

Report of the Advisory Group on Eliminating Discrimination against Sexual Minorities

Executive Summary

1. The Advisory Group on Eliminating Discrimination against Sexual Minorities (“Advisory Group”) was set up in June 2013 by the Government to advise on matters relating to concerns about discrimination faced by sexual minorities in Hong Kong, notably 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. Since its establishment, the Advisory Group has met 14 times.

2. The Advisory Group has completed a series of stocktaking, fact-finding and collection of views summarised as follows¹:

- (a) Stock-taking of major developments in Hong Kong on issues of concern to sexual minorities over the past 30 years;
- (b) A qualitative study conducted through a consultant to ascertain, *inter alia*, whether sexual minorities are discriminated against in Hong Kong and, if so, the discrimination they experience in the domains of employment; education; provision of goods, facilities and services; disposal and management of premises; and other domains (“the Fact-finding Study”). The consultant interviewed a total of 214 sexual minority participants (including lesbian, gay, bisexual, transgender, post-gay and intersex participants) from diverse socio-economic backgrounds, and obtained information from them through focus group discussions and one-to-one interviews;
- (c) Desktop research on the experience in tackling discrimination on the grounds of sexual orientation and gender identity in selected jurisdictions, namely, Australia, Canada, New Zealand, Taiwan, the United Kingdom and the United States (“the desktop research”), which covers the

¹ Details are reported in Chapter 2 of the Report.

scope of the legislation concerned, including the domains and conducts covered, the exceptions / exemptions, relevant litigation / complaint cases, and areas of concern;

- (d) Meetings with stakeholder groups from different sectors in the community; and
- (e) Advising the Government's publicity measures to promote non-discrimination against sexual minorities.

3. In formulating strategies and measures to tackle discrimination against the sexual minorities, the Advisory Group has considered the information and views collected through the above work. The Advisory Group acknowledges that, while the Fact-finding Study is qualitative and hence the findings cannot be extrapolated to the community at large, it obtains reports by sexual minority participants on their experience of discrimination in four public domains, namely, employment; education; provision of goods, facilities and services; and disposal and management of premises. The discrimination reported mainly took the form of harassment (unwelcome verbal conduct primarily, but acts of unwelcome physical conduct were also reported) and direct discrimination. The Fact-finding Study also reveals that one of the major causes of discrimination is that the "discriminators" lacked sensitivity in relation to issues related to sexual orientation and gender identity.

4. In view of the findings of the Fact-finding Study, the Advisory Group supports introducing various strategies and measures to tackle discrimination, notably in enhancing public education and publicity and enhancing the sensitivity of relevant professional groups and practitioners in certain sectors. Members however had divergent views on whether legislation should be enacted to prohibit discrimination on the grounds of sexual orientation and gender identity. In this regard, the Advisory Group, through the desktop research, has taken a preliminary view of some common features of the legislation in other jurisdictions that prohibit discrimination on the grounds of sexual orientation and gender identity, as well as some issues in the implementation of such legislation (e.g., how to define "gender identity" and how to apply exemptions). The Advisory Group considers that there is a need for more in-depth studies to inform discussions on formulating proposals for legislation in Hong Kong. The Advisory Group also acknowledges the polarised views and concerns raised by different stakeholder groups during the collection of views over the issue of

whether legislation should be enacted.

5. The Advisory Group recommends the following five areas of strategies and measures²:

- (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.

² Details are reported in Chapter 3 of the Report.

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Chapter 1 - Introduction

1.1 The Advisory Group on Eliminating Discrimination against Sexual Minorities (“Advisory Group”) was set up in June 2013 by the Government to advise on matters relating to concerns about discrimination faced by sexual minorities in Hong Kong, notably 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 believes that discrimination is wrong and endeavours to identify measures to eliminate discrimination that address the needs and concerns of the community as a whole.

Background

1.2 Issues relating to sexual orientation and gender identity often attract public debates. This has happened not only in Hong Kong, but in other parts of the world as well.

1.3 Some people consider sexual orientation and gender identity purely personal matters that should be left to the persons concerned; some however consider that there are social, moral and religious implications to society. Such different viewpoints lead to further debates including whether consensual homosexual behaviours should be viewed as equal to heterosexual behaviours, and whether persons with different sexual orientation or gender identity should be accorded the same treatment across different social institutions, including religion and marriage.

1.4 Different jurisdictions adopt different approaches to deal with the issues, having regard to their local circumstances, and such approaches evolve over time.

1.5 At present, some jurisdictions have enacted legislation that prohibits discrimination on grounds of sexual orientation and gender identity, with the scope of such legislation varying significantly across jurisdictions; some other jurisdictions do not offer such legal assurance of equal treatment of persons with different sexual orientation or gender identity though same-sex sexual behaviour is not an offence; other jurisdictions outlaw same-sex sexual activities¹.

¹ More details can be found at Appendix D.

1.6 In the case of Hong Kong, whether persons of different sexual orientation and gender identity are discriminated against and, if so, whether and what measures should be taken to address this phenomenon has been a subject of public debate for some time.

1.7 As background, the following provisions in the Basic Law, the Hong Kong Bill of Rights Ordinance (“HKBORO”) (Cap. 383), the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) are worth noting:

(a) Basic Law

- (i) Article 25: “All Hong Kong residents shall be equal before the law.”;
- (ii) Article 32: “Hong Kong residents shall have freedom of conscience. Hong Kong residents shall have freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public.”; and
- (iii) Article 39: “The provisions of the ICCPR, the ICESCR, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region (“HKSAR”).

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

(b) HKBORO² - Part II, Hong Kong Bill of Rights (“HKBOR”)

- (i) Article 1(1): “The rights recognised in this Bill of Rights shall be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”;
- (ii) Article 15

² HKBORO is the domestic law that provides for the incorporation of the provisions of the ICCPR as applied to Hong Kong into the laws of the HKSAR. It only binds the Government and all public authorities, and any person acting on behalf of the Government or a public authority. The term “person” includes any body of persons, corporate or unincorporated.

- (1) “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”;
 - (2) “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”;
 - (3) “Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”;
 - (4) “The liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions shall be respected.”; and
- (iii) Article 22: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

(c) ICCPR

(i) Article 2

- (1) “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status³.”;

³ Article 2(1) of the ICCPR corresponds with Article 1(1) of the HKBOR in Part II of the HKBORO.

- (2) “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant.”;
- (ii) Article 18⁴
- (1) “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”;
- (2) “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”;
- (3) “Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”;
- (4) “The State parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”; and
- (iii) Article 26⁵: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or

⁴ Article 18 of the ICCPR corresponds with Article 15 of the HKBOR in Part II of the HKBORO.

⁵ Article 26 of the ICCPR corresponds with Article 22 of the HKBOR in Part II of the HKBORO.

other status.”⁶

(d) ICESCR

(i) Article 2

- (1) “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”; and
- (2) “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁷

1.8 There is currently no specific anti-discrimination ordinance that prohibits discrimination on grounds of sexual orientation or gender identity.

⁶ In the context of the Third Report of the HKSAR of the People's Republic of China (PRC) in the light of the ICCPR, issues concerning sexual minorities were considered. In March 2013, the Government issued a response to the list of issues presented by the Human Rights Committee of the United Nations (HRC) on 16 November 2012 (accessible at http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/response_to_list_of_issues_mar_2013.pdf), the HRC issued the concluding observations on the Third Report (http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/Advance_Version_2013_ICCPR_e.pdf), and the Government issued a press release in response to the concluding observations (http://www.cmab.gov.hk/en/press/press_3146.htm).

⁷ In the context of the Third Report of the HKSAR of the PRC under the ICESCR, issues concerning sexual minorities were considered. In March 2014, the Government issued a response to the list of issues presented by the Committee on Economic, Social and Cultural Rights of the United Nations (CESCR) on 13 June 2013 (accessible at [http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/Response_to_LOI-ICESCR\(Eng\)\(3_3_14\).pdf](http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/Response_to_LOI-ICESCR(Eng)(3_3_14).pdf)). In May 2014, the CESCR issued the concluding observations on the Third Report (http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/ICESCR_Concluding_Observation.pdf), and the Government issued a press release in response to the concluding observations (http://www.cmab.gov.hk/en/press/press_3405.htm).

The Sex Discrimination Ordinance (Cap. 480) enacted in Hong Kong in 1995 does not cover the ground of sexual orientation⁸. Some people argue that the Disability Discrimination Ordinance (Cap. 487), enacted in 1995, covers persons suffering from gender identity disorder (“GID”) which is arguably a form of disability recognised under the Ordinance; however this view is thus far not tested in a court of law in Hong Kong, and it is understood that persons with GID do not necessarily subscribe to such a view either.

1.9 In the last few years, there have been increased calls for the enactment of legislation to protect persons of different sexual orientation and gender identity from discrimination. In November 2012, the Legislative Council (“LegCo”) held a motion debate on equal rights for people of different sexual orientations, which urged the Government to expeditiously launch public consultation on enacting legislation to safeguard equal opportunities for and the basic rights of people of different sexual orientations.

1.10 The motion was voted down in LegCo⁹. As evidenced by the speeches of LegCo Members during that motion debate, as well as the public opinions and commentaries expressed around that time through the media¹⁰, society is deeply divided over this issue. As mentioned in the 2013 Policy

⁸ Although “sexual orientation” and “gender identity” are not specific grounds, the Ordinance prohibits sexual harassment against any man or woman regardless of their sexual orientation and gender identity.

⁹ For functional constituency Members, 10 voted in favour of the motion, 17 against, and 8 abstained; for geographical constituency Members, 21 voted in favour of the motion, 8 against, and 4 abstained.

¹⁰ Opinions by supporters of the motion include: (a) discrimination against sexual minorities was a serious problem in Hong Kong; (b) the existing protection and resources for public education were inadequate; (c) legislative approach was a global trend as well as an effective approach to address discrimination; and (d) concerns over the implications of the legislation could be addressed through consultation with stakeholders.

On the other hand, those who opposed were of the view that: (a) the issues were controversial and touched on traditional family values and religious belief; (b) there was no consensus in the community on enacting anti-discrimination legislation on ground of sexual orientation and gender identity; (c) such legislation would have far reaching restrictions on freedom of speech and religious belief in different aspects including employment and provision of services, as well as the liberty of parents to ensure the religious and moral education of their children; freedom of speech and religious belief were fundamental rights protected by laws in Hong Kong; and (d) the legislative approach was not the only solution to the problem of discrimination; publicity and public education could be enhanced and other administrative measures could be considered.

Address¹¹, the Government took the view that this was a highly controversial issue which must be tackled cautiously.

Establishment of the Advisory Group on Eliminating Discrimination against Sexual Minorities

1.11 To better address the issue of discrimination faced by sexual minorities and provide a platform for informed discussion, the Government set up the Advisory Group in June 2013. The Advisory Group comprises a chairperson and 13 members. They are non-officials from the academic and business sectors, the sexual minority community and the LegCo, and represent divergent views from stakeholders. The membership list and terms of reference of the Advisory Group are at **Appendix A**. The Advisory Group held 14 meetings in total from June 2013 to December 2015¹².

Definition of “sexual minorities”

1.12 There is no single authoritative definition of “sexual minorities” according to different sources of information. Some define the term to broadly cover a group whose gender identity and sexual orientation differ from the majority of the population concerned. Some refer the term specifically to lesbian¹³, gay¹⁴, bisexual¹⁵, and transgender¹⁶ (“LGBT”) or those outside of the mainstream of sexual expression or orientation in a given culture. Some consider that other forms of sexual expression / orientation / gender identity should also be covered (e.g., intersex¹⁷, post-gay¹⁸, queer¹⁹,

¹¹ Paragraph 131 of the 2013 Policy Address

¹² The term of appointment of the Advisory Group was extended from 10 June 2015 to 31 December 2015.

¹³ A woman who is sexually attracted to other women (source: Oxford Advanced Learner’s Dictionary 8th Edition)

¹⁴ A person who is homosexual (usually a man, who is sexually attracted to people of the same sex) (source: ditto)

¹⁵ A person who is sexually attracted to both men and women (source: ditto)

¹⁶ The term describes a diverse group of individuals who cross or transcend culturally defined categories of gender (source: Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7, issued by World Professional Association for Transgender Health)

¹⁷ A variation in sex characteristics including chromosomes, gonads, and/or genitals that do not allow an individual to be distinctly identified as male or female

¹⁸ Persons with same sex attraction who chose not to lead a homosexual lifestyle

etc.).

1.13 The Advisory Group has considered the scope of sexual minorities for the purpose of the work of the Advisory Group and decided to focus its scope of work on discrimination on the basis of sexual orientation and gender identity^{20 21}.

¹⁹ An umbrella term for sexual and gender minorities

²⁰ Gender identity reflects a deeply felt and experienced sense of one's own gender. A person's gender identity is typically consistent with the sex assigned to them at birth. For transgender people, there is an inconsistency between their sense of their own gender and the sex they were assigned at birth (source: "Fact sheet: LGBT Rights: Frequently Asked Questions" issued by the United Nations Office of the High Commissioner for Human Rights).

²¹ The study on discrimination experienced by sexual minorities in Hong Kong, as conducted under the auspices of the Advisory Group (to be discussed in paragraphs 2.14 to 2.20 of this report), covers lesbians, gays, bisexuals, transgender people, post-gays and intersex persons.

Chapter 2 – Stocktaking, Fact-finding and Collection of Views

Stocktaking of major developments in Hong Kong

2.1 The Advisory Group first took stock of major developments in Hong Kong on issues of concern to sexual minorities over the past 30 years.

2.2 In Hong Kong, a more prominent public debate on the issue of homosexuality began in the 1980s. At that time, the Law Reform Commission (“LRC”) conducted a study on the laws governing homosexual conduct. The LRC published a report in 1983 and the key recommendation of the report was to amend the law so that it would no longer be an offence for two consenting males of 21 years of age or above to engage in homosexual conduct in private. This proposal of “decriminalising” homosexual conduct sparked off a public debate. There were views that so long as homosexual acts were committed by mutual consent and not to the detriment of the interests of a third party or public affairs, the acts should be regarded as a matter of personal freedom. On the other hand, some considered that homosexual act was unnatural or abnormal, and that “decriminalisation” would encourage such act in the community. In 1990 when the LegCo debated the motion on “decriminalising” homosexual act²², some Members expressed strong reservation about homosexuality even though they were in favour of “decriminalisation”²³. The aforementioned LRC’s recommendation was eventually implemented by the Crimes (Amendment) Ordinance in 1991.

2.3 In 1994, a member of the LegCo introduced the Equal Opportunities Bill in the form of a Private Member’s Bill. That Bill contained provisions prohibiting discrimination on the ground of, inter alia, “sexuality”²⁴, and revived public debates on the issue of sexual orientation, with divergent views on whether legislation prohibiting sexual orientation discrimination should be enacted. The Bill was eventually voted down in the LegCo.

2.4 In 1995, the Government commissioned an opinion survey to

²² The wording of the motion reads: “That measures be presented to this Council - (a) to remove the criminal penalties relating to homosexual acts committed in private by consenting men who have reached the age of 21; and (b) to extend to men and boys, where appropriate, the protection from sexual exploitation afforded by the Crimes Ordinance to women and girls.”

²³ Hansard of the meeting of the LegCo on 11 July 1990

²⁴ Defined as “heterosexuality, homosexuality (including lesbianism) or bisexuality” in the Bill

gauge the public's perception of different forms of sexual orientations, and their views on the measures the Government should adopt in addressing the problem of discrimination on the ground of sexual orientation. The results of the survey, with a sample size of 1 500, indicated that the public had an ambivalent attitude towards homosexuality / bisexuality in a number of aspects, such as the impact of homosexual / bisexual behaviour on others, and contacts with homosexuals / bisexuals on social occasions²⁵. Moreover, a lower level of acceptance was clearly observed in some areas including same-sex marriage, adoption of children by homosexuals / bisexuals and contacts with homosexuals / bisexuals in private settings.

2.5 In 1996, the Government conducted a consultation exercise to consult the public on, inter alia, the legislative and non-legislative approaches to address the problems encountered by homosexuals in Hong Kong. A total of 10,014 submissions were received. An overwhelming majority (over 80% of respondents) strongly opposed legislation in respect of sexual orientation. Having regard to the outcome of the consultation exercise, the Government decided to adopt a non-legislative approach to address the issue of discrimination encountered by homosexuals and promote equal opportunities in respect of sexual orientation. The Equal Opportunities (Sexual Orientation) Funding Scheme was launched in 1998 and the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation (“the Code”)(text of the Code at **Appendix B**²⁶) was released in the same year. The Sexual Minorities Forum was established in 2004 to provide a forum for exchanges with sexual minorities groups²⁷ and the Gender Identity and Sexual Orientation Unit (“GISOU”) was set up in the then Home Affairs Bureau in 2005.

2.6 In 2005, the Government commissioned another survey to assess public attitudes towards homosexuals, including whether there was a need for introducing legislation to prohibit discrimination against people of different sexual orientation. The findings of the survey revealed, amongst others, that 34.5% of the respondents considered that the Government should not legislate at that stage, 28.7% considered that the Government should legislate and 33.7% stood neutral.

²⁵ Including shaking hands, watching movies, singing Karaoke, dining out and going swimming with homosexuals / bisexuals

²⁶ The Code is also accessible at the webpage of the Constitutional and Mainland Affairs Bureau: http://www.cmab.gov.hk/en/issues/code_of_practice.htm

²⁷ The Sexual Minorities Forum was established in September 2004 to provide a regular and formal channel for non-governmental organisations and the Government to exchange views on issues concerning sexual minorities in Hong Kong. The Forum was discontinued in June 2013, while the Advisory Group was set up at the same time.

2.7 In 2005, the Court of First Instance held in *Leung TC William Roy v Secretary for Justice*²⁸ that provisions in the Crimes Ordinance which prohibited buggery or an act of gross indecency involving two males if one or both were aged under 21 were discriminatory on the ground of sexual orientation and hence unconstitutional. The court held that section 118H²⁹ of the Ordinance was discriminatory because heterosexual and lesbian couples having reached the age of 16 were permitted by the law to engage in acts of sexual intimacy, but section 118H did not permit gay couples to engage in the same conduct until they were 21. The court also held that section 118C³⁰ of the Ordinance was discriminatory because when under-age homosexual buggery took place, both men were made criminally liable, whereas under section 118D which prohibited buggery with a woman aged under 21, only the man in under-age heterosexual buggery but not the woman was criminally liable. An appeal against the Court of First Instance's ruling on the constitutionality of section 118C³¹ was dismissed by the Court of Appeal for the reason that no evidence had been given to explain why the minimum age requirement for buggery was 21 whereas for sexual intercourse between a man and a woman, the age of consent was only 16.

2.8 In 2007, the Court of Final Appeal (“CFA”) held in *Secretary for Justice v Yau Yuk Lun*³² that the provision of the Crimes Ordinance against homosexual buggery committed not in private was discriminatory on the ground of sexual orientation and was unconstitutional. The CFA noted that all persons, irrespective of sexual orientation, were subject to the common law offence of committing an act outraging public decency. However, homosexuals alone were subject to the statutory offence in section 118F(1)³³, whilst heterosexuals were subject to no comparable criminal

²⁸ HCAL No. 160/2004

²⁹ At the time when the judgment was delivered by the Court of First Instance, section 118H provided: “A man who (a) commits an act of gross indecency with a man under the age of 21; or (b) being under the age of 21 commits an act of gross indecency with another man, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 2 years.”

³⁰ At the time when the judgment was delivered by the Court of First Instance, section 118C provided: “A man who (a) commits buggery with a man under the age of 21; or (b) being under the age of 21 commits buggery with another man, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.”

³¹ The respondent appealed to the Court of Appeal seeking to set aside the Judge's declarations only in relation to section 118C of the Ordinance.

³² FACC 12/2006, [2007] 3 HKLRD 903, 17 July 2007.

³³ At the time when the judgment was delivered by the CFA, section 118F(1) provided: “A man who commits buggery with another man otherwise than in private shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for five years.”

liability in relation to vaginal intercourse or buggery otherwise than in private. Secondly, there was no genuine need for the differential treatment³⁴.

2.9 In 2009, the Domestic Violence Ordinance was amended to become the Domestic and Cohabitation Relationship Violence Ordinance to provide protection for same-sex cohabitants as well.

2.10 In 2013, The Court of Final Appeal held in *W v The Registrar of Marriages*³⁵ that in addressing the question of whether an individual like the appellant qualifies as “a woman” so as to be entitled to marry a man, the Court ought in principle to consider all the circumstances – biological, psychological and social – relevant to assessing that individual’s sexual identity at the time of the proposed marriage. In that case, the Court held that a post-operative male-to-female transsexual person in the appellant’s situation, who has gone through full sex reassignment surgery and was issued with a new Hong Kong Identity Card and passport stating her sex as female, should be eligible to marry a man.

Fact-finding and Collection of Views

2.11 Having taken stock of the aforementioned major developments and the latest situation, the Advisory Group saw the need to identify in what specific aspects sexual minorities were discriminated against and the extent of such discrimination, before consideration could be given as to what targeted measures should be formulated. The Advisory Group therefore recommended that a study on these issues should be conducted, and rendered advice on how such a study should be conducted.

2.12 In parallel, the Advisory Group considered the findings of a desktop research on the experience of some other jurisdictions in tackling discrimination on grounds of sexual orientation and gender identity. The Advisory Group also rendered advice on a number of public education and publicity measures to promote non-discrimination. In addition, the Advisory Group met with different sexual minority groups, family values and religious groups as well as other concern groups to listen to their views and concerns on the subject.

2.13 The Advisory Group’s work in fact-finding and collection of views is explained in more detail in the ensuing paragraphs.

³⁴ Paras 23 to 30 of the judgment

³⁵ FACV No. 4 of 2012

I. Study on discrimination experienced by sexual minorities in Hong Kong

Objective, scope and methodology

2.14 The Advisory Group decided that a study should be carried out with a view to helping ascertain, inter alia, whether sexual minorities are discriminated against in Hong Kong and, if so, the discrimination they experience; specifically:

- (a) in what aspects or domains they experience discrimination;
- (b) in what ways, i.e., the forms of discrimination;
- (c) in what areas the respondents require support and/or redress , given these experiences; and
- (d) whether the respondents have attempted to seek redress and/or assistance from different bodies and, if not, the reasons for not doing so.

2.15 The Advisory Group rendered advice on how the study should be conducted, including the study objectives, methods to recruit participants, ways to obtain information from participants, and the discussion guide. Upon such advice, Policy 21 Limited (“the consultant”) was commissioned by the Constitutional and Mainland Affairs Bureau (“CMAB”) to conduct the study (“the Fact-finding Study”) after a tendering exercise.

2.16 Having regard to the Advisory Group’s advice, the consultant recruited a total of 214 sexual minority participants (including lesbian, gay, bisexual, transgender, post-gay and intersex participants) from diverse socio-economic backgrounds. The participants were recruited through sexual minority networks and communities, open recruitment, and referrals by participants (i.e., “snowball sampling”).

2.17 A qualitative method was adopted to provide in-depth understanding of the experiences of sexual minorities. The consultant met with the 214 participants between March 2014 and September 2014 and obtained information from them through either focus group discussions or one-to-one interviews.

Limitations

2.18 While the qualitative approach could provide ample scope for obtaining in-depth responses by participants on their experiences, the limitations of the approach were also acknowledged. The views from sexual minority participants were the single source of qualitative data of the

Fact-finding Study, and the experiences mentioned were cited based on their perceptions without a requirement to produce concrete evidence or verification with other relevant parties. In addition, the Fact-finding Study used a non-random sample comprising a limited number of participants, hence it was not meant to be a statistically representative sample to illustrate the extent of the experiences. The findings therefore cannot be extrapolated to wider populations or form the basis for any general conclusion to be drawn regarding the sexual minorities population at large in Hong Kong. Nevertheless, efforts have been made to collect views of the sexual minorities from diverse backgrounds as far as possible.

Key findings

2.19 The report of the Fact-finding Study is at **Appendix C**. Cases of discrimination³⁶ against the sexual minorities were reported in four public domains, namely, employment; education; provision of goods, facilities and services; and disposal and management of premises. The discrimination encountered took the form of harassment (unwelcome verbal conduct primarily, but acts of unwelcome physical conduct were also reported) and direct discrimination. The participants of the Fact-finding Study who encountered discrimination are commonly of the view that one of the major causes of discrimination is that the “discriminators” lacked sensitivity in relation to issues related to sexual orientation and gender identity. Relevant findings of the Fact-finding Study in respect of the different domains are summarised below:

- **Employment:** Slightly less than half of the participants (72 out of the 180 participants who had work experience in Hong Kong) indicated that they had encountered discrimination. Some participants (59) encountered unwelcome verbal conduct (a form of harassment) in the workplace. A few participants (6) suffered sexual harassment verbally or physically by their employers or co-workers. A few participants (10) reported

³⁶ The reported discrimination experiences, if any, were recorded by the consultant under the following categories of forms of discrimination: direct discrimination (i.e., a person is treated less favourably than another person with a different sexual orientation or gender identity); indirect discrimination (i.e., a condition or requirement is applied to everyone but in practice adversely affects persons of a particular sexual orientation or gender identity); harassment (i.e., a person is subjected to unwelcome verbal or physical conduct on grounds of their sexual orientation or gender identity); and vilification (any activity in public that incites hatred towards, serious contempt for, or severe ridicule of, a person or persons because of their sexual orientation or gender identity). Such a classification is largely in line with the definition of “direct discrimination”; “indirect discrimination”; “harassment” and “vilification” in the existing anti-discrimination ordinances.

experience of direct discrimination, which includes being asked to leave their jobs/denied job offers or being deprived of promotion and training opportunities once their sexual orientation / gender identity was discovered. On the other hand, about half of the participants (108) who had work experience in Hong Kong stated that they had not experienced discrimination in the workplace.

The majority of the participants (140 out of the 180 participants who had work experience in Hong Kong) opined that the major cause of discrimination in the workplace against sexual minorities was that their employers or colleagues lacked adequate and accurate knowledge about sexual orientation, gender identity and related issues.

- **Education:** some of the participants (69 out of 208 participants who had studied in Hong Kong) reported having encountered discrimination in the educational domain. Some of them (58) encountered unwelcome verbal conduct (a form of harassment) in school, while a few encountered unwelcome physical conduct (a form of harassment) (4) and sexual harassment (8). Two participants also reported that they were denied school place offers by theological college, which in their view might constitute direct discrimination³⁷. On the other hand, the majority of participants (139) who had studied in Hong Kong said that they had never encountered discrimination in school, but at the same time it should be noted that the majority of the participants (154) who had studied in Hong Kong chose to conceal their sexual orientations / gender identities in school.

The great majority of the participants who had experienced discrimination at school (61 out of the 69 participants) had not sought assistance from any party. The major reason cited was that they did not know any party that could provide assistance, and they felt that the teachers and social workers were not equipped with adequate knowledge and skills to handle cases of discrimination against sexual minority students. Besides, a small group of participants (21) opined that the lack of relevant knowledge led to misunderstandings or even discrimination. The participants considered that training courses for teachers and social workers should be provided;

³⁷ While there was less favourable treatment for a person with different sexual orientation or gender identity in these cases, the consultant noted that the anti-discrimination laws in some of the overseas jurisdictions provide exemptions for religious schools in relation to their decisions on admission of students.

- **Provision of goods, facilities and services:** some of the participants (85 out of 214 participants) indicated that they had encountered discrimination in this domain. Some of them (45) have encountered unwelcome verbal conduct by the providers of goods, facilities and services. Apart from this, some of the participants reported experience of direct discrimination, which included denial of goods, facilities or services requested (e.g., being denied Valentine's Day menus in restaurant and being denied entry to public toilets) (40) or differential treatment during the provision of goods, facilities or services (e.g., being charged additional deposit for rental in hotel/inn) (6). The remaining 129 participants who made up about half of all the participants expressed that they had not faced discrimination in relation to the use/purchase of goods, facilities and services.

There were two cases of transgender participants being refused provision of social services and medical services in private clinics where the services were specifically for persons of one sex. Such cases might reflect a lack of adequate knowledge about transgenderism among front-line workers. Some of the transgender participants (14 out of the total 37 transgender participants) indicated that doctors and medical staff often lacked good knowledge of transgenderism. There were also reported cases where the participants encountered discrimination by service providers in business sectors, when they were seeking catering services, rental of hotels/inns and retail services. A small group of participants (21) considered that more materials issued by the Government to promote the message of equal opportunities would help prevent discrimination under this domain.

- **Disposal and management of premises:** Many participants had no relevant experience in relation to this domain. Some of the participants (6 out of the 48 participants who had experience in disposal and management of premises) reported having encountered direct discrimination, which included being denied from renting premises (4), and being subjected to less favourable treatment in relation to the rental of premises (2). However, the remaining majority of participants (42) who had experience in disposal and management of premises in Hong Kong had not encountered discrimination in this domain.

The great majority of the participants who had experienced discrimination in relation to the disposal and management of

premises had not sought assistance from any party (5 out of 6 participants who experienced discrimination in relation to the disposal and management of premises). The main reason for not seeking assistance was that they did not know any party that could provide assistance.

- **Other domains:** A few participants reported that they encountered direct discrimination in church (4)³⁸: when their sexual minority identity was discovered in the churches they had joined, they were denied the opportunities to participate in the activities of the churches³⁹. One post-gay participant recalled that he was opposed by a sexual minority organisation when he attended a forum to share his experience where he was subjected to unwelcome verbal conduct.

2.20 To address discrimination against sexual minorities, the majority of participants proposed (a) education in schools and education for stakeholders in different domains; and (b) enacting legislation against discrimination on grounds of sexual orientation and gender identity. Some of the participants proposed the following supportive measures: (c) setting up unisex toilets and changing rooms; (d) enhancing employment resources and counselling services for sexual minorities; (e) providing temporary shelters for sexual minorities. Some of the transgender participants proposed: (f) allowing transgender persons to dress in accordance with their preferred gender at work or at school; and (g) protecting privacy in relation to sex/gender identity (in relation to the use of public services).

II. Desktop research on experience and legislation in other jurisdictions

Objective and scope

2.21 The Advisory Group looked into the findings from a desktop research on the experience in tackling discrimination on grounds of sexual orientation and gender identity in selected jurisdictions, namely, Australia,

³⁸ These experiences were reported during the open-ended session of the focus group discussion and/or in-depth interview on experiences in other domains. As the experiences do not belong to the major domains covered by the study, there was no statistic on how many participants in total participated in church activities.

³⁹ While there was apparently less favourable treatment for a person with different sexual orientation in these cases, the consultant noted that the anti-discrimination laws in some of the overseas jurisdictions provide exemptions for religious organisations in relation to participation in their activities.

Canada, New Zealand, Taiwan, the United Kingdom and the United States. These jurisdictions were selected after considering that they already have some form of legislation enacted, the relative ease of obtaining information about the jurisdiction, and the availability of information in English or Chinese. The desktop research covers the scope of the concerned legislation including the domains and conducts covered, the exceptions / exemptions, relevant litigation / complaint cases, and areas of concern, if these are readily accessible through the online search.

