

**LegCo Panel on Home Affairs
Subcommittee to Study Discrimination
on the Ground of Sexual Orientation**

Purpose

This paper responds to the comments made by groups concerned and LegCo Members at the LegCo Panel on Home Affairs meeting held on 12 December 2000.

Employment

2. All employees, irrespective of their sexual orientation, are protected under the Employment Ordinance and enjoy the same employment rights and benefits under the Ordinance. If a homosexual employee is dismissed not for his/her own fault, he/she may, like other employees, apply for termination compensations under the Employment Ordinance (subject to the fulfilment of the relevant eligibility criteria) as well as other compensations under the employment contract. These termination compensations include, inter alia, outstanding wages, wages in lieu of notice (if any), pro rata annual leave pay, severance payment/long service payment and legal remedies for unreasonable dismissal (including reinstatement and re-engagement subject to the mutual consent of the employer and employee and the award of terminal payments).

3. Employees deprived of their benefits and protection under the Employment Ordinance or the employment contract may seek assistance from and lodge claims for compensation with the Labour Department which will provide free conciliation service to assist the employees and their employers in reaching a mutually acceptable agreement. Should conciliation fails, the

employees concerned may submit the case for follow up action by the Labour Tribunal or Minor Employment Claims Adjudication Board depending on the claim amount. It should be pointed out that all employees may seek assistance by the above mechanism to safeguard their lawful rights and benefits protected under the Basic Law, irrespective of their sexual orientation.

4. As an employer, the Government will adhere to the principle of equal opportunities in relation to employment. It will neither take sexual orientation into consideration nor require information on the sexual orientation of individual candidates when recruiting, training, promoting and transferring employees.

Housing Policy

5. In order to best allocate our limited resources to those who need them most, applicants for public rental housing must meet a set of eligibility criteria. The total income and net asset value of the applicant and his/her household members must not exceed the limits. Besides, the applicant family must not own domestic property and must meet the required length of residence in Hong Kong. In fact, the sexual orientation of applicants is not taken into account and applicants are not required to reveal their sexual orientation when they apply. The groups were of the opinion that homosexual couples could apply for public rental housing as “other household” applicants. However, the current housing policy only permits applicants with legal family status to be put on the waiting list. Applicants are required to produce legal documentary proof, such as marriage certificate and birth certificate, to prove their family relationships. As homosexual couples at present cannot produce documents recognized by the Hong Kong Special Administrative Region Government to prove their marital status, they cannot apply for public rental housing as a family.

Adoption of Children

6. The Social Welfare Department, in arranging adoption placement for children, gives paramount consideration to the best interests and needs of the child. Our legislation does not prohibit homosexuals from making application for adoption. Adoption and family counselling services are provided by the Social Welfare Department on a non-discriminatory basis, irrespective of the users' age, health, family status or sexual orientation, etc.

Film Censorship

7. The Film Censorship Authority (FCA) (i.e. the Commissioner for Television and Entertainment Licensing) has consistently applied the same set of criteria in approving all advertising materials relating to films. According to section 15K of the Film Censorship Ordinance (FCO) which was amended in 1995, advertising materials of Category III films are to be submitted to the FCA for approval. This requirement aims at providing better protection to children and young persons, and to prevent them from exposure to Category III advertising materials which are offensive to public morality, decency and ordinary good taste while under display in public places. A group claimed that as the poster for the film "Better than Chocolate" which depicted two naked embracing lesbians was not approved but those for "Pink Lady" and "Naked Killer" were approved, the FCA was biased and discriminatory. This is really a misunderstanding. Before 1995, there was no legal requirement for advertising materials of Category III films to be submitted to the FCA for approval. The posters for the films "Pink Lady" and "Naked Killer", which were screened before 1995, were not subject to the control of the FCO. As "Better than Chocolate" was a Category III film screened after 1995, its poster was subject to the control of the amended FCO. Since 1995, the FCA has consistently applied the same set of censorship guidelines under the amended FCO when considering advertising materials for Category III films submitted

for approval. The same set of guidelines is used for all Category III films, including those about homosexuality and heterosexuality.

Guidelines for Blood Donation

8. The Hong Kong Red Cross Blood Transfusion Service (BTS) respects the rights of individuals in the community. It also has the responsibility to ensure the safety of blood products in order to protect blood recipients. In line with international practices, the BTS seeks to defer persons of certain behaviours which carry a relatively higher risk of transmitting infectious viruses when formulating the guidelines for blood donation. Such 'high-risk' behaviours include a man having sex with another man, anyone having injected oneself with drugs and commercial sex workers. Examples of the deferral criteria for male having sex with another male adopted by various territories (including Hong Kong) are at Annex. At the two international conferences of the International Federation of Red Cross held in June 1999 and July 2000 in Switzerland and Austria respectively, the Hong Kong Red Cross representative raised for discussion the issue of whether certain deferral criteria might be construed as discriminatory against certain 'at risk' groups of potential donors. It was agreed that the current deferral criteria used by the BTS were necessary and should be continued. The international blood donation guidelines are subject to constant review. The Hong Kong Red Cross will continue to reflect the community's concerns and suggestions on appropriate occasions.

