

**C i v i l
R i g h t s
f o r S e x u a l
D i v e r s i t i e s**

**Submission to the 20-Aug-2001
Subcommittee on Discrimination on the Ground of Sexual Orientation
Home Affairs Panel
Legislative Council**

**by Civil Rights for Sexual Diversities
on 11-Aug-2001**

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I am writing in response to the papers presented by the HKSAR Government with respect to discrimination based on sexual orientation in Hong Kong in the above-captioned Subcommittee of the Home Affairs Panel. I urge the Legco and the HKSAR government to enact Equal Opportunities Bill against Discrimination based on Sexual Orientation.

In response to the papers submitted by the HKSAR government, I would like to further the discussion in the following areas:

Domestic Partnership: Both the health and housing issues are related to the accessibility of Registration of Domestic Partnership by same-sex life partners. While details of how Domestic Partnership may resolve the health and housing issues will be discussed in subsequent sections, I would like to hereby introduce some of the models that have worked for other municipalities in the world. First of all, I would like to stress that Domestic Partners' rights and responsibilities, once the registration of which is formalized, are limited to only the municipal / city level. They have no bearings whatsoever on the federal / national level. Domestic Partnership Registration mostly allow rights granted to same-sex partners in a limited number of areas. The following are a list of countries / cities that have recognized and registered same-sex partners:

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	<i>Countries / Cities where same-sex partners have access to:</i>					
	<i>Marriage</i>	<i>Domestic Partnership Protection</i>	<i>Limited Domestic Partnership Protection</i>	<i>Partners Protection being proposed</i>	<i>Immigration Rights</i>	<i>Employment Benefits</i>
Europe	Germany, the Netherlands	Denmark, France, Hungary, Iceland, Norway, Spain (Catalonia), Sweden	Austria, Belgium+, Czech Republic+, Portugal+, Spain (except Catalonia)+, U.K.	Finland, Italy, Latvia, Luxembourg, Slovenia, Switzerland	Belgium, Denmark, Finland, Greece, Iceland, Norway, the Netherlands, Sweden, UK	Most countries where same-sex partners have access to marriage or domestic partnership.
Americas		Canada (Quebec), Greenland.	Brazil+, Columbia, US (Vermont, Hawaii)		Canada	US (3,000+ companies), Canada, Argentina
Asia-Pacific			Australia (Federal, Capital Territory, New South Wales).	Australia (Queensland, South Australia, Tasmania, Victoria), Japan, New Zealand, Taiwan.	Australia, New Zealand	New Zealand
Middle East						Israel
Africa					Namibia, South Africa	South Africa

Those with '+' sign are countries / cities where the existing legislation is being amended to cater for higher level of protection for same-sex partners.

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The pre-requisites of the Domestic Partnership may include some or all of the following conditions for each of the two parties to the Partnership:

- 1) Not be a party of another Partnership or Marriage.
- 2) Be of same sex therefore is excluded from Cap 181 Marriage Ordinance
- 3) Not be close members of a family
- 4) Not be of age lower than 16 (as stipulated for legal marriage in Cap 181 Sec 13)
- 5) Not be of non compos mentis (unsound mind)

The Partnership entails both rights and responsibilities. Partners shall support each other to the same degree and in the same manner as prescribed by legal marriages. [1]The law of domestic relations, including annulment, separation and divorce, family, child custody and support, and property division and maintenance shall apply to parties to a domestic partnership.

Rights and responsibilities related to debts, property, liabilities, taxation and a number of other areas applicable to married spouses shall be applicable to also same-sex partners. Existing legislations shall be taken into account according to, but not limited to, the following list:

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Cap	Ordinances
3	JURY ORDINANCE
4	HIGH COURT ORDINANCE
6	BANKRUPTCY ORDINANCE
7	LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE
8	EVIDENCE ORDINANCE
22	FATAL ACCIDENTS ORDINANCE
23	LAW AMENDMENT AND REFORM (CONSOLIDATION) ORDINANCE
24	SECURITIES AND FUTURES COMMISSION ORDINANCE
30	WILLS ORDINANCE
32	COMPANIES ORDINANCE
57	EMPLOYMENT ORDINANCE
73	INTESTATES' ESTATES ORDINANCE
76	RECOGNITION OF TRUSTS ORDINANCE
78	CONTRACTS FOR EMPLOYMENT OUTSIDE HONG KONG ORDINANCE
79	SURVIVING SPOUSES' AND CHILDREN'S PENSIONS ORDINANCE
89	PENSIONS ORDINANCE
99	PENSION BENEFITS ORDINANCE
106	TELECOMMUNICATIONS ORDINANCE
111	ESTATE DUTY ORDINANCE
112	INLAND REVENUE ORDINANCE
115	IMMIGRATION ORDINANCE
117	STAMP DUTY ORDINANCE
136	MENTAL HEALTH ORDINANCE
155	BANKING ORDINANCE
178	MARRIAGE REFORM ORDINANCE
179	MATRIMONIAL CAUSES ORDINANCE
181	MARRIAGE ORDINANCE
182	MARRIED PERSONS STATUS ORDINANCE
184	LEGITIMACY ORDINANCE
192	MATRIMONIAL PROCEEDINGS AND PROPERTY ORDINANCE
200	CRIMES ORDINANCE
201	PREVENTION OF BRIBERY ORDINANCE
202	VOLUNTEER AND NAVAL VOLUNTEER PENSIONS ORDINANCE
254	AUXILIARY FORCES PAY AND ALLOWANCES ORDINANCE