Limitations

2.22 As background, **Appendix D** sets out the statistics of countries / jurisdictions concerning whether they outlaw homosexual activities and whether they have anti-discrimination legislation. The desktop research is focusing on only six jurisdictions with legislation against discrimination on grounds of sexual orientation and gender identity, hence contains limited information about alternative approaches to anti-discrimination legislation, e.g., how jurisdictions without anti-discrimination legislation tackled discrimination against the sexual minorities by administrative measures.

Findings

2.23 The desktop research identified some common features of the legislative measures against discrimination in the jurisdictions studied, as well as a number of issues in their implementation which point to a need for more in-depth studies to inform discussions on formulating proposals for legislation in Hong Kong. The ensuing paragraphs provide an overview of the research findings and the issues identified.

Legislative approaches

2.24 All jurisdictions covered in the research except Taiwan enacted anti-discrimination law in a self-contained piece of legislation, containing some common elements of (a) a delineation of the grounds of discrimination, (b) a number of domains to which the anti-discrimination law is applicable and (c) a delineation of the prohibited conduct(s), with differences in terms of scope and form among the jurisdictions. In contrast, Taiwan does not have a self-contained anti-discrimination legislation: anti-discrimination provisions cover only the domains of education and employment, and are found in separate pieces of legislation, namely, the Act of Gender Equality in Employment, the Employment Services Act, and the Gender Equity Education Act.

Common elements of legislation

2.25 The Advisory Group recognises that the following features are the common elements found in the anti-discrimination legislation in the six jurisdictions:

(a) Grounds of discrimination

In the anti-discrimination legislation studied, it is unlawful to discriminate against someone because of certain personal characteristics. These characteristics are defined as prohibited grounds of discrimination. The anti-discrimination legislation in all the jurisdictions studied contains the ground of “sexual orientation”, with only some of the jurisdictions also covering the ground(s) for transgender people. For the latter, the different pieces of legislation adopt different terminology including “gender identity”⁴⁰, “gender reassignment”⁴¹, and “gender expression”⁴². It is also noteworthy that some jurisdictions do not specify any ground for transgender people⁴³.

⁴⁰ “Gender identity” has different definitions in respective legislation, e.g.,

Australia (Federal) Sex Discrimination Act 1984 (Part I – Section 4): gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth;

Australia (Victoria) Equal Opportunity Act 2010 (Part I – Section 4): (a) the identification on a bona fide basis by a person of one sex as a member of the other sex (whether or not the person is recognised as such) - (i) by assuming characteristics of the other sex, whether by means of medical intervention, style of dressing or otherwise; or (ii) by living, or seeking to live, as a member of the other sex; or (b) the identification on a bona fide basis by a person of indeterminate sex as a member of a particular sex (whether or not the person is recognised as such) - (i) by assuming characteristics of that sex, whether by means of medical intervention, style of dressing or otherwise; or (ii) by living, or seeking to live, as a member of that sex; and

Gender Equity Education Act in Taiwan (Article 2(6)): an individual's awareness and acceptance of his or her own gender.

⁴¹ In the UK, defined by the Equality Act 2010 (Part 2 – Section 7) as: a person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex

⁴² Ontario (Canada) Human Rights Code. The Code also covers the ground of “gender identity”. Both terms are not defined in the Code.

⁴³ New Zealand Human Rights Act 1993, Canadian Human Rights Act (Federal) (the Canadian Human Rights Tribunal set a precedent in *Montreuil v. the Canadian Forces* in 2009 when it ruled that there is “no dispute that discrimination on the basis of

In the five jurisdictions with a self-contained piece of anti-discrimination legislation, the legislative regime is such that the same piece of legislation also covers other grounds including “age”, “disability”, “race”, “religion or belief”, “sex”, etc.

(b) Domains

The pieces of legislation covered in the research define the areas of public life (i.e., domains) in which discriminatory acts will be unlawful. The categories of domains vary among the jurisdictions, yet some are included by all of the self-contained anti-discrimination legislation covered in the research, namely, employment (or work); education; and premises (or accommodation). Other common domains include provision of goods, facilities and services⁴⁴; and public function^{45 46}.

(c) Prohibited conduct

Direct discrimination and indirect discrimination are prohibited in all of the five jurisdictions with self-contained anti-discrimination legislation⁴⁷. In some of the jurisdictions, the law also prohibits harassment in specified domains⁴⁸, sexual harassment⁴⁹, and victimisation⁵⁰. The anti-discrimination

Transsexualism constitutes sex discrimination as well as discrimination on the basis of a disability.”) and New York (US) Sexual Orientation Non-Discrimination Act

⁴⁴ UK Equality Act 2010; New Zealand Human Rights Act 1993; Australia (Federal) Sex Discrimination Act 1984; Victoria (Australia) Equal Opportunity Act 2010; Canadian Human Rights Act (Federal); and Ontario (Canada) Human Rights Code

⁴⁵ *Ditto*

⁴⁶ It refers to a public function which does not involve the provision of a service. Examples of such public functions include law enforcement and revenue raising and collection.

⁴⁷ In Taiwan, the Act of Gender Equality in Employment, the Employment Services Act, and the Gender Equity Education Act prohibit “discrimination”. “Direct” or “indirect” discrimination is not specified.

⁴⁸ UK Equality Act 2010; Canadian Human Rights Act (Federal); Ontario (Canada) Human Rights Code; and New York (US) Sexual Orientation Non-Discrimination Act

⁴⁹ UK Equality Act 2010; New Zealand Human Rights Act 1993; Australia (Federal) Sex Discrimination Act 1984; Victoria (Australia) Equal Opportunity Act 2010; Canadian Human Rights Act (Federal); Ontario (Canada) Human Rights Code; and the Act of Gender Equality in Employment and the Gender Equity Education Act in Taiwan

⁵⁰ UK Equality Act 2010; New Zealand Human Rights Act 1993; Australia (Federal) Sex

legislation in these jurisdictions does not prohibit vilification or hate crime on grounds of sexual orientation and gender identity. It is noted that such conduct is prohibited by separate criminal provisions in jurisdictions including the UK and Canada.

Exemptions

2.26 The self-contained anti-discrimination legislation in all jurisdictions covered in the research set out a range of specific circumstances where differential treatment on the basis of sexual orientation or gender identity is not unlawful. These are known as exemptions or exceptions. The Advisory Group recognises that exemptions in the following areas are commonly adopted by the jurisdictions which have enacted anti-discrimination legislation.

- (a) Religion: religious requirements in employment / appointment decisions⁵¹; religious solemnisation of marriages⁵²; and other acts by religious bodies^{53 54};

Discrimination Act 1984; Victoria (Australia) Equal Opportunity Act 2010; Canadian Human Rights Act (Federal); Ontario (Canada) Human Rights Code; and the Act of Gender Equality in Employment in Taiwan

⁵¹ UK Equality Act 2010 (Part 1 – Schedule 9 (Paragraph 2); New Zealand Human Rights Act 1993 (Part 2- Section 28); Australia (Federal) Sex Discrimination Act 1984 (Part II – Section 37) ; Victoria (Australia) Equal Opportunity Act 2010 (Part 5 – Section 82); Ontario (Canada) Human Rights Code (Section 24(1)); and New York (US) Sexual Orientation Non-Discrimination Act

⁵² UK Equality Act 2010 (Part 6 – Section 24); and Ontario (Canada) Human Rights Code (Section 18.1)

⁵³ The “other acts” covered in the legislation vary across the selected jurisdictions:

UK Equality Act 2010 (Schedule 23 – paragraph 2): restrictions on membership of the organisation; participation in its activities; the use of any goods, facilities or services that it provides; and the use of its premises;

Australia (Federal) Sex Discrimination Act 1984 (Part II – Section 37(1)(d)): any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.;

Victoria (Australia) Equal Opportunity Act 2010 (Part 5 – Section 82(2)): anything done on the basis of a person's sexual orientation or gender identity by a religious body that (a) conforms with the doctrines, beliefs or principles of the religion; or (b) is reasonably necessary to avoid injury to the religious sensitivities of adherents of the religion.; and

New York (US) Sexual Orientation Non-Discrimination Act: sales or rental of housing accommodations, and admission to persons of the same religion; giving preferences to

- (b) Employment: employment in relation to provision of domestic or personal services⁵⁵; and crucial or bona fide occupational requirement⁵⁶;
- (c) Premises: shared accommodation⁵⁷;
- (d) Provision of goods, facilities and services: differential treatment in insurance policy⁵⁸;
- (e) Sports: Restriction of participation of transgender people in

persons of the same religion or denomination; and taking "such action as is calculated by such organisation to promote the religious principles for which it is established or maintained."

⁵⁴ Definitions of "religious body" vary among the following jurisdictions, e.g.,

Victoria (Australia) Equal Opportunity Act 2010 (Part 5 – Section 81): (a) a body established for a religious purpose; or (b) an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles;

UK Equality Act 2010 (Schedule 23 – Section 2): an organisation the purpose of which is (a) to practise a religion or belief; (b) to advance a religion or belief; (c) to teach the practice or principles of a religion or belief; (d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or (e) to foster or maintain good relations between persons of different religions or beliefs. And it does not apply to an organisation whose sole or main purpose is commercial.

US: the definition varies among states, e.g. (i) New York Executive Law § 296(11): "any religious or denominational institution or organisation, or any organisation operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organisation"; and (ii) Wisconsin State Legislature § 111.32(12m) (2011): "an organisation [...] which operates under a creed."

⁵⁵ New Zealand Human Rights Act 1993 (Part 2 – Section 27); Victoria (Australia) Equal Opportunity Act 2010 (Part 4 – Section 24); and Ontario (Canada) Human Rights Code (Section 24(1)(c))

⁵⁶ UK Equality Act 2010 (Schedule 9 – Paragraph 1); and Canada (Federal) (Section 15)

⁵⁷ UK Equality Act 2010 (Schedule 5 – Paragraph 3); New Zealand Human Rights Act 1993 (Part 2 – Section 54); Victoria (Australia) Equal Opportunity Act 2010 Part 4 – Section 59); Ontario (Canada) Human Rights Code (Section 21(1)) ; and New York (US)

⁵⁸ UK Equality Act 2010 (Schedule 9 – Section 20); New Zealand Human Rights Act 1993 (Part 2 – Section 48); and Victoria (Australia) Equal Opportunity Act 2010 (Part 4 – Section 47)

sports activities⁵⁹; and

- (f) Charities: Charities are allowed to provide benefits only to people who share certain personal characteristics including sexual orientation if it is justified, e.g. charity services exclusive to homosexuals or heterosexuals⁶⁰.

Issues identified as requiring further study – (1) Definition of “gender identity”

2.27 “Gender identity” is a relatively new ground in the anti-discrimination legislation of jurisdictions covered in the desktop research. While “gender identity” is defined in the anti-discrimination legislation of some of the jurisdictions studied as discussed in paragraph 2.25 above, concerns have been raised over the subjectivity of definitions of “gender identity”. In 2013, when the Congress in the US introduced the Employment Non-discrimination Act (“ENDA”) which covered the ground of gender identity, defined as “the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual’s designated sex at birth”, some expressed concern that the subjective definition could lead to abuse. Some commentators queried the creation of rights for individuals claiming to be transgender persons to act in ways in conflict with the interests of other people in the workplace, and the prohibition on employers from considering the consequences of the individuals’ behaviour⁶¹. In Canada, an attempt by a Member of Parliament to add “gender identity” and “gender expression” to the list of prohibited grounds of discrimination in the Canadian Human Rights Act was met with concerns that the bill would allow men access to women’s washroom facilities and open a door to sexual predators^{62 63}.

⁵⁹ UK Equality Act 2010 (Part 14 – Section 195); New Zealand Human Rights Act 1993 (Part 2 – Section 49); Australia (Federal) Sex Discrimination Act 1984 (Part II – Section 42); and Victoria (Australia) Equal Opportunity Act 2010 (Part 4 – Section 72)

⁶⁰ UK Equality Act 2010 (Part 14 – Section 193); New Zealand Human Rights Act 1993 (Part 7 – Section 150); Australia (Federal) Sex Discrimination Act 1984 (Part II – Section 36); and Victoria (Australia) Equal Opportunity Act 2010 (Part 5 – Section 80)

⁶¹ Source: (i) “ENDA, explained” published in the Washington Post on 4 November 2013; and (ii) “ENDA Threatens Fundamental Civil Liberties” issued by The Heritage Foundation 1 November 2013.

⁶² Source: “MP Rob Anders takes aim at transgender rights ‘bathroom bill’ proposal” published by the National Post in Canada on 4 October 2012

⁶³ The bill was passed by the House of Commons of Canada in 2013 and was being scrutinised by the Senate of Canada as of November 2015. The status of scrutinisation can be tracked from the website of the Parliament of Canada (<https://openparliament.ca/bills/41-1/C-279/>).

Issues identified as requiring further study – (2) Concerns surrounding the application of exemptions

2.28 The self-contained anti-discrimination legislation in all the jurisdictions covered by the desktop research provides exemptions for religious bodies (as summarised in paragraph 2.26(a) above), and the scope of the exemptions varies across the jurisdictions. For instance, while the religious requirements in employment / appointment decisions are commonly covered by the jurisdictions, the legislation studied in Australia also broadly cover “other acts” by a religious body that conform to and/or promote the religious doctrines⁶⁴.

2.29 Though specific exemptions are provided in the anti-discrimination legislation of some jurisdictions to protect the freedom of religious organisations to conduct their activities in accordance with their beliefs and doctrines, concerns and uncertainties have arisen as to the application of these exemptions, as no commonly recognised criteria have emerged in the jurisprudence on reconciliation of competing rights when such conflicts arise. Court decisions on the scope of activities which can be undertaken following religious doctrines under the exemption provisions have been highly contextual, dependent on the specific circumstances of each case and do not readily lend themselves to generalisation. Examples of such cases are set out below. They are not exhaustive and aim to illustrate that exemptions applicable to religious bodies were upheld by the court in some instances but not so in others.

- A resort operated by an organisation with Christian background in Victoria, Australia refused a booking for a programme targeted at same-sex attracted young people. The court ruled that the organisation could not rely on the exemptions for bodies established for religious purposes, in consideration, inter alia, that it provided camping facilities to both secular and religious groups⁶⁵;
- The owner of a printing company in Ontario, Canada refused to provide services to a sexual minority organisation on the basis that the service would be in conflict with his religious beliefs. The court noted that the further an activity was from the core elements of the freedom, the more likely the activity was to impact on others and the less deserving the activity was of

⁶⁴ See Footnote 53

⁶⁵ *Cobaw Community Health Services v Christian Youth Camps Ltd & Anor* (2014)

protection. While the court ruled that the owner lost the case, the court acknowledged the possibility of a different result in a different context, for example where the content of the materials being printed might more directly conflict with the core elements of the owner's beliefs⁶⁶;

- In a case in New Zealand⁶⁷, the plaintiff brought proceedings on the basis of discrimination following the church's refusal to consider him for ordination as he was in an unmarried same-sex relationship which was against the doctrine of the Bishop of Auckland. The claim failed as it was ruled that the relevant exception of the law was to preserve the institutional autonomy of organised religions in relation to their decisions concerning the appointment of clergy;
- A Christian operator of a community living residence in Ontario, Canada was not allowed to require its workers to sign a Lifestyle and Morality Statement which identified homosexual relationships as inappropriate behaviour⁶⁸;
- In a case in British Columbia, Canada⁶⁹, the court considered whether graduates of a private Christian university, which required its students to abide by certain "community standards" which prohibited "homosexual activity", should be licensed by a college of teachers to teach in the public school system. The college of teachers argued that it was justifiably concerned about a risk that as teachers, graduates of the Christian university would discriminate on the basis of sexual orientation. The court found no concrete evidence that holding such beliefs in relation to "homosexuality" would result in actions by those graduates that would be discriminatory, and that the college of teachers was wrong in rejecting those graduates⁷⁰.

⁶⁶ *Brockie v Brillinger (2002)*; In this case, no relevant exception was provided in the legislation. The appellant (i.e., the owner) sought declarations by the court that the Ontario Human Rights Commission was unconstitutional "in failing to provide a defence of bona fide conscience or religious exemption..." This claim failed.

⁶⁷ *Gay and Lesbian Clergy Anti-Discrimination Society v Bishop of Auckland (2013)*

⁶⁸ *Ontario Human Rights Commission v Christian Horizons (2010)*; the court emphasises that "an employer who wants to rely on a bona fide occupational qualification exception in human rights legislation must prove a direct and substantial relationship between the job's qualifications and the abilities and qualities needed to satisfactorily perform the particular job."

⁶⁹ *Trinity Western University v British Columbia College of Teachers (2001)*

⁷⁰ The court opined that "...although the college was right to evaluate the impact of the

2.30 The desktop research also touched on controversies during the legislative process when exemption provisions were drawn up. In Australia, soon after the Victorian Government passed the Equal Opportunity Act 2010 to, inter alia, narrow the scope of the “religious bodies” exception⁷¹, such a change was reversed in 2011 by the government of the next term, which was of the view that the reduced scope of exceptions would undermine religious freedom, with adverse impact on faith-based schools and parents who wanted religious education for their children⁷².

III. Meetings with stakeholders groups

2.31 To ensure that different viewpoints and concerns of different sectors in the community are taken into account when considering and formulating recommendations to the Government, the Advisory Group has met stakeholder groups including the New Creation Association (“NCA”), Post Gay Alliance (“PGA”), Diocesan Committee for the Pastoral Care of Persons with Same Sex Attraction, Family School Sexual Orientation Discrimination Ordinance Concern Group (“Concern Group”), Kowloon Union Church (“KUC”) and Queer Theology Academy (“QTA”) and the Equal Opportunities Commission (“EOC”) to exchange views with them.

2.32 During these exchange sessions, some representatives shared with the Advisory Group the discrimination or difficulties faced by sexual minorities in Hong Kong and their views on support services they needed as well as legislating against discrimination on the grounds of sexual orientation and gender identity.

2.33 The Advisory Group noted in particular that stakeholder groups held divergent views over the issue of whether legislation should be enacted to prohibit discrimination on the ground of sexual orientation. The EOC, KUC and QTA support the enactment of legislation to protect sexual

Christian university’s admission policy on the public school environment, it should have considered more. The Human Rights Code, R.S.B.C. 1996, c. 210, specifically provides for exceptions in the case of religious institutions...”

⁷¹ I.e. discrimination in employment of religious bodies could only be justified if the possession of a particular attribute was an inherent requirement of a role.

⁷² Source: (i) “How Victoria's Equal Opportunity Act has changed over time” published by the Victorian Equal Opportunity and Human Rights Commission on its website, accessible (as at December 2015) at:

<http://www.humanrightscommission.vic.gov.au/index.php/about-us/item/572-howvictorias-equal-opportunity-act-has-changed-over-time>; and (ii) “Religious groups to regain bias rights” published by The Age Victoria on 13 February 2011

minorities on grounds of the principles of diversity, inclusion and equal opportunities. The KUC and QTA saw the need for legislation as they were aware that among their service users who are sexual minorities, some encountered struggles or discrimination (such as losing one's job upon disclosure of sexual orientation or gender identity; and being asked by the school that was run by a church to change one's sexual orientation). The KUC opined that while legislation could not resolve all problems in the private domain, it could serve as an educational tool and instill a value in society. KUC was also of the view that there were different views among Christian churches as to how the Bible should be interpreted regarding homosexuality and whether legislation should be enacted to prohibit discrimination on the ground of sexual orientation; while some Christians supported equal rights for sexual minorities, many churches were in general concerned about the impact of the legislation on religious freedom and freedom of education.

2.34 On the other hand, the other stakeholder groups (e.g., Concern Group, NCA and PGA) expressed concerns about the impact of enacting such legislation on different aspects of human rights including the freedom of religious beliefs and freedom of speech. The areas of concern raised include the following:

- (a) the anti-discrimination legislation would jeopardise the freedom to teach traditional family values in schools. Overseas experiences had revealed that tackling the problem through legislation was a disproportionately excessive move. Family values would be under attack and cases of “reverse discrimination”⁷³ would emerge;
- (b) there would also be implications on procreation and children's development, which might be sacrificed when the institution of marriage was undermined and homosexual couples would have a right of adoption to be allowed by the legislation ;
- (c) whether to enact legislation was a very sensitive and controversial issue. It was necessary to take into account the local culture and public sentiments; and
- (d) there would be a chilling effect on freedom of speech. Even without such legislation in place in Hong Kong, the current social atmosphere in Hong Kong was already hostile to people

⁷³ “Reverse discrimination” in this report refers to alleged unfair treatment to those who disapprove of homosexual behaviour or disagree with the agenda of homosexual movements in support of relevant anti-discrimination legislation or same sex marriage.

who spoke against homosexuality. On the social media, views were already biased against traditional family values.

2.35 The views of the different groups the Advisory Group has met are set out in detail at **Appendix E**.

IV. The Government's publicity measures

2.36 The Advisory Group was apprised that the Government had been implementing various publicity measures to promote equal opportunities on the grounds of sexual orientation and gender identity. These measures target at the general public and the employment field, including broadcasting Announcements in the Public Interest ("APIs"); launching poster campaigns at government venues and public areas, organising various competitions as well as briefings and seminars on the Code, etc.

2.37 To help enhance the Government's promotional effort, the Advisory Group rendered advice on (a) the key messages to be included in the first-ever series of API on television (and associated radio API and poster) to promote the message of non-discrimination against and equal opportunities for people of different sexual orientation and transgender people launched in end-2013; and (b) a campaign to appeal to employers in Hong Kong to adopt the Code.

2.38 For the series of API launched in end-2013, the Advisory Group has advised the following:

- (a) the API should deliver the messages (i) everyone is born equal, irrespective of his/her sexual orientation; and (ii) no person should discriminate against another person because that other person has a different sexual orientation or gender identity;
- (b) the API should avoid giving the impression that currently widespread discrimination against sexual minorities existed in Hong Kong;
- (c) the API should avoid persuading people to support homosexuality as there was a clear distinction between not discriminating against people who were homosexuals on the one hand, and supporting homosexuality on the other;
- (d) if possible, the API should help correct the misconception of equating a person who did not support homosexuality as one

who would discriminate against homosexuals; and

- (e) the concept of equal opportunities should be included in the messages for the API.

2.39 This was the first time a television API on this subject was produced. Other than on television and radio, the API has also been broadcast and the poster displayed on various other platforms, such as on the Internet, on public transport and in government venues. Pictures of the final products of the API and poster, which have incorporated the Advisory Group's views, are at **Appendix F**.

2.40 On the promotion of the Code, after incorporating the views of the Advisory Group, a campaign to promote the Code commenced in September 2013. The Government wrote to the top management of public sector bodies and leading private sector corporations/companies to appeal for their adoption of the Code, as well as to major chambers of commerce to enlist their assistance in promoting the Code to their members. The Advisory Group subsequently further advised to publish the list of organisations that have pledged to adopt the Code for public reference. The list was first made public in August 2014 with feature articles published in local newspapers (**Appendix G**). As at end November 2015, over 145 organisations in the public and private sector have pledged to adopt the Code; the list of these organisations is available at CMAB's website⁷⁴.

⁷⁴ http://www.cmab.gov.hk/doc/issues/Bilingual_List_of_Organisations.pdf

Chapter 3 - Deliberations and Recommendations

3.1 In formulating strategies and measures to tackle discrimination against the sexual minorities, the Advisory Group has considered the information and views collected through its work as introduced in Chapter 2, namely the qualitative Fact-finding Study on the discrimination experienced by sexual minorities in Hong Kong; the desktop research on the experience of six other jurisdictions in tackling discrimination on grounds of sexual orientation and gender identity; the views and concerns expressed by stakeholder groups; and the Government's public education and publicity measures.

3.2 The Advisory Group acknowledges the experience of discrimination as reported in the Fact-finding Study, and supports introducing strategies and measures to tackle discrimination. Members however had divergent views on how the problem could be addressed, in particular, whether legislation should be enacted to prohibit discrimination on the ground of sexual orientation and gender identity.

3.3 Members who support legislation consider that legislation was necessary as a deterrent of discrimination and means of public education, since the Fact-finding Study reveals cases of discrimination in different domains. These members note the strong concerns over implications of legislation on freedom of religious beliefs and speech, and opine that this may be addressed by providing exemptions in legislation. Some are of the view that the Government has a responsibility to enact sexual orientation discrimination legislation under Article 39 of the Basic Law, as well as ICCPR and ICESCR.

3.4 Members who oppose legislation are of the view that such legislation may unreasonably restrict the freedom of religious belief and the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions, which are protected by Article 32 of the Basic Law and Article 18(4) of the ICCPR respectively. They are concerned that the exact scope of religious exemptions is hard to define, and the reliance on exemptions may imply that the exempted acts are wrong in principle though tolerated by the legislation. Some suggest that the legislative approach should be considered only after administrative measures have been implemented and proved ineffective.

3.5 The Advisory Group also acknowledges the polarised views of stakeholders on this matter, which have been raised at meetings of the Advisory Group with different stakeholder groups (reported in paragraphs 2.33 – 2.34 above).

3.6 Given the complexity and sensitivity of the issues involved, Members reached a consensus after deliberation that a further study on the experience of legislative and non-legislative measures in other jurisdictions should be conducted to inform future consultation regarding measures to eliminate discrimination on grounds of sexual orientation and gender identity, and in parallel, the Government should tackle discrimination by strengthening various administrative measures. The Advisory Group recommends the following five areas of strategies and measures:

- (a) training and resources for personnel in specific fields;
- (b) a charter on non-discrimination of sexual minorities;
- (c) enhanced publicity campaign;
- (d) review and reinforcement of support services to address the specific needs of sexual minorities; and
- (e) further study on the experience of legislative and non-legislative measures of other jurisdictions to inform future consultation regarding both legislative proposals and administrative measures to eliminate discrimination on grounds of sexual orientation and gender identity.

3.7 The recommended strategies and measures are explained in the ensuing paragraphs.

- (a) Training and resources for personnel in specific fields; and**
- (b) Charter on Non-discrimination of Sexual Minorities**

3.8 In the Fact-finding Study, cases of discrimination against the sexual minorities were reported in four public domains, namely, (i) employment; (ii) education; (iii) provision of goods, facilities and services; and (iv) disposal and management of premises. The discrimination encountered mainly took the form of harassment (unwelcome verbal conduct primarily, but isolated reports of unwelcome physical conduct were also collected) and direct discrimination. As mentioned in paragraph 2.19 in Chapter 2, the participants of the Study who encountered discrimination are commonly of the view that one of the major causes of discrimination is that the “discriminators” lacked sensitivity in relation to issues related to sexual orientation and gender identity.

3.9 The Advisory Group acknowledges the need to raise the sensitivity of various service providers and professionals towards the sexual

minorities. After collecting preliminary views from groups of professionals concerned, the Advisory Group suggests introducing:

- (a) training 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 (as explained in paragraphs 3.10 to 3.17 below); and
- (b) a charter on non-discrimination of sexual minorities to be drawn up for voluntary adoption by employers; schools; providers of goods, facilities and services; and landlords / agents in charge of disposal and management of premises (“the Charter”), which aims at enhancing sensitivity and friendliness towards people with different sexual orientations and transgender people in the respective domains (as explained in paragraphs 3.18 to 3.27 below).

Training and resources for personnel in specific fields

Contents

3.10 The Advisory Group recommends that the following contents should be covered by the sensitivity training for teachers; medical practitioners, associated professionals and frontline workers in hospitals and clinics; social workers; and human resources professionals⁷⁵:

- (a) generic contents applicable to all aforementioned personnel:
 - (i) understanding of fundamental concepts about sexual orientation and gender identity; different categories of sexual orientation; and GID or gender dysphoria;
 - (ii) struggles and concerns of the sexual minorities in daily life, such as issues in “coming out” or disclosure of their sexual orientation or gender identity, healthcare and support services needed, risks and impact of homophobic bullying, and health concerns arising from homosexual behaviour and GID; and

⁷⁵ The Advisory Group has, through the Secretariat, gathered views from a number of teachers, healthcare professionals and social workers before formulating the recommendation.

- (iii) promotion of equal opportunities for people of different sexual orientation and transgender people, as well as the values of mutual respect between sexual minorities and other people (including those who disagree with homosexuality) and inclusiveness (e.g., the need for and benefits of maintaining a sexual minority-friendly environment).

(b) Domain-specific contents:

- (i) sharing of possible discrimination cases in respective domains;
- (ii) skills in handling service recipients who belong to the sexual minorities in the relevant contexts, such as counselling sexual minority students in schools; accommodating transgender employees undergoing real-life experience in the workplace; and providing service to transgender and intersex patients in hospitals/clinics; and
- (iii) sources of further information and advice one may consult if needed in the handling of complicated cases.

The Advisory Group considers that the above contents should be objective and informative, with the goal of enhancing the concerned personnel's understanding of the subject matter and facilitating their handling of cases that involve sexual minorities.

Development and implementation

3.11 As the proposed contents involve in-depth and cross-disciplinary knowledge, the Advisory Group recommends that the development of training resources should be commissioned to an institution with expertise in social service, gender / sexual orientation research, psychology and education. Members agreed that the deliverables should contain no stance on the issues of same-sex marriage and legislation against discrimination on grounds of sexual orientation and gender identity.

3.12 The Advisory Group also notes that the delivery mode of training (e.g., workshops or self-learning modules) should be tailor-made to match the needs of different professions. During the development stage of the training resources, representatives of the respective personnel should be consulted on the optimal and preferred delivery modes, notably in how the training may fit into the existing training frameworks of respective

professions⁷⁶.

3.13 The Advisory Group considers that it is important to ensure the utilisation and effectiveness of the sensitivity training. The training, when developed, should be promoted extensively to the target audience and be incorporated into the regular training programme (e.g., pre-qualification courses or induction training for new recruits and continuing education programmes) of the professions concerned. In addition to the aforementioned professional groups identified by the Fact-finding Study as having more direct interactions with sexual minorities, the sensitivity training should also be promoted and introduced to employees of the Government.

3.14 The training could also be publicised through the Government's public education programmes with a view to enhancing public awareness of the initiative.

Evaluation

3.15 Evaluation should be conducted on a regular basis to assess the effectiveness of the sensitivity training, i.e., whether the training goal of enhancing the concerned personnel's understanding of the subject matter and facilitating their handling of cases that involve sexual minorities could be met, and to identify any room for improvement. This could be achieved through surveys to collect users' opinions.

3.16 Utilisation of the training should also be reviewed on a regular basis. While the ultimate goal is to reach out to all personnel in the respective fields, practicable interim targets on the annual rate of participation in the training should be set taking into account the corresponding delivery mode of the training, as well as views from representatives of the respective professions. For instance, quantitative targets may be set for the percentage of practitioners reached or the number of training sessions organised per year.

3.17 The Advisory Group recommends regular review and publication of these quantitative targets with a view to ensuring the utilisation of the training resources.

⁷⁶ It has been suggested that training for teachers would best be delivered through voluntary workshops, whereas healthcare professionals may prefer written guidelines or information notes.

Charter on Non-discrimination of Sexual Minorities

3.18 The Advisory Group recommends that the Government should draw up a Charter 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 people with different sexual orientations and transgender people in the respective domains.

