

**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**

Members of LegCo Panel on Home Affairs

c/o Mr Stanley MA
Clerk to Home Affairs Panel
8 Jackson Road
Central, Hong Kong

Dear Madam/Sir,

**Response to the Legco Home Affairs Panel's Paper on
Discrimination on the Ground of Sexual Orientation**

We understand that the issue of Discrimination on the Ground of Sexual Orientation has been raised in the LegCo Panel on Home Affairs. First of all, we welcome the concern your good selves and the Home Affairs Bureau have on the issue. We and the Tongzhi Community (the term referring to the vast community of Lesbians, Gays, Bisexuals, Transgendered people and Transvestites, LGBT, in Hong Kong) are very much concerned about the government's stand on the improvement of the availability of Equal Opportunities to the Tongzhi Community.

In reading the government's paper to be presented to the Panel on Home Affairs, we become dubious on the government's commitment to Equal Opportunities For All and especially to people with different sexual orientation and expression.

Concerning the paper, we have a few questions for the Bureau:

- What are the projects that the HAB have supported using the HK\$1.38M fund? Can the Bureau publish a list of projects and organizations that have used the fund so that future bids to such fund do not overlap in effort and focus? How orchestrated and co-ordinated are these efforts? Are they addressing the same issues or are they addressing the diverse issues having direct impact on lives of the Tongzhi community? What are the project deliverables, how are they delivered and to whom? Can they be shared, published, distributed on a larger basis reaching a larger crowd? Can the bureau publish any tangible project deliverables as we imagine that they must have been a product of valuable input from those conducting the project? While a lot of publications sponsored by the Bureau and published by Tongzhi organizations are widely available to the Tongzhi community, little was seen from other projects and organizations, i.e. those relating to the HK\$830,000 fund available to non-Tongzhi organizations.
- We are glad to see that there has been a well-written Code of Practice against

Discrimination in Employment on the Ground of Sexual Orientation DRAFTED in 1996-97. How was that circulated, communicated, promoted and implemented among employers, human resources organizations, employers federations, chambers of commerce, etc.? How many employers did that reach? To what extent was that implemented by employers? What difficulties are faced by corporates, SMEs and multi-national firms? What measures have been taken to overcome those difficulties? How about schools, educational institutes, religious-group operated social service agencies, schools, universities, C&Y centers, elderly centers, counseling centers, etc.? Is the Code of Practice sent, communicated, explained and adapted to these organizations at all? What reviews have the government done over the 3-4 years? If not, when will the government do so?

- *"Complaints of discrimination on the ground of sexual orientation have been few and far between in the past three to four years. There have not been any indications that discrimination of that sort is prevalent or frequent."* What are the mechanisms in place in the government's structure to receive, handle and mediate such "complaints of discrimination"? What obstacles are there, in the opinion of the Bureau, for members of the Tongzhi community to come forward to complain? What mechanisms are there to protect the rights of complainant when he/she files a complaint? Is he/she protected with concealment of his/her identity? What are the procedures and policies the government has formulated for such assurance? The handling of a case often requires knowledge in various policy areas (such as taxation, housing, education, employment, etc.), legal counseling, legal aid, case administration, mediation (with employers and/or service providers) and social service support. Are the government officials equipped with such knowledge, training and resources? What is the protection in place to guarantee that one's job, career, use of service, housing, rental and other rights are not being put at risk when one raises a complaint.
- The Equal Opportunities Commission, which seems to be the most appropriate organization to receive complaints, IS NOT AUTHORISED to handle such cases as there is NO LEGISLATION (EOC only has the power to mediate as provided in SDO, DDO and FSDO) against discrimination on the ground of sexual orientation.
- *"In the 1996 consultation, an overwhelming majority was strongly opposed to legislation in respect of sexual orientation."* The principle of "Equal Opportunities For All" operates from the ground of whether a person SHALL BE treated equally, but not from the basis whether the majority public WANTS them to be treated equally. The latter assumption, which is very dangerous and has grave consequences, would basically marginalize minorities in the society, such as disabled people, overseas domestic helpers, low-income people, tongzhi and racial minorities. Equal Opportunities legislation is a protective measure and it shall not operate on a "Majority Rules" basis.
- The Consultation regarding Discrimination on the Ground of Sexual Orientation was done more than four and a half years ago. Is the Bureau ready to review on the situation now, based on Equal Opportunities principles, but not "Majority Rules" principle? What are the measurements of the effectiveness of the Bureau's non-legislative measures? How effective are they? What change in opinion and awareness have the Bureau effected in the past 4 years? What's the Bureau's plan toward greater improvement? What is the Bureau's solution for discriminatory dismissal in work, refusal of services (medical, social, educational, etc.), discontinuation of apartment rental agreements, discriminatory

employment against members of the Tongzhi community?

