Equal Opportunities Tribunal;
- (e) Performance measures; and
- (f) Corporate governance and organizational structure.

6.12 The second review is about the EOC's major human resource management policies, procedures and practices (HRM Review) including -

- (a) recruitment, selection, appointment, promotion and posting;
- (b) training and development;
- (c) discipline and termination of employment;
- (d) performance assessment;
- (e) staff grievances and handling of complaints against staff;
- (f) communication; and
- (g) manpower planning.

6.13 The HRM Review was steered by a review committee³⁹ appointed by the Commission. The review commenced in April 2004 and was completed in September 2004. During the review, the

³⁹ The review committee comprised Mr K S YEUNG, JP, as its chairperson and Prof Yuk-shee CHAN, JP and Ms Nora YAU, JP as its members.

committee had extensive discussions with EOC Members and staff. At its meeting on 2 December 2004, the EOC agreed that the report on HRM Review be accepted and referred to the A&FC for advice on whether the recommendations and comments should be followed up and adopted.

Concerted Efforts Required to Restore the Credibility of the EOC

6.14 Whilst the EOC has taken positive steps, concerted efforts are required to restore the credibility of the EOC. Besides EOC Members and staff, the Government, legislators, non-government organizations, the media and the community at large all have a role to play. With the benefit of the collective wisdom channeled to us through written submissions and interviews, we venture to suggest two major directions to achieve this goal. First, we should strengthen the institutional framework and governance of the EOC having regard to the Paris Principles⁴⁰ and good practices in the public and private sectors. Secondly, the EOC should have a clear positioning.

Strengthening the Governance of the EOC

Guiding Principles

6.15 We **recommend** to rebuild the credibility of the EOC based on the following guiding principles -

- (a) The Government should consider making reference to the Paris Principles, copy at **Annex 6**, in the appointment to, and the governance of, the EOC.
- (b) The following core values, as embodied in the Paris Principles and general good organizational practices, should form the basis for the interface between the Government and the EOC, as well as the operation of the EOC -
 - Independence;
 - Pluralism;
 - Good corporate governance ;
 - Openness, transparency and communication;
 - Efficient and effective performance; and
 - Accountability.

⁴⁰ Please refer to paragraphs 6.16 to 6.18 and **Annex 6**.

Paris Principles

6.16 The Paris Principles are a detailed set of principles for the establishment and operation of national human rights institutions⁴¹. The applicability of the Paris Principles to the EOC has received some attention⁴² in LegCo. In his reply to a Member's question on 12 November 2003, SHA stated that -

“The Paris Principles relate to the status and functioning of national institutions for the promotion and protection of human rights. The EOC is not such an institution, in that it is not national, and it does not have a broad mandate in respect of all forms of discrimination....While the Paris Principles do not strictly apply to the EOC, we believe that we have largely conformed with the Paris Principles relating to the appointment of members to these national institutions and the composition of such institutions. The relevant principles also require guarantees of independence and pluralism.”

6.17 Since the Paris Principles are regarded as the international good practices for the establishment and operation of national institutions for the promotion of human rights, it has been suggested that the Government take them into account in its interface with the EOC. Whilst acknowledging that the Principles do not strictly apply to the EOC, we **recommend** that the Government should consider making reference to the Paris Principles in making appointments to the EOC and refining its governance. It can demonstrate the Government's commitment to follow international good practices.

⁴¹ The Paris Principles were developed at a meeting of representatives of national institutions held in Paris in 1991 and subsequently endorsed by the UN Commission on Human Rights (*Resolution 1992/54 of 3 March 1992*) and the UN General Assembly (*Resolution 48/134 of 20 December 1993, annex*). For details, please see [Annex 6](#).

⁴² For instance, LegCo touched on this issue during the motion debate on the independence of statutory organizations handling public complaints on 21 May 2003 and Question 3 of the LegCo at its sitting on 12 November 2003.

6.18 We further **recommend** that the EOC should likewise be guided by the Paris Principles in performing its functions to the fullest extent permitted by its enabling legislation. For instance -

- (a) It should freely consider any questions falling within its portfolio, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner. Specifically, the EOC should continue to present submissions to LegCo on issues within its portfolio. It may initiate and conduct research and promulgate its research findings. It may conduct direct investigation into matters within its jurisdiction.
- (b) It may hear any person and obtain any information and any documents necessary for assessing situations falling within its competence.
- (c) It may address public opinion directly or through the media, particularly in order to publicize its opinions and recommendations. Indeed, the EOC should make the best use of its website to communicate and publicize its views.
- (d) It may maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights. The EOC may, for instance, strengthen its network with local, regional or international bodies of similar nature.
- (e) It may develop relations with non-government organizations.
- (f) It may hear and consider complaints and petitions concerning individual situation. In so doing, the EOC should be able to seek amicable settlement through conciliation, inform the complainants of their rights, including the remedies available to them, hear complaints or refer them to other competent authorities, and make recommendations to the competent authority. This complaints handling function is now a core function of the EOC, and the EOC should improve its capabilities in performing this function.

Independence

Importance of an Independent EOC

6.19 Independence is pivotal to the EOC's credibility. Since the EOC is a complaints-handling body, it is looked upon not only as an arbitrator between two private parties but also a watchdog of the Government. In performing its duty to handle complaints and enforce the anti-discrimination legislation, the EOC serves an important role as the guardian of an open and caring civil society. Its success hinges on whether it is endowed with the mandate, powers and institutional arrangements for it to perform its functions in an independent and impartial manner. The essence of independence is that the EOC should be entitled to freedom of action in managing its affairs within the restraints of the laws of Hong Kong. The EOC must be permitted to exercise all of its enforcement powers – not only conciliation but also litigation and formal investigations – without fear or favour. The EOC must be, and be seen to be, independent of the Government. Likewise, it should be non-partisan and free from the dominance of political or interest groups.

