

# Report on Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status

*Commissioned by the Equal Opportunities Commission and  
Conducted by Gender Research Centre of  
the Hong Kong Institute of Asia-Pacific Studies of  
The Chinese University of Hong Kong*



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# **Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status**

## **Report**

**This project is commissioned by  
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## **Executive Summary**

### **Introduction**

1. The Equal Opportunities Commission (EOC) has commissioned the Gender Research Centre (GRC) of the Hong Kong Institute of Asia-Pacific Studies at the Chinese University of Hong Kong to conduct the project “Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status” (the Study).
2. The Study was a fact-finding exercise with specific objectives as follows:
  - a) To systematically understand discrimination encountered by people of different sexual orientation, gender identity (SOGI) and intersex status, including lesbian, gay, bisexual, transgender and intersex (LGBTI) people from all walks of life in Hong Kong, and to solicit their views on how such experiences of discrimination may be redressed through legislation or other means.
  - b) To solicit public views on: their awareness (including their contact with and understanding of) LGBTI people, their acceptance of LGBTI people in various aspects of life, their perception of the discrimination encountered by LGBTI people, and their views towards possible legislation against discrimination on the grounds of SOGI and intersex status.
  - c) To conduct an extensive literature review to evaluate laws relating to discrimination on the grounds of SOGI and intersex status in other jurisdictions.
  - d) To evaluate and make recommendations on the feasibility of legislating against discrimination on the grounds of SOGI and intersex status, the scope of fields where the legislation could apply, possible exemptions and situations in which they may be justified, and strategies of rolling out the legislation.



3. The Study is significant in several ways:

- a) It is the first study of its kind in Hong Kong that provides a thorough understanding of the perspectives about discrimination encountered by LGBTI groups and viewpoints of legislating against discrimination on the grounds of SOGI and intersex status from both LGBTI people as well as the general public.
- b) It is the first study of its kind in Hong Kong that employs various research methods, including both quantitative method in the form of telephone survey and qualitative approaches such as focus groups, interviews and opinion collection via online and postal channels. In view of this comprehensive investigation, it provides not only figures of those supporting and opposing legislating against discrimination on the grounds of SOGI and intersex status but, more importantly, the reasons and nuances behind the support and opposition.
- c) It is the first study of its kind in Hong Kong to analyse a number of jurisdictions around the world with either similar legal systems, or jurisdictions that are also influenced by Chinese and Asian cultures that have developed various forms of LGBTI anti-discrimination legislation. The analysis considers different elements of this legislation, as well as what lessons can be learnt from the experience of the legislation's development and implementation.
- d) Previous studies in Hong Kong on discrimination of LGBTI people tended to overlook the experiences of transgender and intersex people, who might be subject to further misunderstanding and marginalization in Hong Kong society. In addition to reaching lesbian, gay and bisexual groups, this Study explicitly paid attention to seeking the viewpoints of transgender and intersex groups so as to include their voices in Hong Kong, and their suggestions on ways of redressing the discrimination they face.

4. Chapter 1 provides an overview of the current legal and social situation of LGBTI people in Hong Kong. In summary, it highlights that there is currently no comprehensive legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status.

## **Literature review**

5. In Chapter 2, previous studies of the past 10 years on discrimination experienced by LGBT people, as well as public attitudes towards legislating against discrimination on the grounds of SOGI and intersex status, are reviewed. In previous studies, LGBT people consistently reported experiencing considerable levels of discrimination, particularly in the fields of employment and education. The studies also indicated that the discrimination experiences had significant effects on LGBT people's lives in the forms of emotional stress and other psychological impacts such as feeling the need to conceal sexual orientation and even to contemplate suicide. In relation to public attitudes towards legislating against discrimination on the grounds of sexual orientation, the studies indicated that there appear to be signs of a shift in attitudes among the Hong Kong public during the last 10 years with increasing support for legislation. In a survey in 2006 (MVAHK, 2006) only 29% of those surveyed strongly disagreed/disagreed that "the Government should not introduce legislation to outlaw discrimination on the grounds of sexual orientation at this stage". However, about 60% of the respondents in a 2013 survey thought that it was very/quite important to introduce the legislation against discrimination on the grounds of sexual orientation (Loper, Lau & Lau, 2014).