- Some government-funded or subsidized social service agencies, schools and hospitals are still practicing Aversive Therapy that claims to "cure" what the American Psychiatric Association has ruled in 1970's as NOT A MENTAL DISEASE - homosexuality and bisexuality. While no cases have been reported, with substantial medical and/or psychiatric evidence that one's sexual orientation can be "cured", we would doubt the legitimacy of such therapies and the professionalism of medical and social service professionals engaging in such practice.
- What is the Diversity Awareness Training existing within the government catering for people of different sexual diversities? How much training do government officials receive in dealing with sexual diversities? These government officials include educators, medical professionals, social workers, police, immigration officers, taxation officers, service providers, housing officials, etc. How well are they equipped to cater for the needs of people with different sexual diversities?
- It was shown that the different sexual orientations have been included in the Guidelines for Sex Education as one of the 8 topics to be selected by individual schools and teachers as a Sex Education subject to be taught. Has the ED or the Bureau surveyed the actual selection of such topic in the Sex Education programs in schools? What percentage of school Sex Education programs has covered such topic? In 1994, 1997 and 2000, various Tongzhi Groups, 10% club, Queer Sisters and Chi Heng Foundation, respectively sent out invitations to offer secondary schools for a guest speech session on the different sexual orientations. Schools either did not respond to those invitations or decline to them. What are the ED's or the Bureau's plan on improving the Sex Education with regards to sexual orientation?
- In universities where thousands of future professionals are trained, how does the Bureau see the problem of the teaching of the different sexual orientations in subjects that normally carry a negative connotation such as Abnormal Psychology, Social Deviance and Social Problems? Is the Bureau aware of the extent to which such misconceptions and prejudice prevail in tertiary institutes? What is the extent to which such misconception undermines the quality of health, social service and educational professionals in our society? To what extent does the propagation of such misconception in tertiary institutes nullify or defeat the intention the Bureau has in educating the public?
- On the report with regards to Housing Policies, the paper totally missed out on the availability of Housing Loans, Benefits and rights to same-sex couples. While one may argue that such rights and benefits are not available to unmarried de-facto heterosexual couples either, we would very much like to counter that argument since heterosexual couples have a choice to marry but same-sex couples do not. Neither does the paper address the situation in which same-sex couples got their marriage status or de-facto spouse status from overseas such as Canada (Quebec province), Denmark, France, Hungary, Iceland, the Netherlands, Norway, Spain (Catalonia and Aragon) and Sweden. Is the marriage / spouse status from such countries fully recognized in Hong Kong?
- The paper seemed to have missed out on the development of anti-discrimination laws in Europe and the numerous rulings of the European Court of Human Rights of cases

concerning sexual orientation discrimination. Of the 23 countries / states worldwide which has already enacted federal level and/or state level anti-discrimination or equal opportunities laws (see Appendix for details), the report just mentioned 4 of them. Among those overseen by the Bureau were 13 European countries which have concrete and comprehensive legislation protecting the civil rights of people of sexual diversity, ranging from anti-harassment, anti-vilification, employment non-discrimination, use of services, extension of spouse rights, adoption rights, etc. The Bureau seemed to have been left out in the period between 1996 - 2000 of the 11 countries which have introduced new laws regarding anti-discrimination on the ground of sexual diversities and the major developments in Europe.

- The HKSAR government has been urged by the UN in a couple of hearings for the implementation of ICCPR (see the UN Report on Hong Kong's ICCPR Implementation, Nov-1999, ref **CCPR/C/79/Add.117**) and ICESCR in HK to protect equal rights for the Tongzhi community. What has been the government's response to the recommendations made in those UN hearings? Is there a plan where the HKSAR government intend to respond to the rising call from the international community for Hong Kong to have legal protection for the Tongzhi community? If so, when?

In view of all the above issues and concerns, we would like to make the following recommendations for the Bureau and the Panel to consider:

- Set up a time table for the legislation of anti-discrimination laws for sexual orientation. Review all laws that violate are discriminatory. Legislation is a basis on which victims of discrimination can come forward and report right infringement cases. legislation is also an enabling tools for more effective education and policy change.
- Provide funding for a comprehensive and independent study to investigate a number of issues relating to discrimination on the grounds of sexual orientation. The study, amongst other issues, should consider the experiences of discrimination and harassment faced by members of the Tonghzi community, issues associated with the "invisibility" of their sexuality and identity, general community attitudes and identify social and legal priorities for this community. Four and a half years have passed since the 1996 consultation, it is high time that the government reviewed the severity of civil rights infringement towards the Tongzhi community. Such studies need to be overseen by a committee consisting of members from the Bureau, other related government departments and the Tongzhi community.
- Empower the Equal Opportunities Commission (EOC) to receive, handle, mediate and provide legal aid for cases of civil rights infringement of people with different sexual diversities. Allow for EOC's charter to pro-actively investigate cases of discrimination based on sexual orientation.
- Urge IRD to grant Tongzhi organizations Charitable Status and the Bureau to provide funding in an orchestrated manner to make sure money is spent addressing the diverse needs of the Tongzhi community. Make sure that government funding does not support projects and initiatives that are against equal opportunities principles and against the well-being of the Tongzhi community and the community at large. Such projects and initiatives include those that invalidate same-sex affection, practice aversive therapies, condemn homosexuality, encourage hatred towards non-heterosexual expressions,

tolerate violence and harassment towards the Tongzhi Community, defame and stigmatize the Tongzhi community, provide incorrect AIDS education, etc.

- Provide funding for NGO's organizing Sexual Diversity Awareness Training (SDAT) to universities, tertiary institutes, training centers of related professions, government officials and employers. Provide sexual orientation-neutral materials in all sex education courses.

We would very much welcome the Bureau and the Home Affairs Panel members' in attending to the issues related to the well being of the Tongzhi community. By way of the Clerk to the Home Affairs Panel, please kindly arrange the time for our organization to present our views in the 12-Dec Home Affairs Panel Meeting. We are looking forward to a thorough discussion in the meeting.