Legal Age of Consent to Heterosexual Acts

9. A group believes it is unfair to homosexuals as Section 118C of the Crimes Ordinance (CO) stipulates that it is unlawful for a man to commit buggery with another man under the age of 21. In fact, section 118D of the CO also prohibits a man from committing buggery with a girl under the age of 21. Indeed, the offence of buggery applies to both heterosexual and

homosexual activities and the maximum penalty for both kinds of acts are the same, i.e. life imprisonment. The legislative provisions are not discriminatory against homosexuals.

10. The legal age of consent to heterosexual acts is 16 years and that to buggery is 21. Such a difference in the age of consent is based on the need to protect persons aged over 16 and under 21 (regardless of their sex or sexual orientation). Their consent to buggery is not legally recognised under the existing law.

Homosexual Marriage

11. Some groups comment that since homosexual couples cannot acquire legal marital status, the couples cannot enjoy the same treatment as monogamous couples in the allocation of public housing, inheritance of spouse's estate and other social welfare services targeted at legitimate couples. In view of that, they propose legislative amendments be made to recognize homosexual marriage or accord legal status to homosexual pairs. Yet, this is an issue concerning our marriage system which involves socio-moral values and family ethics. As such, the issue should be left for the community to judge. Nowadays, society upholds monogamous marriage and our legislation only reflects the consensus reached by the community on the issue.

Legislation against Discrimination on the Ground of Sexual Orientation

12. In Hong Kong, the Hong Kong Bill of Rights Ordinance, binding the Government and all public authorities, has already provided sufficient safeguard against discrimination on the ground of sexual orientation. As to the proposed enactment of legislation in this respect to govern individual relationships in the community, the Government deems that it should be very careful in dealing with the matter. Some groups suggest that Hong Kong

should follow foreign countries in introducing legislation to outlaw discrimination on the ground of sexual orientation. According to the information supplied by these groups, however, we note that even in countries which legislate against discrimination on the ground of sexual orientation, the issue is addressed in different ways. For example, some countries only legislate at the local or district level, and the coverages of their legislation vary. This shows the importance of modifying the measures under different circumstances. We think that we should take into account our own circumstances and not copy blindly the practices of foreign countries. Since social attitude towards sexual orientation is closely related to value judgement, ethical norms and the institution of marriage and family systems, any new legislation in that respect will not operate effectively if it does not agree with the general social climate. If the community does not recognise the values which a certain piece of legislation represents, the relevant legislation can hardly operate and may even generate counter effect. Since 1996 when the Government conducted its consultation exercise on discrimination on the ground of sexual orientation, it has maintained an open mind and kept the situation in view. The Government does not see a major change in social attitude towards the need to legislate in that area. Therefore, we will continue to strengthen our publicity and education in a bid to eliminate misunderstandings and prejudices on the ground of sexual orientation, and promote public awareness and knowledge on the issue.

Sex Education

13. Schools in Hong Kong enjoy high flexibility in the selection and planning of curriculum. In recent years, many schools under the continued encouragement of the Education Department have been strengthening sex education in their curriculum. Although the schools would select topics of sex education based on the interest and needs of their students, the Education Department recommends the schools to develop their sex education

programmes with reference to the syllabuses and Sex Education Guidelines prepared by the Curriculum Development Council so as to enable the students to acquire appropriate understanding of different sexual orientations. Homosexual groups that would like to be involved in devising sex education courses on homosexuality may contact the Education Department. In fact, the Education Department has consulted a number of homosexual groups for their invaluable comments in the course of compiling and implementing the Sex Education Guidelines.

Training of Teachers and Professionals

14. In the recent sex education courses for teachers organized by the Education Department, experienced doctors were invited to give talks and lead discussions on the topic of homosexuality for the teachers to discuss in depth and clarify their values on homosexuality with those in attendance. It is believed that through talks, discussions and sharing of experiences on special topics, the teachers will develop their skills in dealing with homosexuality.