3.19 By pledging to adopt the Charter, the organisations concerned would commit to adopting non-discrimination policies (i.e., that discrimination, harassment and vilification of employees, students, customers, buyers / tenants of premises with different sexual orientation and gender identity are not permitted). Possible areas to which the non-discrimination policy would apply may include the following:

- (a) Employment: recruitment; terms and conditions of employment, benefits, facilities and services; appraisal, promotion, posting and training; and dismissal;
- (b) Education: admission; assessment of performance; and discipline and dismissal;
- (c) Provision of goods, facilities and services: staff behaviour; design of products and facilities (including toilets / changing rooms); and marketing and other communications; and
- (d) Disposal and management of premises: selling, letting or subletting a property; and the advertisements concerned.

3.20 Other commitments in the Charter may include:

- (a) To issue a clear policy statement that discrimination, harassment and vilification on grounds of sexual orientation and gender identity will not be permitted, and to assign responsibility for giving effect to the policies to a member of senior management;
- (b) To monitor implementation and review the policies regularly;
- (c) To provide training for their staff involved in relevant operations and human resources staff on the non-discrimination policies, including both existing staff and new recruits; and
- (d) To establish internal grievance procedures to deal with complaints.

3.21 The Charter should provide definitions on key concepts such as

sexual orientation, gender identity and discriminatory acts (including discrimination, harassment and vilification) and cover special circumstances where differential treatment could be justified⁷⁷.

3.22 The Charter, once launched, may replace the Code. Organisations which have already adopted the Code will be invited to pledge adoption of the Charter.

Development

3.23 The Charter could be drawn up by the Government with reference to similar charters or codes of practice already developed in other jurisdictions⁷⁸, taking into account the local context.

3.24 During the development stage, stakeholders of the domains concerned, as well as sexual minority service users should be consulted on what aspects should be covered by the Charter, and any concerns of employers; schools; providers of goods, facilities and services; and landlords / agents in charge of disposal and management of premises over the implementation of the Charter.

3.25 The Advisory Group notes the potential misperception that the adoption of the Charter is mandatory. The Advisory Group also acknowledges that the application of the Charter to the domain of education is relatively more sensitive among the domains, as schools with a religious background may have concerns about possible conflicts between the requirements of the Charter and their religious doctrines. The Advisory Group recognises that a very substantial proportion of school enrolments in Hong Kong are in schools with a religious background⁷⁹. In view of the above, the Advisory Group suggests that the Charter should emphasise that adoption is voluntary, and that the drafting of the Charter should make

⁷⁷ For example, two special circumstances are set out in the existing Code, i.e., “(a) employment in the domestic environment, particularly where the employee is required to live in the employer's home. The Government firmly upholds the principle of equal opportunities for all. But it considers that a balance must be struck between that right and the right of individuals to determine who may enter or live in their homes; or (b) the job entails the performance of duties entirely or substantially outside Hong Kong, particularly in countries where the laws or customs are such that the duties could not, or could not effectively, be performed by the applicant.”

⁷⁸ Such as the “Guidance for service providers about their duties under the Equality Act 2010” developed by the Equality and Human Rights Commission of the United Kingdom

⁷⁹ For example, around 33% of total enrolment of secondary schools is provided by Christian schools, and 18% by Catholic schools. (Source: Table 4.4 of Student Enrolment Statistics, 2014/15 issued by the Education Bureau.)

reference to existing charters promulgated by the Government for voluntary adoption in other policy areas⁸⁰. In addition, for the domain of education, the Charter should apply only to admission, assessment of performance, and discipline and dismissal, and not to the school curriculum.

3.26 The Advisory Group also acknowledges that, as evidenced by the desktop research on other jurisdictions, the inclusion of the ground of “gender identity” into the Charter would be a complicated matter given the difficulties of defining in different contexts which transgender people should be accorded the same treatment as persons of his/her preferred gender⁸¹ while not unreasonably jeopardising the rights to non-discrimination entitled to transgender people. The Advisory Group therefore suggests that the Government should carefully consider the extent to which the Charter could cover transgender people with reference to overseas experience, as well as the interpretation of definition(s) related to transgender people in *W v The Registrar of Marriages*.

Implementation

3.27 The implementation of the Charter should be complemented by public relations programmes, e.g., commendation for participating organisations (also see paragraph 3.31(c) below), as well as regular evaluation to assess the effectiveness and participation rate of the Charter.

(c) Enhanced publicity campaign

3.28 The Government has been pursuing publicity and public education to promote equal opportunities on the grounds of sexual orientation and gender identity, to nurture a culture of diversity, tolerance and mutual respect in the community. As part of the promotional efforts, the Government has produced and broadcast an API and launched advertising

⁸⁰ For example, the Talent-Wise Employment Charter and Inclusive Organisations Recognition Scheme promulgated by the Labour and Welfare Bureau, in collaboration with the Rehabilitation Advisory Committee, the Hong Kong Joint Council for People with Disabilities and the Hong Kong Council of Social Service

⁸¹ “Gender identity” has different definitions in the legislation of different jurisdictions (see Footnote 40) and it appears that the definitions commonly contain an element of subjectivity involving the individual’s own perception or preference.

In addition, “gender identity” is a relatively new ground in the anti-discrimination legislation of jurisdictions covered in the desktop research. The controversies that arose during legislative processes are illustrated in paragraph 2.27 above.

campaigns on different media platforms. The Government has also promulgated the Code and appeals to public and private sector organisations for their adoption of the Code on a voluntary basis.

3.29 In this connection, the Advisory Group has earlier rendered advice on the Government's publicity measures, including what key messages should be adopted since end-2013 for the API on television and radio as well as posters to promote the message of non-discrimination against and equal opportunities for people of different sexual orientation and transgender people. The Advisory Group has also rendered advice on the campaign to appeal to employers in Hong Kong to adopt the Code, as well as publishing the list of organisations that have pledged to adopt the Code.

3.30 Other sources of information considered by the Advisory Group echo the need for enhanced efforts in public education. 20 participants of the Fact-finding Study expressed that stereotypical portrayals of sexual minorities in the mass media had shaped negative attitudes towards sexual minorities in society. They believed that more media exposure of sexual minorities' real situation in Hong Kong could help the public understand them better, and mitigate prejudice towards them⁸²; some representatives of stakeholder groups that the Advisory Group has met also suggested, among other things, that the Government should provide additional resources for public education.

3.31 To further the promotional efforts in this regard, the Advisory Group recommends the Government to carry out an enhanced publicity campaign to promote the message of non-discrimination against and equal opportunities for sexual minorities in the community, to include the following initiatives:

- (a) a new series of API or filmlets targeting the general public to strengthen the promotion of the message on television, radio and other platforms, with emphasis on eliminating discrimination against sexual minorities;
- (b) television and/or radio programmes, such as docu-drama, in collaboration with television/radio broadcaster(s) to help the public understand the real situation of sexual minorities in Hong Kong and mitigate prejudice towards them, and to promote eliminating discrimination against sexual minorities. The production should make reference to real life cases encountered by sexual minorities;

⁸² Para. 4.7.7 of the Final Report at Appendix C

- (c) public relations programmes to commend best practices adopted by public and private sector organisations that have pledged to adopt the Charter as proposed in paragraphs 3.18 – 3.27 above, such as commendation ceremony coupled with press releases and feature articles in widely-circulated news media, in order to further enhance the public awareness of equal opportunities for people of different sexual orientation and gender identity, thereby appealing to more organisations to follow suit in eliminating discrimination; and
- (d) promotion of the GISOU’s hotline for enquiries and complaints relating to sexual orientation and gender identity through more publicity channels. Information on the complaint handling mechanism should be covered in the promotional materials.

3.32 The Advisory Group suggests that the Government should first evaluate the existing publicity measures (including the APIs and promotion of the GISOU) to identify areas for improvement before launching the above initiatives. The evaluation may be conducted in the form of audience research studies targeting members of the general public as well as different stakeholder groups, with a view to gauging public knowledge about and attitudes towards the sexual minorities and learning about their exposure to the current channels of publicity / promotion.

3.33 Based on the evaluation, the Government should draw up both short and long term strategies for future publicity measures targeting different audience groups. The content and channels of publicity should be coordinated to achieve maximum impact.

(d) Review and reinforcement of support services to address the needs of sexual minorities

3.34 Some Advisory Group members from the sexual minority community consider that there are shortcomings in the existing support services for sexual minorities. They comment that the services of some providers, in particular those with a religious background, are considered by some as not sexual minority-friendly and insensitive to the needs of sexual minority users. These Advisory Group members are of the view that sexual minorities have unique circumstances and needs which could not be effectively met by the existing support services in the areas of shelter, counselling and some other services.

Sensitivity of service providers

3.35 In order to address the concern about whether the service providers concerned are sexual minority-friendly, the Advisory Group recommends the provision of sensitivity training for social workers amongst others (see paragraphs 3.10 – 3.17). The service providers should also be encouraged to pledge to adopt the Code and the proposed Charter (see paragraphs 3.18 – 3.27) which will cover the domain of provision of goods, facilities and services. These measures aim at providing assurance that the support services run by different service providers are sexual minority-friendly and meet the clients' needs.

Effectiveness of existing support services

3.36 As regards the comment that the existing support services could not effectively meet the unique circumstances and needs of sexual minorities, the Advisory Group has taken note of the existing policies and services of the Social Welfare Department (SWD) and non-government organisations (“NGOs”) subvented by SWD, which include (a) procedural guidelines for handling domestic violence cases and sexual violence cases; (b) shelter service for individuals and families at risk of domestic violence, facing crisis or in distress; and (c) training for frontline social workers to enhance their understanding of sexual minorities, working skills and sensitivity. The Advisory Group also noted a submission at **Appendix H** from one member which sets out alongside a description of service gaps, proposals to provide a range of support services for sexual minorities through dedicated shelters and community centres.

3.37 The Advisory Group has not taken a position on the issues raised in Appendix H. Nevertheless, noting the views from Advisory Group members from the sexual minority community, the Advisory Group considered that an in-depth review should be taken by the Government in consultation with relevant service providers and sexual minorities with a view to delineating service gaps and improving the effectiveness of the existing support services. The Advisory Group particularly recommends that the existing provision of shelter services and other support services, as well as the need for dedicated shelters and community centres for sexual minorities should be reviewed to identify the services that could meet the needs of sexual minorities and the areas that might need improvement. On the basis of such a review, it could be further considered how support services for sexual minorities could be provided in a dual-track model, i.e., alongside the existing services provided through NGOs and government bureaux/departments, dedicated support services for sexual minorities could be introduced.

3.38 The Advisory Group also suggests that the availability of support services for sexual minorities should be promoted among the sexual minority communities. A comprehensive list of relevant support services can be drawn up in consultation with service providers, to inform potential users.

(e) **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**

3.39 In view of the issues identified and the limitations of the desktop research (as set out in paragraphs 2.22 and 2.27 – 2.30 above), as well as the divergent views among Members on how the discrimination problem should be addressed, i.e. whether through legislative and/or non-legislative measures (as set out in paragraphs 3.2 – 3.4 above), the Advisory Group recommends that a further study should be conducted 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 grounds of sexual orientation and gender identity.

3.40 The study should cover the following aspects:

- (a) Administrative measures adopted in other jurisdictions to tackle discrimination against the sexual minorities (including whether conciliation to resolve disputes should be the preferred approach), and any empirical data on their implementation, including utilisation of relevant services and facilities, the administrative infrastructure and public expenditure involved, any changes in public attitudes on relevant issues, etc.
- (b) Legislative measures adopted in other jurisdictions to tackle discrimination against the sexual minorities, including –
 - (i) empirical data on their implementation, including the number and nature of disputes settled by judicial or other processes;
 - (ii) definitions of “gender identity” and “sexual orientation” in the relevant legislation, and the threshold of evidence required to establish these grounds for claims;
 - (iii) the evolving case law and any established or emerging

criteria adopted by courts in balancing the rights of the sexual minorities to protection from discrimination and the freedom of speech and religion of others including religious groups. In particular, the scope and application of exemptions in anti-discrimination legislation should be examined in detail to provide insights on permissible activities under respective exemption provisions;

- (iv) comparative analyses of the different approaches of formulating anti-discrimination laws including those enacted as a self-contained piece of legislation, as separate pieces of legislation targeting different domains, and as specific provisions in various other legislation; and the legislative approach of extending the definition of “sex” under anti-discrimination legislation on the ground of sex to cover sexual orientation. The underlying factors to the adoption of different approaches, and stakeholders’ views on the adequacy of protection and accessibility of remedies should be covered; and
 - (v) controversial issues in other jurisdictions in relation to the legislative measures, including the implications of legislation on freedom of speech, freedom of conscience and freedom of religion; the concerns of different parties such as the legislature, enforcement authorities and stakeholder groups; and public discourse on “reverse discrimination”;
- (c) The study on the areas in (a) and (b) above should cover both jurisdictions which have adopted legislative measures and those which have not done so, as well as jurisdictions in different cultures including those in Asian countries; and
 - (d) The study should provide recommendations on how stakeholders with diverse views could facilitate and participate in public discussion in Hong Kong on both legislative proposals and administrative measures to eliminate discrimination on grounds of sexual orientation and gender identity.

Feasibility Study on Legislating against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status commissioned by the Equal Opportunities Commission

3.41 The Advisory Group notes that the Equal Opportunities

Commission has commissioned the Gender Research Centre of the Hong Kong Institute of Asia Pacific Studies, the Chinese University of Hong Kong, to conduct a feasibility study on legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status, which aims to systematically identify the extent and forms of discrimination experienced by people with different sexual orientation, gender identity and intersex status, including lesbian, gay, bisexual, transgender and intersex people in Hong Kong. It is noted that the study also seeks to explore the feasibility of legislating against discrimination on grounds of sexual orientation, gender identity and intersex status, taking into account the perspectives of sexual minorities and other stakeholders in society.

3.42 The Advisory Group noted that study is in progress and suggests that the Government should take into account the findings of that study when available in taking forward measures to eliminate discrimination on grounds of sexual orientation and gender identity.

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**Advisory Group on Eliminating Discrimination
against Sexual Minorities**

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Terms of Reference

To advise the Secretary for Constitutional and Mainland Affairs on matters relating to concerns about discrimination faced by sexual minorities in Hong Kong, notably -

- (a) to advise on the aspects and extent of discrimination faced by sexual minorities in Hong Kong; and
- (b) on the basis of (a) above, to advise on the strategies and measures to tackle the problems identified with a view to eliminating discrimination and nurturing a culture of diversity, tolerance and mutual respect in the community.

Code of practice against discrimination in employment on the ground of sexual orientation

Executive summary

This Code, issued by the Government of the Hong Kong Special Administrative Region, is to facilitate self-regulation on the part of employers and employees in eliminating discriminatory practices in employment. It seeks to promote equal employment opportunities among all persons – irrespective of their sexual orientation. The Government is committed to following the good practices recommended in this Code.

In this document, “discrimination” means any distinction, exclusion, restriction or preference based on sexual orientation, or perceived sexual orientation stemming from stereotypical assumptions, which has the purpose or effect of nullifying or impairing human rights and freedoms. It does not refer to measures voluntarily taken – in the spirit of promoting equal opportunities – to help persons of different sexual orientation to overcome disadvantages. Differences of treatment will not amount to discrimination if –

- their purpose is reasonable and objective;
- they have been adopted in pursuit of a legitimate aim; and
- they are reasonably proportional to the aim to be realised.

Among other things, employers are encouraged to –

- develop consistent selection criteria (objective standards) in all aspects of employment, including:
 - recruitment;
 - appraisal, promotion, posting and training;
 - dismissal and redundancy; and
 - terms and conditions of employment benefits, facilities and services.

Recommended measures include:

- using objective tests in the selection process; and
 - avoiding assumptions about the abilities of persons of different sexual orientation.
-
- train their personnel/human resources staff in ways of avoiding discrimination when they handle applications and conduct interviews. Questions asked at job interviews should relate only and directly to the essential requirements of the job;
 - state clearly in job advertisements that the vacancies in question are equally open to all persons, regardless of their sexual orientation. When vacancies are to be filled by promotion or transfer, ensure that all eligible employees know about them and are considered for nomination;
 - keep records of notes taken when considering candidates for selection, promotion, posting, training, dismissal and redundancy for a reasonable period of time (say, 12 months);
 - review rules that restrict or preclude posting between certain jobs and examine policies and practices on selection for training, and other opportunities for personal development. Change them if they are found to be discriminatory;
 - ensure that employees of different sexual orientation are not disciplined or dismissed for performance or behavior which would be overlooked or condoned in those of other sexual orientation;
 - ensure that conditions of access to voluntary redundancy benefits are available on equal terms to all employees in the same or similar circumstances;
 - issue a clear policy statement that discrimination, harassment and vilification at work (these terms are defined in the Code) will not be permitted on any grounds whatever, and assign responsibility for giving effect to this policy to a member of senior management;
 - establish internal grievance procedures to deal with complaints; and
 - involve employees in the development and review of the policy.

Employees are encouraged to -

- become familiar with the recommendations in this Code;
- encourage their employers to introduce and review policies against discrimination and to implement preventive measures within their organisation; and
- support friends or colleagues who have lodged – or intend to lodge – complaints about discrimination.

Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation

A. Introduction

1. Purpose of the Code

1.1 This Code, issued by the Government of the Hong Kong Special Administrative Region, is to facilitate self-regulation on the part of employers and employees in eliminating discriminatory practices in employment. It seeks to promote equal employment opportunities among all persons - irrespective of their sexual orientation - and reaffirms Government's commitment to the elimination of all forms of discrimination. That commitment is founded on the belief that -

- all human beings are born equal and have the inherent right to equal opportunities in every aspect of their lives, irrespective of their sexual orientation or, indeed, any other status. This is a fundamental tenet of the International Covenant on Civil and Political Rights, the Basic Law and the Bill of Rights;
- all human beings have a right to just and equitable conditions of work, to be rewarded for their work on the basis of their merits, to compete on equal terms for a place to live and to enjoy access to facilities on the same basis. To deny them this right on the ground of their sexual orientation is morally wrong and irrational, as are all forms of discrimination;
- people of different sexual orientation perform all the normal duties and responsibilities as citizens and contribute to society in the same way and to the same extent as everyone else. They are entitled to the same respect and consideration accorded to all human beings; and
- discrimination is costly: when people are passed over for recruitment into or promotion within organisations simply because they are of different sexual orientation, those organisations deny themselves the advantage of employing and retaining the best people available. In competitive markets, they handicap themselves in the pursuit of performance and profit.

The Government is committed to following the practices recommended in this Code. We encourage all concerned to do so to the best of their ability.

- 1.2 Although this Code concerns equal opportunities in employment, the principles that it upholds apply to all aspects of life. The Government encourages everyone to apply these principles in all their dealings with other people, whoever they may be, with all the respect that is the natural and inalienable right of all human beings.

2. Definitions

2.1 In this document -

- a. "sexual orientation" means heterosexuality (sexual inclination towards persons of the opposite sex), homosexuality (sexual inclination towards persons of the same sex), and bisexuality (sexual inclination towards persons of both sexes);
- b. "discrimination" means any distinction, exclusion, restriction or preference based on sexual orientation, or perceived sexual orientation stemming from stereotypical assumptions, which has the purpose or effect of nullifying or impairing rights and freedoms. It does not refer to measures voluntarily taken - in the spirit of promoting equal opportunities - to help persons of different sexual orientation to overcome disadvantages. It should be noted that differences of treatment will not amount to discrimination if -
 - o their purpose is reasonable and objective;
 - o they have been adopted in pursuit of a legitimate aim; and
 - o they are reasonably proportional to the aim to be realized.
- c. "harassment" means being subjected to unwelcome verbal or physical conduct on grounds of a person's sexual orientation. Physical abuse, threats, offensive jokes, taunts and insults are all examples of the kind of harassment that people may experience in the workplace. It can go beyond the treatment of persons of different sexual orientation themselves: harassment can affect people who are in some way associated with those persons. For example: people may be taunted or insulted because, while they

are not (say) of a different sexual orientation themselves, they are known to have friends who are; and

- d. "vilification" means any activity in public that incites hatred towards, serious contempt for, or severe ridicule of, a person or persons because of their sexual orientation. In this context, "activity in public" means doing anything whatever that so incites other people.

B. Eliminating discrimination on the ground of sexual orientation in employment

3. Consistent selection criteria

- 3.1 It is recommended that employers apply consistent selection criteria for all aspects of employment, including recruitment, promotion, transfer, training, dismissal and redundancy as well as terms and conditions of employment.
- 3.2 Such criteria should not make reference to sexual orientation. They should be specifically related to the job, such as -
 - a. the type of experience the job holder should have, for example, merchandising experience;
 - b. the amount of experience required for the job, for example, five years in the relevant field;
 - c. the educational qualifications, if necessary, for example, a diploma in merchandising;
 - d. the specific technical and managerial skills, for example, ability to use certain types of computer software, proficiency in Cantonese and/or English;
 - e. the personal qualities required for the job, such as willingness to travel, willingness to meet people of different backgrounds; and
 - f. the physical and other skills required for the job, for example, hand-eye co-ordination for delicate assembly work.
- 3.3 It is recommended that these criteria and the terms and conditions of employment -

- a. be made known to all employees and job applicants on request;
- b. are circulated to all employees on a regular basis, particularly at times such as the annual performance appraisal and promotion exercises; and
- c. are re-examined from time to time to see whether they need updating.

Special circumstances

3.4 Government does not condone discrimination of any kind and considers that a person's sexual orientation should not be a consideration in the selection process. But it accepts that there may be very special circumstances where it could be a consideration, such as where the job entails -

- a. employment in the domestic environment, particularly where the employee is required to live in the employer's home. The Government firmly upholds the principle of equal opportunities for all. But it considers that a balance must be struck between that right and the right of individuals to determine who may enter or live in their homes; or
- b. the job entails the performance of duties entirely or substantially outside Hong Kong, particularly in countries where the laws or customs are such that the duties could not, or could not effectively, be performed by the applicant.

C. Guidelines for employers

4.1 It is recommended that personnel/human resources staff handling applications - or informal enquiries prior to application - are trained to avoid acts of discrimination. The following paragraphs set out points for consideration at each stage of the recruitment process.

Advertising

4.2 Discrimination at this stage of the recruitment process can be avoided by ensuring that the contents of advertisements follow consistent selection criteria as discussed in section 3.

Internal recruitment

- 4.3 Where vacancies are to be filled by promotion or transfer, it is recommended that employers let all eligible employees know this.

Vetting applications

- 4.4 At the pre-interview stage, it is recommended that all applications - wherever they come from - are processed in exactly the same way. It is also recommended that application forms avoid questions that may suggest an intention to take account of factors that would, or might, discriminate on the ground of sexual orientation.

Interviewing

- 4.5 It is recommended that -
- a. personnel staff, line managers and all other employees involved in the staff recruitment process, are trained to recognise discriminatory practices, to avoid them, and not to instruct or put pressure on others to discriminate;
 - b. questions asked at job interviews relate only and directly to the essential requirements of the job;
 - c. where it is necessary to assess whether personal circumstances will affect performance of the job, interviewers discuss this objectively without questions that may suggest that the candidate's sexual orientation may influence the outcome of the interview;
 - d. information necessary for personnel records be collected after the job offer has been made;
 - e. immediately after the interview, interviewers record the assessment they have formed of the applicant's ability to meet the selection criteria. This will help to ensure a fair and balanced assessment of applicants' strengths and weaknesses. It will also serve as a valuable explanation and defence against any unfounded suggestions of bias;
 - f. the interview records show the reasons why applicants were or were not appointed. Again, this could help to counter possible allegations of discrimination; and

- g. employers retain interview records for a reasonable period of time (say, 12 months) - or after any complaints that may have arisen have been resolved, whichever is later - then destroy them.

Shortlisting

- 4.6 It is recommended that shortlists be drawn-up on the basis of consistent criteria that provide objective standards for assessing the experience and capability of each applicant. Employers are also encouraged to -
- a. guard against making assumptions about the abilities of persons of particular sexual orientation; and
 - b. train personnel staff to recognise the danger of such assumptions and to make comparisons based on criteria that are applied equally to everyone and relate specifically to the actual requirements of the job.

Tests

- 4.7 If tests are used for selection purposes, it is recommended that they are -
- a. specifically related to the job and/or the career requirements and measure applicants' actual or potential ability to do or be trained for the job;
 - b. professionally designed wherever possible; and
 - c. reviewed regularly to ensure that they remain relevant and free from bias, either in content or in scoring.

Recruitment through employment agencies or employment services

- 4.8 Where recruitment is done through outside agencies, employers are encouraged to advise them to follow the recommendations in this Code. In particular, they are encouraged to make it clear that vacancies are open to all qualified applicants, regardless of sexual orientation.

5. Terms and conditions of employment, benefits, facilities and services

5.1 Government is committed to the principle of equal pay for equal work and encourages all employers to share that commitment. The principle does not mean that all employees should be paid the same wage/salary regardless of their performance or productivity. Rather, it means that - in principle - all employees are entitled to the terms and conditions of employment or access to employment or access to benefits¹, facilities or services commensurate with their rank, duties, seniority and experience and any other special circumstances of their employment, irrespective of their sexual orientation.

6. Appraisal, promotion, posting and training

6.1 All employees are entitled to the opportunities for promotion, posting or training (etc.) commensurate with their ability, rank, seniority and experience. Again, their sexual orientation is not a relevant consideration. To ensure that access to these things is non-discriminatory, it is recommended that -

- a. where an appraisal system exists, employers examine the assessment criteria to ensure that employees are promoted on merit and that the criteria adopted are not discriminatory. It is good practice to establish measurable standards for evaluating job performance;
- b. employers organise selection for promotion along the same lines as those recommended for recruitment in section 4. This would entail detailed assessment of all candidates' abilities and qualities against objective and consistent criteria;
- c. where opportunities for promotion, training, or posting arise, employers inform all eligible employees of the conditions and procedures for application;
- d. where promotion is by nomination, ensure that all suitable candidates are considered and that nobody with potential is overlooked;

¹ "Benefits" include fringe benefits, commissions, bonuses, allowances, pensions, health insurance plans, annual leave, merit and performance pay, or any other benefits available to employees generally.

- e. keep records of notes taken in the course of considering candidates for promotion, posting and training. It is recommended that employers retain these records for a reasonable time (say, 12 months) - or after any complaints that may have arisen have been resolved, whichever is later - and then destroy them;
- f. review rules that restrict or preclude posting between certain jobs and change them if they are found to be discriminatory; and
- g. examine policies and practices on selection for training, and other opportunities for personal development with a view to ensuring that they do not entail discrimination.

7. Dismissals, redundancies and unfavourable treatment of employees

7.1 It is recommended that employers -

- a. ensure that employees' sexual orientation is not a ground for disciplinary action or dismissal. Persons of a particular sexual orientation should not be dismissed or disciplined for performance or behaviour which would be overlooked or condoned in those of other sexual orientations;
- b. review redundancy procedures to ensure that there is no discrimination;
- c. ensure that conditions of access to voluntary redundancy benefits are available on equal terms to all employees in the same or similar circumstances;
- d. ensure that employees' sexual orientation is not taken into account if/when it is necessary to put part of the work force on short-time working or to lay off some employees but not others; and
- e. keep records of dismissals and redundancies for a reasonable period of time (say, 12 months) - or until any complaints that may have arisen have been resolved - whichever is later - and then destroy them.

8. Grievance procedures

8.1 It is recommended that employers -

- a. establish internal grievance procedures to deal with complaints concerning discrimination, harassment², or vilification within their organisations. Employers are encouraged to explain these procedures to all staff and to review them from time to time to ensure that none of them are - or might be - discriminatory;
- b. advise employees to use the internal grievance procedures where appropriate;

² Clearly, too, the workplace should be free of criminal intimidation, which is beyond the scope of this Code. Should occurrences of that nature come to their attention, employers and/or employees should immediately contact the Police.

- c. together with their employees, draw up rules for redressing grievances. The rules should be acceptable to all concerned and be made known to everyone in the organisation. They should encourage discussion/conciliation between the parties, perhaps including provision for a neutral third party to mediate on a 'good offices' basis. The third party (possibly but not necessarily a senior management representative) should be well respected by all concerned;
- d. deal with all complaints of discrimination, harassment or vilification effectively and confidentially, respecting the rights of both the complainant and the respondent. It is important to avoid the common assumption that people who make such complaints are simply being over-sensitive; and
- e. handle disciplinary procedures uniformly and without regard to an individual's sexual orientation.

9. Equal employment opportunities policy

9.1 Organisations are encouraged to -

- a. make a commitment to employment procedures and practices that are non-discriminatory and that provide equal opportunities for all employees;
- b. issue a clear policy statement that discrimination, harassment and vilification at work will not be permitted on any grounds whatever. Employees should have a right to complain should these occur; and
- c. to assign responsibility for giving effect to this policy to a member of senior management.

10. Implementing anti-discrimination policy

10.1 Employers are encouraged to -

- a. involve employees in the development and review of the policy;
- b. state the policy clearly;

- c. make the policy known to all employees and to all job applicants. Where the policy statement is detailed and/or lengthy, employers are encouraged to tell applicants - in advertisements and invitations to interview - at least the main points/gist of the company's equal opportunities policy;
- d. provide training to all employees who may be involved in human resource matters;
- e. make all new recruits aware of the equal opportunities policy; and
- f. take all reasonably practicable steps to ensure that a standard of conduct or behaviour is observed to prevent persons of certain sexual orientations from being intimidated, harassed or otherwise subjected to unfavourable treatment.

11. Monitoring the policy

- 11.1 It is recommended that the policy be monitored regularly to ensure that it is working in practice. One approach might be to set up a joint committee of management and employee representatives. This may not be necessary or practical for small organisations. Nevertheless, small organisations are encouraged to involve employees in monitoring their equal opportunities policies wherever practical.

D. The employee's role

12. Eliminating discrimination

- 12.1 Employees can help to eliminate discrimination by becoming familiar with the subject, so that they do not inadvertently discriminate against someone or inadvertently aid their employers to do so.
- 12.2 Whenever appropriate, employees could also encourage their employers to formulate policies against discrimination and to implement preventive measures. They are encouraged to participate in the development and review of anti-discrimination policies within their organisations.

12.3 Employees are encouraged to be supportive of friends or colleagues who have lodged - or intend to lodge - complaints about discrimination. Harassment and vilification are deeply offensive and hurtful. By supporting colleagues who face such things, we share our rejection of the attitudes that underlie them and help to create a more pleasant and congenial working environment for all.