Regards,

Civil Rights for Sexual Diversities

Anti-discrimination Laws enacted around the world

Summary of countries / states that have anti-discrimination and equal opportunities laws enacted

| Region | No. of countries / state | Nations / States |
|--------------|--------------------------|---|
| Europe | 13 | Austria, Denmark, Finland, France, Iceland, Ireland, Luxembourg, The Netherlands, Norway, Slovenia, Spain, Sweden and Switzerland |
| Americas | 6 | Argentina, Brazil, Canada, Ecuador, Mexico, the United States |
| Asia Pacific | 3 | Australia, Fiji and New Zealand |
| Africa | 1 | South Africa |

Details of anti-discrimination and equal opportunities laws by nation / state

| Nation / State | Anti-discrimination / Equal Opportunity Laws in force | Enactment Dates |
|----------------|---|----------------------|
| Europe | | |
| Austria | It has no national anti-discrimination laws on sexual orientation, yet the city of Bludenz has a non-discrimination declaration. | |
| Denmark | In 1987 the law forbidding discrimination on grounds of race, etc. was changed also to include sexual orientation, so that it now reads: "Any person who within commercial or other activity declines to treat an individual on the same basis as others on ground of racial origin, skin colour, national or ethnic origin, beliefs or sexual orientation, shall be punishable by fines, short-term detention or imprisonment for up to six month." However this law did not cover the private labour market, and it was not until 1996 that Denmark introduced a law on anti-discrimination in the private labour market. In 1987 the anti-vilification law of the penal code (Art. 266 b) was amended to include sexual orientation: "Persons who publicly or deliberately disseminate statements or other reports by which any group of people are threatened, ridiculed or degraded on account of their racial origin, skin colour, national or ethnic origin, beliefs or sexual orientation, are liable to fines, short-term detention or imprisonment for up to two years." | 1987 1996 1987 |

| Nation / State | Anti-discrimination / Equal Opportunity Laws in force | Enactment Dates |
|----------------|---|-----------------|
| Finland | <p>"The Constitution includes "sexual orientation" as a non-discrimination category. The Constitution (17.7.1919/ 94 as amended by Law 17.7.1995/969) was changed in 1995.</p> <p>Section 5: All persons shall be equal before the law. No-one shall, without acceptable grounds, be afforded a different status on account of sex, age, origin, language, religion, conviction, opinion, state of health, disability or any other reason related to the person.</p> <p>"Sexual orientation" is mentioned in the text accompanying the government bill as an example of "other reason related to the person". It is also emphasised that not all instances of prohibition of discrimination are mentioned in the Constitution itself and the list is not to be deemed exhaustive. No-one has denied that "sexual orientation" is included in this non-discrimination category."</p> <p>The Finnish penal code (19.12.1889/39 as amended by Law 21.4.1995/578) includes the following general anti-discrimination clause:</p> <p>"Chapter 11: War Crimes and Offences against Humanity [21 April 1995/578]</p> <p>Section 9: Discrimination [21 April 1995/578]: Any person who, without a good reason, in exercising their trade or profession, serving the general public, exercising official authority or other public function, or arranging public events or meetings:</p> <ol style="list-style-type: none"> 1.refuses someone service in accordance with the general practice; 2.refuses someone entry to the event or meeting or ejects them; or 3.places someone in an unequal or an essentially inferior position <p>on grounds of race, national or ethnic origin, colour, language, gender, age, family ties, sexual preference, state of health, religion, political orientation, political or industrial activity or another comparable circumstance shall be sentenced, unless the act is punishable as industrial discrimination, for discrimination to a fine or to up to six months' imprisonment."</p> | 1995 |
| France | <p>"Any discrimination on the basis of sexual orientation in employment or service, public or private, has been prohibited since 1985 (Art. 225-1,2 of the penal code)."</p> | 1985 |
| Iceland | <p>"The Icelandic parliament, Althingi, has late 1996 voted for a change of the anti-discrimination clause of the country's penal code. According to 1996's annual report of Samtoekin '78, the Icelandic gay and lesbian organization, the bill includes two provisions dealing with discrimination against homosexuals. Firstly, a provision that criminalizes every action that humiliates, degrades, slanders, defames and so on an individual or a group because of sexual orientation. Secondly, the bill makes it punishable to deny someone service or merchandise because of sexual orientation."</p> | 1996 |

| Nation / State | Anti-discrimination / Equal Opportunity Laws in force | Enactment Dates |
|-----------------|---|-------------------------------------|
| Ireland | <p>The Health Insurance Act (1994) provides that premiums payable under health insurance contracts shall not be varied by reference to the age, sex, or sexual orientation or suffering or prospective suffering of a person from a chronic disease, illness or other medical condition of a particular kind.</p> <p>In 1996 the Report of the Government's Constitution Review Group recommended that a new anti-discrimination section be added to the Constitution and that the categories specified should include sexual orientation. Currently (1998) there are no concrete plans for implementation of this recommendation.</p> <p>The Peace or Belfast Agreement between the British and Irish Governments and the political parties in Northern Ireland contains very strong commitments to equality, parity of esteem for the diversity of identities and traditions, the protection and vindication of the human rights of all. Both Governments are committed to introducing human rights and equality legislation and agencies. The legislation in the republic will include sexual orientation and at least some of the measures to be introduced in the North will explicitly include sexual orientation.</p> <p>The Prohibition of Incitement to Hatred Act (1989) created a number of offences which outlaw the stirring up of hatred against groups of persons on the grounds of certain characteristics including sexual orientation. It is an offence to publish or distribute material or use words or behaviour if such, "are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred".</p> | <p>1994</p> <p>1998</p> <p>1989</p> |
| Luxembourg | <p>"The Luxembourg Parliament voted on 17 June 1997, a Bill to "Fight against Racism, Revisionism and other Discriminations". Articles 444 and 453 to 457 of the Luxembourg Penal Code provide now for prison sentences from one month to two years and/or fines from 10.001 to 1 million Francs for incitement to hatred, discrimination and violence or acts of discrimination against physical persons, a community or corporate body based on "their origin, colour, sex, SEXUAL ORIENTATION, family status, health condition, disability, life-style, political or philosophical convictions, trade union activities, their real or assumed affiliation to a certain ethnic group, nation, race or religion." The sentences provided will be higher by one third (3 months to three years, fine up to 1,500,000 Francs) if the offence is committed by a civil servant. The Bill was voted with great majority (47 votes in favour, no vote against, ten abstentions). The law was signed by the Grand-Duke of Luxembourg on 19 July and came into force, after being published in the "Memorial", the official journal of the Grand-Duchy, on 7 August 1997.</p> | <p>1997</p> |
| The Netherlands | <p>In 1992, criminal protection against discrimination on grounds of homosexuality came into force. Existing articles on racial discrimination had the terms "homosexual and heterosexual orientation" added. As a result, As a result [incitement to hatred, to discrimination and to violence targeted at a group of persons because of their sexual orientation]" became an offence. The same applies to publicly expressed discriminatory remarks and participating in or encouraging discrimination (Articles 137c, d, e and f of the Penal Code). Also banned is discrimination against gays and lesbians by a person in the performance of his/her public function, profession or business (Article 429quarter of the Penal Code).</p> <p>The <u>General Equal Treatment Act</u> came into force in September 1994, after a battle of more than 15 years by the lesbian and gay movement. It prohibits discrimination on grounds of an individual's religion, belief, political conviction, race, sex, heterosexual or homosexual orientation or civil status in the fields of labour, housing, medical care and access to goods and services.</p> | <p>1992</p> <p>1994</p> |