15. Regarding training for social workers/welfare workers to deal with homosexuality, pre-service training and in-service training, such as courses on human sexuality, body politics as well as working with people with different sexual orientation, are provided respectively by universities and the Social Welfare Department. About 14 such courses/ seminars/ workshops were conducted in the past two years for over 700 participants. In addition, there are on-the-job training programmes organized for clinical psychologists and social workers of the Social Welfare Department and non-governmental organisations to enhance their understanding and counselling skills towards people with different sexual orientation.

16. Medical students are taught on issues related to homosexuality in their undergraduate training modules such as behavioural and social science and

human sexuality. Staff of the Department of Health are provided with continuous education on how to treat their patients with care and sensitivity. They are regularly reminded to serve clients equally regardless of sex, age, ethnicity and sexual orientation.

Complaint Handling System

17. Some groups are of the view that the lack of a complaint handling system constitutes one of the reasons for the small number of discrimination complaints on the ground of sexual orientation. However, people of different sexual orientations may lodge complaints to the relevant authorities direct when they feel being unequally treated. They may also approach the Home Affairs Bureau (HAB) which will gather the cases and refer them to relevant departments for necessary follow-up actions. HAB will, based on the complaint information, devise publicity and promotional strategies to tackle the discrimination.

Publicity and Education

18. The Government is committed to promoting equal opportunities for all (including people of different sexual orientations) and is opposed to all forms of discrimination on the ground of sexual orientation. To drive home the message of equal opportunities on sexual orientation, HAB has produced various publicity materials for distribution through the District Offices, Labour Department offices and other channels to the relevant organisations, schools and the public. These materials include pamphlets to clarify public misunderstanding of the homosexuals, a “Code of Practice Against Discrimination in Employment on the Ground of Sexual Orientation” to promote self-regulation by employers and employees, a storybook entitled “The Young Detectives Club” for students and a comic book entitled “Perspectives of Equal Opportunities on Sexual Orientation”.

19. To facilitate various publicity and educational efforts for the promotion of equal opportunities among people of different sexual orientations, HAB allocated a funding of \$1.38 million in the years 1998-99 to 2000-01 for sponsoring 29 projects specifically to promote equal opportunities in sexual orientation. These include publications, educational materials, exhibitions, webpage production, volunteers training, counselling programmes for homosexuals, drama and school activities on sex education. These provide the organisations concerned with different channels through which they can drive home the message of equal opportunities in sexual orientation to different sectors of the community.

20. The participation of private organisations in promoting equal opportunities in sexual orientation is very important. The Equal Opportunities (Racial and Sexual Orientation) Funding Scheme invites interested groups to apply for subsidy in the middle of each year. In order to encourage more applications from various groups for funding meaningful activities to promote equal opportunities in sexual orientation and to increase the transparency of the Scheme, HAB has, apart from using traditional means of posters and letters, planned to publicize the Scheme through its homepage at (www.info.gov.hk/hab). Information on the details of the Scheme, names of successful recipients and projects to be held will be uploaded for public information.

21. To enable the general public to have a better understanding and knowledge of equal opportunities in sexual orientation and to eliminate any possible misunderstanding, the Government would also like the media to make an accurate and comprehensive coverage on the issue. In 2000, Chi Heng Foundation, a homosexual group, was granted subsidy under the Scheme for organising the First Media Award on Tong Zhi Coverage. It produced good effects on the news media and encouraged them to report the issue in a fair and

accurate manner. We hope the groups concerned will hold similar meaningful activities in future.

22. Furthermore, in order to help homosexual groups to carry out their work plans, the Government will assist them in seeking funding from charitable organisations. Over the past few years, homosexual groups like Horizons, The Satsanga, Queer Sisters, Hong Kong Ten Percent Club, Freeman and Over the Rainbow have obtained sponsorship from charitable organisations with the assistance of HAB.

Conclusion

23. We have spelt out the views of the Government on many occasions that we are opposed to all forms of discrimination. To tackle the problem of discrimination on the ground of sexual orientation, we believe it is more advisable to foster mutual respect among people so as to remove any misunderstanding or bias. We will continue our efforts in public education and hope that the homosexual groups will play an active role in participating in and organizing promotional activities so that the principle of equality and the concept of mutual respect and tolerance can be nurtured in the community.

Home Affairs Bureau

March 2001

Examples of blood donation
Deferral criterion for male having sex with another male

	Australia	Singapore	UK	US	HK
Male having sex with another male	Have you had male to male sexual activity in the last 5 years? *	<u>Male Donors:</u> Have you ever had sex with another male? *	You should NEVER give blood if you are a man who has had sex with other men, even “safe sex” using a condom.	<u>Male Donors:</u> Have you had sex with another male, even once since 1977? *	You should never give blood if : you are a man who had sex with another man.

* Note: If the answer is “yes”, blood donation will be deferred.