The EOC's Independence from the Government

6.20 At present, there are institutional safeguards to ensure the EOC's independence vis-à-vis the Government -

- (a) ***Legislation.*** The EOC is an independent statutory body with its powers and functions clearly stipulated in the legislation. The law states that no public officer can be appointed as EOC Members. The law contains comprehensive provisions to safeguard the EOC's full autonomy over the management of its affairs. It possesses the legal capacity to sue and to be sued. It may establish committees, acquire and hold property, enter into contract, determine its terms and conditions of service and appoint its own staff. The independent status is fortified by the provision stating clearly that the EOC is not a servant or agent of the Government.
- (b) ***Memorandum of Administrative Arrangement (MAA).*** The relationship between the EOC and the Government is governed by an MAA and a Supplementary MAA signed in 1997 and 1998 respectively. As stated in the MAA, its provisions are founded on the principle that the EOC should have autonomy and flexibility in utilizing its funds as is

compatible with the provisions of the anti-discrimination Ordinances and general subvention guidelines. The EOC is autonomous in the management and control of its activities.

6.21 The fact that the EOC is an independent statutory body places Hong Kong among the most advanced system in this region. According to the comparison between the EOC practices in Hong Kong and in selected Asian countries/regions, which was conducted during the EOC's recent Organizational Review, most countries use government agencies, instead of an independent equality commission, as the institutional machinery for promoting equality.

6.22 On several occasions⁴³, after the spate of incidents relating to the EOC, SHA has made public statements to reaffirm the non-interventionist policy towards the EOC. Under this policy, the Government distances itself from the daily operation of the EOC and confine its role to the following three areas -

- (a) to appoint the Chairperson and members of the EOC;
- (b) to ensure that the necessary funding is provided to the EOC for it to carry out its proper functions; and
- (c) to consider the EOC's advice relating to three anti-discrimination ordinances including proposals on legislative amendments.

6.23 The EOC has been dutifully performing its function as the watchdog of the Government through handling complaints against the Government bureaux and departments. Details are set out at Table 6.2.

⁴³ For details, please refer to the LegCo motion debate on the credibility of the EOC on 26 November 2003, the oral LegCo question on controversies surrounding the EOC on 12 November 2003 and the special meeting of the LegCo Panel on Home Affairs on 14 November 2003.

Table 6.2:

Number of complaints against the Government bureaux and departments between 2001 and 2004

	2001	2002	2003	2004
Complaints against Government bureaux/ departments for investigation	496	155	119	70
After deducting SSPA cases	89	137	118	70
Conciliated ⁽¹⁾	27	195	41	27
Concluded ⁽¹⁾	286	374	152	90
Complaints against Government bureaux/departments for follow-up action ⁽²⁾	6	7	25	2

Source: the EOC Office

Notes

- (1) including cases brought forward from previous years
- (2) cases without a complainant or identified by the Commission to follow up on the issues.

6.24 The EOC enjoys a high degree of autonomy and its independence is enshrined by law. There appears to be concerns that the Government can, if it so wishes, undermine the EOC's independence through the control over finance and appointment.

6.25 As regards finance, the EOC has accumulated a healthy surplus of \$28.8 million when the Government is facing a budget deficit. (For details, please refer to paragraph 5.14). Whilst this may be attributable to the EOC's prudential financial management, it also reflects the Government's readiness to provide adequate resources to the EOC to perform its functions. Such independence does not exclude the EOC from the public scrutiny to ensure proper use of the taxpayers' money.

6.26 As regards the EOC's appointments, we share the view that the appointment system can be refined to demonstrate more clearly the Government's respect for the EOC's independence. We will elaborate this in the context of enhancing the corporate governance of the EOC. (Please see paragraphs 6.35 to 6.66.)

6.27 The community expects the Government to take the lead in upholding the credibility of the EOC. The Government should keep the EOC at an arm's length to safeguard its independence. The Government should be more sensitive and prudent in handling matters relating to the EOC, particularly in making appointments. We **recommend** that the Government should continue to adhere to the non-interventionist policy and distance itself from the day-to-day operation.

6.28 We **recommend** that the Government should give favourable consideration to, and provide assistance in relation to the EOC's request to join relevant international organizations. Under the Sex Discrimination Ordinance, the EOC may, with the prior approval of the Chief Executive, become a member of or affiliate to any international body concerned with (whether in whole or in part) the elimination of discrimination.

The EOC's Independence from Political Influence

6.29 To maintain the impartiality of the EOC, we **recommend** that the EOC should be a non-partisan body. It is desirable to maintain a balance between different interests and prevent predominance by any single interest group. We further **recommend** that all EOC Members should be required to uphold the EOC's overall interest. Members should not allow their own interests, or those of their affiliated groups, to take precedence over the interests of the EOC.

Pluralism

6.30 As an organization dedicated to promoting equal opportunities regardless of differences in gender, abilities and family status, the EOC should treasure pluralism as one of its core values. The EOC should be representative of the community including those under-privileged groups protected by the anti-discrimination legislation currently administered by the EOC. It is expected to listen to different views and balance different interests. Having regard to the Paris Principles and the local conditions, we **recommend** that EOC Membership should cover a broad spectrum of people, including -

- (a) members representing various communities protected by the anti-discrimination ordinances administered by the EOC;
- (b) members from the academia, religious field as well as legal, medical, accounting, media or other professions;
- (c) members with knowledge of, or experience in, non-government organizations involved in the development of equal opportunities and efforts to combat discrimination;
- (d) members with knowledge of, or experience in, trade unions or employees' associations;

- (e) members representing the employers in the private and public sectors; and
- (f) a Legislative Councillor.