5

| Nation / State | Anti-discrimination / Equal Opportunity Laws in force | Enactment Dates |
|----------------|--|-----------------|
| Norway | <p>In 1981 anti-discrimination provisions were introduced as follows: S.349a of the Penal Code makes it an offence "in business or similar activities" to refuse to give goods or services (on the conditions applicable to others) to a person because of his or her "homosexual inclination, lifestyle, or orientation." The offence can be punished with fines, or with imprisonment of up to six months. These provisions do not cover the private labour market. (PB and QRD website - correspondence Markhus/Buckmire 18 June 1991)</p> <p>In 1981 anti vilification/incitement to hatred provisions were introduced as follows: Under S.135a of the Penal Code it is unlawful "to publicly threaten or deride, or to incite to hatred, persecution or contempt" against a person or group on account of their "homosexual inclination, lifestyle, or orientation." The penalty is a fine, or imprisonment up to a maximum of two years. (PB and QRD website - correspondence Markhus/Buckmire 18 June 1991)</p> | 1981 1981 |
| Slovenia | <p>SLOVENIA PROTECTS GAYS: 22-May-96: "Slovenia's new penal code bans discrimination and special rights based on sexual orientation, activists reported last week. Article 141 states, "He who, on the grounds of nationality, race, color, religion, ethnic background, gender, language, political or other conviction, sexual orientation, material wealth, birth, education, social standing, or any other circumstance, deprives a person of any human right or fundamental freedom, acknowledged by the international community or stated in the Constitution or a law, or restricts such right or freedom to a person, or who on the basis of such discrimination grants a person a special right or privilege, is punished with a fine or prison up to a year." The general non-discrimination clause in the Constitution, article. 14, bans discrimination based on "... any other personal circumstance". This term, according to government opinion (210-03/93-3/4-8, March 16, 95, to Skuc Roza klub, Magnus and L), also includes sexual orientation. (Based on information provided by Ales Pecnik, 17 April 99)</p> | 1996 |
| Spain | <p>SPAIN PROTECTS GAYS NATIONWIDE: 16-Nov-95: "Spain's Congress of Deputies and Senate Nov. 8 banned discrimination based on sexual orientation and created new hate-crime laws. Ratifying a new Penal Code, the legislators declared the right to express one's sexual orientation a fundamental freedom and prohibited sexual-orientation-based discrimination in housing, employment, public services and professional activities. The new code also specifically criminalizes hate and violence against gay individuals and organizations with penalties ranging from six months to four years in prison. "This Penal Code is one of the most advanced in penalizing discrimination based on sexual orientation ... and the first to protect the rights of homosexuals in a Latin Catholic country," said Jordi Petit, co-secretary general of the national organization Coordinador Gai-Lesbiana." (RW/1511)</p> | 1995 |

| Nation / State | Anti-discrimination / Equal Opportunity Laws in force | Enactment Dates |
|----------------|---|-----------------|
| Sweden | <p>In 1987 discrimination against gay men and lesbians was included in the section of the penal code (chapter 16 paragraph 9) which deals with discrimination on grounds of race, etc. Businesses (individuals and companies) are committing an offence if they fail to provide their normal level of service to someone because of his/her homosexuality; this constitutes discrimination. The penalty for illegal discrimination is fine or up to one year's imprisonment. The law also applies to the following categories of staff: employees of businesses, civil servants, organisers of public events and staff at such events.</p> <p>The aim of the law is to guarantee that gay men and lesbians have access to all public areas and be treated in the same way as heterosexuals. It includes public services and places such as trains, ferries, restaurants, cafés, theatres, parks, and churches. The provision applies to every person or company running a commercial business or enterprise, such as building firms, hotels, warehouses, craftsmen, lawyers, or doctors. It also applies to private accommodation agencies, though not to individual lettors. All kinds of public services are also bound by the law, such as health services, social services and the courts.</p> <p>(Björn Sknlander in "Equality for Lesbians and Gay Men")</p> <p>"Swedish Government Appoints Ombudsman for Gay and Lesbian Concerns</p> <p>The Swedish government has appointed an Ombudsman for discrimination against gay men and lesbians at the labour market and at other levels of society. The appointment was announced by cabinet minister Mona Sahlin at RFSL's (The Swedish Federation for Lesbian and Gay Rights) yearly conference this past weekend. The person chosen for the new position is Hans Ytterberg, who is well know to the Swedish gay and lesbian community. He was RFSL chairman from 1988 to 1991, and is co-writer of a book on the legal situation for gays in Sweden. His official title as ombudsman will be HomO.</p> | 1987 |
| Switzerland | <p>SWISS GAYS BATTLE FOR PROTECTIONS: 28-May-97: "Switzerland is updating its constitution to reflect rights established by court rulings but gays are being left out. On April 22, parliament's Constitutional Committee refused to add "sexual orientation" to the proposed new anti-discrimination clause. The gay groups Pink Cross and Swiss Lesbian Organization continue their lobbying and will stage a large protest in Bern, the capital, on May 31." (RW/2784)</p> <p>Especially Art. 8 (Equal Rights) is very important for same gender loving people because Art. 8 paragraph 2 protects everybody from discriminations against her/his origin, race, gender, age, language, social standing, WAY OF LIFE, religion, ideological or political conviction or handicap.</p> <p>Pink Cross (the Swiss Gay Federation), LOS (the Swiss Lesbian Organization) and their individual and group members went all out for including the clause 'sexual orientation' in this article for many years. But the discussion within the parliament has transformed the clause to 'WAY OF LIFE' which strictly includes gays and lesbians. We can be happy today because this clause have been specially added on the demand of the Swiss glbt movement.</p> <p>Pink Cross and LOS will have to fight for adjustments to the law in the future because the law doesn't correspond with the Constitution (By the way: the Swiss law hasn't to correspond with the Swiss Constitution).Marcello Kyser (20 April 1999)</p> | 1997 |

