

**For discussion on
15 June 2020**

**Legislative Council Panel on Constitutional Affairs
Progress of Work in Tackling Discrimination on Grounds of Sexual
Orientation and Gender Identity**

Purpose

This paper updates Members on the progress of work of the Government in tackling discrimination on grounds of sexual orientation and gender identity.

Background

2. The Government is committed to promoting equal opportunities for people of different sexual orientations and gender identities, with a view to fostering in the community the culture and values of inclusiveness, mutual respect and non-discrimination. The Advisory Group on Eliminating Discrimination against Sexual Minorities (“Advisory Group”) had taken stock of major developments in Hong Kong on issues of concern to sexual minorities, researched into the relevant experience and legislation in certain jurisdictions and met with stakeholder groups, and recommended to the Government strategies and measures in the following five areas:

- (a) enhancing public education and publicity to promote the message of non-discrimination;
- (b) providing training resources for personnel in specific fields to enhance their knowledge of and sensitivity towards sexual minorities;

- (c) reviewing and reinforcing the relevant support services;
- (d) drawing up a charter on non-discrimination of sexual minorities for voluntary adoption by relevant organisations and individuals; and
- (e) conducting further study on the experience of other jurisdictions in implementing anti-discrimination measures, including legislative and non-legislative measures.

3. The Government has been actively taking forward the Advisory Group's recommendations. The progress of the relevant work is summarised below.

Progress of work

Enhancing publicity campaign

4. We have been promoting the message of "Eliminate Discrimination, Embrace Inclusion" through, amongst others, producing and broadcasting promotional videos in public transport network (including the display platform in railway stations, train compartments, bus stops and ferries), government premises, Internet and other media. Announcements in the Public Interest which promote equal opportunities for people of different sexual orientations and transgenders will also continue to be broadcast on television and radio to reach out to the general public.

5. With a view to encouraging employers to provide equal opportunities for people of different sexual orientations, we have made active efforts to appeal for employers' adoption of the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation (the Code). At present, more than 360 public and private organisations employing nearly 560 000 employees locally have pledged

to adopt the Code. We will continue to encourage more organisations to adopt the Code through various channels such as talks, seminars, and publications of trade associations.

Providing training resources for personnel in specific fields

6. We had launched the training resources for medical and healthcare professionals to enhance their sensitivity towards sexual minorities, and organised a briefing session for about 80 representatives from various professional bodies from the medical and healthcare sector in 2019. We subsequently arranged two train-the-trainer sessions for these professional bodies to facilitate their dissemination of relevant knowledge and practical skills to members of their professional bodies. Through these activities, we had positive exchanges with the medical and healthcare sector, enhancing their knowledge of and sensitivity towards sexual minorities. We also encouraged relevant professional bodies to include the training resources as part of their regular pre-service or in-service training according to the needs of their profession. We understand that some professional bodies (such as the Hospital Authority and individual departments of the Li Ka Shing Faculty of Medicine of the University of Hong Kong) are planning to include the training resources into their training programmes or courses. The preparation of the training resources for social workers developed jointly with the Clinical Psychological Services of Social Welfare Department is near completion, and we will continue to prepare training resources for personnel in other specific fields such as human resources professionals and teachers.

7. Meanwhile, in order to enhance the awareness and sensitivity of frontline officers of the disciplined services towards sexual minorities, we have embarked on the preparation of the training resources for Government disciplined services, and will liaise with the training units of the disciplined services to listen to and incorporate their views. After which, we will conduct train-the-trainer sessions for the trainers in the disciplined services

to facilitate them to incorporate training resources as appropriate into the regular training of the disciplined services.

