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LegCo Panel on Home Affairs

**Report of the Subcommittee to study
discrimination on the ground of sexual orientation**

Purpose

This paper reports on the deliberations of the Subcommittee to study discrimination on the ground of sexual orientation.

Background

2. The Panel on Home Affairs discussed discrimination on the ground of sexual orientation with concern organisations and the Administration at its meeting on 12 December 2000. The Panel received submissions from 17 organisations and individuals and met with 15 of them at the meeting. Members of the Panel decided at the meeting to set up a subcommittee to follow up the issue of discrimination on the ground of sexual orientation.

The Subcommittee

3. The Subcommittee comprises four members of the Panel and Hon Cyd HO Sau-lan was elected Chairman. The membership of the Subcommittee is in **Appendix I**. The Subcommittee held three meetings between January and June 2001 and met with representatives from the Equal Opportunities Commission (EOC) at one of the meetings.

Deliberations of the Subcommittee

4. The Subcommittee further considered the views expressed by members of the Panel and concern organisations at the meeting of the Panel held on 12 December 2000. The Subcommittee also discussed the Administration's response to these views. A gist of the Subcommittee's deliberations is summarised in the following paragraphs.

Blood donation

5. Members note that the Hong Kong Red Cross Blood Transfusion Service (BTS) will preclude persons of certain behaviours which carry a relatively higher risk of transmitting infectious viruses from donating blood. A prospective male donor will be advised in the guidelines for blood donation not to donate blood if he has sex with another man. Some homosexual groups consider that BTS is prejudiced against male homosexuals and the guidelines contain discriminatory element against male homosexuals.

6. BTS has explained that it has the responsibility to ensure the safety of blood products in order to prevent the transmission of communicable diseases through blood transfusion. Based on medical opinions, international communities on blood transfusion services consider it necessary to preclude a man who has sex with another man from donating blood. The necessity to adopt such a criterion has been re-confirmed at the two international conferences of the International Federation of Red Cross held in June 1999 and July 2000 respectively. BTS has stressed that pre-donation screening is not intended to discriminate against certain groups of persons, irrespective of whether they are heterosexual, bisexual or homosexual.

7. Members note that it is the EOC's recommendation that donor screening should be based on objectively described "high-risk" sexual behaviours and not perceived "high-risk" groups. EOC has also informed members that there is a rising trend in HIV infection from heterosexual exposure. In Hong Kong, the cumulative total of HIV/AIDS cases from heterosexual contact had increased from 46.1% in 1996 to 58.9% in 2000. Correspondingly, transmission through homosexual contact had decreased from 28.3% in 1996 to 19.5% in 2000, and transmission through bisexual contact had reduced from 9.3% in 1996 to about 5% in 2000. Screening to target a group instead of behaviour does not secure blood safety because the awareness of the heterosexuals with high-risk sexual behaviours is not called for.

8. Members have suggested BTS to consider carrying out donor screening with emphasis on "high-risk" sexual behaviours rather than on "high-risk" groups. BTS has pointed out that they have considered various alternatives including the EOC's recommendation. However, it is difficult for prospective donors to be certain whether they have unprotected sex during the past 12 months or a longer period.

9. Members note that BTS has designed a new blood donation registration form to review the suitability of a prospective donor to donate blood. Questions such as "have you had male-to male sexual activity?", "have you had a history of drug abuse or ever injected yourself with drugs?" and "have you ever been given money for sex?" are still included in the registration form. BTS has explained that it is clearly stated in the new blood donation registration form that a "yes" answer to any of the questions will not necessarily result in "deferral of blood donation" i.e. the prospective donor being asked not to donate blood for the time being. The nursing staff will decide whether the prospective donor can donate blood.

10. Members have expressed concern as to whether the new blood donation registration form is consistent with the Hong Kong Bill of Rights. BTS has confirmed that according to the legal opinion obtained by the Hospital Authority, the new registration form is consistent with the Hong Kong Bill of Rights. The Department of Justice has also confirmed that the new registration form is consistent with the Hong Kong Bill of Rights. Members also note that it is the Administration's view that if the registration form, including all the questions therein, has been designed on objective considerations to elicit information from prospective donors with a view to ensuring the safety of blood products, it will not be inconsistent with the Hong Kong Bill of Rights.