Others

| Nation / State | Anti-discrimination / Equal Opportunity Laws in force | Enactment Dates |
|----------------|---|-----------------|
| Argentina | <p>Buenos Aires "On August 30, 1996, the Statutory Convention of Buenos Aires unanimously approved a measure forbidding discrimination on the basis of gender, age, race, religion, political ideology or sexual orientation, making Buenos Aires the first Spanish-speaking city in Latin America to do so. on September 24th, the city's Statutory Convention passed a clause that repealed the infamous Police Edicts that have enabled police to arbitrarily detain young people, transvestites, gays, lesbians, and prostitutes among other, without any form of outside judicial review.</p> <p>Rosario On December 20th, the Rosario town council adopted an anti-discrimination clause submitted by Colectivo Arco Iris. The clause...reads: "no discrimination [on the basis of] race, ethnicity, gender, sexual orientation, age, religion, ideology, nationality, physical appearance, psychological, social, economic condition, or any other circumstance will be allowed ... The city promotes the removal of any and every type of obstacle that actually restricts equality and freedom, [or] impedes a person's full development and her/his effective participation in the social, political, or economic community life."</p> | 1996 |
| Australia | <p>Australia has in most of its provinces or territories anti-discrimination laws: Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania and Victoria. The only one territory that has not enacted any anti-discrimination laws is that of Western Australia.</p> | 1977-1998 |
| Brazil | <p>1991: "The government in Brazil's 4th large city Salvador has banned discrimination on the grounds of sexual orientation. It is the first town in Latin America to take such a step, according to Grupo Gai da Bahia. (ILGA bulletin 1/91 p 27) Since then many cities have followed." (PB)</p> <p>11-Aug-94: "Seventy-three Brazilian cities and towns, three states and the federal capital district [Brasilia] now protect gays and lesbians from discrimination, reported the Washington Blade. Among them are the cities of Sao Paulo and Rio de Janeiro and the states of Bahia, Sergipe and Mato Grosso. One town of 2,000 people has a gay-rights law." (RW/841)</p> | 1991 1994 |

| Nation / State | Anti-discrimination / Equal Opportunity Laws in force | Enactment Dates |
|----------------|--|-----------------|
| Canada | <p>At the Federal level, Canada has two human rights statutes: the Charter of Rights and Freedoms, which addresses the acts of government, and the Human Rights Act which applies to individuals. Both provide protection from discrimination based on sexual orientation, as follows:</p> <p style="text-align: center;">The Charter of Rights and Freedoms</p> <p style="text-align: center;"><i>Egan v. Canada</i></p> <p>"In Canada, the constitutional provision on equality is found in section 15 (1) of the Charter of Rights and Freedoms, added to the constitution in 1982. It reads:</p> <p>"Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."</p> <p>In the case of Egan v. Canada, [1995] Supreme Court Reports 418, the Supreme Court of Canada unanimously held that the equality clause applied to homosexuals. Discrimination on the basis of sexual orientation was held to be an analogous ground of discrimination, similar in character to the grounds listed in section 15 (1).</p> <p>"The Supreme Court of Canada has unanimously held that the Charter of Rights prohibits discrimination against gays and lesbians. Moreover, a majority of the Supreme Court ruled in Egan v Canada [1995] 2 SCR 513, that legislation which fails to recognize same-sex couples equally constitutes sexual orientation discrimination, in violation of s.15 of the Charter of Rights:</p> <p style="padding-left: 40px;">"Sexual orientation is demonstrated in a person's choice of life partner, whether heterosexual or homosexual. It follows that a lawful relationship which flows from sexual orientation should also be protected. ... The definition of 'spouse' as someone of the opposite sex reinforces the stereotype that homosexuals cannot and do not form lasting, caring, mutually supportive relationships with economic interdependence in the same manner as heterosexual couples. The appellants' relationship vividly demonstrates the error of that approach. The discriminatory impact can hardly be deemed to be trivial when the legislation reinforces prejudicial attitudes based on faulty stereotypes. The effect of the impugned provision is clearly contrary to s.15's aim of protecting human dignity, and therefore the distinction amounts to discrimination on the basis of sexual orientation." "</p> <p style="text-align: center;">(Egale web site)</p> | 1995 1996 |

