

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

Purpose

This paper responds to the comments made by deputations concerned at the LegCo Panel on Home Affairs Subcommittee to Study Discrimination on the Ground of Sexual Orientation on 20 August 2001 and Members' enquiries at the Subcommittee meeting on 29 November 2001.

Employment

2. Some groups comment that the Employment Ordinance (Section 9) does not provide for sufficient protection for employees of a different sexual orientation. The current policy is that all employees, regardless of other sexual orientation, should enjoy equal employment protection under the Employment Ordinance. Thus, employees, regardless of their sexual orientation, may seek redress if they are deprived of their benefits and protection under the Employment Ordinance or the employment contract. Aggrieved employees can approach and lodge their claims at the Labour Department which will provide free conciliation service to assist the employees and their employers in resolving their disputes and reaching a mutually acceptable settlement. Should conciliation fail, the employees concerned can seek adjudication at the Labour Tribunal or the Minor Employment Claims Adjudication Board depending on the claim amount. All employees may seek assistance by the above mechanism to safeguard their lawful rights irrespective of their sexual orientation.

Housing

3. Some groups enquire whether the de-facto spouse relationship of homosexual couples can be recognized for the purpose of public housing application. Under the current policy of the Housing

Authority, family applicants for public housing are required to produce relevant documentary proof such as marriage certificate and birth certificate to prove their family relationship. As it is technically not feasible to objectively verify the de-facto spouse relationship, de-facto spouses cannot be accepted for the purpose of application for housing unit as a family, be they homosexual or heterosexual, taking into account the need for prudence in the use of public resources and practical operational requirements.

4. Some groups enquire whether homosexual couples who have obtained marriage certificates in a foreign country are eligible for applying for public housing unit as a family in Hong Kong. The present position is that marriage certificates issued by overseas countries for homosexual couples are not legally recognized in Hong Kong. Therefore, homosexual couples with such marriage certificates are not eligible for applying for public housing unit as a family in Hong Kong.

Medical Benefit

5. Some groups suggest that the Government should allow civil servants to nominate certain specified persons who will be eligible for medical and dental benefits provided by the Government. Under this approach, any persons unrelated to the civil servants may be nominated. This approach would, however, deviate from the Government's current policy that civil service medical and dental benefits are only extended to nuclear family members. Such a policy is necessary in order to ensure effective use of limited public resources. There is no sufficient justification, from the perspective of prudent financial management, to extend the scope of the existing eligibility criteria which will continue to be guided by the prevailing marriage system in Hong Kong on whom may be recognised as a legal spouse.

6. Some groups enquire whether the Hospital Authority (HA) will consider a homosexual partner of a patient as "a person close to the patient" for the purpose of obtaining consent for a treatment. As a general rule, medical treatment should not proceed without the consent of the patient. Consent can only be given by the patient himself (if the patient is an adult), the patient's guardian appointed by the Guardianship Board

under the Mental Health Ordinance (if the patient is an adult and mentally incompetent) or the patient's parent (if the patient is a child). That said, treatment can be given in an emergency situation if the patient is unable to give consent and there is no one who can give consent legally on his behalf, provided that such treatment is in the best interest of the patient. In such a situation, the HA will seek support from persons who are close to the patient (including the patient's homosexual partner).

Blood Donation

7. Some groups comment that both homosexuals and heterosexuals are vulnerable to HIV infection if they have buggery and homosexuals may not necessarily have buggery. People who have many sexual partners and those who perform unsafe sex with sex workers are also high-risk groups. Therefore, these groups suggest that it is these two groups of people who should be refused from donating blood rather than homosexuals.

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. Such "high-risk" behaviours include having sex by a man with another man, injecting oneself with drugs and engaging in commercial sex activities. Potential donors will also be advised not to give blood if they have multiple sex partners or perform unsafe sex.

9. Like most Western countries, the HIV prevalence rate in homosexual men is still relatively high in Hong Kong. A recent study conducted by Prof. James Chin, consultant of the World Health Organization, also concluded that male to male sex is still the most prevailing mode of HIV transmission in Hong Kong.

10. The Hospital Authority will continue to monitor international trends, changes and scientific developments in blood safety and will review the donor screening and deferral system regularly with a

view to ensuring the supply of safe blood to patients in Hong Kong.