Reviewing support services

8. We have provided funding to the Tung Wah Group of Hospitals (TWGHs) to operate a 24-hour hotline for sexual minorities, PRIDE Line. Handled by registered social workers who have training and knowledge on sexual minorities, the hotline provides prompt support, counselling and referral services for sexual minorities and their families, with a view to relieving their stress and difficulties in everyday life. Since its commencement in January 2018, the PRIDE Line has received over 7 500 calls as at end May 2020. Support groups and activities such as those on emotion management, peer sharing, and voluntary service have also been regularly organised for sexual minorities. So far over 60 sessions have been organised. The TWGHs will continue with their publicity work through various channels, including stepping up publicity and interaction with service users through online social media in order to provide more support and services that cater for the needs of the sexual minorities.

9. Moreover, we have been providing funding support to worthwhile community projects through the Equal Opportunities (Sexual Orientation) Funding Scheme to promote equal opportunities for people of different sexual orientations and transgenders, or provide support services for the sexual minorities. In 2019-20, a total of 18 projects including talks, workshops, drama and musical performances, exhibitions and so on have been sponsored by the Scheme.

Drawing up a charter of non-discrimination of sexual minorities

10. We are drawing up a charter on non-discrimination of sexual minorities for voluntary adoption by providers of goods, facilities and services, with a view to enhancing acceptance and friendliness towards

sexual minorities. We will consider a suitable time to introduce the charter, having regard to the circumstances of various trades and industries after the pandemic. We will also continue to draw up charters covering organisations in other domains, including disposal and management of premises, employment and education. By pledging to adopt the charter, the organisations concerned should commit to adopting non-discrimination policies, i.e. no discrimination, harassment or vilification of customers, buyers/tenants of premises, employees or students on grounds of sexual orientation and gender identity would be allowed.

The study on the experience of other jurisdictions in tackling discrimination through administrative and legislative measures

11. As recommended by the Advisory Group, we have conducted a further study on the experience of other jurisdictions in tackling discrimination against sexual minorities through legislative and non-legislative measures. The research study examined the experience of 15 jurisdictions including Australia (Federal), Australia (Victoria), Canada (Federal), Canada (Ontario), Japan, the Mainland, Malaysia, the Netherlands, New Zealand, Republic of Korea, Singapore, Taiwan Area, the United Kingdom, the United States (Federal), and the United States (New York State). The jurisdictions under the study have different socio-cultural backgrounds. Some of them have adopted administrative measures and put in place anti-discrimination law for the sexual minorities, while some have not enacted any relevant legislation. The draft report of the study is largely finished. The salient points of the study report are outlined below:

12. On **administrative measures**, major measures implemented in various jurisdictions found in the study are as follows:

- (a) Inclusion of the concepts of sexual orientation and gender

- identity into the sexuality education curricula of primary and secondary schools;
- (b) Encouragement of an inclusive and non-discriminatory school environment;
 - (c) Incorporation of professional code of ethics relevant to sexual orientation and gender identity into the professional programmes of tertiary institutions for students to learn and put in practice, so as to ensure that practitioners of different sectors would treat all clients in the same way for services provided in the long run;
 - (d) Promotion of anti-discrimination conduct and equality to the public as well as facilitating sexual minorities to locate resources and services. In some jurisdictions, non-governmental organisations have set some indices assessing and measuring the level of acceptance of sexual minorities in enterprises with the purpose of encouraging enterprises to create a diversified and inclusive work environment;
 - (e) Provision of specific services and facilities to specific groups of sexual minorities (including sexual minority youth and sexual minority elders). For example, providing sexual minority youth with counselling services and health information; providing homeless sexual minority youth with temporary accommodation; assisting sexual minority elder people to find support services and assistance; and providing unisex toilets in public places;
 - (f) Establishment of funding schemes and awards to sponsor organisations to provide support services and develop activities for sexual minorities, or support the building of a culture of respect and equal treatment in the society; and
 - (g) Liaison with sexual minorities for greater understanding. Relevant government set up dedicated units to connect with sexual minority groups and listen to their views. For example, the police force of some jurisdictions established

liaison units to foster relationship between the police and the sexual minority communities, and to facilitate the handling of relevant crimes.