| Nation / State | Anti-discrimination / Equal Opportunity Laws in force | Enactment Dates |
|----------------|---|-----------------|
| Canada | <p style="text-align: center;"><i>The Human Rights Act</i></p> <p>This Act was amended in 1996 to include sexual orientation:</p> <p style="text-align: center;">"Prohibited grounds of discrimination :</p> <p>3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted." (Full text of amendment at Egale website)</p> <p>"The HRA deals with discrimination in its various forms. These include differential treatment of an individual or a group of individuals, "indirect or de facto" discrimination, as well as harassment. Discriminatory practices covered by the Act include discrimination in the provision of goods, services, facilities or accommodation, and matters related to employment. The Act applies to all federal government departments, agencies, Crown corporations, and business and industry under federal jurisdiction such as banks, airlines, and railway companies. The Canadian Human Rights Commission deals with complaints it received from individuals or groups concerning discriminatory practices as covered in the HRA. (Para 74 - Equal Opportunities: A Study of Discrimination on the ground of sexual orientation - A Consultative Paper - Hong Kong Government, 1995)</p> <p style="text-align: center;"><i>Provincial anti-discrimination legislation</i></p> <p>11 Provinces include protection from discrimination on grounds of sexual orientation in their human rights codes: British Columbia (1992), Manitoba (1987), New Brunswick (1992), Newfoundland (1997), Nova Scotia (1991), Ontario (1986), Quebec (1977), Saskatchewan (1993), Yukon Territory (1987), Alberta (1998, following a unanimous decision of the Supreme Court of Canada on 23 April 1998 - see below), Prince Edward Island (1998?). Only one province, North West Territories, does not yet have this protection.</p> | |
| Ecuador | <p>Ecuador's new Constitution (1998) follows in the footsteps of the South African Constitution, offering explicit non-discrimination guarantees for sexual minorities:</p> <p>"La igualdad ante la ley. Todas las personas serán consideradas iguales y gozarán de los mismos derechos, libertades y oportunidades, sin discriminación en razón de nacimiento, edad, sexo, etnia, color, origen social, idioma; religión, filiación política, posición económica, orientación sexual; estado de salud, discapacidad, o diferencia de cualquier otra índole." (Constitution of Ecuador, 1998, Article 23, section 3) [unofficial translation: "Equality before the law. All individuals shall be considered equal and shall enjoy the same rights, freedoms, and opportunities, without discrimination due to birth, age, sex, ethnicity, color, social origin, language, religion, political affiliation, economic position, sexual orientation, health status, disability, or difference of any other kind."</p> | 1998 |
| Fiji | <p>"The new constitution of Fiji, that came into effect in July, recognises the right not to be discriminated against on the grounds of sexual orientation.</p> <p>Amita Jowitt - University of the South Pacific - 2 Nov 98</p> | 1998 |

| Nation / State | Anti-discrimination / Equal Opportunity Laws in force | Enactment Dates |
|----------------|--|-----------------|
| Mexico | <p>Mexico City's Legislative Assembly banned discrimination against gays Sept. 2: Beginning Oct. 1, Penal Code Article 281 will prohibit discrimination "based on age, sex, pregnancy, marital status, race, language, religion, ideology, sexual orientation, skin color, nationality, social origin or position, work or profession, economic status, physical features or health." The penalty for violation of the law will be one to three years in prison and/or a fine equal to 50 to 200 days' salary and/or 25 to 100 days of community service. The law prohibits provocation or incitement of hate or violence, and bans bias in employment and public accommodations and services. "With this article the rights of vulnerable groups are recognized as they have been in the most democratically advanced nations," said city councillor David Sanchez Camacho. (INTERNATIONAL NEWS #281 - Sep 13, 1999 © Rex Wookner)</p> | 1999 |
| New Zealand | <p>66. The New Zealand Human Rights Act 1993 (the Act) was enacted in February 1994 to replace the Human Rights Commission Act 1977 and the Race Relation Act 1971. The Act provides for a number of prohibited grounds of discrimination, including sexual orientation. 67. The Act defines sexual orientation to mean heterosexuality, homosexuality, lesbianism, or bisexuality. Under the Act, it is unlawful to discriminate against a person based on the person's sexual orientation. It is also unlawful to discriminate against a person because the person's relative or associate is of a particular sexual orientation. Discrimination that relates to past circumstances and discrimination on the basis of an assumption or belief about another person are also unlawful. 68. The legislation covers various areas of activity, including employment, education, access to public places, provision of goods and services, housing and accommodation, partnerships, vocational training bodies, qualifying bodies, and industrial and professional associations. 69.....In the first full year of operation of the Act, there were 22 complaints based on the ground of sexual orientation, which constituted 7% of all complaints in that year."</p> | 1993 |
| South Africa | <p>January 26, 2000: "S. Africa passes landmark bill to outlaw discrimination: The South African national assembly on Wednesday approved a bill that outlaws discrimination on grounds such as race, gender, religion and disability in a bid to eradicate the lingering inequalities of the apartheid era. The Promotion of Equality and Prevention of Unfair Discrimination Bill contains a wide-ranging list of 17 grounds on which no person may be discriminated against. These include sexual orientation, age, culture, pregnancy, marital status, conscience, social standing and language. Though already enshrined in the country's liberal 1996 constitution, they can now be enforced through every court in the country and replace the old regime's racist laws which were wiped off the statute books nearly a decade ago. The bill also bans hate speech and, tacitly, the racial slurs that black, mixed-race and Indian South Africans suffered as so-called second-class citizens during more than 40 years of white minority rule. Justice Minister Penuell Maduna trumpeted the bill as the most important piece of legislation in the country, bar the constitution, and "the legal basis for transforming South Africa."</p> | 2000 |