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257	PERPETUITIES AND ACCUMULATIONS ORDINANCE
278	MEDICAL (THERAPY, EDUCATION AND RESEARCH) ORDINANCE
282	EMPLOYEES' COMPENSATION ORDINANCE
290	TAX RESERVE CERTIFICATES ORDINANCE
305	PENSIONS (INCREASE) ORDINANCE
330	MOTOR VEHICLES (FIRST REGISTRATION TAX) ORDINANCE
354	WASTE DISPOSAL ORDINANCE
360	PNEUMOCONIOSIS (COMPENSATION) ORDINANCE
382	LEGISLATIVE COUNCIL (POWERS AND PRIVILEGES) ORDINANCE
386	HONG KONG WAR MEMORIAL PENSIONS ORDINANCE
395	SECURITIES (INSIDER DEALING) ORDINANCE
396	SECURITIES (DISCLOSURE OF INTERESTS) ORDINANCE
401	PENSION BENEFITS (JUDICIAL OFFICERS) ORDINANCE
426	OCCUPATIONAL RETIREMENT SCHEMES ORDINANCE
451	LEVERAGED FOREIGN EXCHANGE TRADING ORDINANCE
465	HUMAN ORGAN TRANSPLANT ORDINANCE
480	SEX DISCRIMINATION ORDINANCE
485	MANDATORY PROVIDENT FUND SCHEMES ORDINANCE
487	DISABILITY DISCRIMINATION ORDINANCE
499	ENVIRONMENTAL IMPACT ASSESSMENT ORDINANCE
500	CARRIAGE BY AIR ORDINANCE
501	ENDURING POWERS OF ATTORNEY ORDINANCE
504	CORONERS ORDINANCE
511	ESTATE AGENTS ORDINANCE
514	PATENTS ORDINANCE
548	MERCHANT SHIPPING (LOCAL VESSELS) ORDINANCE
562	BROADCASTING ORDINANCE
1035	MATILDA AND WAR MEMORIAL HOSPITAL ORDINANCE
2402	PROMULGATION OF NATIONAL LAWS
2403	PROMULGATION OF NATIONAL LAWS
2501	RULES OF PROCEDURE OF THE LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

The more significant laws are highlighted in **bold**.

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Our organization believes that a Registration for Domestic Partnership Program is the best model for the HKSAR government to provide equal opportunities to same-sex partners in terms of their right to civil unions as stipulated by the Bill of Rights (Article 1, *Entitlement to rights without distinction*; Article 19, *Rights in respect of marriage and family*; Article 22, *Equality before and equal protection of law*). We do not think, under current social, political and legal circumstances of Hong Kong, Same-sex Marriage is an appropriate model for the protection of same-sex partners. Neither do we believe that De-facto Spouse Protection is reasonably practical given the technical difficulties in proving two persons' de-facto spouse and/or co-habitation relationship.

Housing Issues: With regards to the issues our organization raised in the July subcommittee meeting concerning inaccessibility of same-sex partners to public housing policies and housing loans schemes, we believe with the introduction of Domestic Partnership Registration, the Housing Department may easily validate the applicants' family relationship. The same-sex partners may present to the Housing Department their Domestic Partners Certificate for any application of public housing and/or housing loans. The Domestic Partnership Registration shall also facilitate co-owning properties by same-sex partners and the subsequent mortgage loans arrangement, debts, dissolution of ownership, inheritance and resolution in case of annulment and/or separation of the partnership.

Health Issues: We are surprised by the response by the Health and Welfare Bureau in regards to the implied Power of Attorney as provided by law to direct family members (next-of-kin) in case of the patient being incapacitated (unconscious or mentally ill) in terms of the right to make medical decisions and visitation. The Professional Code and Conduct as published by the Medical Council of Hong Kong to regulate the medical practitioners in Hong Kong clearly states in Part III of the document that consent needs to be sought from the patient and in case of the incapacitated patient, consent shall be sought from the family. As of now, there is no provision for same-sex spouse to be considered 'family'. With the introduction of the Domestic Partnership Programme, same-sex spouse may act as attorney to the patient in terms of making medical decisions.