Homosexual Marriage

11. Some groups comment that homosexual couples should be given the right to lawful marriage. This is an issue that concerns the institution of marriage. Nowadays, society still upholds a monogamous marriage system and the laws reflect such socio-moral values and family ethics of the community.

Crimes Ordinance

12. Some groups comment that the different age of consent requirements for homosexual and heterosexual intercourse constitutes discrimination on the ground of sexual orientation. However, in view of the need to protect young male persons under the age of 21 from being lured into homosexual intercourse before they may be able to make an informed consent, the age of consent for homosexual intercourse was set at 21 after careful deliberations before the enactment of the Crimes (Amendment) Bill 1991 in July 1991. The Crimes Ordinance has been consistent with the Bill of Rights Ordinance. There is no question of discrimination against homosexuals on the ground of sexual orientation.

13. Hitherto, the Administration has not received widespread demands from society for a need to review the age of consent for either homosexual intercourse or heterosexual intercourse. Despite a lower age of consent for homosexual intercourse in some other countries, it may not be advisable to compare Hong Kong with these countries directly as every country or place is distinguished by its own cultural background, social attitudes and moral standards. It would be inappropriate for Hong Kong to follow other countries without due regard to the local circumstances.

14. Some groups suggest that the legal liability for a male partner under the age of 21 having buggery with another male constitutes discrimination against the male. Section 118C(b) of the Crimes Ordinance provides that a male person under the age of 21 may also be liable to prosecution for buggery offence. The aim of this section is to

provide deterrent effect against blackmail by the male person under 21. This provision would normally not be invoked unless there is an aggravating factor such as blackmail. This is because homosexual activities are still sensitive and controversial. For privacy reasons, homosexuals may not wish to reveal their sexual orientation publicly, e.g. in court or during police investigation. Hence, they may fall prey to blackmail by the younger male person after engaging in buggery. Although such cases may be sporadic, the deterrent effect is acknowledged.

15. Further, some groups comment that Section 118J of the Crimes Ordinance constitutes discrimination on the ground of sexual orientation. Section 118J of the Crime Ordinance states that a man who commits an act of gross indecency with another man otherwise than in private shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for two years. While homosexual intercourse by two male adults above the age of 21 in private has been decriminalised since 1991, it is maintained that gross indecency committed by a man with another man *otherwise than in private* should remain a criminal offence. This provision reflects the general social attitudes and moral standards of the Hong Kong community. There is no question of discrimination against homosexuals on the ground of sexual orientation.

Education

16. Some groups enquire whether social workers are given trainings in handling cases involving homosexuals. In this regard, Social Welfare Department (SWD) and local universities have provided social workers with pre-service training such as courses on human sexuality and body politics as well as in-service training including workshops on adolescents sexuality, working with people with different sexual orientation and so on. In 2000-01, SWD organized six such training programmes for over 300 social workers and four workshops would be organized for about 200 social workers in 2001-02. Furthermore, SWD has sponsored staff to attend relevant courses offered by local universities.

17. Some groups ask if the Education Department (ED) has provided schools with any guidelines on handling cases involving homosexuals. The ED has been and is committed to eliminating all forms of discrimination, including homosexuality, in schools. The Department also issued in 1999 a circular to all schools drawing their attention to their responsibilities in this regard and has been monitoring the situation closely.

18. Members enquire whether schools have the discretion to teach what concepts and topics covered in the Guidelines on Sex Education (the Guidelines) issued by the ED. The Guidelines has been issued to schools to provide a framework for schools to develop school-based education programme based on their school aims, the needs of their students and resources available. The issue of sexuality and sexual orientation have been included in the content of the Guidelines. To support its implementation in schools, teaching resources and regular teacher training courses have been provided. Since 1994, about 700 secondary school teachers and 427 primary schools teachers had attended a three-day and two-day sex education courses respectively.

19. As regards members' request for a survey on concepts and topics relating to sexual orientation taught at schools, the ED will conduct a survey on implementation of values education including sex education in 2002-2003 school year. The survey will reveal information about the situation in schools and the problems they encounter in promoting these values related curriculum. The cultivation of respect for others is a core value to be promoted under the current curriculum reform which will be conducive to achieving the aim for eliminating discrimination of any nature. Teacher enhancement programmes and teaching resources will be provided to schools to strengthen its promotion.