| Nation / State | Anti-discrimination / Equal Opportunity Laws in force | Enactment Dates |
|----------------|---|-----------------|
| United States | <p>Anti-discrimination laws exist mostly at state level and differ in the extent of coverage to a large degree. Currently the laws enacted include Employment Non-Discrimination Act (ENDA), Hate Crimes Protection Act (HCPA) and Religious Freedom Protection Act (RFPA). California - Fair Employment and Housing Act, Government Code, ss. 12920-12921 ("sexual orientation" originally added to Labor Code in 1992) Connecticut - Conn. Gen. Stat. ss. 4a-60a, 45a-726a, 46a-81b to 46a-81r ("sexual orientation" added in 1991) District of Columbia - D.C. Code Ann. ss. 1-2501 to 1-2533 ("sexual orientation" originally added in 1973)</p> <p>Hawaii - Haw. Rev. Stat. ss. 378-1, 378-2 ("sexual orientation" added in 1991)</p> <p>Massachusetts - Mass. Gen. Laws Ann. ch. 151B, ss. 3, 4 ("sexual orientation" added in 1989)</p> <p>Minnesota - Minn. Stat. Ann. ss. 363.01(45), 363.03 ("sexual orientation" added in 1993)</p> <p>Nevada - Nev. Rev. Stat. (e.g.) s. 613.330 ("sexual orientation" added in 1999)</p> <p>New Hampshire - N.H. Rev. Stat. Ann. (e.g.) ss. 21:49, 354-A:7, 354-A:10, 354-A:17 ("sexual orientation" added in 1997)</p> <p>New Jersey - N.J. Rev. Stat. ss. 10:5-5.hh.-kk., 10:5-12 ("affectional or sexual orientation" added in 1991)</p> <p>Rhode Island - R.I. Gen. Laws (c.g.) ss. 11-24-2 to 11-24-2.2, 28-5-2 to 28-5-7.3, 28-5-41, 34-37-1 to 34-37-5.4 ("sexual orientation" added in 1995)</p> <p>Vermont - Vt. Stat. Ann. tit. 1, s. 143; tit. 21, s.495 ("sexual orientation" added in 1991)</p> <p>Wisconsin - Wis. Stat. Ann. ss. 101.22, 111.31 to 111.36 ("sexual orientation" added in 1982)</p> <p>Major U.S. cities with prohibitions of sexual orientation discrimination extending to private sector employment include Baltimore, Boston, Chicago, Cleveland, Denver, Detroit, Kansas City, Los Angeles, Minneapolis, New Orleans, New York, Philadelphia, Phoenix, Pittsburgh, Portland, Saint Louis, San Diego, San Francisco, Seattle, and Tampa.</p> | 1973 - 1999 |

Information Sources: World Legal Survey, International Lesbian and Gay Association

Reference of International treaties, national, state, provincial and territorial constitutions covering discrimination protection based on sexual orientation

(as compiled by Dr. Robert Wintemute, School of Law, King's College, University of London)

1. INTERNATIONAL TREATIES

European Union

Treaty establishing the European Community, Rome, 25 March 1957, Article 13 (inserted as Article 6a by Article 2(7) of the Treaty of Amsterdam, 2 October 1997, and renumbered as Article 13 by Article 12(1) and the Annex of the Treaty of Amsterdam) ("sexual orientation") (in force on 1 May 1999)

2. NATIONAL (AND STATE) CONSTITUTIONS

Brazil

Mato Grosso - Constitution, 1989, Article 10.III ("*orientação sexual*")

Sergipe - Constitution, 1989, Article 3.II ("*orientação sexual*")

Ecuador

Constitution, 1998, Article 23(3) ("*orientación sexual*")

Fiji Islands

Constitution Amendment Act 1997, s. 38(2)(a) ("sexual orientation")

Germany

Berlin - Constitution, 1995, Article 10(2) ("*sexuelle Identität*")

Brandenburg - Constitution, 1992, Article 12(2) ("*sexuelle Identität*")

Thuringia - Constitution, 1993, Article 2(3) ("*sexuelle Orientierung*")

South Africa

Constitution of the Republic of South Africa Act, No. 200 of 1993, Section 8(2) (transitional Constitution) ("sexual orientation")

- Constitution of the Republic of South Africa, 8 May 1996 (as amended on 11 Oct. 1996), Sections 9(3), 9(4) (final Constitution) ("sexual orientation")

Switzerland

Federal Constitution, adopted on 18 April 1999, Article 8(2)

("Lebensform", "mode de vie", "modo de vita", or "way of life")

3. NATIONAL (AND STATE, PROVINCIAL, TERRITORIAL, LOCAL) LEGISLATION

Australia

Australian Capital Territory - Discrimination Act 1991, No. 81, s. 7(1)(b)

("sexuality")

New South Wales - Anti-Discrimination Act 1977, No. 48, as amended by Anti-Discrimination (Amendment) Act 1982, No. 142, s. 5, Schedule 2, Anti-Discrimination (Amendment) Act 1994, No. 28, s. 3, Schedule 4 ("homosexuality" added in 1982)

Northern Territory - Anti-Discrimination Act 1992, No. 80, s. 19(1)(c) ("sexuality") Queensland - Anti-Discrimination Act 1991, No. 85, s. 7(1)(l) ("lawful sexual activity")

South Australia - Equal Opportunity Act, 1984, No. 95, ss. 5(1), 29(3), as amended by Equal Opportunity Amendment Act, 1989, No. 68, Schedule ("sexuality" included in 1984)

Tasmania - Anti-Discrimination Act 1998, No. 46, s. 16 ("sexual orientation" and "lawful sexual activity")

Victoria - Equal Opportunity Act 1995, No. 42, s. 6(d) ("lawful sexual activity")

Canada

Federal Level - Canadian Human Rights Act, R.S.C. 1985, c. H-6, ss. 2, 3(1), as amended by S.C. 1996, c. 14 ("sexual orientation")

British Columbia - Human Rights Act, S.B.C. 1984, c. 22, ss. 3-6, 8-9, as amended by S.B.C. 1992, c. 43, ss. 2-7 ("sexual orientation")

Manitoba - Human Rights Code, S.M. 1987-88, c. 45, s. 9(2)(h) ("sexual orientation")