**A Study on Discrimination Experienced
by Sexual Minorities**

Final Report

Submitted by

Policy 21 Limited

July 2015

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Executive Summary

Objective

1. The Government of the Hong Kong Special Administrative Region, in consultation with the Advisory Group on Eliminating Discrimination against Sexual Minorities and acting through the Constitutional and Mainland Affairs Bureau, commissioned Policy 21 Ltd. to conduct a study on discrimination experienced by the sexual minorities in Hong Kong (“the Study”). The aim of the Study is to ascertain whether sexual minorities were discriminated against in Hong Kong, and if so, the discrimination they had experienced and specifically: (a) in what domains; (b) in what forms; (c) the areas of needs for support and/or redress; and (d) whether they have attempted to seek redress and/or assistance from different bodies.
2. A qualitative method was adopted to collect more in-depth understanding of the experiences of sexual minorities instead of attempting to estimate the extent of discrimination using a quantitative survey of a representative sample. The data collection process was carried out from March to September 2014. A total of 214 sexual minority participants (encompassing 70 lesbians, 66 gays, 34 bisexuals, 35 transgender people, 8 post-gays and 1 intersex person) from diverse socio-economic backgrounds were interviewed through focus group discussion or in-depth interview.

Limitations

3. While the qualitative approach adopted in the Study could provide ample scope for obtaining in-depth responses by participants, this method has some limitations. Views from sexual minorities are the single source of qualitative data of the Study, and the experiences mentioned are cited based on self-report without concrete evidence or verification with other relevant parties; there is no guarantee that all descriptions were accurate especially for distant events reported from memory.
4. In addition, the Study used a non-random sample comprising a limited number of participants, which is not a scientific sampling design for

gathering views from a representative sample of the target population. Therefore, it should be cautioned that the findings cannot be extrapolated to wider populations or form the basis for any general conclusion to be drawn regarding the sexual minorities in Hong Kong. Nevertheless, efforts had been made to collect views of the sexual minorities from diverse socio-economic backgrounds and different age groups.

Key findings

General understanding of discrimination in daily life

5. About half of the participants¹ indicated that the basic definition of “discrimination” was “a person is treated unfairly or less favourably than other persons”. Another half of them might not be able to articulate clearly what the definition of discrimination was. However these participants gave examples including verbal insult, mockery, sexual harassment, and physical assault; the majority of these participants also perceived “unfriendly looks or expressions” as discriminatory acts.
6. On the basis of the above subjective understanding of discrimination, the majority of participants expressed that they had experienced discriminatory acts in daily life.

Experience of discrimination on grounds of sexual orientation / gender identity

7. The participants were interviewed on their actual experiences, if any, in the domains of (1) employment; (2) education; (3) provision of goods, facilities and services; (4) disposal and management of premises and; (5) other domains. Participants were asked about the circumstantial information on the actual experiences. The reported discrimination experiences, if any, were recorded under the following pre-determined categories of forms of discrimination: direct discrimination (i.e., a person is treated less favourably than another person with a different sexual orientation or gender identity);

¹ In this report, terms including “the great majority”, “the majority”, “about half”, “some” and “few” are used to describe the proportion of participants expressing a specific point of view in response to a particular question. “The great majority” represents 90% or above; “the majority” 61% to 89%; “about half” 40% to 60%; “some” 11% to 39%; and “few” 10% or below.

indirect discrimination (i.e., a condition or requirement is applied to everyone but in practice adversely affects persons of a particular sexual orientation or gender identity²); harassment (i.e., a person is subjected to unwelcome verbal or physical conduct on grounds of their sexual orientation or gender identity); and vilification (any activity in public that incites hatred towards, serious contempt for, or severe ridicule of, a person or persons because of their sexual orientation or gender identity).

8. In the workplace, slightly less than half of the participants (72 out of 180 participants who had work experience) had disclosed their sexual orientations / gender identities to their employers or co-workers in the workplace. Slightly less than half of the participants (72)³ who had work experience indicated that they had encountered discrimination. Among these participants who encountered discrimination, half of them (36 out of 72 participants) had disclosed their sexual orientations / gender identities in the workplace. Some of the participants (59) who had work experience encountered unwelcome verbal conduct (a form of harassment) in the workplace. Few of the participants (6) who had work experience suffered sexual harassment verbally or physically by their employers or co-workers. Few of the participants (10) who had work experience reported experience of direct discrimination, which includes being asked to leave their jobs/denied job offers or being deprived of promotion and training opportunities once their sexual orientation / gender identity was discovered. On the other hand, about half of the participants (108) who had work experience in Hong Kong stated that they had not experienced discrimination in the workplace.

9. In school, some of the participants (69 out of 208 participants who had

² It should be noted that the commonly adopted legal definition of indirect discrimination also takes into account whether the concerned condition or requirement can be justified; however, as the experiences collected in this Study are based on self-reports by the participants without concrete evidence or verification with other relevant parties, the definition in this Study for indirect discrimination does not take into account whether the concerned condition or requirement is justified or not.

³ These 72 participants are not the same group of the aforementioned 72 participants who had disclosed their sexual orientations / gender identities. Some participants who had not disclosed their sexual orientations / gender identities reported that they encountered discrimination, and vice versa.

studied in Hong Kong) reported suffering discrimination. Some of the participants (58) who had studied in Hong Kong encountered unwelcome verbal conduct (a form of harassment) in school. Few of the participants who had studied in Hong Kong encountered unwelcome physical conduct (a form of harassment) (4) and sexual harassment (8). Two participants also reported that they were denied school place offers by theological college, which in their view might constitute direct discrimination⁴. On the other hand, the majority of participants (139) who had studied in Hong Kong said that they had never encountered discrimination in school. It should be noted that the majority of the participants (154) who had studied in Hong Kong chose to conceal their sexual orientations / gender identities in school.

10. Regarding the experience in relation to use/purchase of goods, facilities and services, some of the participants (85 out of 214 participants) indicated that they had encountered discrimination. Some of the participants (45) encountered unwelcome verbal conduct by the providers of goods, facilities and services. Apart from this, some of the participants reported experience of direct discrimination, which includes denial of goods, facilities or services requested (e.g. being denied Valentine's Day menus in restaurant and being denied entry to public toilets) (40) or differential treatment during the provision of goods, facilities or services (e.g. being charged additional deposit for rental in hotel/inn) (6). About half of the participants (129) expressed that they had not faced discrimination in relation to use/purchase of goods, facilities and services.
11. Regarding the experience in relation to disposal and management of premises, many participants had no relevant experience; some of the participants (6 out of the 48 participants who had experience in disposal and management of premises) reported suffering direct discrimination, which includes denial of renting premises (4), and being subjected to less favourable treatment in relation to the rental of premises (2). The majority of participants (42) who had relevant experience in this domain in Hong Kong had not encountered discrimination in this domain.

⁴ While there was less favourable treatment for a person with different sexual orientation or gender identity in these cases, it is noted that the anti-discrimination laws in some of the overseas jurisdictions provide exemptions for religious schools in relation to their decisions on admission of students.

12. As far as other domains are concerned, few participants reported that they encountered direct discrimination in church (4)⁵; when their sexual minority identity was discovered in the churches they had joined, they were denied the opportunities to participate in the activities of the churches⁶. One post-gay participant recalled that he was opposed by a sexual minority organisation when he attended a forum to share his experience and he was subjected to unwelcome verbal conduct.
13. In the domains discussed above, among the participants who experienced discrimination, the majority of them had not sought assistance mainly because they did not know where to seek help or they were afraid of exposing their sexual minority identity.

Supportive measures

14. To address discrimination against sexual minorities, the majority of participants proposed (1) education in schools and education for stakeholders in different domains; and (2) enacting legislation against discrimination on grounds of sexual orientation and gender identity. Some of the participants proposed the following supportive measures: (3) setting up unisex toilets and changing rooms; (4) enhancing employment resources and counselling services for sexual minorities; (5) providing temporary shelters for sexual minorities. Some of the transgender participants proposed: (6) allowing transgender persons to dress in accordance with their preferred gender at work or at school; and (7) protecting privacy in relation to sex/gender identity (in relation to use of public services).

⁵ These experiences were reported during the open-ended session of the focus group discussion and/or in-depth interview on experiences in other domains. As the experiences do not belong to the major domains covered by the Study, there was no statistic on how many participants in total participated in church activities.

⁶ While there was less favourable treatment for a person with different sexual orientation in these cases, it is noted that the anti-discrimination laws in some of the overseas jurisdictions provide exemptions for religious organisations in relation to participation in their activities.

Chapter 1 Introduction

1.1 Objective

1.1.1 To have a better understanding of discrimination against sexual minority people in Hong Kong, the Government of the Hong Kong Special Administrative Region (Government), in consultation with the Advisory Group on Eliminating Discrimination against Sexual Minorities (the Advisory Group) and acting through the Constitutional and Mainland Affairs Bureau (CMAB), commissioned Policy 21 Ltd. in November 2013 to conduct a study on discrimination experienced by the sexual minorities in Hong Kong (hereinafter referred to as “the Study”).

1.1.2 The objective of the Study is to ascertain whether sexual minorities are being discriminated against in Hong Kong, and if so, the discrimination they experienced and specifically:

- (a) in what aspects or domains –
 - (i) employment,
 - (ii) education,
 - (iii) provision of goods, facilities and services,
 - (iv) disposal and management of premises, or
 - (v) other domains where participants perceive acts of discrimination;

- (b) in what ways, i.e. the form of discrimination –
 - (i) direct⁷ or indirect discrimination⁸;
 - (ii) harassment⁹;

⁷ Direct discrimination occurs when a person is treated less favourably than another person with a different sexual orientation or gender identity.

⁸ Indirect discrimination occurs when a condition or requirement is applied to everyone but in practice adversely affects persons of a particular sexual orientation or gender identity. Also see footnote 2.

- (iii) vilification¹⁰; and
 - (iv) any other ways;
- (c) what are the areas of needs for support and/or redress for the respondents given these experiences; and
- (d) whether the respondents have attempted to seek redress and/or assistance from different bodies, and if not, the reasons for not doing so.

⁹ Harassment occurs when a person is subjected to unwelcome verbal or physical conduct on grounds of their sexual orientation or gender identity.

¹⁰ Vilification encompasses any activity in public that incites hatred towards, serious contempt for, or severe ridicule of, a person or persons because of their sexual orientation or gender identity.

Chapter 2 Study Design

2.1 Sample design

- 2.1.1 The target respondents of the Study (“Target Respondents”) are people of different sexual orientation and gender identity in Hong Kong aged 18 or above. There should be a balance of lesbians, gays, bisexuals, transgender people and people with other sexual orientation/gender identity (i.e. post-gay and intersex) as far as practicable. They should come from different economic and social backgrounds (e.g. economic activity status, income groups, educational attainment) and include people of different age groups.
- 2.1.2 A qualitative approach is adopted for this Study using focus group discussions and in-depth interviews. Focus group discussions and in-depth one-to-one interviews could enable in-depth analysis on the views of the participants. Efforts have been made to encourage participants to disclose their personal experiences frankly, by assuring confidentiality of information gathered, re-confirming the impartiality and neutrality of Policy 21 in conducting the Study, and re-asserting the genuine intention of both the Government and the Advisory Group in ascertaining whether sexual minorities are being discriminated against in Hong Kong, and if so, the discrimination they have experienced. For those who did not want to share their views in the presence of other participants, in-depth one-to-one interviews would be conducted.
- 2.1.3 For focus group discussions, it is not necessary and indeed not practicable to adopt scientific sampling design aimed at gathering views from a representative sample of the target population. Nevertheless, it is desirable to ensure that focus group participants cover a sufficiently wide cross-section of participants. To ensure that participants in the Study come from diverse backgrounds, different means including open recruitment and referrals from sexual minority communities were adopted in recruiting participants. In addition, individuals not belonging to the identified organisations of sexual minorities were recruited through snowball sampling. Specifically, the participants

interviewed were asked to nominate individuals in the sexual minority outside of their communities or organisations to participate in the Study.

2.2 Sampling methods

2.2.1 Three sampling methods were adopted, as follows:

Sampling Method 1 - In order to form focus groups consisting of a diverse range of participants, sexual minority networks and communities were approached to recruit participants.

Sampling Method 2 - Snowball sampling was adopted to recruit sexual minorities who were not active members of the sexual minority community in Hong Kong. Participants recruited from the sexual minority communities were asked to nominate sexual minority people outside of their communities or organisations to participate in the Study. Coupled with the use of maximum variation sampling within each focus group, the voices of sexual minorities from a variety of backgrounds would be represented in the Study, enhancing the comprehensiveness of the data.

Sampling Method 3 - Target Respondents were recruited from online social networks and via online media outlets. The social networks include social media such as Facebook and discussion forums such as MyHotBoy and LesPub where sexual minority people were known to be active. Leaflets were distributed at clubs, bars, cafes and restaurants and in districts with high pedestrian flow such as the pedestrians-only streets in Causeway Bay and Mongkok during the weekends. In addition, advertisements were posted in two newspapers, namely *Headline Daily* and *the Standard*.

2.2.2 Based on the above sampling methods, over 200 participants were recruited to participate in the Study. Over 100 participants were recruited by Sampling Method 2 (snowball sampling) whereas about 70 and 30 participants were recruited by Sampling Method 1 and Sampling Method 3 respectively. All the participants were informed of the nature and purpose of the Study. Interviews and focus groups were conducted

in Cantonese or English.

2.3 Process of data collection

2.3.1 Conducting in-depth interviews and focus group discussions for qualitative analysis is very different from conducting questionnaire surveys for quantitative analysis. An in-depth interview/focus group discussion is not designed to seek definitive responses from individual respondents based on a pre-designed structured or semi-structured questionnaire. Instead, the role of the moderator in a discussion is to encourage the participants to freely articulate their beliefs, ideas, experience and feelings about a particular topic. A focus group needs not reach a consensus. Rather, participants are encouraged to express different points of view to provide a wide range of qualitative information¹¹.

2.3.2 It is essential that the moderator should avoid, during the discussion, putting forward his/her own views on the subject matter, or leading the group discussion towards a particular direction. In summarising the findings of the discussion, the moderator should also avoid letting his/her own views on the subject matter affect the reporting.

2.3.3 A Discussion Guide in English and Chinese was prepared in consultation with the Government and Advisory Group before invitations were issued to Target Respondents. A pilot study was conducted on 22nd and 28th January, 2014 to test the overall flow and procedures of the Study and the feasibility of the Discussion Guide prior to the main study. In-depth interviews were carried out with four sexual minority persons (one interview each for lesbian, gay, bisexual and transgender person) and the views collected from the pilot interviews were examined with reference to supplementary information provided by the four interviewees. The Discussion Guide was revised according to the comments collected during the pilot study.

2.3.4 The Discussion Guide (*see Appendix 1*) was divided into five parts

¹¹ Vaughan, Sharon et al. (1996), *Focus Group interviews in education and psychology*, pg.5.

covering general understanding and experience of discrimination in daily life, experience of sexual orientation/gender identity discrimination in the workplace, in school, in relation to use/purchase of goods, facilities and services, and in relation to the disposal and management of premises. Voluntary participation, anonymity, and confidentiality of information collected were ensured in the Study. Participants were informed of the purpose of the Study and their rights as participants. With informed consent of all participants, every session was audio-taped.

2.3.5 The following procedures were adopted for conducting the focus groups:¹²

- (a) At the beginning of discussion sessions, the moderator tried to “warm up” the group by going through the purposes of the discussion. The moderator was required to ensure anonymity of opinions expressed to encourage better response;
- (b) Equipment such as clipboard and pen was provided to enable participants to record their opinion when necessary;
- (c) Then the moderator proceeded to the list of issues to be raised for discussion. The moderator started with the less threatening and more general issues and then proceeded to the more specific, more difficult and controversial ones. The moderator also encouraged discussion among participants as far as possible;
- (d) During the course of discussion, the moderator ensured that the list of issues required to be discussed were covered in the discussion; and
- (e) At the end of the discussion, the moderator tried to re-confirm the opinions of participants on the various issues raised during the discussion, to ensure that any change of mind over the course of the discussion was reflected.

2.3.6 Relevant demographic data (including gender, sexual orientation, gender identity, age group, occupation and income level) of all participants of the in-depth interviews or focus group discussions were collected through a questionnaire at *Appendix 2*.

¹² Vaughan, Sharon et al. (1996) and Steward, David et al. (1990), *Focus groups, theory and practice*.

2.3.7 The Study used a non-random sample comprising a limited number of participants. As this is not a scientific sampling design for gathering views from a representative sample of the target population, the findings cannot be extrapolated to wider populations or form the basis for any general conclusion to be drawn regarding the sexual minorities in Hong Kong. The incidence of reported experiences among the participants therefore should not be quantified into actual percentages. In this report, terms including “the great majority”, “the majority”, “about half”, “some” and “few” are used to describe the proportion of participants expressing a specific point of view. “The great majority” represents 90% or above; “the majority” 61% to 89%; “about half” 40% to 60%; “some” 11% to 39%; and “few” 10% or below.

2.4 Quality assurance

2.4.1 A number of measures were adopted to ensure that information gathered from the focus group discussions and in-depth interviews was credible, as follows:

- (a) Attempts were made to recruit the Target Respondents from a diverse range of backgrounds, by recruiting from a number of different sources;
- (b) The Discussion Guide used for the focus group discussions and in-depth interviews was carefully drawn up in consultation with the Government and the Advisory Group and pilot-tested before actual use;
- (c) The moderators of the focus group discussions and in-depth interviews were experienced researchers who had ample experience conducting focus group discussions and in-depth interviews. Training was provided to the researchers prior to the commencement of the Study.

2.4.2 All personal particulars of the participants, audio tape and datasets were treated as strictly confidential at all stages of work. Data collection instruments, including but not limited to interview protocols, were regarded as “confidential” documents.

2.5 Limitations

2.5.1 Few studies have examined the discrimination encountered by sexual minorities in Hong Kong. The qualitative approach adopted in the Study, including focus group discussions and in-depth interviews, could provide the researchers with ample scope for probing and obtaining in-depth responses by participants, and allow ample time and opportunities for each participant to share views, experience and feelings. More details and deeper insights into their subjective experience could be obtained. Despite these advantages, the research method employed has limitations as discussed below.

Single source of qualitative data provided by the participants

2.5.2 The Study gathered views from sexual minorities in Hong Kong and was dependent on this single source of qualitative data. The experiences of discrimination were cited based on self-report by the participants without any concrete evidence/supporting information or verification with other relevant parties, e.g. the organisations/individuals that are said to have discriminated against the participants. Data triangulation¹³ was also not used to check and ensure validity of the qualitative analysis by analysing the issue with the use of different sources.

2.5.3 The Study collects views and experiences from the participants only through face-to-face focus group discussions and in-depth interviews. It is important for the researchers to establish mutual trust with the participants so as to elicit in-depth responses. The researchers could not question the accuracy of participants' account of events and did not investigate into the incidents mentioned. Hence there is no guarantee that all descriptions were accurate especially in regard to distant events reported from memory.

¹³ Data triangulation refers to the use of multiple data sources in the same study for validation purposes, so that data at different times and social situations, as well as on a variety of people, can be collected.

Results cannot be generalised

2.5.4 The Study used a non-random sample comprising a limited number of participants recruited through referrals from sexual minority communities, snowball sampling and open recruitment. This is not a scientific sampling design for gathering views from a representative sample of the target population. Therefore, the findings cannot be extrapolated to wider populations or form the basis for any general conclusion to be drawn regarding the sexual minorities in Hong Kong. In spite of this, efforts had been made to collect different views of individuals belonging to the sexual minorities from diverse socio-economic backgrounds and of different age groups. While seeking to cover the widest possible range of experiences of discrimination in the relevant domains, the researchers cannot quantify the incidence of reported experiences among the sexual minorities.

Chapter 3 Profile of the Participants

3.1 Enumeration results

- 3.1.1 In total, 231 persons enrolled to participate in the Study, including 71 lesbians, 80 gays, 34 bisexuals, 37 transgender people, 8 post-gays and 1 intersex person. Among them, 88 who were members of sexual minorities communities (“members”) were recruited from the social networks and communities, and 143 who were not members of sexual minority communities (“non-members”) were recruited by snowball sampling and open recruitment.
- 3.1.2 The main study was conducted from March 2014 to September 2014. 29 focus group discussions with 76 participants and 138 one-to-one in-depth interviews were conducted. All the focus group discussions were conducted in Cantonese. Interviews were conducted according to the spoken languages of the participants. 117 and 21 in-depth interviews were conducted in Cantonese and English respectively. Most of the focus group discussions and in-depth interviews were conducted at the Policy 21 Limited premises and some were held in the venues provided by sexual minority organisations.
- 3.1.3 In total, 214 participants were interviewed¹⁴, including 70 lesbian, 66 gay, 34 bisexual, 35 transgender, 8 post-gay and 1 intersex participants. Of these 214 participants interviewed, 72 who were members were interviewed, and 142 who were non-members and recruited by snowball sampling (112 participants) and open recruitment (30 participants).

¹⁴ Among the 231 persons enrolled, 17 could not be reached during the data collection period and were not interviewed.

Table 1: Distribution of participants and the number of participants interviewed

Categories	No. of participants				No. of participants interviewed			
	Total	Members	Non-members (Snowball)	Non-members (Open recruitment)	Total	Members	Non-members (Snowball)	Non-members (Open recruitment)
Lesbians	71	21	38	12	70	20	38	12
Gay	80	32	39	9	66	19	38	9
Bisexual	34	8	20	6	34	8	20	6
Transgender	37	20	14	3	35	18	14	3
Post-gay	8	7	1	0	8	7	1	0
Intersex	1	0	1	0	1	0	1	0
Total	231	88	113	30	214	72	112	30

3.1.4 The socio-economic status and the status of disclosure of sexual orientation/gender identity of the interviewed participants are presented in the following paragraphs. Other demographic data of these participants are summarised in *Appendix 3*.

3.2 Socio-economic status

3.2.1 A total of 214 participants from different sexual orientations/gender identities, ages, educational attainment and economic activity status were interviewed. Only one intersex person participated in the Study. In order to protect his/her privacy, this report leaves out his/her information in some paragraphs and charts that set out the data of each category of participants (including paragraphs 3.2 and 3.3 and *Appendix 3*). As such, the total number of participants covered in the paragraphs and charts concerned is 213.

3.2.2 With regard to age groups, 122 participants were at the ages of 25-39, 57 participants were aged 18-24 and 34 participants were aged 40 or above (6 participants were aged 60 or above). It is worth noting that the recruitment of elder sexual minority people was very difficult and different sampling methods were adopted to reach out to them. Regarding educational attainment, 176 participants had attained post-secondary education or above and 37 participants had attained

secondary education or below.

- 3.2.3 Considering monthly total personal income (in Hong Kong Dollars), among the 158 participants who were economically active, 111 participants earned around \$10,000 to \$29,999, 29 participants earned more than \$30,000 per month and 18 participants earned less than \$10,000.

Table 2: Socioeconomic status of the participants

Profile	Sexual orientation/gender identity					
	Lesbians	Gay	Bisexual	Trans-gender	Post-gay	Total
Age group						
18-24	18	18	14	6	1	57
25-39	46	35	16	19	6	122
40 or above	6	13	4	10	1	34
Educational attainment						
Secondary and below	14	7	3	12	1	37
Post-secondary and above	56	59	31	23	7	176
Economic activity status						
Economically active	59	44	25	23	7	158
Economically inactive	11	22	9	12	1	55
Monthly total personal income (for those who were economically active)						
Below HK\$10,000	6	6	2	3	1	18
HK\$10,000 - HK\$29,999	44	26	20	17	4	111
HK\$30,000 or above	9	12	3	3	2	29
Total	70	66	34	35	8	213

3.3 Status of disclosure of sexual orientation/gender identity

- 3.3.1 Among the 213 participants, 191 participants said that they had disclosed their sexual orientations or gender identities to friends, parents, siblings, colleagues, relatives¹⁵, classmates/teachers, church mates and the public¹⁶.

¹⁵ The working definition of “relatives” refers to relatives excluding parents and siblings.

Their average age when doing so was 20.8 years. 170 participants told their friends their sexual orientations or gender identities; 110 participants told their parents, 95 participants told their siblings, 93 participants told their colleagues, 70 participants told other relatives, 59 participants told the public, 9 participants told their teachers and classmates and 4 participants told their church mates.

Table 3: Participants' status of disclosure of sexual orientation/gender identity

Profile	Sexual orientation/gender identity					
	Lesbians	Gay	Bisexual	Trans-gender	Post-gay	Total
Whether their sexual orientations or gender identities had been disclosed						
No	9	1	6	5	1	22
Yes	61	65	28	30	7	191
<i>Average age of their first disclosure</i>	<i>19.2</i>	<i>20.6</i>	<i>19.4</i>	<i>25.5</i>	<i>19.6</i>	<i>20.8</i>
<i>Age range</i>	<i>9-45</i>	<i>10-39</i>	<i>13-24</i>	<i>12-54</i>	<i>14-29</i>	<i>9-54</i>
Who has been told						
Friends	54	60	27	22	7	170
Parents	35	41	13	20	1	110
Siblings	31	36	13	13	2	95
Colleagues	26	37	15	11	4	93
Relatives	21	28	12	9	0	70
Public	15	24	9	10	1	59
Others						
Classmates/teachers	4	1	2	1	1	9
Church mates	1	1	0	0	2	4
Total	70	66	34	35	8	213

¹⁶ The working definition of “public” refers to acquaintances/other people encountered in daily life.

Chapter 4 Study Findings

4.1 General understanding and experience of discrimination in daily life

General understanding of discrimination in daily life

- 4.1.1 At the beginning of the focus group discussions or in-depth interviews, the participants discussed their subjective understanding of discrimination, their experience of discrimination in daily life and the forms and the frequency of discrimination they experienced.
- 4.1.2 With regard to the general understanding and forms of discrimination, there were no significant differences among the sexual minority groups (i.e., lesbian, gay, bisexual, transgender, post-gay and intersex) nor among participants from different socio-economic backgrounds (e.g. economic activity status, income groups, educational attainment, and age).
- 4.1.3 About half of the participants considered that direct discrimination occurs when “a person is treated unfairly or less favourably than other persons”. Examples in the domain of employment include “employers refused to employ applicants who were qualified for the job due to their sexual orientation or gender identity” and “employees were mistreated in the assignment of work due to their sexual orientation or gender identity”. Some of them also considered that “depriving a person of his/her basic rights” or “unfair distribution of resources” was direct discrimination.
- 4.1.4 Another half of the participants might not be able to articulate clearly what the definition of discrimination was. However these participants gave examples including “verbal insult, mockery” or “physical assault”. Their descriptions of “verbal insult or mockery” included “passing inappropriate sexual comments”, “telling inappropriate jokes”, “sharing sexual anecdotes” and “making derogatory remarks in relation to the sexual orientation or gender identity” of the participants. Their descriptions of physical assault include “beating”, “punching” or

“kicking the body”. Some of these participants mentioned “persistent attempt to hurt or humiliate someone” as example of harassment. Some of these participants further elaborated that, despite that each person had freedom to express one’s own judgment on sexual orientation and gender identity and that opposition to sexual minorities was not tantamount to discrimination, verbal attack was intolerable and discriminatory.

- 4.1.5 It is worth noting that, among the half of the participants who might not be able to articulate clearly what the definition of discrimination was, the majority of them considered “unfriendly look or expression” as a form of discrimination. Their descriptions included “looking at ones’ body in an unfriendly manner”, “showing offensive gestures or facial expressions” to the participants, and “staring at one in a sexually suggestive or offensive manner”. Some of these participants pointed out that “making a person feel stressed to disclose his/her sexual orientation/gender identity” and “addressing transgender persons by their biological sex instead of their preferred gender” were discriminatory practices.

Views of the participants who had experienced discrimination in daily life

- 4.1.6 On the basis of the above subjective understanding of discrimination, the majority of the participants expressed that they had experienced various forms of discriminatory acts in daily life. Among these participants, about half considered that they had encountered discrimination “frequently” or “sometimes” and another half said that they were “seldom” discriminated against in daily life.
- 4.1.7 Among the sexual minority groups interviewed (i.e. lesbians, gays, bisexuals, transgender people, post-gays and an intersex), the majority of the transgender participants and the intersex participant considered that they experienced discrimination according to their own understanding of discrimination, while about half of the lesbian, gay and post-gay participants and some of the bisexual participants considered they had experienced discrimination. These findings did not differ significantly across different socio-economic backgrounds of the participants.
- 4.1.8 Regarding whether there are differences in findings among participants recruited from the three sampling methods as discussed in Chapter 2.2

(i.e. members from sexual minority communities, and non-members recruited from snowball sampling and open recruitment from online social networks and media outlets), in general, more of the gay and lesbian participants recruited from sexual minority communities' members had reported that they encountered discrimination, as compared to the non-members. For the bisexual and transgender participants, there were no observable differences in the frequency and forms of discrimination among members and non-members. Since most of the post-gay participants were recruited from members of the sexual minority communities, whether there could be differences could not be ascertained.

Views of the participants who had not experienced discrimination in daily life

- 4.1.9 About half of the bisexual participants expressed that they had not experienced discrimination in daily life. For the other categories of sexual minority participants, some of them stated that they had never encountered discrimination.
- 4.1.10 The majority of the participants who had not experienced discrimination in daily life had made efforts to avoid discrimination. In general, the participants who had gender-conforming appearance and behaviours would seldom be discriminated against on the grounds of sexual orientation and gender identity in daily life. Their identities as sexual minority were less prone to be uncovered by others. Some participants chose to disclose their sexual orientations and gender identities only to the persons they trusted in order to ensure they would not face discrimination by other people. For example, in the domain of employment, some of the participants selectively disclosed to their most trusted colleagues instead of their work counterparts or supervisors; while some only disclosed to their family and friends but did not do so at all in the workplace.
- 4.1.11 In addition, some of the participants had not experienced discrimination as they had an inclusive environment where their sexual orientation/gender identity was welcomed by people around them. Some of the participants, especially those in the high-income group, pointed out that their sexual orientations and gender identities are well

accepted by people around them, and hence they feel more comfortable to disclose their sexual orientations and gender identities and had never faced discrimination in daily life.

4.1.12 After sharing their subjective understanding on discrimination, participants were asked about the circumstantial information on the actual experiences. They were interviewed on their actual experiences, if any, in the domains of (1) employment; (2) education; (3) provision of goods, facilities and services; (4) disposal and management of premises and; (5) other domains. The reported discrimination experiences, if any, were recorded under the following pre-determined categories of forms of discrimination: direct discrimination (i.e. a person is treated less favourably than another person with a different sexual orientation or gender identity); indirect discrimination (i.e. a condition or requirement is applied to everyone but in practice adversely affects persons of a particular sexual orientation or gender identity¹⁷); harassment (i.e. a person is subjected to unwelcome verbal or physical conduct on grounds of their sexual orientation or gender identity); and vilification (any activity in public that incites hatred towards, serious contempt for, or severe ridicule of, a person or persons because of their sexual orientation or gender identity). These experiences in different domains, which were based on the circumstantial information reported and categorised by the researchers, form the main findings of the Study and are presented in Chapters 4.2 – 4.6 below.

4.2 Experience of sexual orientation/gender identity discrimination in the workplace

4.2.1 This section focuses on whether the participants disclosed their sexual minority identities in the workplace, whether the participants were being discriminated against in the workplace in Hong Kong, and if so, the forms of discrimination they experienced. Brief excerpts are illustrated for further elaboration and understanding of the situation encountered by the participants. In order to safeguard the anonymity of the participants, the excerpts have been modified to remove details that may expose the

¹⁷ See footnote 2.

identity of the individuals. Any differences in experiences across different sexual minority groups and socio-economic backgrounds, as well as between those who had disclosed their sexual orientations or gender identities and those who had not, are also presented where applicable. The cases as reported in this report are listed at *Appendix 4*.

