

# 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 June 2020**

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

#### **Background**

2. In June 2013, the Advisory Group on Eliminating Discrimination against Sexual Minorities ("Advisory Group") was set up to advise the Government 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 submitted its report ("the Report of Advisory Group") to the Government on 31 December 2015. According to the Administration, the Government has been taking forward the recommendations made by the Advisory Group, which include:

- (a) providing training resources for personnel in specific fields to enhance their knowledge of and sensitivity towards sexual minorities;
- (b) enhancing public education and publicity to promote the message of non-discrimination;
- (c) reviewing and reinforcing the relevant support services;
- (d) drawing up a charter on non-discrimination of sexual minorities for voluntary adoption by relevant organizations and individuals; and

- (e) conducting further study on the experience of other jurisdictions in implementing anti-discrimination measures to form the basis for future public consultation.

3. The "Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status" ("the Study") was commissioned by the Equal Opportunities Commission ("EOC"). According to EOC, the Study was a fact-finding exercise to, among other things, systematically understand discrimination encountered by people of different sexual orientation, gender identity and intersex status; and evaluate and make recommendations on the feasibility of legislating against discrimination on relevant grounds. EOC published the report of the Study ("the EOC Report") in January 2016.

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

4. The Panel discussed the Report of Advisory Group and the EOC Report on 15 February 2016. On 15 May 2017, the Administration briefed the Panel on the progress of its work in tackling discrimination on the grounds of sexual orientation and gender identity. The major concerns expressed by members are summarized in the following paragraphs.

#### Outlawing discrimination on the grounds of sexual orientation and gender identity

5. At the meeting on 15 February 2016, the then Chairperson of EOC informed the Panel that the Study commissioned by EOC indicated that 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.

6. 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 the International Covenant on Civil and Political Rights, 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". They suggested that the Administration should tackle discrimination on such ground by strengthening various administrative measures.

7. 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 Report of the Advisory Group and the EOC Report 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 Report of Advisory Group and the EOC Report, and would map out the way forward in consultation with different stakeholders.

8. At the Panel meeting on 15 May 2017, some members criticized the Administration for making little progress in following up the recommendations made by the Advisory Group and EOC. These members reiterated their view that there was an imminent need to outlaw discrimination on the grounds of sexual orientation and gender identity in order to protect the rights of sexual minorities. Some other members, however, stressed that it was important to safeguard the freedom of expression of the people who did not support enacting legislation to prohibit discrimination against sexual minorities. These members considered that the problem should be tackled by administrative measures and public education rather than legislation.

9. The Administration advised that that as recommended by the Advisory Group, the Administration was conducting a further study on the experience of other jurisdictions in tackling discrimination through legislative and non-legislative measures. The findings of the study would form the basis for public consultation on both legislative proposals and administrative measures to eliminate discrimination on the grounds of sexual orientation and gender identity. Upon completion of the study, the Administration would examine the findings of the study and draw up a plan for conducting public consultation.

10. At the policy briefing cum meeting on 16 December 2019, the Administration informed members that its further study on the experience of other jurisdictions in tackling discrimination through legislative and non-legislative measures was near completion and the draft report was being prepared. Some members urged the Administration to conduct public consultation on the proposal to enact legislation to prohibit discrimination on the grounds of sexual orientation and gender identity. The Administration advised that in the current social and political climate, it would be more pragmatic and practicable to establish a communication platform to facilitate discussion with stakeholders and implement feasible anti-discrimination proposals based on the findings of the study. The Administration undertook that stakeholders holding different views on the issue would be invited to join the communication platform.

## Implementation of administrative measures to tackle discrimination against sexual minorities

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### *Providing training resources for personnel in specific fields*

11. On the provision of training resources for personnel in specific fields to enhance their knowledge of and sensitivity towards sexual minorities, some members sought details of the Administration's plan of providing the sensitivity training and how the effectiveness of such training would be assessed. In these members' view, the sensitivity training for social workers and teachers should be strengthened in particular, as young people who encountered discrimination problems in this area would likely turn to them to seek their professional support. Members also enquired whether relevant training resources would be provided to civil service unions and associations to enable them to provide such training to their members.

12. The Administration advised that the Administration had collected information on the content, delivery modes and target recipients of existing pre-service and in-service training in the relevant professions, and gathered views from training providers (including tertiary institutions, professional groups and major employers). The Administration advised that the content would include both generic content applicable to all of the domains, as well as domain-specific content.

13. At the policy briefing cum meeting on 16 December 2019, the Administration informed the Panel that the training resources to enhance sensitivity of medical and healthcare professionals towards sexual minorities had been launched in December 2018. Meanwhile, the training resources for other specific fields were being developed and those for social workers were expected to be launched at a later stage. Moreover, the Administration had commenced the development of training resources for the Government disciplined services and would incorporate such resources into the regular training courses to enhance frontline officers' knowledge of and sensitivity towards sexual minorities.

### *Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation ("the Code of Practice")*

14. Some members expressed concern about the monitoring of the implementation of the Code of Practice and queried whether the Government was abided by it. They pointed out that the Government had already been found by the Court that it did not abide by the Code of Practice in a court case involving a civil servant seeking judicial review of the Secretary for the Civil Service's decision. Some members also considered that all subvented organizations should be required to adopt the Code of Practice.

15. The Administration explained that the Code of Practice was for voluntary adoption by public and private sector organizations. As of December 2019, over 350 organizations employing a total of more than 550 000 employees had adopted the Code of Practice. The Constitutional and Mainland Affairs Bureau would continue to encourage more organizations to adopt it through various channels.

### **Recent development**

16. The Administration will 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 June 2020.

### **Relevant papers**

17. A list of relevant papers available on the Legislative Council website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
11 June 2020

## Appendix

### 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	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>
	15.5.2017 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	16.12.2019 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>

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