Age of Consent: Our organization is shocked by the response made by the Security Bureau with regards to the "justification for allowing a difference in treatment in making the male partner [in buggery] (as contrast to the female partner) under 21 also criminally liable in a consensual buggery is to ... [guard the other partner] against possible blackmail by the underaged partner. What makes it

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more likely that a male partner in buggery would blackmail than a female partner? What makes it justifiable for a female under 21 to be not deterred from blackmailing an adult male?

A female under 21 committing buggery and a male under 21 committing buggery are subject to entirely different treatment to the detriment of the male where he stands the chance of being prosecuted. We urge the Sub-committee to investigate whether sections 118C and 118D have already violated the Sex Discrimination Ordinance (SDO) where people of different gender are being treated differently, given all other circumstances are the same (such as both underaged, both committed buggery, in a consensual manner, in a private place). The detriment is the possibility of being prosecuted and subsequently having a criminal record which may impact greatly on a young person in terms of employment and emigration.

Besides, Hong Kong is the only place in the world that maintains the highest age of consent for consensual male-to-male sex and at the same time maintains the second widest discrepancy between ages of consent for homosexual and heterosexual sex.

Hong Kong led the world by having the highest age of consent for consensual private male-to-male sex at the age of 21, accompanied by Burkina Faso and Western Australia. In terms of degree of discrimination in ages of consent between homosexual and heterosexual sex, Hong Kong follows right behind Burkina Faso, having 5 years of discrepancy (21 and 16 respectively).

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Countries with discriminatory ages of consent

	Country	Lesbians	Age for Gay Men	Heterosexuals
Africa	Burkina Faso	21	21	13
	South Africa	19	19	16
Asia/Pacific	Australia Capital Terr	16	18	16
	Australia: Northen Terr	16	18	16
	Australia: Queensland	16	16/18*	16
	Australia: Western Australia	16	21	16
	Hong Kong	16	21	16
	Europe	Albania	18	18
Austria		14	18	14
Belarus (age limits only for vaginal/anal/oral sex)		14	18	14
Bulgaria		18	18	14
Cyprus		None	18	13 or 16
Estonia (age limits only for vaginal and homosexual anal intercourse)		None	16	14
Faroe Islands		18	18	15
Gibraltar		16	18	16
Hungary		18	18	14
Ireland		15	17	17/15 see Ireland page for details
Liechtenstein		14	18	14
Lithuania (age limits only for vaginal/anal/oral sex)		14	18	14
Moldova		16	18 for anal sex, otherwise 16	16
Portugal		16	16	14
Romania		18	18	14 for females, no age for males
Yugoslavia (Serbia, Kosovo, Vojvodina)		14	18 for anal intercourse, otherwise 14	14
United Kingdom	16 (17 in Northern Ireland)	18	16 (17 in Northern Ireland)	
The Americas	Bahamas	18	18	16
	Bermuda	16	18	16
	Canada	14	18 for anal intercourse, 14 otherwise	14 (but 18 for anal intercourse)
	Chile	18	18	??
	Surinam	18	18	16[2]

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There are already 54 countries / states having the same ages of consent for both heterosexual and homosexual sex: Africa (5), Asia-Pacific (11), Europe (30), Middle East (1) and The Americas (7). The interesting thing to note is that the US has different ages of consent for each state. China does not even have a law prohibiting sex between men nor between women.

Countries known to have equal ages of consent

Africa	Central African Republic, Chad, Congo, Egypt, Gabon
Asia/Pacific	Australia: Capital Territory, Australia: South Australia, Australia: Tasmania, Australia: Victoria, Cambodia, New Zealand, Philippines, South Korea, Taiwan, Thailand, Vietnam
Europe	Azerbaijan, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Georgia, Germany, Greece, Iceland, Italy, Latvia, Luxembourg, Malta, Monaco, Montenegro, Netherlands, Norway, Poland, Russia, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine
Middle East	Israel
The Americas	Argentina, Brazil, Colombia, Costa Rica, Dominican Republic, Netherlands Antilles, Paraguay

While a nineteen-year-old man, for example, is mature enough to be company director, listed company president and candidate for LegCo election, he is, as reflected in our laws, not mature enough to decide what he wants to do and who to do with in bed.

We urge the HKSAR government to seriously review the existing discriminatory laws concerning male-to-male consensual sex (i.e. Sections 118C and 118D) and bring the age of consent down to an equal level of 16 as is heterosexual sex.

Regards,

Roddy Shaw
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