Disclosure of sexual orientations or gender identities in the workplace

- 4.2.2 In general, slightly less than half of the participants (72 out of 180 participants who had working experience) had disclosed their sexual orientations or gender identities to their employers or co-workers in the workplace. Among different sexual minority groups, more gay and transgender participants expressed that they had disclosed their sexual orientations or gender identities in the workplace. Bisexual and post-gay participants pointed out that it was not difficult to hide their sexual orientation from their employers or co-workers, and therefore far fewer bisexual and post-gay participants indicated that they had disclosed their sexual orientations or gender identities in the workplace. There is no observable difference in the findings among different socio-economic backgrounds of the participants except for gay participants. Gay participants in the higher income group (monthly income of HK\$30,000 or above) were more likely to disclose their sexual orientation to their employers or co-workers in the workplace (as compared to gay participants in the lower income groups (i.e. HK\$10,000 – HK\$29,999 and below HK\$10,000) as well as participants of other sexual minority groups in all levels of income).
- 4.2.3 The participants who had disclosed their sexual orientations or gender identities commented that being open at work could be a daunting challenge. They chose to disclose their orientations or gender identities at work to eliminate the need to hide or mislead, to build trusting working relationships if they felt being accepted at the working environment, to avoid embarrassment, to break down barriers to understanding, or to work in organisations related to sexual minorities.
- 4.2.4 Some of the transgender participants expressed that although disclosing their identities might result in the denial of job offers, they still chose to be open at work from the outset as the employers or co-workers would

eventually find out their identities when referring to their ID cards or school certificates. Besides, some of the transgender participants had disclosed their gender identities to their seniors during sex reassignment treatment in order to protect themselves from discrimination and avoid any misunderstanding or embarrassment.

4.2.5 The participants who chose to conceal their sexual orientations or gender identities considered that this was a private matter so it was unnecessary for them to be out to their employers, co-workers or clients at work. Some stated that they were hiding at work for fear of losing their jobs or social connections and suffering workplace discrimination or stigmatisation. In addition, some suggested that no one wanted to put their job security or opportunity for advancement in jeopardy. Even where employers or co-workers adopted laudable and inclusive practices, these were deemed necessary but not wholly sufficient for creating a climate of inclusion in the views of some participants. Nevertheless, some of the participants pointed out that even if they had not disclosed their orientations or gender identities to avoid discrimination, their sexual minority identity could still be noticed in the workplace due to their appearance or behaviour.

4.2.6 The majority of the transgender participants thought that transgenderism were still a taboo subject in the workplace due to a lack of understanding in the Hong Kong society. They feared that disclosure of their gender identities at work would have a negative impact on their relationships with co-workers, their prospects for promotion and even their social status in the workplace. They did not want to take the risk of losing their jobs so they had not disclosed their gender identities in the workplace. The transgender participants who had not undergone sex reassignment surgery might even try hard to conceal their identity in the workplace by appearing and behaving in a way conforming to their biological sex. However, they reported that they suffered great pressures from doing so.

Whether the participants had experienced discrimination in the workplace

4.2.7 Slightly less than half of the participants (72 out of 180 participants who had working experience) indicated that they had experienced various

forms of discrimination in the workplace (direct discrimination: 12 participants; harassment: 65 participants who encountered unwelcome verbal conduct (59) and sexual harassment (6)) [Note: some participants indicated that they experienced both forms of discrimination.]. Among these participants, half (36 out of 72 who had experienced discrimination) had disclosed their sexual orientations / gender identities in the workplace. Among different sexual minority groups, more of the transgender participants reported that they had experienced workplace discrimination on the grounds of their gender identity, whereas fewer of the bisexual participants experienced discrimination. The findings did not differ significantly across participants from different socio-economic backgrounds, except for participants in the higher income group (with personal monthly income of HK\$30,000 or above). Gay and lesbian participants in the higher income group were less likely to experience discrimination in the workplace as they were the executives or senior managers of the companies and they had a greater decision-making power in the workplace.

- 4.2.8 It was also found that the English-speaking participants were less likely to suffer discrimination. The main reason might be that the majority of them had higher income and status. Another reason might be because they often lived and/or worked among the communities of foreigners in Hong Kong, whose attitudes were deemed to be more inclusive towards sexual minorities, it was less likely they would face discrimination.

Forms of discrimination experienced in the workplace

- 4.2.9 The participants experienced various forms of workplace discrimination. The major forms of workplace discrimination could be categorised as: (1) direct discrimination - being asked to leave a job or denied a job offer; (2) direct discrimination - being deprived of promotion and training opportunities; (3) harassment - unwelcome verbal conduct; and (4) harassment - sexual harassment.

(1) Direct discrimination - Being asked to leave a job or denied a job offer

- 4.2.10 Few (including lesbian, gay and transgender participants) of the

participants who had work experience indicated that they were denied a job offer or asked to leave a job by their supervisors or employers due to their sexual orientations and gender identities, and not based on employment qualifications (10 participants out of 180 participants who had work experience).

- 4.2.11 Two of the gay participants who had disclosed their sexual orientation reported that they were asked to leave a job after disclosing their sexual orientation. However, it is possible that some employers may conceal their real reasons for withholding a job offer by offering excuses. A gay participant emphasised that he had good appraisal records before disclosing his sexual orientation, and was asked to leave the jobs soon after his senior became aware of his sexual orientation. Another gay participant said that he was abruptly dismissed after disclosure to his senior and the excerpt of his experience in Chinese is presented below.

<p>我向上司表露了〔同性戀者〕身份，同一日下午，我就被解僱了。 I disclosed my identity [as a homosexual] to my senior, and later the same day, I was dismissed from my post. (A gay participant describing an incident in 2004)</p>

Note: All excerpts quoted in this report were delivered by the participants in Chinese. The English translation is prepared by researchers.

- 4.2.12 One transgender participant who had disclosed his/her gender identity in the workplace expressed that he/she had once been denied a job offer after he/she had disclosed his/her gender identity. He/she also perceived that it was more difficult for him/her to obtain a job than “ordinary” people.
- 4.2.13 Some of the transgender participants faced the threat of being fired because of their gender identities. They reported that they had been informed to leave their jobs due to their gender identities. However, it would be difficult to substantiate these claims with evidence. In two cases, transgender participants reported that their employers asked them to leave after learning about their gender identity, and the employers clearly expressed their non-acceptance. Brief excerpts from their statements are presented below:

曾有上司知道我是跨性別之後，就對我說：「其實我個人是接受不了的。」所以後來就解僱了我。

After learning that I was a transgender person, my senior said, “personally I can't accept it.” Some time later, he fired me. [Translation]
(A transgender participant describing an incident in 2007)

當時我正在看醫生，開始 Real Life Experience [真實生活體驗]，便通知人事部，想以另一個性別的身份上班，後來老闆突然將我的工作報告評為不合格，並借故解散我主管的部門，以冗員為由將我勸退。
At that time, I was under the supervision of a doctor and started the Real Life Experience. So I informed the human resources department that I wished to work as a staff member of the opposite sex. Then my boss abruptly failed my job appraisal and dismissed the department I was in charge of. And he/she asked me to leave the job for I was a redundant staff member.

(A transgender participant describing an incident in 2009)

(2) *Direct discrimination - Being deprived of promotion and training opportunities*

4.2.14 One transgender participant and one gay participant reported that they had been deprived of promotion and training opportunities in the workplace on the basis of gender identity/sexual orientation.

4.2.15 The transgender participant expressed that he/she was deprived of promotion and training opportunities after he/she disclosed his/her identity to his/her seniors. The excerpt of his/her experience is presented below to illustrate the situation encountered.

因為我透露了自己的性別認同，上司就將我調職，並且失去一些受訓機會，無法得到某些技能，變相直接影響我的晉升機會。

As I disclosed my gender identity, my senior transferred me to another post. I lost training opportunities as a result, and was unable to acquire certain skills. This in turn directly affected my chances of promotion.
(A transgender participant describing an incident during 2012 - 2014)

(3) Harassment - Unwelcome verbal conduct

- 4.2.16 Unwelcome verbal conduct was the most common form of discrimination in the workplace mentioned by the participants (59 participants out of 180 participants who had working experience). Among these participants, about half had disclosed their sexual orientations / gender identities (27 out of 59 participants who had encountered unwelcome verbal conduct). Examples of the unwelcome verbal conduct included calling offensive nicknames, telling inappropriate jokes and making derogatory remarks on the grounds of the sexual orientation or gender identity of the participants. Some participants reported that the unwelcome verbal conduct might cause profound and serious psychological injury. Some participants were annoyed and distressed by the unwelcome verbal conduct and they struggled to ignore the conduct when their dignity was attacked.
- 4.2.17 Some of the gay participants reported offensive nicknames encountered such as “死基佬” (*damn gay men*), “屎忽鬼” (*asshole*), “變態” (*pervert*), “屺型” (*sissy*) and “不男不女” (*not like a man, not like a woman*). Some reported that the co-workers also teased them by continually imitating their behaviours or voices. Some of the gay participants pointed out that even though they concealed their sexual orientation at the workplace, they were subject to such nickname-calling or asked if they were gay because their co-workers suspected that they were gay. These conducts caused distress and nervousness. Some of these gay participants reported that their employers and co-workers liked to make homophobic jokes or comments, creating an unwelcome or even hostile environment to homosexual persons. They considered that this working environment made them feel more depressed and anxious as they had to put more effort into hiding their sexual orientation.
- 4.2.18 Some lesbian participants also reported that they were called offensive nicknames by their employers or co-workers such as “死TB” (*damn tom-boy*).
- 4.2.19 Some transgender participants reported that they encountered offensive nicknames such as “人妖” (*shemale*), “變態” (*pervert*) and “不男不女” (*not like a man, not like a woman*), “怪物” (*monster*) and “陰陽怪氣”

(*queer*), as called by their co-workers, clients and even employers. Some of them reported that the co-workers also teased them by continually imitating their behaviours or voices. Some of the transgender participants had not disclosed their gender identities at work, but their sexual minority identity could still be spotted by their co-workers due to their gender-nonconforming appearances or behaviours. Some of these transgender participants stated that the unwelcome verbal conduct might spread in the workplace once their gender identity was discovered. Some of these transgender participants pointed out that due to lack of understanding of transgenderism, their co-workers confused transgender people with homosexuals and told homophobic jokes to them.

- 4.2.20 Bisexual and post-gay participants were less likely to be subjected to unwelcome verbal conduct in the workplace as their appearance usually did not reveal their sexual orientation. Some of them reported that some verbal comments and jokes encountered at the workplace were extremely humiliating to them.

(4) *Harassment - Sexual harassment*

- 4.2.21 Few of the participants who had working experience had experienced sexual harassment (6 participants out of 180 participants who had working experience). Three cases (one transgender participant, one gay participant and one intersex participant) are extracted and summarised below.

- 4.2.22 One transgender participant stated that he/she had sometimes experienced verbal and physical sexual harassment exerted by his/her employer and co-workers in the workplace. He/she, who had undergone sex reassignment surgery and had disclosed his/her gender identity in the workplace, recalls his/her experience in the following excerpt:

我的僱主會向其他同事評價我的身材，說：「他/她〔指受訪者〕的胸部造得太小，真是浪費了。」甚至有些同事會觸摸我的臀部和胸部。
My employer commented on my figure in front of other colleagues: “His/her (the participant’s) breasts are made too small. What a pity!”
Some colleagues even touched my buttocks and breasts.
(A transgender participant describing an incident in the 2000s)

- 4.2.23 A brief excerpt of the intersex participant’s recollection of his/her having been sexually harassed by his/her co-workers after disclosing his/her identity in the workplace is presented below:

我在工作間透露自己的性別身份後，有一個同事直接用手按我的胸脯，跟著說：「你的胸部頗大！」

After I disclosed my gender identity in the workplace, a co-worker touched my breast and said: “Your breasts are quite large.”

(An Intersex participant describes his/her experience in 2012)

- 4.2.24 One gay participant stated that he encountered verbal sexual harassment when he was suspected of being gay due to his gender-nonconforming appearance or behaviour. The excerpt below illustrates his experience:

公司有兩個女同事直接問我是不是同性戀，我說大家不太熟絡，不談私事，她們繼續追問，叫我快些讓她們打臀部，那就會和我熟絡。

Two female co-workers in my workplace asked me if I was gay. I replied that we were not close enough to talk about personal matters. They persisted in asking and asked me to let them pat my buttocks, saying that we could then become friends.

(A gay participant describing his experience in 2011)

Seeking assistance in the workplace when experiencing discrimination

- 4.2.25 The majority of the participants who had experienced discrimination in the workplace had not sought assistance from any party. The major reason quoted was that they did not know any party that could offer assistance. They pointed out that seeking assistance might expose their identities in the workplace and adversely affect their relationship with co-workers, and that in some cases it was difficult to collect substantial evidence of the discriminatory workplace practices. Moreover, as some of the discriminators were participants’ employers and seniors, fear of losing their jobs prompted them to adopt a protective silence.

- 4.2.26 Some of the participants who experienced discrimination in the workplace had sought assistance from the Equal Opportunities Commission (EOC), Government departments, their seniors, social

workers or friends (12 out of 72 participants who experienced discrimination in the workplace). However, the majority of them considered that those parties which provide assistance were not helpful, and that discriminatory practices could not be mitigated after seeking assistance. They considered that the seniors in the workplace often overlooked the seriousness of the reported discriminatory acts and hence took no further actions to address the problem. Still, two transgender participants who sought help from friends and EOC had found it helpful. One of the transgender participants reported a case where his/her employer failed his/her work appraisal upon learning that he/she was a transgender person and was undergoing “real life experience”. According to him/her, his/her Gender Identity Disorder (GID) was considered by EOC as a form of disability and hence was covered by the Disability Discrimination Ordinance. EOC investigated into the case and provided mediation to both parties.

Views of the participants who had not experienced discrimination in the workplace

4.2.27 In the workplace, about half of the participants (108 out of 180 participants who had working experience) stated that they had not experienced discrimination. The main reason is that their working environments were inclusive and their sexual orientation was well accepted. The view of a lesbian participant who works in the film industry is presented below:

就我自己個人而言，我不知道是否因為我幸運，我身邊的人思想都很開放……因為在拍攝和創意上，我認為他們都是比較多元化和他們的看法能夠擺脫框架，所以我認為我自己很幸運。

My personal experience is that I may be lucky because people around me are open-minded. As they are engaged in the creative film industry, they are more open to diversity and breaking away from convention. I think I am lucky to be around these people.

4.2.28 Other participants expressed that they concealed their identities in a careful way and avoided discussing issues related to sexual minorities with their colleagues or employers. This had helped them avoid discrimination.

4.3 Experience of sexual orientation/gender identity discrimination in school

4.3.1 This section focuses on whether the participants disclosed their sexual orientation/gender identity as students, whether the participants were discriminated against in school in Hong Kong, and if so, the forms of discrimination they experienced. Brief excerpts of participants' statements are presented for further elaboration and understanding of the situations they encountered. In order to safeguard the anonymity of the participants, the excerpts have been modified to remove details that may expose the identity of the individuals. Any differences in experiences across different sexual minority groups and socio-economic backgrounds, as well as between those who had disclosed their sexual orientations or gender identities and those who had not, are also presented where applicable.

Disclosure of sexual orientations/gender identities in school

4.3.2 In general, the majority of the participants (154 out of 208 participants who had studied in Hong Kong) chose to conceal their sexual orientations or gender identities from their schoolmates and teachers in the school due to fear of being gossiped about, isolated, despised or bullied by their schoolmates and teachers. The reason given by participants was that whenever their schoolmates or teachers mentioned homosexuality, they often talked about it in negative ways. Some gay participants stated that they even pretended to be more "masculine" to accommodate themselves to the conventional gender role expectations in school. The majority of the participants viewed the school, especially secondary schools, as an unwelcome or hostile environment towards homosexuals. When the participants reached tertiary educational level they were more willing to disclose their sexual orientation as they thought that the atmosphere of the tertiary education institutes was more open. Findings across participants from different sexual minority and age groups did not differ significantly in this respect.

4.3.3 Among transgender participants, the majority of them had not disclosed their gender identities because of the lack of understanding of

transgender identity in society. The transgender participants, especially those aged over 40, stated that they were ignorant of transgenderism due to the scarcity of information and education about gender identity. Their gender-nonconforming thoughts and behaviours made them perceive themselves as “abnormal”, “bad” or even “mentally ill”. Some of the transgender participants also pointed out that they could only recognise their gender identity in adulthood after they researched information about LGBT on the Internet. Another main reason was that they thought that transgenderism was a taboo and even a “sin” at school. They were afraid of being bullied or discriminated against in school after disclosing their gender identities and therefore made every effort to conceal their gender identities.

4.3.4 Despite this, some of the participants (who had studied in Hong Kong) had disclosed their orientations or gender identities in school selectively to schoolmates whom they trusted when the pressure and depression induced by the concealment of gender identity became too much to bear. It was also found that the participants were more willing to disclose in higher education institutions due to the more open atmosphere.

4.3.5 With regard to findings across different age groups, fewer participants who were aged over 40 had disclosed their sexual orientations and gender identities while at school, as compared with the younger age groups. Some of the older participants pointed out that homosexuality was unlawful at the time they were students, which forced them to conceal their sexual orientation/gender identity. Also, owing to the scarcity of information about sexual orientation and gender identity, some of them were uncertain of their sexual orientations and gender identities when attending schools.

Whether the participants had experienced discrimination in the school

4.3.6 Some of the participants (69 out of 208 participants who had studied in Hong Kong) indicated that they had experienced various forms of discrimination in school (direct discrimination: 2 participants; harassment: 69 participants who encountered unwelcome verbal conduct (58), sexual harassment (8) and unwelcome physical conduct (4) [Note: some participants indicated that they experienced more than one form of

discrimination.]. Among these participants, about half had disclosed their sexual orientations / gender identities (34 out of 69 participants who had experienced discrimination). Among different sexual minority groups, more gay, lesbian and transgender participants reported that they experienced discrimination in school on the grounds of their sexual orientation and gender identity whereas fewer bisexual participants and post-gay participants experienced discrimination. The findings did not differ significantly across different socio-economic backgrounds of the participants. Across different academic stages, it was found that participants encountered discriminatory practices more frequently in the secondary school stage when compared with the tertiary education stage.

- 4.3.7 No significant difference was found across participants in different age groups.

Forms of discrimination experienced in the school

- 4.3.8 Various forms of discrimination in school were experienced by the participants. Some of them reported that these discriminatory acts might contribute to the development of different mental problems and psychological outcomes such as depression (including suicidal ideation) or anxiety. The major forms of discrimination in the school can be categorised as: (1) direct discrimination - being denied a school place offer; (2) harassment - unwelcome verbal conduct; (3) harassment - sexual harassment; and (4) harassment – unwelcome physical conduct.

(1) Direct discrimination - Being denied a school place offer

- 4.3.9 Two participants reported that they had been denied a school place offer. One transgender participant stated that he/she was denied a place in a theological college in the 2000s when he/she applied for admission. During the college's interview, the panel informed him/her that as he/she was a transgender person, a meeting was required to discuss whether or not to give him/her an offer. At last, no offer was issued. The participant indicated that the school place offer was denied on the grounds of gender identity.

- 4.3.10 A gay participant recalled that he was dismissed by a theological college

when he disclosed his sexual orientation while attending that college in 1997. The dismissal letter issued by the college stated explicitly that he was being dismissed on the grounds of his sexual orientation, and that if he felt regrets, he might be given a chance. However, he refused and was finally dismissed by the college.

4.3.11 While there was less favourable treatment for a person with different sexual orientation or gender identity in the above two cases, it is noted that the anti-discrimination laws in some of the overseas jurisdictions provide exemptions for religious schools in relation to their decisions on admission of students.

(2) *Harassment - Unwelcome verbal conduct*

4.3.12 Unwelcome verbal conduct was the most common form of discrimination in school mentioned by the participants. Some (58) of the participants (who had studied in Hong Kong) had experienced this form of discrimination. The discriminatory acts of unwelcome verbal conduct (mostly by schoolmates, while a few participants reported experiencing unwelcome verbal conduct by teachers) included calling offensive nicknames, telling inappropriate jokes and making derogatory remarks on the grounds of the sexual orientation or gender identity of the participants.

4.3.13 The frequently heard offensive nicknames included “死基佬” (*damn gay men*), “死變態” (*damn pervert*), “死TB” (*damn tom-boy*), “死人妖” (*damn shemale*), “唔正常” (*abnormal*), “污糟” (*dirty*) and “怪物” (*monster*). In addition, homosexual persons were sometimes associated with AIDS and promiscuity. It is noteworthy that some of the participants pointed out that they were mocked by the teachers in class, making them feel helpless in the school. A brief excerpt is presented below:

我的班主任有在上課時，會拿我的性傾向開玩笑，說什麼我永遠不會結婚，不會有後代之類，用來引全班笑。

My class teacher made fun of my sexual orientation in the class. He said that I would never get married or have children. The whole class laughed at me.

(A gay participant describing an experience in 2004)

4.3.14 Some of the participants who attempted to conceal their sexual orientation or gender identity pointed out that the homophobic jokes and comments made by schoolmates and teachers forced them to make every effort to conceal their sexual orientation. Such concealment was said to have made them depressed and anxious.

(3) Harassment - Sexual Harassment

4.3.15 Few (8) of the participants (who had studied in Hong Kong) reported that they had been sexually harassed by their schoolmates verbally and physically. One lesbian participant stated that her classmate asked her, “你有無下體？” (“Do you have a penis?”), and even tried to touch her private parts. One gay participant expressed that his male classmates asked him, “你是同性戀，你會不會「搞我」？你會不會用下體觸碰我臀部？” (“As you are gay, would you harass me? Would you touch my bottom with your private part?”).

4.3.16 Another gay participant shared his case and the excerpt of his experience is presented below to illustrate the situation encountered.

有同學捉著我的手叫我摸他的胸部和下體，問我是否真的同性戀，以及是否可以幫他自瀆。

A schoolmate held my hand and asked me to touch his chest and genital area. He asked me if I was gay and if I could help him masturbate.

(A gay participant describing an incident in the early 1990s)

(4) Harassment - Unwelcome physical conduct

4.3.17 Few (4) of the participants (who had studied in Hong Kong) said that they were subjected to unwelcome physical conduct. They described this as bullying by classmates. A lesbian recalled that her classmates took out the belongings in her bag and threw them away. A transgender participant stated that he/she was bullied and physically attacked due to his/her masculine appearance. He/she recalled that classmates used pencils to stab him/her, kicked him/her, stalked him/her, stole his/her belongings, etc.

4.3.18 Two gay participants also stated that they were bullied. A gay participant expressed that in his secondary school days, his classmates threw objects at his body to humiliate him. Another participant said that a schoolmate enticed others to isolate him.

Seeking assistance in the school when experiencing discrimination

4.3.19 The great majority of the participants (61 participants out of 69 participants who had experienced discrimination at school) had not sought assistance from any party. The major reason for not seeking assistance was that they did not know any party that could provide assistance, and they felt that even the teachers and social workers were not equipped with adequate knowledge and skills to handle cases of discrimination against sexual minority students. Some also pointed out that they dared not expose their sexual orientations or gender identities to anyone in the school. Furthermore, as some of the discriminators were school authority figures, such as principals and teachers, the participants were completely helpless when facing discrimination.

4.3.20 Few of the participants had sought assistance from teachers, social workers or classmates when they experienced unwelcome verbal or physical conduct (6 out of 69 participants who reported experience of discrimination at school). Two participants reported that verbal reminders by teachers to the “discriminators” could lessen the problem for a short period of time, and that they could benefit from counselling services by social workers. One mentioned that after the involvement of teacher, the discriminatory act was stopped and never happened again. However, few participants (4 out of 69 participants who reported experience of discrimination at school) mentioned that those discrimination practices still persisted over time even after the involvement of teachers.

Views of the participants who had not experienced discrimination in school

4.3.21 In school, the majority of the participants (139 out of 208 participants who had studied in Hong Kong), especially the bisexuals and post-gays, said that they had never encountered discrimination. They indicated that the environment in schools showed more acceptance of homosexuals

and bisexuals as the social perception towards them is gradually turning more accommodating/inclusive. The view of a lesbian participant is presented below:

我想是較年長一輩〔對同性戀〕是不喜歡。但是，年輕的會持較正面的態度，都可以一起玩。特別是那些年輕的老師，她們會開心地和你聊天。我曾經表示大學有很多相類似的人，她們也表示看過不少，沒什麼大不了的。

I think elder generations do not like us (homosexuals). However, younger generations show more acceptance of us and we get along well. For instance, young teachers would be happy to chat with us. I once mentioned to them that there were many homosexuals in universities, and they responded that they had also seen quite a number and it was no big deal.

4.3.22 Besides, some of the participants who had studied in Hong Kong were not aware of their sexual orientations or gender identities in school days and they had identical appearances as with heterosexual and gender-conforming persons. Thus, they had not experienced discrimination on the grounds of sexual orientation and gender identity at school.

4.4 Experience of sexual orientation/gender identity discrimination in relation to use/purchase of goods, facilities and services

4.4.1 This section focuses on whether the participants were discriminated against in relation to use/purchase of goods, facilities and services in Hong Kong, and if so, the forms of discrimination they experienced. Brief excerpts are presented for further elaboration and understanding of the situation encountered by the participants. In order to safeguard the anonymity of the participants, the excerpts have been modified to remove details that may expose the identity of the individuals. Any differences in experiences across different sexual minority groups and socio-economic backgrounds are also presented where applicable.

Whether the participants had experienced discrimination in relation to use/purchase of goods, facilities and services

- 4.4.2 Some of the participants (85 out of 214 participants) indicated that they had experienced various forms of discrimination in relation to use/purchase of goods, facilities and services (direct discrimination: 46 participants; harassment (unwelcome verbal conduct): 45 participants) [Note: some participants indicated that they experienced both forms of discrimination.]. Among the different sexual minority groups, more gay, lesbian and transgender participants reported that they experienced discrimination in this aspect on the grounds of sexual orientation or gender identity whereas fewer bisexuals experienced discrimination.
- 4.4.3 Participants in the higher income group (with personal monthly income of HK\$30,000 or above) were less likely to experience discrimination in this domain (as compared to participants in the lower income groups (i.e. HK\$10,000 – HK\$29,999 and below HK\$10,000)).

Forms of discrimination experienced in relation to use/purchase of goods, facilities and services by the participants

- 4.4.4 Various forms of discrimination in relation to use/purchase of goods, facilities and services were experienced by the participants. The major forms of discrimination in this aspect can be categorised as: (1) direct discrimination - being denied the goods, facilities or services requested; (2) direct discrimination - differential treatment; and (3) harassment – unwelcome verbal conduct.

(1) Direct discrimination - Being denied the goods, facilities or services requested

- 4.4.5 Among the participants who reported having experienced discrimination before, some stated that they had been once denied goods, facilities or services requested (40 out of 214 participants). The public spaces in which they experienced refusal of services included refuge centres, medical clinics, retail shops and restaurants.
- 4.4.6 Two lesbian participants and two gay participants expressed that they had tried to order a Valentine's set dinner on Valentine's Day, but were

refused by waiters/waitresses who informed them that the Valentine's set dinner could only be offered to heterosexual couples. When challenged on the lack of notification in the restaurant regarding the said rules, the waiters/waitresses replied that it was their usual practice, and no further explanation was offered. The participants said they left the restaurant when they were refused the services. In the context of clubbing activities, few lesbian participants (7 out of 70 lesbian participants) reported that when they tried to enter clubs that offered free entry to ladies, they were requested to pay an entry charge or were not allowed to enter the clubs because they had a tom-boy appearance.

- 4.4.7 In shopping arcades, some of the lesbians (9 out of 70 lesbian participants) with a tom-boy look and some transgender participants (5 out of 35 transgender participants) were not welcome to use the female toilets and would sometimes be driven away by the cleaners. Sometimes, the participants needed to show their identity cards to prove their gender when using public toilets.
- 4.4.8 Regarding rental of hotels/inns, few gay (4 participants) and lesbian (3 participants), and one bisexual participants expressed that they were refused to make a booking with hotels/inns due to their sexual orientations. Some commented that there were statements posted at the hotel indicating that the rental services were not provided to same-sex couples, and that these rules were unfair to people with different sexual orientations.
- 4.4.9 For blood donation, two gay and one bisexual participants indicated that they were not allowed to donate blood if they had disclosed their sexual orientation to the staff of the blood donation centres by filling a form which enquires whether they had any sexual contact with another man¹⁸. While there was less favourable treatment for a person with different sexual orientation in these cases, it is noted that the anti-discrimination laws in some of the overseas jurisdictions allow organisations that operate blood service to refuse to accept a person's blood donation if the

¹⁸ Note by the research team: The Hong Kong Red Cross checks for the suitability to donate by asking, among other things, whether donors ever had male-to-male sexual activity, and whether they, for the past 12 months, had sexual activity with a bisexual male, or a male/female sex worker.

decision is based on reasonable medical ground.

- 4.4.10 A bisexual participant stated that a group of sexual minority people had experienced discrimination when they tried to rent a bus for a demonstration to protest for their rights. When they first contacted the rental bus service company, the representative replied that they could rent the bus after filling in the application. However, when the rental bus service company realised that the bus would be rented to a group of LGBT people, the representative of the company refused to provide the service, with the reason given that this was a commercial decision and they had to take “the image of the company” into consideration.
- 4.4.11 One transgender participant reported experience of being refused the provision of social services. Another transgender participant stated that he/she had faced refusal when requesting to use services during medical check-ups in private clinics. These cases might be a result of a lack of adequate knowledge about transgenderism among front-line workers. Two brief excerpts for these two cases are presented below:

我因向家人出櫃而被趕出家門，睡在街頭，我到某福利機構求助，〔他們〕不單止不接受申請，而且還說我選擇了這條路，也應預計會受到這樣的對待。

I was expelled from home and slept on the street after I disclosed my gender identity to my family. I sought help from a social welfare organisation but they didn't accept my application. They even said that I should have anticipated such treatment when I chose to be a transgender person.

(A transgender participant describing an incident in 2011)

有一次體格檢查〔於更改身份證所顯示的性別後〕，因為我以前是男性，我可以做前列腺檢查，但某醫護人員不許我做，說我的身份證顯示我是女性，不准做前列腺檢查。

I used to be a male and so I had had prostate examination. However, during a medical check [after change of gender on identity card], I was refused to have such examination because my identity card showed that I was a female.

(A transgender participant describing an incident in the 2010s)

4.4.12 In another case, a transgender participant was refused permission to try on and purchase a women's headdress by the salesperson in a high-end department store.

(2) *Direct discrimination - Differential treatment*

4.4.13 Among the participants who reported having experienced discrimination before, few stated that they had been offered differential treatment compared to heterosexuals (6 out of 214 participants).