6.31 We are mindful that the Commission is the EOC's governing body responsible for controlling, and accounting for, the use of public resources and the smooth functioning of the EOC. We therefore **recommend** that the Commission should have Members with financial and legal expertise. Furthermore, to ensure that the EOC remains a non-partisan organization, we **recommend** that Members should be appointed in their personal capacity.

6.32 Since the EOC maintains close ties with the community groups protected by the anti-discrimination ordinances, the EOC is in the best position to identify the best candidates to represent these communities. We **recommend** that the Government should invite the EOC to submit nominations for this category for consideration. The EOC should first invite nominations from various organizations for its consideration via a nomination committee before submitting its recommendations to the Government.

6.33 Apart from achieving pluralism at the Commission level, we **recommend** that the EOC should broaden its network by -

- (a) increasing the number of co-opted members in sub-committees and inviting outstanding representatives in relevant fields to participate in committee work; and
- (b) considering the possibility of establishing and expanding the network of stakeholder groups to discuss topical issues of interest. In Melbourne, Australia, for instance, reference groups and focus groups are set up to gauge the views of specific target groups on draft codes of practice and other publications before release.

6.34 These proposals will bring the stakeholders into the EOC and vice versa. The EOC can tap the wealth of talents and gain rapport.

Good Corporate Governance

Corporate Governance for Public Bodies

6.35 The independence of the EOC should go hand in hand with good corporate governance to enable it to operate in an efficient, effective and

accountable manner. In May 2004, the Hong Kong Institute of Certified Public Accountants (HKICPA) published “Corporate Governance for Public Bodies – A Basic Framework”⁴⁴ (the Basic Framework). This document provides a useful guide for a public organization like the EOC in refining its governance. We **recommend** that the EOC should examine and implement the guidelines as appropriate.

The EOC Chairperson

Role of the EOC Chairperson

6.36 A core issue of the EOC’s organizational structure is the role of the Chairperson. We observe an apparent over-reliance on the EOC Chairperson as the source of directions and the cornerstone of success. This tendency is understandable given the concentration of power in the full-time executive chairperson. However, this is an unhealthy phenomenon that needs to be changed if the EOC is to mature into a public organization with good corporate governance. In accordance with the law and good practices, the governing board rather than the Chairperson alone should be responsible for the stewardship of the EOC. The recent “Organizational Review” conducted by the EOC recommends that the EOC should establish a corporate image rather than focusing on the Chairperson. We **recommend** that this proposal be adopted for implementation.

Full-time Executive Chairperson

6.37 At present, the law provides that the EOC Chairperson should be appointed on a full-time basis. He or she cannot engage in any occupation for reward or hold any other office of profit without the specific approval of the Chief Executive. We are advised that this requirement was stipulated with reference to the prevailing practices in public organizations when the EOC was established. Following the deletion of the post of the Chief Executive Officer (CEO) in 2000, the EOC Chairperson also assumes the functions of the CEO. In effect, the Chairperson is both the policy and the executive head of the EOC.

6.38 The EOC’s recent Organizational Review recommends that the EOC should reinstate the post of CEO. We share the same view. We **recommend** that, for the following reasons, the posts of Chairperson and

⁴⁴ The soft copy of the document is available at HKICPA’s website (http://www.hkicpa.org.hk/publications/corporategovernanceguides/eframework_guide.pdf)

CEO should be separated, and that the Chairperson should ideally be a non-executive function -

- (a) As mentioned in HKICPA's Basic Framework, this proposal will strengthen the structural checks and balances within the EOC.
- (b) Since the establishment of the EOC, various public organizations have already modernized their governance structure. Out of the 17 non-departmental public bodies⁴⁵, only the EOC has a full-time executive Chairperson. The others all have a part-time Chairperson and a full-time CEO. Regarding other categories of public bodies, the Government has recently presented a proposal to the LegCo Panel on Financial Services to improve the governance structure of the Securities and Futures Commission (SFC) such that the SFC is governed by a non-executive chairperson while the executive arm is headed by a chief executive officer.⁴⁶
- (c) From a practical angle, Chairperson and CEO perform different functions and require different attributes. It is difficult, if not impossible, for a single person to have the vision, mission and leadership to give broad policy steer possessing at the same instance a strong executive ability to oversee the day-to-day operation of the institution. Furthermore, the CEO normally has to stay in the organization for a reasonably long period to ensure continuity whereas it is preferable to have a regular turnover of the chairmanship to allow injection of fresh ideas from time to time.

6.39 There are merits for the EOC Chairperson to be a non-executive position. A non-executive Chairperson will be relieved from day-to-day executive responsibilities and be suitably detached from the executive arm in order to discharge his/her supervisory functions effectively. Furthermore, a non-executive Chairperson would keep the EOC organizational structure lean and cost-effective, and avoid overlapping responsibilities between an executive chairman and a CEO. Indeed, the latter was one of the grounds for the EOC's decision to delete the CEO post in 2000.

⁴⁵ According to Government's classification of advisory and statutory bodies, the EOC is classified as a "non-departmental public body".

⁴⁶ For details, please refer to Paper for LegCo Panel on Financial Services "*Securities and Futures (Amendment) Bill 2004*" LC Paper No. CB(1)177/04-05(01).

6.40 It is noteworthy that a “non-executive” chairperson is not the same as a “part-time” chairperson. The Chairperson is expected to spend as much time as needed to fulfill the role and responsibilities of a Chairperson. Nevertheless, it will widen the pool of candidates for appointment as the EOC Chairperson if he/she is not mandated to work on a full-time basis. There are distinguished community leaders who have the passion for, and knowledge of, equal opportunities but are unable to work full-time in the EOC because of other commitments. The requirement for the Chairperson to be appointed on a full-time basis would deprive the EOC of these talents. We therefore **recommend** that the EOC Chairperson should be a non-executive position appointed on a part-time basis. Consideration should be given to amending the relevant legislation to remove the requirement for the EOC Chairperson to be appointed on a full-time basis.