11. Members appreciate that BTS has the responsibility to ensure the safety of blood products. However, members consider that BTS should strive to refine the wording used in the new blood donation registration form to eliminate any possible discriminatory element against male homosexuals.

Film censorship

12. Some members have queried whether the Film Censorship Authority has applied discriminative criteria in considering advertising materials for films on homosexual relationship submitted for approval. They have pointed out that the poster for the film on lesbian "Better than chocolate" which depicts two naked embracing females was not approved, but those for the films "Lady in heat", "Conspiracy", "Love in the river" and "Naked Killer 3" which depict same degree of, if not more, nudity were approved.

13. The Administration has explained that section 15K of the Film Censorship Ordinance as amended in 1995 requires advertising materials of Category III films to be submitted to the Film Censorship Authority for approval. As the film "Better than chocolate" and "Lady in heat" are Category III films, their posters are subject to the control of the amended Ordinance. The Administration has stressed that the Film Censorship Authority does not prejudice against homosexuality as it has approved the poster for the Category III film "Lady in heat" for display in public places even though the film is about homosexuality. As regards the films "Conspiracy", "Love in the river" and "Naked Killer 3", as they are Category IIB films, there is no need for relevant advertising materials to be submitted to the Film Censorship Authority for approval. Chances might be that there are more nudity and violence in poster for Category II film, the Authority would not take action until and unless a complaint is filed from the public.

14. Members note with concern that only advertising materials of Category III films are subject to the regulation of the Film Censorship Ordinance; there is a loophole in the legislation, poster for Category II film can be displayed to the public regardless of its obscenity and indecency. And apparently, there is disparity between the criteria of the Film Censorship Authority and that of the public. Members are of

the view that the Administration should review control measures to establish consistent criteria for advertising materials for Category IIB and Category III films.

Application of the offences of homosexual and heterosexual buggery

15. Members note that sections 118C and 118D of the Crimes Ordinance stipulate that the legal age of consent to homosexual and heterosexual buggery is 21. Under existing legislative provisions, if a man commits buggery with another man under the age of 21, both persons are guilty of the offence of buggery. On the other hand, if a man commits buggery with a girl under the age of 21, only the man is held liable, but not the girl. Members have expressed concern as to whether the different treatment constitutes discrimination against male homosexuals.

16. Members note that EOC is of the view that imposing differential treatment for the offence of buggery on the basis of sex may not be consistent with the Hong Kong Bill of Rights, as the rights recognised under the Hong Kong Bill of Rights shall be rights for all without any distinction of any kind or status.

17. The Administration has explained that such differential treatment derives from the community's acceptance of the need to render protection to women or girls from sexual exploitation and corruption. The Administration has also pointed out that when the Crimes (Amendment) Bill 1991, which included the provisions in question, was debated in the Legislative Council, Members at that time accepted that homosexual and heterosexual conduct should not always be equated.

18. Members are of the view that as the Crimes (Amendment) Bill 1991 was enacted before the Hong Kong Bill of Rights came into operation, the Administration should have reviewed whether sections 118C and 118D of the Crimes Ordinance are consistent with the Hong Kong Bill of Rights. Members have requested the Administration to seek legal advice from the Department of Justice on the matter.

Way forward

19. The Subcommittee will continue to discuss discrimination on the ground of sexual orientation in specific areas e.g. housing and medical services with the Administration at its future meetings.

20. Members of the Panel are invited to note the deliberations of the Subcommittee.

LegCo Panel on Home Affairs

**Subcommittee to study
discrimination on the ground of sexual orientation**

Membership list

Chairman	Hon Cyd HO Sau-lan
Members	Hon Emily LAU Wai-hing, JP Hon CHOY So-yuk Hon Albert CHAN Wai-yip (Total : 4 Members)
Clerk	Miss Flora TAI Yin-ping
Legal Adviser	Mr Stephen LAM Ping-man
Date	10 January 2001