4.4.14 Two lesbian participants recalled that during dinner at an eatery, the waiters intentionally did not provide service. A brief excerpt for this case is presented below:

有一次，我跟朋友去吃飯，侍應會特別不招呼我們，並對我說：「你心理不平衡呀？若非心理不平衡又怎會作此打扮！明明是女的，又要打扮成男性。」

Once I ate out with my friend but the waiter refused to serve our table and said: "Are you psychologically impaired? How come you would dress like that! You are a woman but you dress like a man."

(A lesbian participant describing an incident in 2010s)

4.4.15 Two gay participants indicated that they faced differential treatment at hotels/inns on the grounds of their sexual orientations. In one case a participant reported that when the staff of the hotel/inn was notified that two men were coming, they requested payment of an additional deposit. The condition was that if the gay couple vacated the room without any damage, the deposit would be refunded. The participant was very disappointed and distressed about the differential treatment. Another participant recalled that the staff of one hotel refused to offer a double bed to a gay couple, and stated that this was the company policy so as to prevent sexual intercourse among gay couples. However, this policy did not apply to women couples; in the same hotel a women couple was allowed to book a double bed without hindrance.

4.4.16 Regarding child adoption, one gay participant recalled the process of applying for child adoption with his male partner in a non-governmental organisation in Hong Kong. The staff of the non-governmental

organisation informed them that they could not apply in the capacity of a married couple as they got married overseas. The gay participant could only apply as an individual and as a result only his income level (instead of the sum of his and his partner's) would be taken into account for the application¹⁹. He considered that such arrangement of the organisation constituted systemic discrimination in that it was applying differential treatment, and making it more difficult for gay couples to adopt children as same-sex marriage was not yet legal in Hong Kong.

- 4.4.17 A transgender participant attempted to apply for child sponsorship during his/her real life test period, and encountered differential treatment. An excerpt for this case is presented below:

我去某機構助養一位小朋友，那時我仍未做手術的，但我已經開始了我的 Real Life Test [真實生活體驗]，機構人員要求我將身份告訴小孩父母，我就說，這是我的個人私隱，為何要展露給小朋友的父母？然後我去投訴，他們就說沒有規定向小孩父母透露身份。

I approached an organisation to apply for child sponsorship. At that time I had not undergone surgical operation but had started Real Life Test. The staff asked me to disclose my gender identity to the parents of the child. I said this was my privacy and there was no reason to tell them. I then made a complaint. As a result, they replied that there was no regulation that the child sponsor must disclose his/her gender identity to the parents of the child.

(A transgender participant describing an incident in 2009)

(3) Harassment - Unwelcome verbal conduct

- 4.4.18 Unwelcome verbal conduct was the most common form of discrimination in relation to use/purchase of goods, facilities and services recalled by the participants. The discriminatory acts of unwelcome verbal conduct included calling offensive nicknames, telling inappropriate jokes, and

¹⁹ Note by the research team: there is no written policy by local adoption agencies on whether same-sex or non same-sex cohabitants could apply in the capacity of a couple. Applicants have to undergo a thorough home study in assessing their capability to become suitable adoptive parents. A number of factors will be taken into account including the applicants' early life experience, parenting attitudes and capacities, adoption motivation, abilities in meeting the needs and developing the potentials of the children being adopted, etc.

making derogatory remarks on the grounds of the sexual orientation or gender identity of the participants.

- 4.4.19 Some of the participants indicated that they had encountered unwelcome verbal conduct (45 out of 214 participants). Some of the gay participants (9 gay participants out of 66 gay participants) were called offensive nicknames or subjected to derogatory remarks such as “死基佬” (*damn gay men*), “變態” (*pervert*), “死基佬, 真的核突, 有女人不去愛, 要愛男人” (*damn gay men, you are so disgusting. You love men rather than women*) and “有沒有玩性玩具” (“*Do you like sex toys?*”) by the staff providing goods, facilities and services. Some of the lesbian participants (14 lesbian participants out of 70 lesbian participants) also encountered offensive nicknames and derogatory remarks such as “死TB” (*damn tom-boy*), “女同性戀的性行為是不正常的” (*Lesbian sex is abnormal!*) and “不要貼近她(女同性戀者), 她會搞你的” (“*Don’t get close to her, she would harass you!*”) by the staff providing goods, facilities and services. In discussion on how they responded to such treatment, some participants said they would probably grudgingly accept some inappropriate comments or jokes. Some would deliberately conceal their sexual orientation to avoid intimidation and discrimination.
- 4.4.20 About half of the transgender participants (16 transgender participants out of 35 transgender participants) encountered offensive nicknames and derogatory remarks such as “人妖” (*shemale*), “變態” (*pervert*) and “不男不女” (*not like a man, not like a woman*). Access to public toilets was also a great difficulty they sometimes faced. They might be cursed when using public toilets, and some had been insulted by the cleaning staff or staff in shopping arcades. They expressed that these disrespectful or scornfully abusive comments and jokes were extremely humiliating.
- 4.4.21 For bisexual and post-gay participants, they were less likely to be subjected to unwelcome verbal conduct when using/purchasing goods, facilities and services.

Seeking assistance in relation to use/purchase of goods, facilities and services when experiencing discrimination

4.4.22 The great majority of the participants who had experienced discrimination in relation to the use/purchase of goods, facilities and services had not sought assistance from any party (77 out of the 85 participants who experienced discrimination in relation to the use/purchase of goods, facilities and services). The major reason for not seeking assistance was that they did not know any party that could provide assistance. Also, some of the participants pointed out that seeking assistance was of no use as there were no legal measures to restrict those discriminatory acts.

4.4.23 Few participants had sought assistance from sexual minority organisations, EOC or the staff/managers of the companies which provide the good, facilities and services when facing discrimination in relation to the use/purchase of goods, facilities and services (8 out of the 85 participants who experienced discrimination in relation to the use/purchase of goods, facilities and services). Among them, some stated that those parties were helpful in stopping the discriminatory acts.

Views of the participants who had not experienced discrimination in relation to use/purchase of goods, services and facilities

4.4.24 About half of the participants (129 out of 214 participants) expressed that they had not faced discrimination in this domain. The main reason is that they would not intentionally disclose their identities when using or purchasing goods, services and facilities as they only had brief interaction with the providers. They considered that the providers of goods, services and facilities did not care about the customers' sexual orientations or gender identities as long as there was business. Even though on some occasions they had faced unfriendly looks or expressions by the staff providing goods or services, they were not sure if this amounted to discrimination.

4.4.25 Moreover, a few of the homosexual participants considered that most of the staff providing goods or services were friendly to homosexuals.

我覺得購物可能始終都是消費，現在強調客人為先，他都不會因為你的性傾向而歧視你。

After all we spend money. Now that we are in a customer-oriented society, they won't discriminate against us because of our sexual orientation.

(A lesbian participant describing an incident in 2009)

4.5 Experience of sexual orientation/gender identity discrimination in relation to the disposal and management of premises

4.5.1 This section focuses on whether the participants were discriminated against in relation to the disposal and management of premises, and if so, the discrimination they experienced. Brief excerpts are presented for further elaboration and understanding of the situation encountered by the participants. In order to safeguard the anonymity of the participants, the excerpts have been modified to remove details that may expose the identity of the individuals. Any differences in experiences across different sexual minority groups and socio-economic backgrounds, as well as between those who had disclosed their sexual orientations or gender identities and those who had not, are also presented where applicable.

Whether the participants had experienced discrimination in relation to the disposal and management of premises

4.5.2 Some of the participants (6 out of the 48 participants who had experience in disposal and management of premises) had encountered discrimination in relation to the disposal and management of premises and the majority of these few participants had not disclosed their sexual orientation or gender identity to the landlords or property managers.

Forms of discrimination experienced in relation to the disposal and management of premises

4.5.3 The major form of discrimination in this aspect was (1) direct discrimination - being denied rental of premises; and (2) direct discrimination - being subjected to less favourable treatment in relation

to the rental of premises.

4.5.4 The participants who had encountered discrimination in this aspect reported being denied rental of premises or being subjected to less favourable treatment in relation to the rental of premises. Generally, discrimination usually happened when the landlord or property manager met the tenant. The landlord or property manager would ask the participants specific questions about their relationship with their partner and enquire whether it was a same-sex relationship.

(1) Direct discrimination - Being denied rental of premises

4.5.5 Few participants had experienced this form of discrimination (4 out of 48 participants who had experience of disposal and management of premises). One transgender participant recalled that he/she wanted to move to a new flat. Everything was fine and the contract was ready. When he/she informed the landlord that he/she was a transgender person, the landlord refused to sign the contract. After some time, the property agency informed the transgender participant that the landlord would not rent the flat to him/her because the landlord did not accept his/her gender identity. Another transgender participant experienced the same discriminatory act, with the landlord refusing to rent the flat to him/her once the landlord noticed his/her gender identity. Two lesbian participants shared similar cases; they were refused rental of flats when the landlords recognised that lesbian couples would live in the premises.

(2) Direct discrimination - Being subjected to less favourable treatment

4.5.6 Two participants in total reported this form of discrimination. One transgender participant indicated that he/she was requested to pay the rent for the whole year in advance. This was an unusual and less favourable term. A brief excerpt is presented below:

有一次與屋主談妥租約了，拿身份證出來看，發現我是男性，便說要我預先繳付一年租金，才肯租給我。

The owner and I reached an agreement on renting the flat. When I showed my ID card, he realised I was a male and requested me to pay the rent for the whole year in advance.

(A transgender participant describing an experience in the 2000s)

4.5.7 One lesbian participant recalled that she initially conducted the entire rental process with no issues raised by the landlord, in what was overall a friendly transaction. After the landlord saw her partner and realised that a pair of lesbians were living in the premises, the landlord's attitude changed and more suggestive rules were stated explicitly including "don't be too noisy and disturb others" and "don't get the place dirty". These comments had never been voiced before.

Seeking assistance in relation to the disposal and management of premises

4.5.8 The great majority of the participants who had experienced discrimination in relation to the disposal and management of premises had not sought assistance from any party (5 out of 6 participants who experienced discrimination in relation to the disposal and management of premises). The main reason for not seeking assistance was that they did not know any party that could provide assistance.

4.5.9 One participant sought assistance from a sexual minority organisation. The participant considered it helpful as the organisation provided a shelter for him/her.

Views of the participants who had not experienced discrimination in relation to the disposal and management of premises

4.5.10 In relation to the disposal and management of premises, the majority of the participants (42 out of 48 participants who had experience of disposal and management of premises) had not encountered discrimination.

4.5.11 Some of the participants who had not encountered discrimination considered that the owners or managers were concerned only about whether the premises could be sold or rented at good prices; sexual orientations or gender identities of the clients were not their concern.

4.5.12 However, some participants pointed out that homosexuality or transgenderism was a taboo when renting premises and therefore they would conceal their sexual orientations or gender identities in order to avoid discrimination in this domain.

4.6 Experience of discrimination in other domains

4.6.1 This section focuses on some participants' discrimination experience in relation to other domains. Brief excerpts are presented for further elaboration and understanding of the situation encountered by the participants. In order to safeguard the anonymity of the participants, the excerpts have been modified to remove details that may expose the identity of the individuals.

(1) Direct discrimination - Being denied the opportunities to participate in church activities

4.6.2 Few participants stated that when their sexual minority identity was discovered in the churches they had joined, they were denied the opportunities to participate in the activities of the churches (4 participants out of 214 participants)²⁰. Brief excerpt of a case as mentioned by a gay participant is presented below:

教會知道我是同性戀時，他們覺得如果你是同性戀的話，應該先認罪，而且表示暫時未適合再作奉獻。

When the church knew I was a homosexual, they would ask me to first admit the sin, and consider it inappropriate for me to make contributions for the church for the time being.

(A gay participant describing an incident in the 2000s)

4.6.3 While there was less favourable treatment for a person with different sexual orientation in these cases, it is noted that the anti-discrimination laws in some of the overseas jurisdictions provide exemptions for religious organisations in relation to participation in their activities.

²⁰ These experiences were reported during the open-ended session of the focus group discussion and/or in-depth interview on experiences in other domains. As the experiences do not belong to the major domains covered by the Study, there was no statistic on how many participants in total participated in church activities.

(2) *Harassment: being subjected to unwelcome verbal conduct during participation in social activities*

4.6.4 One post-gay participant recalled that he was met with hostility by a sexual minority organisation when he attended a forum to share his experience and he was subjected to unwelcome verbal conduct because of his post-gay identity. A brief excerpt of the experience of this participant is presented below:

有一次我與另一位講者去講座演講，討論如何輔導青少年同性戀，並分享我的經歷。某性小眾組織前來阻攔我們的活動。

I attended a forum with another speaker to share my experience in homosexuals counseling for youths. A sexual minority organisation came to interrupt the activity.

(A post-gay participant describing an experience in the 2000s)

4.7 Supportive measures

4.7.1 This section focuses on supportive measures for sexual minorities suggested by the participants. Education in schools and education for stakeholders in different domains, and enacting legislation against discrimination on grounds of sexual orientation and gender identity were suggested by the majority of participants respectively, while the other five measures to be discussed in this section were supported by some of the participants. Among these five measures, two were suggested by some of the transgender participants.

(1) *Education in schools and education for stakeholders in different domains*

Education in schools

4.7.2 The great majority of participants (194 out of 214 participants) pointed out that proper education on sexual orientation, gender identity and other related issues was lacking in primary and secondary schools in Hong Kong. Absence of such information and knowledge in the regular curriculum resulted in a lack of awareness of problems faced by sexual minorities. The participants believed that incorporating education on sexual orientation and gender identity into the regular curriculum could

help eliminate prejudice and thus alleviate the discrimination problems faced by sexual minorities in schools.

Education for stakeholders in different domains

- 4.7.3 Regarding discrimination in the workplace, the majority of the participants (140 out of 214 participants) opined that the major cause of discrimination against sexual minorities was that the discriminators lacked adequate and accurate knowledge about sexual orientation, gender identity and other related issues. They suggested that employers could organise seminars for employees with a view to dismantling myths and stereotypes about sexual minorities.
- 4.7.4 Regarding discrimination in school, some of the participants (77 out of 214 participants) suggested that schools could cooperate with sexual minority organisations to hold seminars and workshops for students to enhance knowledge on issues about sexual minorities. In addition, few participants (21 out of 214 participants) stressed that many teachers and social workers in schools did not acquire adequate knowledge about sexual minorities, leading them to misunderstand or even discriminate against sexual minority students. Moreover, as authority figures who should offer assistance to sexual minority students, teachers and social workers should be well-equipped with knowledge and skills to handle discriminatory practices. Training courses for teachers and social workers should be provided.
- 4.7.5 In relation to use/purchase of goods, facilities and services, few of the participants (21 out of 214 participants) considered that more promotional materials issued by the Government to spread the message of equal opportunities for sexual minorities could help prevent discrimination against them.
- 4.7.6 Some of the transgender participants (14 out of the total 37 transgender participants) indicated that doctors and medical staff often lacked good knowledge of transgenderism. This might lead to mistakes when they provided medical services for transgender people²¹.

²¹ They also remarked that there were too few doctors who dealt with people with GID in Hong Kong and so they had to wait for a long time before undergoing sex

4.7.7 Furthermore, few participants (20 out of 214 participants) expressed that stereotypical portrayals of sexual minorities in the mass media had shaped negative attitudes towards sexual minorities in the society. They believed that increasing media exposure of sexual minorities could help the public understand the real situation of sexual minorities in Hong Kong and mitigate prejudice towards them.

(2) Enacting legislation against discrimination on grounds of sexual orientation and gender identity

4.7.8 The participants opined that the Government should take the lead to stop discriminatory practices towards sexual minorities by enacting anti-discrimination legislation. The majority of them believed legislation would be effective in mitigating discriminatory practices in the domains of work (139 out of 214 participants) and provision of goods, facilities and services (159 out of 214 participants); while half of them were supportive of legislation in the domain of education (126 out of 214 participants), and some of them for the domain of the disposal and management of premises (84 out of 214 participants). The participants also pointed out that legislation could be an effective way to educate the public on equal opportunities for people with different sexual orientations and gender identities as well as to raise the awareness among stakeholders over the rights of sexual minorities.

(3) Setting up unisex toilets and changing rooms

4.7.9 In relation to the public toilets and changing rooms in public venues especially the shopping arcades, some lesbian and transgender participants (29 out of the total 104 lesbian participants and transgender participants) stated that they might be subjected to embarrassment, or even insult or arrest by others offended by the presence of a person they perceived as being of the other gender in the public toilets and changing rooms. It was necessary to set up more public unisex toilets and changing rooms to eliminate embarrassment and inconvenience suffered

reassignment treatment. They opined that increasing the number of doctors who dealt with GID could reduce / shorten the waiting time for the process of sex reassignment treatment.

by them.

- 4.7.10 The majority of the lesbian and transgender participants (61 out of the total 104 lesbian participants and transgender participants) indicated that they had experienced embarrassment and inconvenience when using washrooms and changing rooms with their co-workers or classmates, and therefore they saw a need to set up unisex toilets and changing rooms in the workplace and in the school.

(4) Enhancing employment resources and counselling services for sexual minorities

- 4.7.11 Some of the participants (22 out of 214 participants; among them, 18 are transgender participants) pointed out that it was difficult for them to support a living on their own as they had fewer opportunities to secure a job than ordinary people. They opined that the Government should help transgender people to seek jobs. For example, the Labour Department could establish a network to match transgender people with sexual minority-friendly employers. Also, the Government could encourage employers to create a friendly working environment for sexual minorities.

- 4.7.12 Few participants (20 out of 214 participants) pointed out that when sexual minorities suffered discrimination, they did not know what to do and where to seek assistance. Counselling services provided by well-trained social workers equipped with adequate knowledge about sexual minorities could be helpful to them.

(5) Providing temporary shelters for sexual minorities

- 4.7.13 Some of the participants (48 out of 214 participants) pointed out that sexual minorities, especially transgender people, might be expelled from home by their families who do not accept their sexual orientation/gender identity. Therefore, it was considered important to set up temporary shelters for sexual minorities who encountered such a situation.

(6) Allowing transgender people to dress in accordance with their preferred

gender at work or at school

- 4.7.14 Some of the transgender participants (14 out of the total 35 transgender participants) stated that they felt uncomfortable and depressed when they were requested to wear the work uniform conforming to their biological sex but not their preferred gender. They advised that transgender people ought to be allowed to dress in accordance with their preferred gender in the workplace and at school.

(7) Protecting privacy in relation to sex/gender identity (in relation to use of public services)

- 4.7.15 Some of the transgender participants (7 out of the total 35 transgender participants) expressed that some providers of facilities and services might expose their identities to the public. They opined that the Office of the Privacy Commissioner for Personal Data should protect personal data about sex/gender identity against unauthorised or accidental access.

Chapter 5 Conclusion

5.1 This Study was based on 29 focus discussions and 138 in-depth one-to-one interviews with 214 sexual minority participants with different socio-economic backgrounds. The purpose was to ascertain whether sexual minorities were discriminated against in Hong Kong, and if so, the discrimination they experienced and specifically: (a) in what domains, namely employment; education; provision of goods, facilities and services; and disposal and management of premises; (b) in what forms of discrimination; (c) the areas of needs for support and/or redress; and (d) whether they have attempted to seek redress and/or assistance from different bodies. Following the analysis on the participants' discussions as set out in Chapter 4, conclusions were drawn as summarised below.

General understanding of discrimination in daily life

5.2 About half of the participants indicated that the basic definition of "discrimination" was "a person is treated unfairly or less favourably than other persons". Another half of them might not be able to state clearly what the definition of discrimination was. However, these participants gave examples including verbal insult, mockery, sexual harassment and physical assault. Besides, some of these participants pointed out that depriving sexual minorities of their resources and basic rights were forms of discrimination as well. The majority of these participants also perceived "unfriendly looks or expressions" as discriminatory. These participants expressed that this kind of unfriendly gesture would make them feel uncomfortable and stressful. On the basis of the above understandings of discrimination, the majority of participants expressed that they had experienced some form of discriminatory acts in daily life.

Overview of discrimination experience of the participants

5.3 The majority of the participants tended not to disclose their sexual orientations or gender identities in the four domains surveyed. They observed that whenever the persons around them mentioned issues related to sexual minorities, most of them talked about it in negative ways, thereby

creating an unwelcome and even hostile environment towards them. Some of the participants reported that they had at one time or another suffered from mental health problems, such as anxiety or depression (including suicidal ideation), as a result of the severe strain they were mindful at all times to make sure that their sexual orientation/gender identity would not be uncovered. Some of the participants who had not disclosed their sexual orientations or gender identities were still suspected of being homosexual or transgender and thus were discriminated against owing to their gender-nonconforming appearance and behaviours.

5.4 Regarding the forms of discrimination experienced, unwelcome verbal conduct (harassment) was the most common form of discrimination the participants suffered. They were called offensive nicknames, told inappropriate jokes and given derogatory remarks on the grounds of sexual orientation or gender identity. Direct discrimination and sexual harassment are the less common forms of discriminatory acts encountered by the participants.

5.5 Across different sexual minority groups, it is found that the majority of transgender and gay participants reported that they had encountered discrimination, while some of the lesbian participants, few bisexual participants, one post-gay participant and one intersex participant reported having encountered discrimination. Generally speaking, lesbians and bisexuals could more easily conceal their sexual orientations and were less likely to face discrimination in different spheres of daily life.

5.6 In consideration of differences in findings among participants recruited from the three sampling methods as discussed in Chapter 2.2 (i.e. members from sexual minority networks and communities, and non-members recruited from snowball sampling and open recruitment from online social networks and media outlets), in general, more of the gay and lesbian participants recruited from members of sexual minority communities had encountered various forms of discrimination, as compared to non-members. It might be because they were more open about their sexual minority identity in daily life; more of the participants recruited from members of sexual minority communities disclosed their sexual minority identity in different domains, as compared to the non-member participants. For bisexual and transgender participants, there were no significant differences

on the frequency and forms of discrimination among members and non-members. Since most of the post-gay participants were recruited from members of the sexual minority communities, whether there were differences could not be ascertained.

Seeking assistance when experiencing discrimination

5.7 It is noteworthy that the majority of the participants who encountered discrimination had not sought assistance from any party. This was likely because there is no statutory body or legal measures handling discrimination on the grounds of sexual orientation and gender identity; as such, they did not know any party that could provide helpful and long-term assistance. Also, the risk of exposing their identity prevented them from making complaints to the possible complaint-handling organisations. Moreover, as some of the discriminators were employers in the workplace or authority figures (principals or teachers) in the school, fear of losing jobs and school places prompted them to remain silent about the discrimination they experienced.

Experience of sexual orientation/gender identity discrimination in the workplace

5.8 In the workplace, some of the participants who had work experience stated that they had been subjected to unwelcome verbal conduct (harassment) by their seniors or co-workers. Few of the participants who had work experience reported that they had been asked to leave their jobs/denied job offers, deprived of promotion and training opportunities, or sexually harassed because of their sexual orientations or gender identities.

5.9 Among different sexual minority groups, more of the gay and transgender participants reported that they had experienced workplace discrimination on the grounds of their sexual orientation or gender identity.

5.10 Meanwhile, about half of the participants who had work experience stated that they had not experienced discrimination in the workplace. The main reasons were that their working environments were inclusive towards them, and that they concealed their identities in a careful way.

Experience of sexual orientation/gender identity discrimination in school

- 5.11 In the school, some of the participants who had studied in Hong Kong stated that they had been subjected to unwelcome verbal conduct by their schoolmates and teachers. Few of the participants who had studied in Hong Kong had been subjected to unwelcome physical conduct (harassment), had encountered denial of a school place offer in theological colleges²², or had experienced sexual harassment.
- 5.12 Among different sexual minority groups, the majority of the gay participants indicated that they had experienced various forms of discrimination in school, whereas some of the participants who were lesbian, transgender and post-gay participants had experienced discrimination in school.
- 5.13 Some of the participants who had experienced discrimination in the school considered that schools, especially secondary schools, were an unsafe and hostile environment for sexual minorities. Bullying and social isolation at school even led some participants to contemplate self-harm and engage in high-risk behaviour. Furthermore, they expressed that the discriminatory acts they experienced at school might cast a shadow on their later lives.
- 5.14 Meanwhile, the majority of the participants who had studied in Hong Kong, including the great majority of the bisexuals and post-gays, said that they had never suffered discrimination in schools. These participants indicated that the environment in schools showed more acceptance of homosexuals and bisexuals as the social perception towards them is gradually turning more welcoming. Besides, some of the participants who had never suffered discrimination in schools had not recognised their sexual orientations or gender identities in school age and they had identical appearances as with heterosexual and gender-conforming persons. Thus, they had not experienced discrimination on the grounds of sexual orientation and gender identity at school.

²² While there was less favourable treatment for a person with different sexual orientation or gender identity in these cases, it is noted that the anti-discrimination laws in some of the overseas jurisdictions provide exemptions for religious schools in relation to their decisions on admission of students.

Experience of sexual orientation/gender identity discrimination in relation to use/purchase of goods, facilities and services

- 5.15 Concerning use/purchase of goods, facilities and services, some of the participants had suffered various forms of discrimination including unwelcome verbal conduct, being denied the goods, facilities or services requested (direct discrimination)(e.g. being denied Valentine’s Day menus and being denied entry to public toilets) and differential treatment (direct discrimination)(e.g. being charged additional deposit for rental in hotel/inn).
- 5.16 Within this domain, among different sexual minority groups, more gay, lesbian and transgender participants reported that they experienced discrimination in this aspect on the grounds of sexual orientation or gender identity whereas fewer bisexuals experienced discrimination. The participants in the higher income group (with personal monthly income of HK\$30,000 or above) were less likely to experience discrimination in this domain (as compared to participants in the lower income groups (i.e. HK\$10,000 – HK\$29,999 and below HK\$10,000)).
- 5.17 One participant pointed out that he faced systemic discrimination that involved policies of a non-governmental organisation on processing applications for child adoption which were allegedly unfair.
- 5.18 Meanwhile, about half of the participants expressed that they had not faced discrimination. The main reason was that they would not intentionally disclose their identities when using or purchasing goods, services and facilities as they only had brief interaction with the providers. They considered that the providers of goods, services and facilities did not care about the customers’ sexual orientations or gender identities as long as there was business.

Experience of sexual orientation/gender identity discrimination in relation to the disposal and management of premises

- 5.19 Regarding the disposal and management of premises, more than half of the participants had no experience in this domain. For those who had such

experience, some of them had suffered discrimination. The major forms of discrimination experienced were denial of renting premises and being subjected to less favourable treatment in relation to the rental of premises.

5.20 Meanwhile, among the participants who had relevant experience in this domain in Hong Kong, the majority had not encountered discrimination. Some of these participants considered that the owners or managers only cared about whether the premises could be sold or rented at good rate, and sexual orientations or gender identities of the clients were not their concern. However, some of these participants pointed out that homosexuality or transgenderism was a taboo when renting premises and therefore they would conceal their sexual orientations or gender identities in order to avoid discrimination in this domain.

Experience of discrimination in other domains

5.21 As far as other domains are concerned, few participants reported that they encountered direct discrimination in churches²³; when their sexual minority identity was discovered in the churches they had joined, they were denied the opportunities to participate in the activities of the churches²⁴. One post-gay participant recalled that he was opposed by a sexual minority organisation when he attended a forum to share his experience and he was subjected to unwelcome verbal conduct.

Supportive measures

5.22 To mitigate the discrimination they experienced, the majority of participants proposed: (1) education in schools and education for stakeholders in different domains; and (2) enacting legislation against discrimination on grounds of sexual orientation and gender identity.

²³ These experiences were reported during the open-ended session of the focus group discussion and/or in-depth interview on experiences in other domains. As the experiences do not belong to the major domains covered by the Study, there was no statistic on how many participants in total participated in church activities.

²⁴ While there was less favourable treatment for a person with different sexual orientation in these cases, it is noted that the anti-discrimination laws in some of the overseas jurisdictions provide exemptions for religious organisations in relation to participation in their activities.

Some of the participants proposed the following supportive measures: (3) setting up unisex toilets and changing rooms; (4) enhancing employment resources and counselling services for sexual minorities; (5) providing temporary shelters for sexual minorities. Some of the transgender participants proposed: (6) allowing transgender people to dress in accordance with their preferred gender at work or at school; and (7) protecting privacy in relation to sex/gender identity (in relation to use of public services).

- 5.23 The majority of the participants believed that Government should take the first step to formulate effective and long-term measures that could help create an inclusive society accommodating of sexual minorities. Also, they hoped that the general public could have a deeper understanding of their situations so as to eliminate the prejudice and discrimination against sexual minorities.

Appendix 1 Discussion Guide

SECTION A

General understanding and experience of discrimination in daily life

Opening:

- (1) Based on your understanding, what is discrimination?
- (2) Have you experienced any discrimination in your daily life? If so, what are the details of the experience? What exactly happened and in what domain?
- (3) Do you think that the discrimination was mainly induced by your sexual orientation / gender identity?
- (4) What form(s) of discrimination have you experienced?
For example (prompts):
 - (a) Verbal insult or mockery
 - (b) Sexual harassment
 - (c) Vilification²⁵
 - (d) Bullying or physical violence
 - (e) Other forms
- (5) How often do you experience the above form(s) of discrimination?
 - (a) Frequently
 - (b) Sometimes
 - (c) Seldom

²⁵ Any activity in public that incites hatred towards, serious contempt for, or severe ridicule of, a person or persons because of their sexual orientation or gender identity.

SECTION B

**Experience of sexual orientation / gender identity discrimination
in the workplace**

I would like to discuss with you about the following aspects of experience you may have:

- (1) Sexual orientation / gender identity disclosure in the workplace
- (2) Discrimination experienced in the workplace
- (3) Seeking assistance in the workplace

Sexual orientation / gender identity disclosure in the workplace

(B1) Have you disclosed your sexual minority identity in the workplace?

If the participant **HAS** disclosed, ask the following:

- (1) How did you decide whether/whom/when to tell?
- (2) How do you think disclosure of sexual orientation/gender identity has affected your relationships with the following:
 - (a) Your employer
 - (b) Your co-workers
 - (c) Your business clients

If the participant **HAS NOT** disclosed, ask the following:

- (3) What prevent you from disclosing?
- (4) Are the anticipated effects caused by the disclosure part of the reason(s) of your choice?
 - (a) What is your concern for coming out at work?
 - (b) What is the anticipated consequence?
 - (c) What is the difficulty involved?
 - (d) In what ways do you think coming out might affect:
 - (i) Your status
 - (ii) Prospect for promotion / posting
 - (iii) Welfare packages
 - (iv) Other aspects of your work experience

Discrimination experienced in the workplace

(B2) Have you experienced any direct or indirect discrimination in the workplace?

(1) What form(s) of direct or indirect discrimination²⁶ have you experienced?

For example (prompters):

- (a) Verbal insult or mockery
- (b) Sexual harassment
- (c) Being denied a promotion that you were qualified for
- (d) Being denied a job offer or asked to leave a job
- (e) Bullying or physical violence
- (f) Indirect discrimination (please specify: _____)

We would like to know the actual incidents. Please elaborate specifically what happened. Please also let us know when the incidents above occurred.