Division of Responsibilities between Chairperson and CEO

6.41 We **recommend** that there should be clear separation of responsibilities between the Chairperson and CEO. The responsibilities of the chairperson should be formally defined in writing. As the Chairperson of the governing board and of the whole organization, he or she should strengthen the capability of the governing board in overseeing the effective operation of the EOC. The chairperson’s role includes -

- (a) providing leadership to the governing board;
- (b) facilitating board members to make a full contribution to the board’s affairs, including ensuring that they are fully briefed on the terms of their appointment and on their duties and responsibilities;
- (c) ensuring that there is an effective process of review of the performance of individual Members and of the governing board as a whole;
- (d) ensuring that key issues are discussed by the board in a timely manner, that the board has adequate support and is provided with all the necessary information on which to base decisions;
- (e) ensuring that the board takes proper account of statutory and other requirements and makes decisions based on a full consideration of all relevant issues;

- (f) ensuring that the governing board meets regularly and that minutes of meetings accurately record decisions taken, interests declared and, where appropriate the views of individual board members; and
- (g) ensuring that the organization communicates effectively with its stakeholders at regular intervals.

6.42 The Chairperson, as leader of the Commission, should be responsible for the strategy, directions and networking both internationally and locally. On the other hand, the CEO would be in charge of the smooth functioning of the EOC. We **recommend** that the CEO should be an ex-officio executive member of the Commission. The CEO, if reinstated, should have line responsibility for all aspects of executive management. He or she should report to the Chairperson and be accountable to the Commission for the performance of the organization and the implementation of the Commission's strategy and policies.

Division of Responsibilities between Chairperson and the Commission

6.43 Pending the consideration of the structural change recommended above, we **recommend** that the powers and responsibilities of the EOC Chairperson vis-à-vis the Commission should be clearly defined. Specifically, the governing board should reserve strategic and other key matters, such as major decisions in relation to resources and senior appointments, for collective decision-making.

Ideal Attributes of the EOC Chairperson

6.44 During the inquiry, we notice an intense longing for a capable, charismatic leader who can lead the EOC in the years to come. The expectations are extremely high. In fact, it would be unrealistic to identify a single candidate who embodies all the above features and abilities. The EOC must rely on team work. We have received the following comments -

- (a) The EOC needs different EOC Chairpersons at different stages of its development. Regular changes in chairmanship are healthy and necessary. It has been suggested to us that what the EOC needs at this juncture is a stabilizing force to set the EOC administration in order, cultivate harmony in the board and among the staff, and take forward the recommendations arising from various reviews.

- (b) To ensure the sustainable development of the EOC, the EOC cannot rely on the EOC Chairperson alone. The EOC, particularly the Chairperson, must focus on institutional issues and nurture the EOC under the collective leadership of a pluralistic and capable governing board and with the co-operation of a strong team of staff.
- (c) As the spiritual leader of the EOC, the EOC Chairperson is expected to be a distinguished community leader who possesses the following attributes–
- strong commitment to promoting equal opportunities and building an inclusive, barrier-free and harmonious society;
 - a clear vision and the ability and readiness to articulate the vision;
 - a solid track record of community service, particularly in promoting equal opportunities;
 - good reputation as a leader of integrity;
 - courage to pursue worthy cause without fear or favour;
 - an open mind and an open heart to embrace diversity; and
 - strong leadership, particularly in steering a diverse governing board.
- (d) If the Chairperson continues to remain an executive position, he/she must have proven experience in senior management.
- (e) Legal qualification is preferable but not absolutely essential for the EOC Chairperson. It is also desirable for the Chairperson to have an international outlook and good communication skills so as to project a positive image of the EOC and Hong Kong in the local and international arena.

6.45 We **recommend** that the above views be considered in the future appointment and re-appointment of the EOC Chairperson. There is general agreement that the Government should continue to adopt the “merit principle” to appoint the most suitable candidate to the EOC having regard to candidates’ expertise, experience and integrity as well as the functions of the EOC. We would like to add that, there is also a strong expectation that the appointment of the EOC Chairperson should be free from political considerations.

Remuneration of the EOC Chairperson and CEO

6.46 If the above proposed changes in the role and responsibilities of the EOC Chairperson are to be pursued, the Government would need to assess the implications on the remuneration of the Chairperson and the CEO of the EOC. At present, the EOC Chairperson's package is fixed by Government and pegged to D8 of the Directorate Pay Scale of the Civil Service. The EOC's CEO, a post deleted in 2000, was originally pegged to D3 of the Directorate Pay Scale. We understand that the Government's overall review of the system of advisory and statutory body also covers the remuneration package for non-official members of the Government Boards and Committees. We **recommend** that the Government should review the remuneration package of the EOC Chairperson in that context. Similarly, the EOC should also review the remuneration of the CEO, if reinstated accordingly. We should add that the remuneration package of the EOC's head should be commensurate with his/her changing responsibilities and powers, and should be based on sound principles of comparability and reasonableness.

Appointment Process

6.47 The community is not only concerned about who is appointed but also how he/she is appointed. In the case of the EOC, its first Chairperson was identified through an open recruitment, which was considered the best channel to find people with the right caliber to open up a new era of equal opportunities. The other four Chairpersons were directly appointed. The second and fourth Chairpersons were Members of the EOC before assuming chairmanship. The third Chairperson was a retired Justice of Appeal. The newly appointed chairperson formerly headed the Privacy Commission, another independent statutory body.