New Brunswick - Human Rights Act, R.S.N.B. 1973, c. H-11, as amended by S.N.B. 1992, c. 30, ss. 1-8 ("sexual orientation")

Newfoundland - Human Rights Code, R.S.N. 1990, c. H-14, ss. 6-9, 12, as amended by S.N. 1997, c. 18, s. 2 ("sexual orientation")

Nova Scotia - Human Rights Act, R.S.N.S. 1989, c. 214, s. 5(1)(n), as amended by S.N.S. 1991, c. 12, s. 1 ("sexual orientation") Ontario - Human Rights Code, R.S.O. 1990, c. H.19, ss. 1-3, 5-6 ("sexual orientation" originally added by S.O. 1986, c. 64, s. 18)

Prince Edward Island - Human Rights Act, R.S.P.E.I. 1988, c. H-12, s. 1(1)(d), as amended by S.P.E.I. 1998, c. 92, s. 1 ("sexual orientation") Québec - *Charte des droits et libertés de la personne*, R.S.Q. c. C-12, s. 10 ("*orientation sexuelle*" originally added by S.Q. 1977, c. 6, s. 1)

Saskatchewan - Saskatchewan Human Rights Code, S.S. 1979, c. S-24.1, ss. 9-19, 25, 47(1), as amended by S.S. 1993, c. 61, ss. 4-15, 18 ("sexual orientation")

Yukon Territory - Human Rights Act, S.Y.T. 1987, c. 3, ss. 6, 34 ("sexual orientation")

Denmark

Law of 9 June 1971, nr. 289, as amended by Law of 3 June 1987, nr. 357; extended to private employment by Law of 12 June 1996, nr. 459 ("*seksuelle orientering*" added in 1987)

Finland

Penal Code (as amended by Law 21.4.1995/578), c. 11, para. 9, c. 47, para. 3 ("*sukupuolinen suuntautuminen*" or "sexual orientation")

France

Nouveau Code pénal, arts. 225-1, 225-2, 226-19, 432-7; Code du travail, arts. L. 122-35, L. 122-45 (originally added by Loi No. 85-772, 25 July 1985, Loi No. 86-76, 17 January 1986) ("*moeurs*" or "morals, manners, customs, ways")

Germany

Saxony-Anhalt - Gesetz zum Abbau von Benachteiligungen von Lesben und Schwulen (Law on Reducing Discrimination Against Lesbians and Gay Men), 22 Dec. 1997 (public sector only) ("*sexuelle*")

Identität")

Iceland

General Penal Code, No. 19/1940, s. 180, as amended by Act No. 135/1996, s. 1, and Act No. 82/1998, s. 91 ("sexual orientation" added in 1996)

Ireland - Unfair Dismissals Act, 1977, No. 10, s. 6(2)(e), as amended by Unfair Dismissals (Amendment) Act, 1993, No. 22, s. 5(a); extended to other aspects of employment by Employment Equality Act, 1998, No. 21, s. 6(2)(d) ("sexual orientation" added in 1993)

Israel

Equal Opportunities in Employment Act 1988, as amended by Book of Laws, No. 1377 of 2 Jan. 1992 ("*nei'ya minir*" or "sexual orientation")

Luxembourg

Code pénal, arts. 454-457, added by Law of 19 July 1997 ("*orientation sexuelle*" and "*mœurs*")

Mexico

Mexico City - Penal Code, art. 281 (in force on 1 Oct. 1999) ("*orientación sexual*")

Namibia

Labour Act, 1992, No. 6, s. 107 ("sexual orientation")

Netherlands

Penal Code, arts. 137f, 429 *quater* (inserted by Law of 14 Nov. 1991, Staatsblad 1991, nr. 623); General Equal Treatment Act, arts. 1, 5-7 (Law of 2 March 1994, Staatsblad 1994, nr. 230) ("*hetero- of homoseksuele gerichtheid*" or "hetero- or homosexual orientation")

New Zealand

Human Rights Act 1993, No. 82, s. 21(1)(m); New Zealand Bill of Rights Act 1990, No. 109, s. 19, as amended by Human Rights Act 1993, No. 82, ss. 21(1)(m), 145, Second Schedule ("sexual orientation")

Norway

Penal Code, para. 349a, Law of 8 May 1981, nr. 14 ("*homofile legning, leveform eller orientering*" or "homosexual inclination, lifestyle or orientation")

Slovenia

Penal Code (1 Jan. 1995), art. 141; Law About Work Relations (in force 24 Oct. 1998), art. 6 ("*spolni usmerjenosti*" or "sexual orientation" added in 1995)

South Africa

Labour Relations Act, 1995, No. 66, s. 187(1)(f) (dismissal); extended to other aspects of employment by Employment Equity Act, 1998, No. 55, s. 6 ("sexual orientation" added in 1995)

Spain

Penal Code, Organic Law of 23 Nov. 1995, No. 10/1995, arts. 314, 511-12 (see also arts. 22(4), 510,

515(5)) ("*orientación sexual*")

Sweden

Criminal Code, c. 16, para. 9, Law of 4 June 1987, SFS 1987:610 ("*homosexuell läggning*" or "homosexual inclination"); extended to employment by Law of 11 March 1999, SFS 1999:133 ("*sexuell läggning*" or "sexual inclination")

United States

California - Fair Employment and Housing Act, Government Code, ss. 12920-12921 ("sexual orientation" originally added to Labor Code in 1992) Connecticut - Conn. Gen. Stat. ss. 4a-60a, 45a-726a, 46a-81b to 46a-81r ("sexual orientation" added in 1991)

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Minnesota - Minn. Stat. Ann. ss. 363.01(45), 363.03 ("sexual orientation" added in 1993)

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Wisconsin - Wis. Stat. Ann. ss. 101.22, 111.31 to 111.36 ("sexual orientation" added in 1982)

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