(2) Who exert(s) the above form(s) of discrimination to you?

- (a) Your employer
- (b) Your co-workers
- (c) Your business clients
- (d) Others (please specify: _____)

(3) Why do you think that the above form(s) of discrimination were mainly induced by your sexual orientation / gender identity? Have you compared the treatment you experienced with others in the workplace?

(4) How often do you experience the above form(s) of discrimination?

- (a) Frequently
- (b) Sometimes
- (c) Seldom

(5) What do you think about the overall attitudes of your employer / co-workers / business clients towards your sexual orientation / gender identity?

- (a) Positive / Negative / Neutral
- (b) Inclusive / Exclusive / Neutral

²⁶ Moderators should clarify with the interviewees the definitions of direct and indirect discrimination: (1) Direct discrimination occurs when a person is treated less favourably than another person with a different sexual orientation or gender identity; (2) Indirect discrimination occurs when a condition or requirement is applied to everyone but in practice adversely affects persons of a particular sexual orientation or gender identity.

Seeking assistance in the workplace

(B3) Have you sought assistance when you experience direct or indirect discrimination in the workplace?

If the participant **HAS** sought assistance, ask the following:

- (1) From whom did you seek assistance?
 - (a) Your employer
 - (b) Your co-worker
 - (c) Your family
 - (d) NGO
 - (e) Others (please specify: _____)

- (2) What form(s) of assistance did the person(s) or institution(s) provide for you?
 - (a) Complaint system in the workplace
 - (b) Anti-discrimination instructions
 - (c) Verbal reminder
 - (d) Others (please specify: _____)

- (3) Has the discrimination act been mitigated after you sought assistance?

If the participant **HAS NOT** sought assistance, ask the following:

- (1) What is the reason for not seeking assistance?

Ask all participants:

- (1) What kinds of support do you think are needed for sexual minority people in the workplace? What kind of policy or legal measure would be needed? Would you take legal action against your 'discriminator' if there were legal measures in place? Why or why not?

SECTION C

Experience of sexual orientation / gender identity discrimination in school

I would like to discuss with you about the following aspects of experience you may have:

- (1) Sexual orientation / gender identity disclosure in school
- (2) Discrimination experienced in school
- (3) Seeking assistance in school

Sexual orientation / gender identity disclosure in school

[For non-student participants] Did you realise your sexual orientation/gender identity back in the school days? (If not, skip section C)

(C1) Have you disclosed your sexual minority identity in school?

If the participant **HAS** disclosed, ask the following:

- (1) How did you decide whether/whom/when to tell?
- (2) How do you think disclosure of sexual/gender identity has affected your relationships with the following?
 - (a) Your teachers
 - (b) Your classmates
 - (c) Others (please specify: _____)

If the participant **HAS NOT** disclosed, ask the following:

- (3) What prevent you from disclosing?
- (4) Are the anticipated effects caused by the disclosure part of the reason(s) of your choice? What are your concerns for coming out at school?
 - (a) What are the anticipated consequences?
 - (b) What are the difficulties involved?
 - (c) In what ways do you think coming out might affect?
 - (i) Your status
 - (ii) School place offer
 - (iii) Opportunity to take part in courses or activities
 - (iv) Others (please specify: _____)

Discrimination experience in school

(C2) Have you experienced any direct or indirect discrimination in school?

- (1) What form(s) of direct or indirect discrimination have you experienced?

For example (prompts):

- (a) Verbal insult or mockery
- (b) Sexual harassment
- (c) Being denied a school place offer
- (d) Being denied an opportunity to take part in courses or activities
- (e) Bullying or physical violence
- (g) Indirect discrimination (please specify: _____)

We would like to know the actual incidents. Please elaborate specifically what happened. Please also let us know when the incidents above occurred.

- (2) When was the first time you experienced discrimination in school?
- (a) In primary school
 - (b) In secondary school
 - (c) In university or other educational venues for post-secondary education
- (3) Who exerts the above form(s) of discrimination to you?
- (a) Your teachers
 - (b) Your classmates
 - (c) Others (please specify: _____)
- (4) Why do you think that the above form(s) of discrimination were mainly induced by your sexual orientation / gender identity? Have you compared the treatment you experienced with others in school?
- (5) How often do you experience the above form(s) of discrimination?
- (a) Frequently
 - (b) Sometimes
 - (c) Seldom
- (6) What do you think about the overall attitudes of your teachers / classmates towards your sexual orientation / gender identity?
- (a) Positive / Negative / Neutral
 - (b) Inclusive / Exclusive / Neutral

Seeking assistance in school

(C3) Have you sought assistance when you experience direct or indirect discrimination in school?

If the participant **HAS** sought assistance, ask the following:

- (1) From whom did you seek assistance?
 - (a) Your teacher
 - (b) Your classmate
 - (c) Social worker
 - (d) Your family
 - (e) NGO
 - (f) Others (please specify: _____)

- (2) What form(s) of assistance did the person or institution provide for you?
 - (a) Complaint system in school
 - (b) Anti-discrimination instructions
 - (c) Verbal reminder
 - (d) Others (please specify: _____)

- (3) Has the discrimination act been mitigated after you sought assistance?

If the participant **HAS NOT** sought assistance, ask the following:

- (1) What is the reason for not seeking assistance?

Ask all participants:

- (1) What kind of support do you think is needed for sexual minority people in school? What kind of policy or legal measure would be needed? Would you take legal action against your 'discriminator' if there were legal measures in place? Why or why not?

SECTION D

**Experience of sexual orientation / gender identity discrimination in relation
to
use/purchase of goods, facilities and services**

I would like to discuss with you about the following aspects of experience you may have:

- (1) Discrimination experienced in relation to the use/purchase of goods, facilities and services
- (2) Seeking assistance in relation to the use/purchase of goods, facilities and services

The goods, facilities and services here include banking or insurance services, entertainment or refreshment facilities, transport or travel facilities, and also include any service undertaking by or of the government.

Discrimination in relation to the use/purchase of goods, facilities and services

(D1) Have you experienced any direct or indirect discrimination in relation to the use/purchase of goods, facilities and services

- (1) What form(s) of direct or indirect discriminations have you experienced?
For example (prompters):
 - (a) Verbal insult or mockery
 - (b) Sexual harassment
 - (c) Being denied the goods, facilities, services requested
 - (d) Differential treatment in relation to the use/purchase of goods, facilities and services
 - (e) Bullying or physical violence
 - (f) Indirect discrimination (please specify: _____)

We would like to know the actual incidents. Please elaborate specifically what happened. Please let us know when the incidents above occurred.

- (2) Who exert(s) the above form(s) of discrimination to you?
 - (a) Policies of the bodies providing goods, facilities and services
 - (b) The staff providing goods, facilities and services
 - (c) Others (please specify: _____)

- (3) Why do you think that the above form(s) of discrimination were mainly induced by your sexual orientation / gender identity? Have you compared the treatment you experienced with others in relation to the use/purchase of goods, facilities and services?

- (4) How often do you experience the above form(s) of discrimination?
 - (a) Frequently
 - (b) Sometimes
 - (c) Seldom

- (5) What do you think about the overall attitudes of the staff providing goods, facilities and services towards your sexual orientation / gender identity?
 - (a) Positive / Negative / Neutral
 - (b) Inclusive / Exclusive / Neutral

Seek assistance in relation to use/purchase of goods, facilities and services

(D2) Have you sought assistance when you experience direct or indirect discriminations in relation to the use/purchase of goods, facilities and services ?

If the participant **HAS** sought assistance, ask the following:

- (1) From whom did you seek assistance?
 - (a) Person-in-charge of the goods, facilities and services
 - (b) NGO
 - (c) Others (please specify: _____)
- (2) What form(s) of assistance did the person or institution provide for you?
 - (a) Anti-discrimination instructions
 - (b) Verbal reminder
 - (c) Others (please specify: _____)
- (3) Have the discrimination acts been mitigated after you sought assistance?

If the participant **HAS NOT** sought assistance, ask the following:

- (1) What is the reason for not seeking assistance?

Ask all participants:

- (1) What kinds of support do you think are needed for sexual minority people in relation to the use/purchase of goods, facilities and services ? What kind of policy or legal measure would be needed? Would you take legal action against your 'discriminator' if there were legal measures in place? Why or why not?

SECTION E

Experience of sexual orientation / gender identity discrimination in relation to the disposal and management of premises

I would like to discuss with you about the following aspects of experience you may have:

- (1) Discrimination experienced in relation to the disposal and management of premises;
- (2) Seeking assistance in relation to the disposal and management of premises

Discrimination in relation to the disposal and management of premises

(E1) Have you experienced any direct or indirect discrimination in relation to the disposal and management of premises

- (1) What form(s) of discrimination have you experienced?
For example (prompters):
 - (a) Verbal insult or mockery
 - (b) Sexual harassment
 - (c) Being denied renting premises
 - (d) Being offered premises or rental of premises on less favourable terms
 - (e) Bullying or physical violence
 - (f) Indirect discrimination (please specify: _____)

We would like to know the actual incidents. Please elaborate specifically what happened. Please let us know when the incidents above occurred.

- (2) Why do you think that the discrimination act is mainly induced by your sexual orientation / gender identity? Have you compared the treatment you experienced with others in relation to disposal and management of premises?
- (3) Who exert(s) the above form(s) of discrimination to you?
 - (a) The bodies/property owners or any policies handling the disposal

and management of premises
(b) Others (please specify: _____)

- (4) How often do you experience the above form(s) of discrimination?
(a) Frequently
(b) Sometimes
(c) Seldom
- (5) What do you think about the overall attitudes of the property owners handling the disposal and management of premises towards your sexual orientation / gender identity?
(a) Positive / Negative / Neutral
(b) Inclusive / Exclusive / Neutral

Seeking assistance in relation to the disposal and management of premises

(E2) Have you sought assistance when you experience direct or indirect discriminations in relation to the disposal and management of premises?

If the participant **HAS** sought assistance, ask the following:

- (1) From whom did you seek assistance?
(a) Person-in-charge of the disposal and management of premises
(b) NGO
(c) Others (please specify: _____)
- (2) What form(s) of assistance did the person or institution provide for you?
(a) Anti-discrimination instructions
(b) Verbal reminder
(c) Others (please specify: _____)
- (3) Has the discrimination act been mitigated after you sought assistance?

If the participant **HAS NOT** sought assistance, ask the following:

- (1) What is the reason for not seeking assistance?

Ask all participants:

- (1) What kind of support do you think is needed for sexual minority people in relation to the disposal and management of premises? Whether and what kind of policy or legal measure would be needed? Would you take legal action against your 'discriminator' if there were legal measures in place? Why or why not?

Appendix 2 Demographics of Respondents

個人資料 Demographics of Respondents

The Constitutional and Mainland Affairs Bureau of the Government of the Hong Kong Special Administrative Region has commissioned Policy 21 Limited (Policy 21) to conduct a Study on the Discrimination Experienced by Sexual Minorities in Hong Kong.

Your participation in this survey is vital to our analysis and the information provided will be valuable and meaningful. Please be assured that all the information collected will be kept strictly confidential and only aggregate statistics will be published.

If you have any enquiry about the study, please contact Mr. Ben Wong of Policy 21 Limited at 2370 8652 during office hour (9 am to 6 pm from Monday to Friday, except public holidays).

Thank you for your support and co-operation.

香港特別行政區政府政制及內地事務局現正委託政策二十一有限公司（「政策二十一」）對香港性小眾所經歷的歧視進行研究。

您的參與對於是次研究分析很重要，所得資料對進行是次研究非常有價值和有意義。所得資料會嚴加保密，只作整體統計分析之用，不會作個別發表。

如 您對是次研究有任何疑問，請在辦公時間內（星期一至五早上九時至下午六時，公眾假期除外）致電 2370 8652 與政策二十一黃先生聯絡。

多謝您的支持和合作。

以下有幾條有關您個人資料嘅問題作為綜合分析嘅用途，您所提供嘅資料係會絕對保密。

For the purpose of analyzing the survey results, I would like to know some of your personal particulars. The information you provide will be used for analysis only and will be kept strictly confidential.

1. 暱稱 Nickname: _____

2. 性傾向 / 性別認同 Sexual orientation/ gender identity :

(1) 男同性戀 Gay ²⁷

(2) 女同性戀 Lesbian ²⁸

(3) 雙性戀 Bisexual ²⁹

(4) 跨性別人士 Transgender ³⁰

(5) 後同性戀者 Post-gay³¹

(6) 其他性傾向或性別認同 Other sexual orientations or gender identities:

請註明 Please specify:_____

3. 年齡 Age:

(1) 18 – 24

(2) 25 – 29

(3) 30 – 34

(4) 35 – 39

(5) 40 – 44

(6) 45 – 49

(7) 50 – 54

(8) 55 – 59

(9) 60 – 64

(10) >64

4. 你有沒有出櫃? Have you come out of the closet?

(1) 有 Yes

(2) 冇 No (跳至Q.7 Jump to Q.7)

²⁷ 具有同性戀性傾向的男性 A man who is homosexual

²⁸ 具有同性戀性傾向的女性 A woman who is homosexual

²⁹ 不只對單一性別有性傾向的人士 A person who is sexually attracted to both men and women

³⁰ 對其出生時被指定的性別感到無法認同的人 A person whose self-identity does not conform unambiguously to conventional notions of male or female gender

³¹ 希望離開同性戀生活模式的同性戀者 A person who is attracted to same sex, but chose not to have a homosexual lifestyle

5. 出櫃年齡 Age of coming out: _____
6. 向誰出櫃? Whom has been told? (Multiple responses)
- (1) 父母 Parents
 - (2) 兄弟姊妹 Siblings
 - (3) 親戚 Relatives
 - (4) 朋友 Friends
 - (5) 同事 Colleagues
 - (6) 公眾 Public
 - (7) 其他(請註明Please specify) : _____
7. 你現在有沒有親密的男女朋友? Are you in an intimate relationship?
- (1) 有 Yes
 - (2) 冇 No (跳至Q.10 Jump to Q.10)
8. 與男女朋友的親密關係維持了多少月? (如受訪者表示有多於一位親密的男女朋友, 請填寫維持關係最長那個) The length of the intimate relationship (in months) (Please fill in the longest intimate relationship if the respondent indicates that he/she has more than one intimate relationship) : _____月 months
9. 常用語言 Usual language:
- (1) 廣東話 Cantonese
 - (2) 英文 English
 - (3) 其他 Others
10. 育程度 Educational attainment:
- (1) 未曾接受教育/幼稚園 No schooling/kindergarten
 - (2) 小學 Primary (P1-P6)
 - (3) 初中 Lower secondary (F.1 – F.3)
 - (4) 高中 Upper secondary (F.4 – F.6)
 - (5) 預科 Matriculation (F.6 – F.7)
 - (6) 大專 (非學位課程) Tertiary (Non-degree course)
 - (7) 大專 (學位課程) 或以上 Tertiary or above (Degree course or above)
11. 狀況 Marital status:
- (1) 未婚 Single
 - (2) 已婚 Married
 - (3) 同居 Cohabiting
 - (4) 分居/離婚 Separated/Divorced
 - (5) 喪偶 Widowed
 - (6) 民事伴侶關係 Civil partnership
 - (7) 其他 Others
12. 請問你有沒有小孩? Do you have children?

- (1) 有 No
(2) 有 Yes – 幾多位 How many children:
-

13. 請問你有沒有宗教信仰呢 Do you have any religion?

- (1) 有 No
(2) 有 Yes

(a) 係邊種宗教呢? What religion? (可選多項 Multiple answers allowed)

- (1) 天主教 Catholicism
(2) 基督教 Christianity
(3) 佛教 Buddhist
(4) 其他 Others (請註明 Please specify) : _____

(b) 你係 Are you...?

- (1) 非常虔誠 Very devoted
(2) 虔誠 Devoted
(3) 一般 Average
(4) 唔熱衷 Lukewarm
(5) 完全唔關心 Indifferent

14. 請問你嘅經濟活動狀況係? What is your economic activity status?

- (1) 僱主 Employer
(2) 自僱人士 Self-employed
(3) 僱員 Employee
(4) 學生 Student
(5) 退休人士 Retired
(6) 料理家務者 Homemaker
(7) 待業人士 Unemployed
(8) 其他 Others (請註明 please specify: _____)
- } (跳問 Q.17)
(jump to Q.17)

15. 你從事那一種行業? Which industry are you engaged in?

- (1) 製造業 Manufacturing
(2) 建造業 Construction
(3) 進出口、批發及零售業 Import/export, wholesale and retail trades
(4) 運輸、倉庫、郵政及速遞服務業 Transportation, storage, postal and courier services
(5) 住宿及膳食服務業 Accommodation and food services
(6) 資訊及通訊業 Information and communications
(7) 金融及保險業 Financing and insurance
(8) 地產、專業及商用服務業 Real estate, professional and business services
(9) 公共行政、教育、人類醫療保健及社工活動 Public administration,

education, human health and social work activities

(10) 雜項社會及個人服務 Miscellaneous social and personal services

(11) 其他 Others _____

16. 請問你嘅職位係? Could you tell me your position?

(1) 經理及行政級人員 Managers and Administrators

(2) 專業人員 Professionals

(3) 輔助專業人員 Associate professionals

(4) 文員支援人員 Clerical support workers

(5) 服務工作及商店銷售人員 Service Workers and sales workers

(6) 工藝及有關人員 Craft and related workers

(7) 機台及機器操作員及裝配員 Plant and machine operators and assemblers

(8) 非技術工人 Elementary occupations (9) 其他 Others

17. 請問你個人每月嘅平均總收入大約有幾多錢呢(以港幣計算)? (包括所有收入來源例如每月薪金、花紅、房屋津貼、社會援助金或投資收入等)
Could you tell me your monthly total personal income (in Hong Kong Dollars)?
Total personal income should include all your monthly salary, bonus, housing allowance, social support, investment income, etc.

(1) \$5,000 以下 below

(2) \$5,000 - \$9,999

(3) \$10,000 - \$14,999

(4) \$15,000 - \$19,999

(5) \$20,000 - \$24,999

(6) \$25,000 - \$29,999

(7) \$30,000 - \$39,999

(8) \$40,000 - \$49,999

(9) \$50,000 - \$59,999

(10) \$60,000 - \$99,999

(11) \$100,000 - \$199,999

(12) \$200,000 或以上 or above

Appendix 3 Other demographic data

Socioeconomic status

1. A total of 214 participants from different sexual orientations/gender identities, ages, educational attainment and economic activity status were interviewed. Only one intersex person participated in the Study. In order to protect his/her privacy, this report leaves out his/her information in some paragraphs and charts that set out the data of each category of participants (including paragraphs 3.2 and 3.3 and this Appendix). As such, the total number of participants covered in the paragraphs and charts concerned is 213.

2. Regarding economic activity status, 158 participants were economically active and 55 participants were economically inactive. Among the 158 participants who were economically active, 63 participants worked in public administration, education, human health and social work activities, 17 participants worked in the industry of information and communications, and 16 participants were involved in import/export, wholesale and retail trades.

Table 5: Industry the participants who were economically active engaged in

Profile	Sexual orientation/ gender identity					
	Lesbians	Gay	Bisexual	Trans-gender	Post-gay	Total
Public administration, education, human health and social work activities	25	20	11	5	2	63
Information and communications	6	3	1	5	2	17
Import/export, wholesale and retail trades	7	6	1	1	1	16
Real estate, professional and business services	3	2	2	5	0	12
Financing and insurance	4	4	2	0	0	10
Accommodation and food services	4	3	0	1	0	8

Manufacturing	3	2	1	2	0	8
Miscellaneous social and personal services	1	3	2	1	1	8
Transportation, storage, postal and courier services	0	0	2	3	1	6
Construction	4	1	1	0	0	6
Refused to answer	2	0	2	0	0	4

3. Regarding their occupations, 45 participants were professionals and 34 were managers and administrators.

Table 6: Occupations of the participants who were economically active

Profile	Sexual orientation/ gender identity					Total
	Lesbians	Gay	Bisexual	Trans-gender	Post-ga y	
Professionals	15	14	5	9	2	45
Managers and Administrators	10	14	5	4	1	34
Associate professionals	9	5	6	3	2	25
Clerical support workers	6	7	6	3	1	23
Service workers and sales workers	9	3	1	0	1	14
Elementary occupations	3	0	0	3	0	6
Craft and related workers/	5	1	0	0	0	6
Plant and machine operators and assemblers	0	0	0	1	0	1
Refused to answer	2	0	2	0	0	4

Current relationship status

4. Among 213 participants, 136 participants were in an intimate relationship. The average length of the participants' longest intimate relationship was 4.4 years.
5. 171 participants were single, 16 were cohabitating, 14 were married and 5 were in a civil relationship. Fewer than 10 participants were separated, divorced, widowed or other status. Only 10 participants had children.

Table 7: Current relationship status of the participants

Profile	Sexual orientation/gender identity					
	Lesbians	Gay	Bisexual	Trans-gender	Post-gay	Total
Whether in an intimate relationship?						
Yes	53	40	27	17	0	137
No	17	26	7	18	8	76
Marital status						
Single	59	53	25	28	6	171
Married	2	4	1	5	2	14
Cohabiting	6	3	6	1	0	16
Separated/Divorced	0	1	1	1	0	3
Widowed	1	0	0	0	0	1
Civil partnership	0	4	1	0	0	5
Others	2	1	0	0	0	3
Whether had children?						
Yes	4	2	1	3	0	10
No	66	64	33	32	8	203
Total	70	66	34	35	8	213

Religion

6. 83 participants had religious belief: 64 were Christians/Catholics, 14 believed in Buddhism and 5 believed in other religious belief. For those 83 participants who had religious belief, 13 and 21 participants indicated they were very devoted and devoted respectively.

Table 8: Religion of the participants

Profile	Sexual orientation/ gender identity					
	Lesbians	Gay	Bisexual	Trans-gender	Post-gay	Total
Religion						
Yes	18	27	14	16	8	83
<i>Christian/ Catholic</i>	<i>16</i>	<i>19</i>	<i>10</i>	<i>12</i>	<i>7</i>	<i>64</i>
<i>Buddhist</i>	<i>2</i>	<i>7</i>	<i>2</i>	<i>2</i>	<i>1</i>	<i>14</i>
<i>Others</i>	<i>0</i>	<i>1</i>	<i>2</i>	<i>2</i>	<i>0</i>	<i>5</i>
No	52	39	20	19	0	130
Degree of devotion						
Very devoted	1	3	5	2	2	13
Devoted	6	5	3	3	4	21
Average	11	14	4	9	2	40
Lukewarm	0	3	2	0	0	5
Indifferent	0	2	0	2	0	4

Appendix 4 Summary of the reported discrimination experience

<i>Reported discriminatory experience in the workplace</i>	
<i>Forms of discrimination</i>	<i>Description</i>
<i>Direct discrimination</i>	<ul style="list-style-type: none"> • Being asked to leave a job after the sexual orientation/gender identity was made known to employer [2 lesbians, 2 gays, and 5 transgender people] (Total: 9 out of the 180 participants who had working experience in Hong Kong) • Being denied a job offer after gender identity was exposed during recruitment process [1 transgender person out of the 180 participants who had working experience in Hong Kong] • Being deprived of promotion and training opportunities after the sexual orientation/gender identity was made known to employer [1 gay and 1 transgender person] (Total: 2 out of the 180 participants who had working experience in Hong Kong)
<i>Harassment</i>	<ul style="list-style-type: none"> • Unwelcome verbal conduct³² [20 lesbians, 16 gays, 5 bisexuals ,17 transgender people and 1 post-gay] (Total: 59 out of the 180 participants who had working experience in Hong Kong) • Sexual harassment [3 lesbians, 1 gay, 1 transgender person and 1 intersex person] (Total: 6 out of the 180 participants who had working experience in Hong Kong)

³² Examples of unwelcome verbal conduct encountered in different domains include:

Lesbian: “死TB” (damn tom-boy) **Gay:** “死基佬” (damn gay men), “屎忽鬼” (asshole) and “變態” (pervert).

Bisexual: “濫交” (promiscuity), “污糟” (dirty) and “死基佬” (damn gay men).

Transgender: “人妖” (shemale), “變態” (pervert), “不男不女” (not like a man, not like a woman) and “怪物” (monster).

Post-gay: “㗎型” (Sissy)

<i>Reported discriminatory experience in school</i>	
<i>Forms of discrimination</i>	<i>Description</i>
<i>Direct discrimination</i> ³³	<ul style="list-style-type: none"> • Being denied a school place offer of a theological college after the gender identity was exposed during the admission process [1 transgender person out of the 208 participants who had studied in Hong Kong] • Being dismissed by a theological college after the sexual orientation was made known to the college [1 gay out of the 208 participants who had studied in Hong Kong]
<i>Harassment</i>	<ul style="list-style-type: none"> • Unwelcome verbal conduct [17 lesbians, 24 gays, 5 bisexuals ,10 transgender people, 1 post-gay and 1 intersex] (Total: 58 out of the 208 participants who had studied in Hong Kong) • Sexual harassment [6 gays, 1 transgender person and 1 intersex] (Total: 8 out of the 208 participants who had studied in Hong Kong) • Unwelcome physical conduct [1 lesbian, 2 gays and 1 transgender person] (Total: 4 out of the 208 participants who had studied in Hong Kong)

<i>Reported discriminatory experience in relation to use/purchase of goods, facilities and services</i>	
<i>Forms of discrimination</i>	<i>Description</i>
<i>Direct discrimination</i>	<p>Being denied the goods, facilities and services requested: [40 participants in total]</p> <ul style="list-style-type: none"> • Being denied services requested (Valentine’s Day menus) in restaurants [2 lesbians and 2 gays] (Total: 4 out of the 214 participants) • Being denied free entry to bars / clubs that offered free entry to ladies

³³ While there was less favourable treatment for a person with different sexual orientation or gender identity in these cases, it is noted that the anti-discrimination laws in some of the overseas jurisdictions provide exemptions for religious schools in relation to their decisions on admission of students.

	<p>[7 out of the 70 lesbian participants]</p> <ul style="list-style-type: none"> • Being denied entry to public toilets or toilets in shopping arcades [9 lesbians and 5 transgender people] (Total: 14 participants out of the total 105 lesbian participants and transgender participants) • Being denied rental of hotels / inns [3 lesbians, 4 gays and 1 bisexual] (Total: 8 participants out of the 214 participants) • Being rejected as a blood donor³⁴ [2 gays and 1 bisexual] (Total: 3 participants out of the 214 participants) • Being refused trying on and purchasing fashion accessory in retail shop [1 transgender person out of the 214 participants] • Being denied services requested when accessing to medical services [1 transgender person out of the 214 participants] • Being denied social service [1 transgender person out of the 214 participants] • Being denied rental services of a bus service company for demonstration activities [1 bisexual out of the 214 participants] <p><i>Differential treatment</i> [6 participants in total]</p> <ul style="list-style-type: none"> • Being treated less favourably in restaurants [2 lesbians out of the 214 participants] • Being charged additional deposit for rental in an inn [1 gay out of the 214 participants] • Being refused provision of a double bed in hotel [1 gay out of the 214 participants]
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³⁴ While there was less favourable treatment for a person with different sexual orientation in these cases, it is noted that the anti-discrimination laws in some of the overseas jurisdictions allow organisations that operate blood service to refuse to accept a person's blood donation if the decision is based on reasonable medical ground.

	<ul style="list-style-type: none"> • Being rejected application for child adoption [1 gay out of the 214 participants] • Being treated less favourably in participation of child sponsorship programme [1 transgender person out of the 214 participants]
Harassment	<ul style="list-style-type: none"> • Unwelcome verbal conduct [14 lesbians, 9 gays, 2 bisexuals, 16 transgender people and 4 post-gays] (Total: 45 out of the 214 participants)

Reported discriminatory experience in relation to the disposal and management of premises	
Forms of discrimination	Description
Direct discrimination	<ul style="list-style-type: none"> • Being denied rental of premises [1 lesbian, 1 gay, 1 bisexual and 1 transgender person] (Total : 4 out of the 48 participants who had experience in the domain) • Being subjected to less favourable treatment in relation to the rental of premises [1 transgender person and 1 lesbian] (Total: 2 out of the 48 participants who had experience in the domain)

Other reported discriminatory experience	
Description	
<ul style="list-style-type: none"> • Being denied opportunities of participating in church activities³⁵ [1 lesbian, 1 gay, 1 bisexual and 1 transgender person] (Total : 4 participants) • Unwelcome verbal conduct during participation in social activities [1 post-gay] 	

³⁵ While there was less favourable treatment for a person with different sexual orientation in these cases, it is noted that the anti-discrimination laws in some of the overseas jurisdictions provide exemptions for religious organisations in relation to participation in their activities.

Statistics of countries / jurisdictions concerning whether they outlaw homosexual activities and whether they have anti-discrimination legislation

Among the 196 countries / jurisdictions worldwide, 75 criminalise same-sex sexual activity with imprisonment. 4 out of these 75 have legislation that prohibits discrimination in employment based on sexual orientation¹.

For the other 121 countries / jurisdictions that do not criminalise same-sex sexual activity, 65 have enacted anti-discrimination laws and 56 have not. A breakdown by continent is set out in the table below:

	Criminalising same-sex sexual activity with imprisonment		Do not criminalise same-sex sexual activity	
	Without anti-discrimination laws	With anti-discrimination laws	Without anti-discrimination laws	With anti-discrimination laws
Asia	23	0	18	3 ²
Oceania & the Pacific	6	1	4	3
Africa	31	3	17	3
The Americas	11	0	9	15
Europe	0	0	8	41
Total	71	4	56	65

Note: The breakdown in the table is obtained by compiling information from the “2015 Map on Lesbian and Gay rights in the world” and the “State Sponsored Homophobia Report” issued by the International Lesbian, Gay, Bisexual, Trans and Intersex Association in May 2015.

¹ This includes: Tonga (Oceania and the Pacific); Botswana (Africa); Mauritius (Africa); and Seychelles (Africa).

² This includes: Israel, Taiwan and Timor-leste. Besides, some cities in Philippines have enacted legislation prohibiting discrimination on the ground of sexual orientation. The Advisory Group notes that in addition, from May 2015 onwards, legal protection came into effect in Nepal (enshrined equal rights protections for LGBT people in national constitution) and Thailand (enacted legislation prohibiting discrimination on grounds of sexual orientation and gender identity). An employment law in Macao also contains an anti-discrimination provision on ground of sexual orientation.

Views of Stakeholder Groups that the Advisory Group has met

New Creation Association (“NCA”), Post-Gay Alliance (“PGA”) and Diocesan Committee for the Pastoral Care of Persons with Same Sex Attraction (“SSA”)

Extract from Agenda Item 3 of the minutes of second meeting of the Advisory Group held on 11 September 2013

7. The Chairperson welcomed representatives from the three groups, and invited them to speak in turn.

8. A PGA representative remarked that PGA was established not only to represent the post-gays, but also to promote understanding and respect towards, non-discrimination against and equal opportunities for homosexuals. The decisions of persons with same sex attraction not to lead a homosexual lifestyle should be respected. However, there was a lot of misunderstanding and negative labelling on them as well as on the support services provided to them. In view of this, they felt that it was important that PGA was represented on the Advisory Group so that their voices could be heard.