6.48 Direct appointment is commonly adopted in other advisory boards and committees. Some respondents support the present system. Others are advocating greater transparency and accountability in the appointment to the EOC and appointments in general. In this connection, we note the following suggestions -

- (a) The Government should consider the desirability and feasibility of establishing a nominating committee, comprising Government officials and representatives of key stakeholders, to assist in the appointments to the EOC and other major boards and committees. Under this proposal,

vacancies are advertised and nominations invited. After careful examination, the committee will submit a list of candidates to the Chief Executive for consideration and endorsement.

- (b) The Government should consider following some overseas models whereby the Government will, after each key appointment, issue a press release attaching the appointee's detailed curriculum-vitae to demonstrate that his/her qualifications and experiences are impeccably linked to the work of the EOC and hence eminently qualified for the position.

6.49 Whilst recognizing the need to enhance transparency and accountability in appointments to the EOC, we should be mindful not to introduce processes that will dampen the wish of capable candidates to contribute to public service and consequently deprive these bodies and Hong Kong of valuable talents. At present, the Government is conducting an overall review of the system of advisory and statutory bodies. The review covers, among other things, measures to enhance the accountability, openness and transparency of the system. We **recommend** that the Government should take into account the above suggestions in considering the appointments to the EOC in that context. As the EOC also serves as a watchdog of the Government, the demand for transparency and accountability is understandably higher for the EOC.

Term of Appointment

6.50 Under the Sex Discrimination Ordinance, the EOC Chairperson is appointed for a term not exceeding five years. The general view is that the current provision is reasonable. To ensure stability and facilitate longer-term planning, we **recommend** that the EOC Chairperson should normally be appointed for a three-year term, renewable once for another term of not exceeding three years. A regular turnover will facilitate the injection of new ideas and fresh impetus into the EOC. If, however, the EOC Chairperson is also the CEO, the term should be reasonably long to ensure continuity.

Timing for the Announcement of Appointments

6.51 There is a general concern about the short notice and apparent delay in the announcement of appointments to the EOC. The re-appointment of Ms Anna WU in 2002 was not announced until a few

days before the expiry of the contract. Similarly, the appointments of EOC Members in 2003 and 2004 were announced shortly before commencement of the new term. The recent appointment of the new EOC Chairperson seems to follow similar lines.

6.52 We are advised that the Government has an early warning system to alert relevant bureaux/departments of the expiry dates of appointments to public boards and committees six months beforehand. This system provides a timely reminder to relevant bureaux to process appointments and re-appointments. In the case of the EOC, there is no deadline either in the law or the contract by which discussions should be held with the EOC Chairperson on re-appointment or otherwise, although the contract of the EOC Chairperson provides that the Chief Executive may renew the contract with the Chairperson three months prior to the expiry of his/her current term of appointment. Many consider that the short notice and delays in the announcement of the appointments may create an unsettling atmosphere and may hinder the EOC's ability to plan ahead.

6.53 We **recommend** that, unless there are unforeseen circumstances and overriding considerations to the contrary -

- (a) The Government should make a firm decision and announce the appointment, re-appointment or cessation of the appointment of the EOC Chairperson two months before the commencement of the new term; and
- (b) For EOC Members, the appointment and re-appointment should, as far as possible, be announced one month before the commencement of the new term.

Handover Arrangements

6.54 Given that the EOC Chairperson is currently not only the chair of the governing board but also the head of the executive arm, it is desirable that there should be a smooth handover between the outgoing and incoming Chairpersons. We **recommend** that, pending the implementation of the proposal to reinstate the position of the CEO -

- (a) The EOC should develop and, where appropriate, formalize proper handover arrangements for the Chairpersons.
- (b) To preserve the EOC's independence, the handover should, as far as possible, be conducted by the EOC. The Government should keep the EOC at an arm's length except to assist in

building rapport and network. It would be inappropriate for the Government to give any directions or signal to the incoming Chairpersons on the day-to-day operation of the EOC.

Governing Board and EOC Members

Enhancing the Leadership of the Board

6.55 The law provides that the EOC shall comprise a Chairperson and between four and 16 members. The current size is considered reasonable having regard to the need to ensure pluralism on the one hand and efficiency on the other. There may be scope for a moderate expansion in view of the possibility of an increased portfolio for the EOC. To strengthen collective leadership, we **recommend** that -

- (a) The Government may consider appointing a Deputy Chairperson, who may act as the Chairperson if the Chairperson is absent from Hong Kong or is, for any other reason, unable to act as Chairperson, or if the office is vacant; and
- (b) The EOC may consider designating a spokesperson for specific subjects, as detailed in paragraph 3.67.

6.56 The first suggestion is consistent with similar arrangements for public bodies such as university governing councils. The EOC's experience following the resignation of Mr Michael WONG underlines the importance of avoiding a vacuum in leadership that will potentially paralyse the EOC's function. This proposed sharing of responsibilities will also move away from over-reliance on the Chairperson.

6.57 The second suggestion is particularly important for a diverse board like the EOC. It is a further measure to share responsibilities among EOC Members. A spokesperson will enhance public image and achieve unity in diversity. Under normal circumstances, the Chairperson or the Deputy Chairperson should be the spokesperson on key issues. Other Members may also be designated spokesperson for specific topics based on their expertise and experience.

Recognizing the Role of EOC Members

6.58 EOC Members are non-executive members of the governing board. Their basic legal duties and responsibilities towards the EOC should be defined clearly.

