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Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 20 April 2015**

**Progress of work of the Advisory Group on Eliminating Discrimination
against Sexual Minorities**

Purpose

This paper gives a brief account of previous discussion of the Panel on Constitutional Affairs ("the Panel") on the work of the Advisory Group on Eliminating Discrimination against Sexual Minorities ("the Advisory Group") and related issues including the Government's work on anti-discrimination on grounds of sexual orientation and gender identity.

Background

2. According to the Administration, it has been adopting a multi-pronged approach to promote equal opportunities for people of different sexual orientation and transgenders and this includes –

- (a) launching various public education and publicity activities with a view to nurturing a culture of diversity, tolerance and mutual respect in the community;
- (b) funding worthwhile community projects through the Equal Opportunities (Sexual Orientation) Funding Scheme to widen the impact;
- (c) setting up the Advisory Group to advise on the longer term strategy and measures to take forward the objective;
- (d) conducting research into overseas practices with a view to learning from the experience of other jurisdictions; and
- (e) maintaining liaison with stakeholder groups with a view to better

understanding their views and concerns.

3. In June 2013, the Advisory Group was set up to advise on the aspects and extent of discrimination faced by sexual minorities in Hong Kong; and on the basis of that, to advise on the strategies and measures to tackle the issues identified with a view to eliminating discrimination and nurturing a culture of diversity, tolerance and mutual respect in the community. The Advisory Group comprises a chairperson and 13 members, all non-officials, from the academic and business sectors, the sexual minority community and the Legislative Council ("LegCo").

Discussions held by the Panel

4. The Panel discussed "Progress of work on anti-discrimination on grounds of sexual orientation and gender identity" at its meeting on 19 May 2014, during which members were briefed on the work of the Advisory Group. When the Panel received a briefing by the Secretary for Constitutional and Mainland Affairs on the 2015 Policy Address on 19 January 2015, members also expressed concerns on the work of the Advisory Group and initiatives to promote equal opportunities for people of different sexual orientations and gender identities. The major concerns expressed by members are summarized in the following paragraphs.

The work of the Advisory Group

5. Some members enquired about whether the Administration would conduct a study to assess the severity of discrimination faced by sexual minorities in Hong Kong. The Administration informed members that on the advice of the Advisory Group, the Administration had commissioned a consultant to conduct a study about whether sexual minorities were being discriminated against in Hong Kong and, if so, the domains of discrimination they experienced (e.g. in employment, education, provision of services and goods), and the areas of needs for support. The study aimed to recruit a minimum of 200 sexual minorities from different socio-economic background. The Administration advised that the results of the study would form a basis for further consideration by the Advisory Group on how to take forward its work. At the request of members, the Administration has provided details of the study to the Panel vide LC Paper No. CB(2)1766/13-14(01).

6. At the Panel meeting on 19 January 2015, some members criticized that no new initiatives were proposed for the elimination of discrimination on grounds of sexual orientation or gender identity. They asked whether the Administration would consider prohibiting such discrimination by legislation. The Administration advised that the report on the study on discrimination experienced by sexual minorities was expected to be completed by the first quarter of 2015.

Taking into account the findings of the study, the Advisory Group would formulate recommendations to the Administration on strategies and measures to eliminate such discrimination. When the Advisory Group's recommendations were available, the Administration would, in close liaison with different stakeholders, consider how the recommendations should be followed up.

Government's work on anti-discrimination on grounds of sexual orientation and gender identity

7. Some members were of a strong view that the Administration should consult the public on legislating against discrimination on the ground of sexual orientation. They pointed out that the findings of a survey¹ sponsored by Hon Cyd HO in November 2012 showed that 63.8% of the respondents supported enacting such legislation, whereas only about 14% of the respondents were against it. Besides, 31 Members voted for the motion on "Equal right for people of different sexual orientations" at the Council meeting of 7 November 2012 although it was negated because of failure to secure majority support of the Members returned by functional constituencies. These members also pointed out that back in 1999, the United Nations Human Rights Committee ("HRC") had expressed concerns in its Concluding Observations on the Hong Kong Special Administrative Region's ("HKSAR") initial report in the light of the International Covenant on Civil and Political Rights ("ICCPR") about the absence of legislative remedies in HKSAR to individuals in respect of discrimination on the ground of sexual orientation, and HRC had then recommended the enactment of necessary legislation. In its Concluding Observations on the HKSAR's third report in the light of ICCPR issued in March 2013, HRC reiterated its concern about the absence of legislation explicitly prohibiting discrimination on the basis of sexual orientation.

8. These members considered that public consultation on enacting legislation to safeguard equal opportunities for sexual minorities should not be further delayed. They also requested the Administration to address the misunderstanding of some people that enacting such a law was the same as legalization of same-sex marriage or might result in "reverse discrimination".

9. Some other members, however, considered that legislation was not the only means to resolve discrimination on the ground of sexual orientation. They considered that administrative measures and public education were equally effective in combating discriminatory acts in this regard. They expressed concern that the anti-discrimination legislation, if enacted, would only give rise to more

¹ Hon Cyd HO sponsored a survey by the Public Opinion Programme of The University of Hong Kong in November 2012 with a view to gauging public views on whether legislation protecting people of different sexual orientations against discrimination should be enacted.

litigation and the community would become more divided. They suggested that disputes in this regard might be resolved by mediation and requested the Administration to explore in this direction.

10. The Administration advised that the Government had no plan at present to conduct public consultation on whether legislation should be enacted to prohibit discrimination on the ground of sexual orientation given the controversial nature of the issue. It would, however, make sustained efforts in promoting equal opportunities for sexual minorities through public education, publicity and various channels. These included further increasing the provision for the Equal Opportunities (Sexual Orientation) Funding Scheme, continuing to promote the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation ("the Code of Practice") to different levels of management in the public and private sectors, and establishing the Advisory Group to advise on matters specially relating to concerns about discrimination faced by sexual minorities in Hong Kong and for exchange of views with different stakeholders.

11. Some members, however, considered that relying solely on the Code of Practice to tackle discriminatory practices in employment against sexual minorities was inadequate. They pointed out that as reported by the press in early 2014, a Christian international school required its staff to sign an undertaking to abide by biblical ethics and integrity, and those who refused to sign might face disciplinary action or termination of employment. They considered that the case had illustrated the severity of the discrimination against sexual minorities in Hong Kong. The Administration advised that the Education Bureau had all along advised schools to follow the good practices set out in the Code of Practice to ensure that the principle of equal opportunities was adhered to in handling staff related matters. The Administration's supplementary information on its follow-up on the case has been issued vide LC Paper No. CB(2)1252/13-14(01).

Recent development

12. The Administration will brief the Panel on the progress of work of the Advisory Group at the next meeting on 20 April 2015.

Relevant papers

13. A list of relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix**.

Council Business Division 2
Legislative Council Secretariat
14 April 2015

Appendix

Relevant documents on progress of work of the Advisory Group on Eliminating Discrimination against Sexual Minorities

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	19.5.2014 (Item IV)	Agenda Minutes
	19.1.2015 (Item IV)	Agenda Minutes

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