13. As for **legislative measures**, among the 15 jurisdictions studied, a number of jurisdictions such as Australia (Federal), Canada (Federal) and the United Kingdom have enacted legislation that make discrimination on grounds of sexual orientation and/or gender identity unlawful. Most of their legislation cover specific areas, for example, employment (or work), accommodation, education, as well as provision of goods, services and facilities, etc.

14. The study showed that a majority of the examined jurisdictions having anti-discrimination laws in place extended their pre-existing anti-discrimination or human rights laws to incorporate sexual orientation and gender identity as the prohibited grounds. Besides, some jurisdictions made sexual orientation a prohibited ground when the concerned human rights legislation were enacted, or consolidated and combined several pre-existing laws in various domains into a single legislation.

15. The study also noted that jurisdictions faced different degrees of concern or objection in the society regarding the legislative proposals to prohibit discrimination on grounds of sexual orientation and gender identity. The United States have undergone extended discussion about the anti-discrimination legislative proposal at federal level for some 20 years and has yet to reach a consensus, and controversies on anti-discrimination legislation arose in some Asian jurisdictions such as Republic of Korea. The side in favour of legislation believed that the legislation would be capable of rectifying discrimination towards sexual minorities in the society, protecting their basic human rights and enhancing safeguards in their daily lives. The opposing side asserted that the legislation would be sufficient to constitute a violation or weakening of freedom of speech and religion of individuals or organisations. They believed that the business

sector and the general public would be put at risk of facing significant legal responsibilities, and that legislation would also clash with traditional family values.

16. The study also showed that a balance has to be struck between the protection against discrimination on grounds of sexual orientation and gender identity and the right to enjoy freedoms of religion/conscience or moral value. Provision of exemptions can help address the issue. Exemption arrangements in the studied jurisdictions take two main forms which are protection of religious freedom by a specific piece of legislation and having exemptions in specific domains or circumstances under the anti-discrimination laws. The exemption clauses commonly exist as part of the anti-discrimination legislation. While the exemption clauses differ across different jurisdictions, some main domains where exemptions are available are religion; employment; provision of goods, services and facilities; accommodation/premises; sports; charities and positive actions; and temporary exemptions. Where exemption applies, relevant discriminatory acts are not regarded to be unlawful. For example, some anti-discrimination laws provide for an exemption for religious institutes or organisations to impose some relevant requirements in the employment of clergy or pastor in accordance with their religious belief.

17. It is found that many of the statutory or governmental agencies responsible for complaint handling and resolution in the studied jurisdictions would promote the message and policy of non-discrimination in the community and organisations through public education and publicity, such as recommending companies to establish internal procedures in handling discrimination on grounds of sexual orientation and gender identity in the workplace. As regards complaints handling, in general, the statutory and government agencies endeavour to settle complaints by mediation or conciliation, thereby saving time and cost for the litigation. If the complaint cannot be resolved through mediation, the case concerned would be taken to tribunal or court for trial.

18. The study also examined a number of relevant court cases in different jurisdictions to understand the coverage and application of the anti-discrimination laws (including exemptions and exercise of religious convictions and personal belief in defense of an action). In a Canadian case, for example, the Canadian court ruled that the refusal of a printing company to provide a sexual minority group with printing service of letterhead and business cards was discriminatory but suggested that basing on the relevant clause that protects the right to freedom of religion in the Canadian Constitution, if in future the nature of print is in direct conflict with the religious beliefs or creed of the service provider, there are grounds for the service provider to refuse the required service.

Way forward

19. We will continue to press ahead with our work in hand to enhance public awareness and understanding on people of different sexual orientations and transgenders continuously, and promote the atmosphere of inclusiveness, mutual respect and non-discrimination in the society. The information gathered in the study is conducive to the Government to understand this subject matter further. After listening to the views of Members, we will discuss with stakeholders and consider anti-discrimination proposals suitable to be implemented in Hong Kong based on the findings of the study, with a target to put forward the directions of work in the final report.

Advice sought

20. Members are invited to note and offer views on the content of this paper.

Constitutional and Mainland Affairs Bureau

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