6.59 Given the apparent dependence on the EOC Chairperson in the past, some EOC Members might not have fully comprehended their duties and responsibilities as enshrined in the law. Some perceived themselves as advisers rather than non-executive directors of the board. We **recommend** that -

- (a) EOC Members should apprise themselves of their basic legal duties and responsibilities and potential liabilities. These duties should include setting directions, overseeing the organization and monitoring the executive management of the EOC.
- (b) As recommended in the EOC's Organizational Review, the EOC should conduct orientation, familiarization visits, induction and refresher training as well as brainstorming sessions on a regular basis for EOC Members. The training will also enable EOC Members to reflect upon the mission and vision of the EOC, their statutory roles and duties as well as ways to contribute fully to the Commission. Moreover, these sessions will also help cultivate trust, team spirit and harmony among EOC Members from diverse background.
- (c) Whilst the Commission should not interfere with the day-to-day operation of the EOC, chairpersons of the EOC's functional committees should consider taking a more active role in giving guidance, directions and support to the EOC Office. Members should give more support by joining at least one functional committee and participating more actively in public education and community relations activities.
- (d) As mentioned in paragraph 3.68, EOC Members should be apprised of the need to take collective responsibility for the Commission. Once a decision has been made in accordance with proper rules and procedures, EOC Members are expected to support it and protect the corporate identity.

Appointment of EOC Members

6.60 In appointing EOC Members, we **recommend** that the Government should consider those who possess the following attributes -

- (a) supportive of the principles of equal opportunities;
- (b) ready and able to devote time and effort to the work of the EOC; and
- (c) respectable persons who meet a high standard of behaviour
(See paragraphs 6.65 to 6.66).

6.61 We note that the re-appointment of EOC Members whose term exceeded six years in 2004 has aroused some concerns. There were calls for appointing an entirely new board (irrespective of the performance of individual EOC Members) in order to give the EOC a fresh start and a new look.

6.62 In this connection, we applaud EOC Members for their contribution to the EOC during this trying period. EOC Members, who are all volunteers, have to shoulder an exceptionally onerous burden. They have been working diligently in the various reviews undertaken by the EOC.

6.63 There is a lot of wisdom in the so-called “six-year rule” (i.e. a non-official member of an advisory or statutory body should not serve more than six years in any one capacity). Whilst these rules are intended to be guiding principles, they are honoured as good practices that should apply unless there are overriding considerations to the contrary. We **recommend** that the six-year rule should be followed in considering the next round of re-appointments.

6.64 To avoid a bunching effect and to enhance the continuity of the Commission, we **recommend** that the term of appointment of EOC Members should be staggered in such a way that the term of no more than one-half of the Members will expire in the same year.

Behaviour of the Governing Board

6.65 As highlighted in HKICPA's Basic Framework, good corporate governance is not only founded on systems and processes but also dependent upon the individuals that implement them. Various studies⁴⁷ identified key personal qualities expected of people taking up senior positions in public service. These qualities, referred to as the "Seven Principles of Public Life" are Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. Details are at **Annex 7**. They underline the importance for members of the governing board to observe the highest standards of conduct and serve as role models for those within the organization.

6.66 To maintain public confidence in the EOC and to preserve its dignity and standing, we **recommend** that the EOC should consider promulgating a code of ethical conduct for its members and staff to ensure that they will, at all times, observe the highest standards of conduct and integrity. This could involve adapting or simply adopting an existing code. There should be mechanisms for recognizing and dealing with conflicts of interest (as mentioned in paragraph 2.58). We also **recommend** that the Government should consider these principles in making appointments to the EOC.

Openness, Transparency and Communication

6.67 Openness and transparency are fundamental principles of good corporate governance⁴⁸. The lack of transparency may engender suspicions and speculations in the community, within the Commission and among the EOC staff, undermining the credibility and efficiency of the EOC. There have been increasing calls for transparency. As highlighted in the EOC's recent Organizational Review report, some concerned groups have requested the EOC to hold open meetings and allow documents to be fully accessible. Having regard to the EOC's Organizational Review Report and HKICPA's Basic Framework, we **recommend** that -

⁴⁷ In the field of public sector corporate governance, the Committee on Standards in Public Life ("Nolan Committee"), which was established in the United Kingdom in 1994, has identified the key personal qualities required of governing board members as well as senior management of public sector bodies. Other works include the report issued by the International Federation of Accountants (IFAC) entitled "*Governance in the Public Sector: A Governing Body Perspective*". HKICPA has drawn on the IFAC study in preparing the "Basic Framework".

⁴⁸ The report of the Cadbury Committee has identified three commonly accepted fundamental principles of good governance. They are – Openness, Integrity and Accountability.

- (a) the EOC should make an explicit commitment to openness and transparency in all of its main activities, subject only to the need to preserve confidentiality in those specific circumstances where it is proper and appropriate to do so.
- (b) The EOC may consider implementing the recommendation of the Organizational Review report to reinstate the practice of conducting a press conference after each EOC meeting to enhance the communication with the media.
- (c) The EOC may consider implementing the recommendation of the Organizational Review report to release the confirmed minutes of the EOC meetings on the Internet for access by members of the public.
- (d) At the Commission level, the EOC must ensure that relevant and sufficient information must be provided to EOC Members in a timely manner to facilitate discussion and decision-making.
- (e) As recommended in the EOC's HRM Review, the EOC management should consider consulting staff members so as to identify the most effective means to improve the communication within the EOC Office and between EOC Members and the EOC staff. The HRM Review notes that the lack of communication is common across all levels in the EOC.

6.68 Specifically, consideration should be given to -

- (a) making available information on significant areas of policy and practice to all the staff, such as procurement, recruitment, complaints handling and training; and
- (b) putting in place procedures for employees to voice their concerns or complaints about maladministration, breaches of the law or ethical concerns, in a supportive environment where they will be protected from reprisals. These should include clear channels for raising concerns with line management up to the CEO, the Chairperson and governing board members.