9. Another PGA representative said he was a post-gay. Speaking from his own personal experience, he said he had been troubled by his homosexual tendency which he had difficulty coming to terms with but had encountered much difficulty in seeking counselling service. Most of the services that were available adopted a gay-affirmative approach. He eventually managed to obtain counselling service, decided not to lead a homosexual lifestyle, got married, and was happy with his present state. He said that the support services for people with homosexual tendency in the community were not diversified enough, and there was a lack of post-gays’ participation in policy formulation. .

10. Another PGA representative said she had had a homosexual relationship before but decided not to engage in homosexual relationship anymore. She attributed her homosexual tendency to witnessing the poor

marital relationship of her parents and her parents' utter desire to have a son instead of a daughter. She was lucky to have received counselling from professionals and support from church. She was now happy with her current lifestyle and believed that there were also others in a similar situation as hers. In her view, homosexuality was not necessarily inborn. People with homosexual tendency but did not want to pursue a homosexual lifestyle should be given the necessary support to pursue the lifestyle they desired.

11. A NCA representative expressed that the Advisory Group had to listen to the views of different stakeholders, but some voices seemed missing in the current membership. He then introduced the other two representatives from NCA.

12. One NCA representative said her son was a homosexual and she had difficulty in accepting this. She had tried to seek counselling and subsequently found NCA through which she met other parents like herself and they provided support to each other.

13. Another NCA representative said that he was once a gay and had led an unhappy homosexual lifestyle for almost two years. He had tried to obtain assistance from many organisations but did not find them helpful. He subsequently joined the support groups of NCA where he met people in a similar situation as his and they became friends. However, both he and his friends were afraid of letting others know their struggle with homosexuality for fear of being discriminated against. He felt that people like him should be respected and their voices taken into account in policy formulation.

14. A SSA representative said that a key objective of SSA was to provide pastoral care to Catholics with regard to the Catechism in particular paragraph 2357¹ which stated that “[u]nder no circumstances

¹ Paragraph 2357 of the Catechism states that “[h]omosexuality refers to relations between men or between women who experience an exclusive or predominant sexual attraction toward persons of the same sex. It has taken a great variety of forms through the centuries and in different cultures. Its psychological genesis remains largely unexplained. Basing itself on Sacred Scripture, which presents homosexual acts as acts of grave depravity, tradition has always declared that “homosexual acts are intrinsically disordered.” They are contrary to the natural law.

can they [i.e. homosexual acts] be approved” and paragraph 2358² which said that “[t]hey [i.e. men and women who have deep-seated homosexual tendencies] must be accepted with respect, compassion and sensitivity”. Although the Catholic Church did not support homosexuality per se, homosexuals needed to be taken care of and that was the reason for the establishment of SSA to provide support and pastoral care to this minority group.

15. The Chairperson asked if members had any questions they would like to raise with the representatives. A member enquired whether the representatives opposed to enacting legislation against discrimination on the ground of sexual orientation. Another member asked the representatives what protection they would look for if legislation against discrimination on the ground of sexual orientation was pursued. One other member asked that given that their groups were not represented on the Advisory Group, whether there were any specific points they would like the Advisory Group to have regard to in the course of the Advisory Group’s deliberations.

16. NCA and PGA representatives said that they had no preconceived views as to whether or not legislation should be pursued but were concerned about the impact of legislation on the right to speak against pursuance of homosexual conduct and the freedom to provide different forms of counselling services to sexual minorities. A NCA representative supplemented that NCA was often labelled as an organisation practising conversion therapy, together with all the associated connotations this brought. Some people who did not wish to pursue a homosexual lifestyle were unwilling to share their feelings with friends and families for fear of being discriminated against, and had difficulty in securing the necessary

They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved.”

² Paragraph 2358 of the Catechism states that “[t]he number of men and women who have deep-seated homosexual tendencies is not negligible. This inclination, which is objectively disordered, constitutes for most of them a trial. They must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided. These persons are called to fulfill God's will in their lives and, if they are Christians, to unite to the sacrifice of the Lord's Cross the difficulties they may encounter from their condition.”

support services that suited their needs. A PGA representative added that he, as a professional who wanted to help the post-gays, was also being targetted against by the homosexual community. He reiterated that those who helped the post-gays should not be discriminated against, and that the post-gays represented a unique voice in the sexual minority community and it was regrettable that they were not represented on the Advisory Group.

17. A member pointed out that any legislating against sexual orientation discrimination could protect the post-gays as well. Another member said that the impact of such legislation on the freedom of speech was a matter of concern which should be addressed.

18. The Chairperson thanked the three groups for sharing their views and concerns. Before the representatives of the three groups left the meeting, they submitted the following items for members' reference:

- (a) a letter and three books from NCA;
- (b) the speeches of the representatives from PGA; and
- (c) some documents concerning homosexuality and the Catholic Church as well as a book and a DVD from SSA.

Equal Opportunities Commission (“EOC”)

Extract from Agenda Item 3 of the minutes of third meeting of the Advisory Group held on 5 December 2013

The Chairperson welcomed the representatives from EOC, and invited them to share with Members their views on elimination of discrimination against sexual minorities and EOC's work plan in this regard.

2. EOC Chairperson said that between April and September 2013, EOC had met with different stakeholders. Some supported the enactment of legislation with a view to providing legal protection for sexual minorities, eliminating misunderstanding of sexual minorities and bringing about diversity and inclusion in the community. On the other hand, some were against the legislative approach for fear that this would be seen as

promoting homosexuality in the community which would lead eventually to legalisation for same-sex marriage, and undermining the traditional values of marriage and family. There were also concerns that if legislation was enacted, certain religions might no longer be able to preach according to their doctrines and beliefs and that such legislation could be open to abuse. From EOC's viewpoint, the rights of sexual minorities should be respected. Legislating to protect discrimination on the ground of sexual orientation would serve to protect all persons from being discriminated, irrespective of their sexual orientation. It would not lead to reverse discrimination. If such legislation was enacted, EOC would enforce the ordinance drawing on its experience in enforcing the existing four anti-discrimination ordinances; since there were established procedures and protocols in place, such legislation could not easily be abused. As to the work plan, EOC intended to conduct a comprehensive research in the form of focus groups and survey questionnaire to collect the following information:

- (a) how sexual minorities were discriminated against, harassed and vilified in the public domains;
- (b) public views on the discrimination and harassment experienced by sexual minorities;
- (c) public views towards providing legal protection for sexual minorities against discrimination; and
- (d) proposals of various stakeholders for equal rights legislation.

After the research, EOC intended to conduct a public consultation to gauge views on the scope of protection that the proposed sexual orientation discrimination ordinance (SODO) should offer and the exceptions that should be included.

3. The Chairperson shared information on the study that Advisory Group has commissioned and suggested that the two research initiatives should complement each other and avoid duplication. She also invited members for their views and questions. A member pointed out that there were cases overseas where individuals were penalised for refusing to provide certain services which were contrary to their religious beliefs, for example refusing to bake a wedding cake for a homosexual couple. He was concerned about the impact the proposed SODO would have on

freedom of speech and freedom to pursue a life-style in accordance with one's religious beliefs. Specifically he asked whether an employee would enjoy protection under the proposed SODO if that employee was dismissed by a pro-gay employer simply because that employee spoke against homosexuality, and whether organisations that were known not to support homosexuality could enjoy protection from being insulted or vilified publicly. He emphasised that people who did not support homosexuality should continue to have the right to voice out their views. A member responded that according to his understanding, the Sex Discrimination Ordinance did not extend protection to employees who did not share a common stance on some sex-related issues with the employer. One other member asked for figures of overseas court cases concerning sexual orientation discrimination in those jurisdictions with SODO as well as how those jurisdictions without SODO addressed the question of sexual orientation discrimination. The Chairperson asked if EOC could provide the information as well as any relevant court cases relating to the concerns members expressed. EOC Chairperson agreed.

4. A member expressed appreciation of EOC's work in eliminating discrimination against sexual minorities and EOC's clear position of supporting the enactment of legislation, as well as taking the initiative to clarify some misconceptions over legislating against sexual orientation discrimination. He also suggested EOC to issue leaflets to enhance public's understanding on the issue and asked the timeframe of EOC's work plan. In response, EOC Chairperson said that EOC intended to conduct the comprehensive research on sexual orientation and gender identity in the first half of 2014, with a view to submitting the research report to the Administration by the end of the year. He added that depending on Government's action plan, EOC might consider conducting public consultation on legislating to prohibit discrimination against sexual minorities probably in the second half of 2014. The Chairperson said that the Advisory Group would also collect information on actual discrimination cases through focus groups and there could be overlap with EOC's work in this regard.

5. A member queried if the Administration and EOC had adequate liaison and suggested strengthening communication. DS(CMA) responded that there had been communication and sharing of information

between the Administration and EOC at the working level. As EOC was an independent body, CMAB respected its autonomy and would defer to EOC to decide on its work on this front. In the meantime, the Administration would continue to maintain communication with EOC. EOC Chairperson stressed that EOC's position in favour of legislation was based on the principles of diversity and inclusion as well as equal opportunities. He also supplemented that EOC wished to work in coordination with the Advisory Group and the Administration as far as possible.

6. A member recalled that EOC Chairperson had said that no religious exemption should be provided if legislation was enacted to prohibit discrimination on the ground of sexual orientation and asked Dr CHOW whether that was his personal stance or that of EOC's; the member said he had asked some EOC members about this earlier and was informed that this had not been discussed at EOC before. EOC Chairperson clarified that at the EOC Forum held this September, he had said publicly that EOC would not take the initiative to propose exemptions for the legislation and was of the view that stakeholders were in a better position to put forward proposals in this regard in the light of their specific concerns. He said further that in his earlier discussion with the representatives of some religious bodies, some of them had said that they did not wish to pursue for religious exemption. Another member remarked that some religious bodies had requested religious exemption while some not, and that this issue should be thoroughly thrashed out at the Advisory Group if and when sexual orientation discrimination legislation was discussed.

7. In response to some members' concern over whether legislation prohibiting sexual orientation discrimination would lead to a large number of lawsuits, EOC Chairperson remarked that EOC handled about 16,000 enquiries under the four existing anti-discrimination ordinances every year, of which only about 900 cases called for investigation. Many of these cases were settled without the need to go to court and each year less than 10 cases were put before the court and some of these were settled before the hearing. Therefore, members needed not over-worry about huge number of court cases. However, a member opined that a small number of lawsuits might not fully reflect the impact of legislation

against sexual orientation discrimination particularly the chilling effect it had on freedom of speech and pursuit of religious beliefs.

8. A member suggested EOC to share the findings of its comprehensive research, when available, with the Advisory Group to facilitate its discussion on legislation in due course, and another member suggested inviting EOC to exchange views with the Advisory Group again after its research was completed.

9. The Chairperson thanked the representatives from EOC for exchanging views with the Advisory Group.

Family-School Sexual Orientation Discrimination Ordinance Concern Group (“Concern Group”)

Extract from Agenda Item 3 of the minutes of eighth meeting of the Advisory Group held on 2 February 2015

4. The Chairperson welcomed the representatives from the Concern Group.

5. One of the representatives shared with the Advisory Group a set of presentation slides that had been used by the Concern Group on various occasions, such as speeches at schools and churches, and uploaded online for reference by the public. In view of the time constraints of the session, a full presentation was not given but could be presented at a future session if that could be arranged. He said that the Concern Group was opposed to enacting legislation against discrimination on the ground of sexual orientation (“SODO”), having studied the legislative proposals put forward by LGBT groups and discussed with the Chairperson of the Equal Opportunities Commission (“EOC”). The Concern Group believed that SODO would interfere with some aspects of human rights. There was high expectation of the work of the Advisory Group but he was worried that the recommendations of the Advisory Group might be biased due to its unbalanced membership which was skewed towards the sexual minorities.

6. The other representatives of the Concern Group also expressed the following views and concerns:

- (a) one representative opined that in Hong Kong, even without the enactment of SODO, its negative impact had emerged. He found that people were already not allowed to speak against homosexuality, or they would be rebuked. On the social media, views were biased against traditional family values. He also witnessed how the International Christian School (“ICS”) was unfairly criticised as discriminatory when his child studied at the school;
- (b) another representative expressed concern that if SODO was enacted, the freedom to teach traditional family values in schools would be jeopardised, and there could be “reverse discrimination” when one did not support homosexuality;
- (c) one other representative said that while people of different sexual orientation should be respected and not discriminated against, overseas experiences had revealed that tackling the problem through SODO was a disproportionately excessive move. Family values would be under attack if SODO was pursued too fast; and
- (d) one representative said that SODO would suppress traditional family values and the rights of some people, which might not be good for a pluralistic society; also it might bring controversy and disputes to the society. In considering whether SODO should be enacted, it was necessary to take into account the local culture and public sentiment. Many people were afraid to voice their views against enacting SODO, therefore the Concern Group came forth to speak for these people. He hoped that those who supported and opposed to SODO would not attack each other.

7. The Chairperson said that the Advisory Group would not only look into the discrimination faced by sexual minorities but also consider the different views of stakeholders before advising on the recommended strategies and measures to tackle the problems identified. Having regard to the tight working timeframe of the Advisory Group, it would be difficult to arrange a further session with the Concern Group for going through their presentation slides. The slides would be circulated to members for reference. She then asked if members would like to raise any questions with the representatives. A member enquired about the result of the ICS incident, while another member asked the representatives’ views on what was meant by pursuing SODO too fast and how the Concern Group would define traditional family values.

8. One representative said that owing to pressure from the public and the media, the school management of ICS decided to revise its policies by removing the requirement for its employees to sign the “Standards of Biblical Ethics and Integrity” despite that it had been the established employment policy of the school and the parents were deeply concerned. Two other representatives said that they did not deny the technical feasibility of enacting SODO, but were very concerned about the negative impact of the legislation in the long run having regard to overseas experience. In particular, they were concerned about the implications on procreation and children’s development, which might be sacrificed when the institution of marriage was undermined and homosexual couples had a right of adoption. For the stable development of the society, measures to eliminate discrimination should be discussed and had the support of public opinion. Besides, as mutual trust between those who supported and opposed to legislation was very important if SODO was to be pursued, politicians who supported SODO should not intentionally stir up issues again as in the ICS case.

9. The Chairperson thanked the representatives for sharing their views and concerns, and requested the Secretariat to inform members after the meeting of the web link to the Concern Group’s presentation slides mentioned above for reference.

Kowloon Union Church (“KUC”) and Queer Theology Academy (“QTA”)

Extract from Agenda Item 4 of the minutes of eighth meeting of the Advisory Group held on 2 February 2015

10. The Chairperson welcomed the representatives from KUC and QTA, and invited them to speak in turn.

11. A KUC representative appreciated the opportunity to share with the Advisory Group the discrimination faced by sexual minorities in Hong Kong and why legislation was needed to protect them. Another KUC representative supplemented that she was aware of numerous cases where one had lost his/her job upon disclosing his/her sexual orientation or gender identity.

12. The QTA representative remarked that QTA aimed to promote justice and equal rights for people with different sexual orientations

through publications and education. QTA and the One Body in Christ Church had recently obtained funds to jointly provide counselling hotline and support groups for sexual minorities. Through the provision of these services, they had learnt about the struggles of some people in the sexual minorities and their experiences relating to churches. For example, a lesbian who attended a school run by a church was repeatedly asked to change her sexual orientation, which eventually led her to suffer from depression and hence adversely affected her studies and subsequent career prospect; in another case, a gay teacher was always afraid of losing his job.

13. The Chairperson requested the representatives to elaborate further on how the Christian churches thought the discrimination faced by sexual minorities should be addressed. One of the KUC representatives said that there were in fact different views among Christian churches as to how the Bible should be interpreted regarding homosexuality and whether legislation should be enacted to prohibit discrimination on the ground of sexual orientation, and that some Christians did support equal rights for sexual minorities. When KUC launched the campaign “Covenant of the Rainbow”, which promoted an inclusive and friendly attitude towards sexual minorities, with other Christian groups and churches in 2013, they collected about 700 signatures in support of the campaign. On the other hand, the churches were in general concerned about the impact on religious freedom and freedom of education if legislation was to be pursued. She opined that to address this concern, the ordinance to prohibit discrimination on the ground of sexual orientation could model on the existing four anti-discrimination ordinances which provided religious exemptions.

14. The Chairperson asked if members had any questions to raise with the representatives. A member asked whether the representatives had any concrete suggestions for tackling the discrimination faced by sexual minorities and how the strong objection of quite a number of Christian churches to legislation could be mitigated. The representatives responded that in addition to a roadmap for legislation based on the framework of the existing anti-discrimination ordinances, the Government should also provide additional resources for public education and support services for sexual minorities, including counselling and temporary shelter. They also said that they respected others’ views on whether legislation should be enacted, but hoped that other churches could also see this issue from a different angle. Basic human rights were very important and should co-exist with traditional moral values, which should also include “respect” and “inclusiveness”. It was believed that legislation could effectively

help sexual minorities by preventing discrimination.

15. Another member asked the representatives how legislation could deal with objections to homosexuality in the family and churches. A KUC representative responded that although legislation could not resolve problems in the private domain, it could serve as an educational tool and instill a value in the society. As the society became more accommodating of sexual minorities, this group of people and their families would definitely face less stress and live a happier life.

16. The Chairperson thanked the representatives from KUC and QTA for sharing their views. Before the representatives left the meeting, they submitted a publication concerning equal rights for LGBT people for members' reference.

Reference materials submitted by the above stakeholder groups

NCA

- a letter of 11.9.2013 on the subject “要求立即把「新造的人協會」加入「消除歧視性小眾諮詢小組」”
- three books titled 「同話·家」, 「同志·有路」 and 「給：最後女友的信」 respectively

PGA

- Speeches of the representatives

SSA

- Documents on Homosexuality and the Catholic Church
- A DVD titled 「從天主教輔導及牧養角度看同性戀」
- A book titled 「同性戀與天主教會」

Concern Group

- a powerpoint presentation titled "從人權角度看「性傾向條例」"³

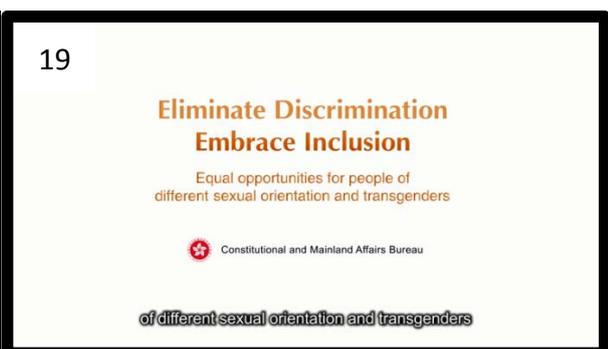
KUC and QTA

- a publication titled "同志及跨性別平權報告"

³ www.tinyurl.com/fsconcern71

Television API





不歧視

Eliminate discrimination



多包容

Embrace inclusion



平等對待

不同性傾向

及跨性別人士



Equal opportunities for people
of different sexual orientation
and transgenders



政制及內地事務局
Constitutional and Mainland Affairs Bureau

Increasing support from the public and private sectors for anti-discrimination on the ground of sexual orientation in the employment field

The Government is committed to promoting equal opportunities for all and eliminating all forms of discrimination. In the area of sexual orientation, it has issued the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation to facilitate self-regulation on the part of employers and employees in eliminating discriminatory practices in employment.

Code of Practice

Apart from providing definitions of "sexual orientation", "discrimination", "harassment" and "vilification", the Code also recommends good practices in various aspects of employment, including recruitment, promotion, posting, training, dismissals, terms and conditions of employment, etc.

For example, employers are recommended to apply consistent selection criteria for all aspects of employment, and such criteria should not make reference to sexual orientation, but should be specifically related to the job, such as type and amount of experience, education qualifications, skills and personal qualities. The Code also sets out points for consideration at each stage of the recruitment process to serve as guidelines for employers.

On the part of employees, the Code points out that they can help eliminate discrimination by familiarizing themselves with the subject, so that they do not inadvertently discriminate against someone, or inadvertently aid their employers to do so. As well, they should help create a more pleasant and congenial working environment for all, and support colleagues who have been unfairly harassed or vilified for their sexual orientation.

Government commitment and promotion

The Government is committed to following the good practices recommended in the Code. It also encourages both public and private sector organizations to do so to the best of their ability, including writing to the top management of these major organizations to appeal to them to adopt the Code on a voluntary basis. It has also organized seminars and briefings for their management or staff to enhance their understanding of the Code.

To date, about 90 public and private sector organizations have pledged to adopt the Code. A list of these organizations, together with the full text of the Code, can be seen at the website of the Constitutional and Mainland Affairs Bureau: www.cmab.gov.hk/en/issues/code_of_practice.htm

Positive response from public and private sectors

The Federation of Hong Kong Industries (FHKI) is one of the major chambers of commerce that have taken up the cause in an

emphatic manner by declaring its commitment to upholding the principle of equal opportunities for all, so as to foster a culture of mutual understanding and mutual respect in the business community.



Mr. Stanley Lau, FHKI Chairman

"We believe that all people, including people of different sexual orientations, have a right to just and equitable conditions of work," emphasized Mr. Stanley Lau, FHKI Chairman. "Non-discriminatory employment practices are essential for enterprises in our search for talented and dedicated employees."

In addition to incorporating the non-discriminatory principle in its own staff handbook, FHKI has also helped raise the awareness of its members by publishing the salient points of the Code in its monthly magazine, appealing to its members to adopt the Code through its newsletter, and publicizing related seminars organized by the Government.

Another supporting organization is Urban Group which has over 4,300 employees, and oversees 347 properties under its management all over Hong Kong, including, for example, City One Shatin and Mei Foo Sun Chuen.

Mr. Bevis Leung, Executive Director, said that when they were appealed to support the adoption of the Code, there was unanimity in management discussion on this issue, and unequivocal support from its Human Capital Department.

"Equal opportunity is part and parcel of our corporate social responsibilities," explained Mr. Leung. "A fair, equitable and transparent approach in staff management enhances our corporate branding, and is a great help in attracting and retaining good quality staff who are our premier assets."

"In providing a professional service to our clients, we are proud to make known what we stand for in terms of equal opportunities without prejudice," he added. "It is a public commitment that enhances our clients' confidence in the company."



Ms Janna Cheng, Urban Group

Ms Janna Cheng, Senior Group Manager – Human Capital, pointed out that sexual orientation has never been an issue in the Group as any decisions made are always job-oriented. The Group's Employee Handbook and Code of Conduct have already incorporated all the Equal Employment Opportunities Principles since as early as 1996.

"Equal Employment Opportunities Principles have always been part of our corporate culture," said Ms Cheng. "It is just one of the many commendable charters that we have signed and supported."

One of the public bodies to have adopted the Code is the Office of the Privacy



Seminar to promote the Code of Practice and spread the anti-discrimination message.

Commissioner for Personal Data (PCPD), Mr. Michael Chung, Chief Corporate Services Manager, said that the PCPD respected the sexual orientation of individuals, and had formulated the equal opportunity policy to provide a respectful working environment.



Mr. Michael Chung, PCPD's Chief Corporate Services Manager

"The selection criteria for all aspects of employment in PCPD are job-related, and an applicant's, or a staff member's sexual orientation is not a consideration in the selection process. We will not tolerate harassment and bully within the office, and internal grievance procedures have been established to handle complaints of this nature," Mr. Chung emphasized.

"The PCPD will ensure that employees (especially those responsible for rendering personnel support) receive training on anti-discrimination so that they are equipped with the relevant knowledge. We have made the measures known to all staff, and they are supportive," he added.

If any organization wishes to know more about the Code, and/or to organize briefings/seminars on the Code for their staff/members, please contact the Constitutional and Mainland Affairs Bureau by phone on 2810 3205, or email gisou@cmab.gov.hk

[Note: This is a submission from Tommy Chen dated 3 November 2015. He also provided a more detailed submission in Chinese on 11 October 2015, which is Appendix H to the Chinese version of this report.]

Report of the Advisory Group on Eliminating Discrimination against Sexual Minorities

Chapter 3 - Deliberations and Recommendations

(d) Dedicated support services to fill the existing service gaps for sexual minorities

Unlike heterosexual couples, same sex couples do not have the choice to apply for “joint taxation”. Therefore, the taxation paid by the homosexual community is unjustly greater than the heterosexual community. On the other hand, same sex couples do not have the opportunity to jointly apply for public housing. These policies make homosexuals “second-class citizens”.

Providing social assistance that caters to the needs of sexual minorities is an indispensable strategy to eradicate discrimination.

A Brief Rationale for Sexual Minority Refuge Shelters

Discrimination against sexual minorities in Hong Kong is rampant. Given the lack of protection of an anti-discrimination ordinance, sexual minorities encounter difficulties while seeking and retaining employment. The challenges faced by transgender people are especially significant whilst some sexual minorities are mired in miserable financial predicaments.

Sexual minorities are usually not accepted by their family members. Domestic violence springing from this is prevalent. The need for refuge shelters for sexual minorities is significant.

Same sex relationships usually do not receive support from family or friends. Most marriage and family counselling services are not suitable for homosexuals. According to the *Hong Kong Same Sex Couple Violence Behaviour Research* conducted by The Department of Psychology of The Chinese University of Hong Kong, 33% of same sex couples have experienced different degrees of domestic violence, which is 3 times more than heterosexual couples (10%).

Lack of a Suitable Refuge Shelter for Sexual Minorities in Hong Kong

There is currently no shelter suitable for transgender people in Hong Kong. Shelters are

segregated by gender. Transgender persons are refused admission by both male and female shelters as they need to share bedrooms and washrooms.

Currently, only TWGHs CEASE Crisis Centre (CEASECC) provides several private rooms with attached washrooms suitable for Transgender people. These rooms however were designed to be used by victims of serious violent sexual abuse and are not consistently or reliably available to Transgender people.

In December 2013, due to the full occupancy of CEASECC and all male shelters in Hong Kong, CEASECC referred a male homosexual victim of domestic violence to Rainbow of Hong Kong for sheltering service.

“Clash of district” (撞區) is the term describing when the location of a shelter is the same as where the abuser resides. For safety reasons for victims of violence and the staff of shelters, a victim cannot be accepted into a shelter with a “Clash of district” and has to be referred to a shelter in another district. In cases of a “Clash of district” with CEASECC, victims with a transgender identity do not have a shelter available to them.

Currently, only CEASECC and Caristas Family Crisis Support Centre can accept male victims of domestic violence. These two shelters are often fully occupied and then male gay victims of domestic violence cannot receive any shelter service.

CEASECC’s operating contract with the Social Welfare Department restricts it to only accepting victims of domestic violence. In December, 2012, two transgender people were forced to vacate their residence and unable to rent a new apartment because of serious discrimination. CEASECC and all current shelters could not provide service to them and they were forced to temporarily reside at Rainbow of Hong Kong.

CEASECC and most shelters do not have sufficient anti-discrimination policies nor the ability to handle incidents of discrimination. Cases of discrimination are not listed in this brief report.

A Brief Rationale for LGBT Community Centers

According to the *2011 Population Census*, “A total of 451,183 ethnic minorities constituting 6.4% of the whole population in Hong Kong” which includes Pilipino and Indonesian domestic helpers as well as Caucasians. The Hong Kong Government has set up 6 community centres and 2 sub-centres dedicated to ethnic minorities but not yet ONE LGBT community centre.

In 2007, The Department of Psychology of The Chinese University of Hong Kong released a report, *Hong Kong Same Sex Couple Violence Behaviour Research*, revealing that only 1.6% of sexual minority victims have sought help from social services, expressing concerns over the mainstream service providers' lack of understanding and care as well as their inexperience in handling sexual minority issues.

LGBT Community Centres can provide services to the community that mainstream Community Centres do not. This is a crucial measure to eliminate discrimination and assisting sexual minorities' integration into the society.

Filling in the Service Gap Left Open by Current Community Centres

The following services are not provided by any current Community Centres in Hong Kong.

Counselling Services

Same-sex Couples Counselling, Coming Out Family Counselling, Sexual Issues Counselling (relating to LGBT), Sexual Health, HIV and Sexually Transmitted Infection Counselling, etc.

Activities

Various Sexual Orientation and Gender Identity Support Groups, Interest Classes without discrimination, Health Information Talks, Integration Activities, Training Workshops on Inclusive Techniques in the Work Space, and Non-discrimination Assurance Referral Services.

Legal Support

Hong Kong has punitive laws against same sex behaviours (Crime Ordinance Cap. 118C, F, G, H, J and K). According to the document Legislative Council Paper No. CB(2)1218/ 12-13(01) provided by the Security Bureau, comparing to heterosexuals, the criminal charges against homosexual men and unfair sentences are significantly higher. This indicates most legal services are not familiar with the related unfair treatment and did not strive for fair sentences for homosexuals.

Legal Forums

To avoid violations of the law and reduce the costs on the courts, gay men in Hong Kong need to be educated, to prevent themselves from violating these punitive laws targeting gay people. These important educational forums have never been provided.

Training Courses

Sexual Minority Sensitivity Training can be offered to teachers, social workers and the Human Resources staff in private companies to alleviate the pressure they face when confronted with sexual minority issues.

Job-Hunting Services

There is no discrimination protection in Hong Kong regarding sexual orientation and gender identity. Transgender people in particular encounter hardship in employment.

The Selective Placement Division of the Labour Department has tried and eventually failed to find any employer willing to hire a Transgender person seeking employment.

The LGBT Community Centre will provide employment counselling services as well as compiling and regularly updating a list of Sexual Minority Friendly Employers to assist sexual minorities seeking employment.

LGBT Elderly

There is currently no service concerning the special needs of sexual minority elderlies.

Without the support of family and children, LGBT elderlies often become “hidden elders”.

There is a phenomenon where LGBT elderlies go back into the closet hiding their sexual identities fearing discrimination by mainstream service providers.

The LGBT Community Centre will provide services to fill this service gap.

Ethnic Minority LGBT

Most ethnic minority people in Hong Kong come from Muslim or Catholic countries. These communities often express extreme prejudice towards homosexuality. Ethnic minority LGBT people do not participate in activities and services provided by mainstream ethnic minority community centres. They often say “I have come to Hong Kong for a better gay life. Hanging out with people of my own race is not why I am here.”

Therefore, the LGBT Community Centre will not only offer sexual minority services to ethnic minorities, but will also provide services related to their ethnicities. For example, translation services without discrimination will be provided when a person, concerned of contracting a sexually transmitted infection, needing to describe homosexual sexual practices in communication with a medical doctor.

None of the much needed services listed above are provided by any current community centre in Hong Kong.

Economic Efficacy

With the option to provide services to the ethnic minority community by all community centres, the Hong Kong Government chose in order to best utilize its resources, it set up 8 ethnic minority community centres. By simply adopting the same philosophy towards the sexual minority community, it is easy to understand the adoption of LGBT Community Centres catering for the specific needs of the sexual minority community.

In respect for the neglected LGBT community in Hong Kong, in order to fill in the service gaps, refuge shelters and community centres dedicated to the LGBT community are needed in Hong Kong. Through social supports, we can eliminate discrimination and create a better Hong Kong.