

# 立法會 *Legislative Council*

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## **Panel on Constitutional Affairs**

**Updated background brief prepared by the Legislative Council Secretariat  
for the meeting on 15 May 2017**

### **Progress of work in tackling discrimination on the grounds of sexual orientation and gender identity**

#### **Purpose**

This paper gives a brief account of previous discussion of the Panel on Constitutional Affairs ("the Panel") on 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 on Eliminating Discrimination against Sexual Minorities ("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 understand 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"). The Advisory Group has completed its work and submitted its report ("Report of the Advisory Group") to the Government on 31 December 2015. An extract from the Report of the Advisory Group on its recommendations is in **Appendix I**.

### **Discussion held by the Panel**

4. The Panel discussed the progress of work of the Advisory Group at its meetings on 19 May 2014 and 20 April 2015. At the meeting on 15 February 2016, the Panel discussed the Report of the Advisory Group and the Equal Opportunities Commission's ("EOC") Report on Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status ("the Study Report of EOC") which was published in January 2016. The major concerns expressed by members at these meetings are summarized in the following paragraphs.

#### Study on discrimination faced by sexual minorities

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 support needed ("the Study").

6. At the Panel meeting on 20 April 2015, members were advised that to look into the problems faced by sexual minorities in Hong Kong, a total of 214 sexual minority participants from diverse socio-economic backgrounds had been recruited for the Study. A qualitative method was adopted to provide in-depth understanding of the experiences of sexual minorities. Nevertheless, limitations of the approach were acknowledged such as that views from sexual minority participants were the single source of qualitative data of the Study, and the experiences mentioned were cited based on self-report without a requirement to produce concrete evidence or verification with other relevant parties. The report of the Study was expected to be completed by the second quarter of 2015, and it

would be provided to the Panel for members' reference. Members were further advised that the Advisory Group would take into account the findings of the Study, desktop research on overseas experience in tackling discrimination on grounds of sexual orientation and gender identity as well as the views of stakeholders to formulate recommendations on strategies and measures to eliminate discrimination against sexual minorities.

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

7. Some members held a strong view that the Administration should consult the public without further delay on legislating against discrimination on the ground of sexual orientation. They pointed out that the findings of a survey<sup>1</sup> 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 initial report of the Hong Kong Special Administrative Region ("HKSAR") 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. In these members' views, problems faced by sexual minorities could not be resolved in the absence of legislation to safeguard equal opportunities for them. They considered that the Administration had the responsibility 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".

8. Some other members, however, considered that legislation was not the only means to resolve discrimination on the ground of sexual orientation. They suggested that disputes in this regard might be resolved by mediation and requested the Administration to explore in this direction. 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,

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<sup>1</sup> 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.

if enacted, would only give rise to more litigation and the community would become more divided. It might also result in "reverse discrimination".

9. 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.

10. 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).

11. When the Study Report of EOC was discussed at the meeting on 15 February 2016, Dr York CHOW Yat-ngok, the former Chairperson of EOC, advised that the study commissioned by EOC indicated that the Hong Kong society and the general public had become more supportive of legislating against discrimination on the grounds of sexual orientation and gender identity than before. In particular, there was a significant increase of public support for legislating against discrimination on such grounds in the past 10 years from 28.7% to 55.7%. EOC recommended that the Government should consider launching a public consultation exercise with a view to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. Some members urged the Administration to introduce legislation against discrimination on such grounds.

12. Some other members stressed the need to safeguard the freedom of parental choice of children's religious and moral education under Article 18(3) and (4) of ICCPR, as well as the freedom of religious belief under Article 32 of the Basic Law. They considered that legislating against discrimination on the ground of sexual orientation might result in "reverse discrimination", and that the Administration should tackle it by strengthening various administrative measures.

13. The Administration acknowledged that more and more people in Hong Kong had expressed support for enacting anti-discrimination legislation to protect sexual minorities in recent years. The Administration noted also that both the Advisory Group's report and the Study Report of EOC acknowledged that there were divergent views on whether legislation should be introduced to prohibit discrimination on the grounds of sexual orientation and gender identity. The Administration advised that it would study both the Advisory Group's report and the Study Report of EOC, and would map out the way forward in consultation with different stakeholders.

### **Recent development**

14. The Administration has proposed to brief the Panel on the progress of its work in tackling discrimination on the grounds of sexual orientation and gender identity at the next meeting on 15 May 2017.

### **Relevant papers**

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

5. The Advisory Group recommends the following five areas of strategies and measures<sup>2</sup>:

- (a) training and resources with focus on sensitivity towards sexual minorities for teachers; medical practitioners, associated professionals and frontline workers in hospitals and clinics; social workers; and human resources professionals, who have been identified by the Fact-finding Study as the professional groups having more direct interactions with sexual minorities, which should also be promoted and introduced to employees of the Government;
- (b) a charter on non-discrimination to be drawn up by the Government for voluntary adoption by employers; schools; providers of goods, facilities and services; and landlords / agents in charge of disposal and management of premises, which aims at enhancing sensitivity and friendliness towards sexual minorities in the respective domains;
- (c) enhanced publicity campaign to promote the message of non-discrimination against sexual minorities, including television and radio Announcements in the Public Interest and programmes; and commendation of best practices by public and private sector organisations that have pledged to adopt the charter proposed in paragraph 5(b) above;
- (d) a review by the Government in consultation with relevant service providers and sexual minorities to delineate gaps in support services for sexual minorities, with a view to improving the effectiveness of the existing support services and identifying the need for designated services for sexual minorities; and
- (e) a further study on the experience of legislative and non-legislative measures of other jurisdictions to inform future consultation on both legislative proposals and administrative measures to eliminate discrimination on grounds of sexual orientation and gender identity.

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<sup>2</sup> Details are reported in Chapter 3 of the Report.

## Appendix II

### Relevant documents on progress of work in tackling discrimination on the grounds of sexual orientation and gender identity

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Constitutional Affairs ("CA Panel")	19.5.2014 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	25.6.2014	<a href="#">Official Record of Proceedings</a> <a href="#">Pages 44-55</a> (Oral question)
CA Panel	20.4.2015 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	15.2.2016 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	25.1.2017 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>

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