Efficient and Effective Performance

6.69 The EOC needs power, resources and people to perform its functions in a fair, effective and efficient manner. As far as resources are concerned, we note that the EOC has accumulated a healthy surplus. We are unaware of any suggestions of insufficient resources for the smooth operation of the EOC. To enable the EOC to deliver the results that meet public expectations, the EOC needs to strengthen its performance measurement and its human resources.

Performance Management

6.70 Whilst recognizing that the EOC's performance is generally considered effective, the EOC's Organizational Review recommends among other things that, in the spirit of continuous improvement, the EOC should -

- (a) review the service standards and targets in the current performance pledge to ensure quality service;
- (b) develop a strategic corporate plan for a three to five year term to provide a framework for respective functional division/unit to develop their annual work plan; and
- (c) draw up a more structured self-evaluation plan, including conducting a regular and structured survey, say every three years, on the public perception of the EOC's work and customer satisfaction.

6.71 We support these recommendations and **recommend** that the EOC should implement these proposals as soon as possible.

6.72 Over the years, the EOC has conducted various reviews to improve the EOC's performance of its core functions. Two major studies on the EOC's complaint handling work and related matters were conducted by two external consultants and the Centre for Comparative and Public Law of the Faculty of Law, University of Hong Kong respectively over the past few years. The recent Organizational Review also suggests measures to enhance the EOC's performance in public education, training, research and legal assistance. We **recommend** that the EOC should follow up on the recommendations and implement them as soon as possible.

Human Resources

6.73 The EOC delivers its services for people and by people. The efficient operation of the EOC hinges on the availability of a strong, dedicated and capable team of staff members and a sound human resource management (HRM) system. The appointment and termination of the appointment of Mr Patrick YU as Director (Operations) unveiled room for improvement in the HRM policies and procedures. The various allegations against the EOC over the years also reflected internal discontent in certain quarters. Against this background, the EOC conducted the HRM Review in 2004. We **recommend** that the EOC should implement the recommendations as soon as possible.

6.74 As mentioned in Chapter 5, we appreciate that the EOC staff, particularly those in the Operations Division, have to face intense pressure. Their clients have invariably tried alternative means but failed before they approach the EOC Office. They may be frustrated, angry and hostile. On the other hand, the respondents do not believe that they have breached the law and are therefore equally dissatisfied. The sentiment can easily be transferred to the complaint officers. Settlement is never pleasing to either party. The EOC is not an easy environment to work in. We **recommend** that the EOC should further improve its human resources policies to give more recognition and provide more support and training to its staff.

6.75 As mentioned in the HRM Review, we note that the EOC staff have diverse background and there are small circles and sub-culture within the EOC. This phenomenon is not desirable in a people-oriented organization dedicated to embracing diversity and promoting conciliation. We **recommend** that the EOC management should, with external assistance where appropriate, take active steps to cultivate a forward-looking, positive and harmonious working environment by improving staff morale and staff relations.

6.76 Looking into the future, we **recommend** that -

- (a) The EOC should improve its staff performance management system, cultivate a merit-based culture and give sufficient warnings and signals to under-performed staff so that the eventual decision regarding their termination or non-renewal will not be taken by surprise.
- (b) As mentioned in the HRM Review, the EOC should reaffirm the importance of the commitment to equal opportunities as a

core competency for staff at all levels. It should recruit and retain staff who subscribe to the belief of equal opportunities. It should provide comprehensive induction programme and regular staff training in this respect.

- (c) The EOC should improve its grievance handling system.
- (d) The EOC should enhance its skills in managing the exit of staff. As recommended in the HRM Review, it should provide proper training on staff counseling, disciplinary actions and termination of employees.
- (e) The EOC should ensure that its HRM policies and practices are fair and transparent.
- (f) The EOC should encourage the staff to strengthen the social ties by such means as forming staff associations and arranging social gatherings.

Accountability

6.77 As a public organization, the EOC must reaffirm its commitment to be accountable to the community. We **recommend** that the EOC should continue to demonstrate its accountability by -

- (a) furnishing an annual report, a statement of accounts and the auditor's report on the statement to the Chief Secretary for Administration who shall cause the same to be tabled in LegCo;
- (b) subjecting itself to the scrutiny of the Director of Audit as to whether it has complied with the principle of economy, efficiency and effectiveness in the use of its resources; and
- (c) complying with the subvention guidelines and submitting regular reports.

Equal Opportunities Tribunal

6.78 We note a proposal to establish an Equal Opportunities Tribunal to provide a relatively inexpensive and user-friendly alternative dispute resolution mechanism in the area of equal opportunities. We understand that a Working Group composing of Members and staff of the EOC, members of the Judiciary and other relevant parties is formed to study this proposal. We **recommend** that relevant authorities should continue to explore the proposal with a view to identifying the best way to promote and protect equal opportunities.

Clear Positioning and Public Perception

6.79 In addition to strengthening the EOC's governance, the EOC should also address some longer-term issues. The EOC should have a clear positioning which should be communicated to the public.

Scope of the EOC's Work

6.80 For a young organization like the EOC, its top priority should be to establish a good track record and to develop itself into an institution of excellence. It is advisable to set priorities and map out medium to long term plans. We are pleased to note that the EOC has taken the initiative to conduct the Organizational Review. At the EOC meeting on 2 December 2004, it endorsed a revised set of vision, mission and core values as recommended in the Organizational Review. Please see **Annex 6**. To enhance public understanding of the role and functions of the EOC, we **recommend** that the EOC should publicize its vision, mission and core values as well as the scope of its responsibilities.

6.81 We further **recommend** that -

- (a) The EOC should consider adopting a focused approach by consolidating itself and seeking to excel in its current statutory functions in terms of depth and quality of work.
- (b) In anticipation of the possibility of expanding the EOC's portfolio to cover legislation against racial discrimination⁴⁹, the EOC should work closely with the Government in putting in place a sound framework for implementation.

Impartiality of the EOC

6.82 The EOC is a "regulator" in enforcing legislation through warnings or prosecution. It is also a "mediator" when handling complaints between two private parties. Last but not least, it is an "advocate" in promoting equal opportunities through education and publicity. Role conflict is a natural outcome of the EOC's multi-faceted functions. There is no firewall between these functions (nor should

⁴⁹ In the consultation paper on "*Legislating against Racial Discrimination*" issued by the HAB in September 2004, it was proposed that the EOC should be the body responsible for implementing the proposed legislation against racial discrimination.

there be) and it is not always easy to differentiate these roles. It is understandable that there is a lingering sense of uncertainty even among some of the EOC staff and Members as to whether and when they should be an “advocate” or a neutral party.

6.83 Whilst some people expect the EOC to be their “advocate” and champion their cause, there is a risk that the EOC may undermine its credibility if it is biased in handling complaints. To many people, the EOC should be an honest broker balancing the interests of different sectors of the community. The EOC should serve as a bridge through which different interest groups could communicate their concerns and settle their differences, firstly through amicable means and, failing that, through legal channels. It is suggested that the EOC Commission should discuss and clearly define the meaning of the duty of impartiality⁵⁰, having regard to international practices and the local circumstances. We support this suggestion and we **recommend** that the EOC should consider preparing (and publicizing on its website and in other materials) an explicit policy statement⁵¹ on its interpretation of “impartiality”. We are pleased to note that the EOC’s recent Organizational Review also makes similar recommendations.

Conciliation

6.84 At the operational level, some complainants are disappointed at (i) the EOC’s approach to investigation and conciliation (which, in their view, places too much of a burden on individual complainants); (ii) the very nature of conciliation and the absence of a “judgment”; and (iii) the neutral role played by the EOC officers and the apparent hesitation or even reluctance to advise complainants on the strengths and weaknesses of their complaints.

⁵⁰ Please refer to the conference paper mentioned in Footnote 34.

⁵¹ In the case of the Australian Human Rights and Equal Opportunities Commission (HREOC), the considered view, having regard to the Australian situation, was to adopt a more proactive approach. The Commission published the following statement on its website (http://www.hreoc.gov.au/complaints_information/publications/alternative.html) – “HREOC is of the view that power differentials between parties in the context of anti-discrimination and human rights disputes must be considered and addressed if the process is to be just and fair and that intervention to enable a fair and just process is central to the achievement of fair and just outcomes. The Commission’s legislation supports the positive intervention of the conciliator to ensure that a party is not significantly disadvantaged in proceedings and to assist the parties to participate on equal terms. Ensuring a fair and just process requires moving beyond notions of formal equality as clearly treating unequals equally will exacerbate rather than ameliorate party disadvantage.....This interventionist approach to enable substantive equality of process does not constitute a breach of conciliator impartiality or neutrality. Neutrality can be seen to involve not only a requirement to be aware of and restrain from imposing personal bias on the process but also a requirement to act positively to maintain equality of process.”

6.85 There are obvious merits in encouraging conciliation, particularly if our ultimate objective is to cultivate a harmonious society. We **recommend** that the EOC should review whether and what more assistance should and could be provided to the complainants to facilitate conciliation and mediation without compromising its “impartial” roles. The proposal to set up an Equal Opportunities Tribunal is also a possible channel to handle cases that cannot be resolved by conciliation.

Public Education and Promotion

6.86 Some people expect the EOC to devote more efforts to education and publicity and less on litigation, so as to promote a harmonious society that embraces diversity. We **recommend** that -

- (a) The EOC should reaffirm that its ultimate objective is to promote social harmony through changing the community’s attitude towards equal opportunities. To this end, it should intensify its research, publicity, public education and training functions whilst continuing its established policy to initiate litigation where appropriate.
- (b) The EOC should also reaffirm its positioning as a “people-oriented” organization in which people always come first. Anti-discrimination legislation is its servant rather than its master in the pursuit of a pluralistic, tolerant and harmonious society. The EOC should seek to cultivate a society where people embrace equal opportunities not for fear of breaching the law but because of their genuine respect for equal opportunities. Furthermore, the EOC should promote equal opportunities to the general public using easily understandable language.

A Model Institution

6.87 As its name implies, the EOC is looked upon as an icon of fairness, symbol of integrity and defender of equality. As in the case of the Judiciary, the EOC is expected to adjudicate disputes between citizens and the Government as well as between citizens. The EOC should be fair and impartial in discharging its duties. The EOC has to strike a balance between allowing flexibility and ensuring due processes. On balance, we **recommend** that, in the interest of developing the EOC as a credible institution with sound principles and processes -

- (a) The EOC should, where appropriate and feasible, formalize its rules and procedures in human resource management, particularly in its recruitment, appointment, retirement and termination of staff, paying due regard to best practices in the public and private sectors. The EOC should promulgate these guidelines and provide training to staff at all levels to ensure compliance.
- (b) The EOC should formulate clearer guidelines and procedures on the conduct of the business of the Commission and its Committees.
- (c) The EOC should, with the assistance of external agencies such as the Independent Commission Against Corruption (ICAC) and Privacy Commission where appropriate, review and improve the system for the storage and handling of confidential documents and personal data.

Conclusion

6.88 In making the above recommendations, we have been guided by what happened, and by the views and the vision conveyed to us through written submissions and interviews during the inquiry. We hope that these recommendations will provide some food for thought for the Government and the EOC in its endeavour to restore the credibility of the EOC. Some of our suggestions are short-term measures that can be implemented shortly whereas others may entail careful examination of the policy and legal implications. We trust the relevant authorities will examine them, alongside the various reviews undertaken by the EOC in recent years.