## **Research methods**

6. Chapter 3 explains the various research methods, including quantitative method in the form of telephone survey and qualitative approaches such as focus groups, interviews and opinion collection via online and postal channels, employed in this Study.

## **Discrimination self-reported by LGBTI people in Hong Kong and LGBTI people's views on legislation**

7. Chapter 4 focuses on experiences of discrimination self-reported by LGBTI people in Hong Kong and the views of LGBTI people on legislating against discrimination on the grounds of SOGI and intersex status. Experiences of discrimination reported by the LGBTI people were extensive, in the areas of employment, education, provision of services, disposal and management of premises, and government functions. The prevalence of discrimination

was notable, regardless of places of occurrence, life stages of the victims and demographic characteristics of the perpetrators.

8. When discrimination took place, it often brought serious consequences to the LGBTI people as well as to the wider society. These people often became victims of direct discrimination by losing out on equal education and employment opportunities or indirect discrimination by having had to use different strategies to escape from unfriendly or even hostile environments such as avoiding the use of health care services, or both.
9. Means of redress were also reported to be minimal or non-existent. It has been reported that LGBTI people experienced problems when accessing supporting professionals such as teachers, counsellors, social workers and healthcare personnel, caused by problematic attitudes of these professionals, as well as outdated approaches to homosexuality and transgenderism. Many LGBTI people found that using public education alone as a strategy in eliminating discrimination on the grounds of sexual orientation and gender identity is inadequate and ineffective. Many LGBTI people saw legislating to protect them from discrimination as an important and necessary first step to protect their basic human rights.
10. It was reported that intersex people faced social difficulties as their gender expression may not fit into the male/female binary in society. In some extreme cases, sexual harassment was experienced.
11. However, the most suffering-inducing aspect of their lives was when medical treatment and decisions were applied to them at an early age without their consent. As it is generally practised presently, a sex is assigned to an intersex baby by the doctor in consultation with the parents who are usually little informed of the possible consequences and other options. Such operations are known to result in the dysfunction of sex organs and the excretory system and sterilization.
12. The intersex community is asking for the return of the right of consent to medical treatment, and sufficient social support to be provided for them in the meantime. In relation to legislation, there was also discussion about whether intersex people should be protected under the existing Disability or Sex Discrimination Ordinances, or whether

appropriate clauses should be included as a part of a separate LGBTI anti-discrimination ordinance, if it was to be developed.

## **Public attitudes towards legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status**

13. Chapter 5 presents public opinion which was gathered by two methods: a territory-wide telephone survey of more than 1,000 respondents and qualitative findings collected from public forums, focus groups, online and postal submissions.
14. Chapter 5 demonstrates that there are clear objections by some members of the public to the prospect of legislation. They raised a number of considerations. First, they disagreed that discrimination towards LGBTI people is prevalent. Second, they were particularly concerned that legislation could create a conflict with their rights such as freedom of expression, freedom of thought, conscience and religion, and the right to privacy. Some members of the public used the term “reverse discrimination” to describe such concerns. Third, they did not believe that legislation would be effective in addressing discrimination experienced by LGBTI people. They believed that legislation could create further division in society and that education and guidance would be more effective.
15. However, those who support the legislation believed that it was important to introduce legislation for a number of reasons. These included the evidence of widespread discrimination against LGBTI people, the need to protect the human rights of LGBTI people and to provide them with access to justice and the benefits that legislation bring in changing public attitudes towards LGBTI people and in sending a clear signal that discrimination of LGBTI people is unacceptable.
16. Such concerns have generally been taken as divided opinion among the public. This has for a long time stalled further discussion and action on the part of the government, and hence no advancement has effectively been made towards addressing discrimination experienced by LGBTI people.
17. However, such concerns must be contextualized in the wider society. The representative survey of this study noted a significant increase of public support for legislation in the past

10 years from 28.7% (MVAHK, 2006) to 55.7% in this Study (March 2015) who “somewhat/completely” agreed that there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status as a whole. In this Study, it was found that only 34.8% of the public objected to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status.

18. It is noteworthy that respondents aged 18–24 are especially supportive of legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status in Hong Kong – 91.8% of them agreed that there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status.

19. It shall also be noted that of those respondents with religious beliefs, 48.9% agreed that, overall there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status. This indicates that among people with religious beliefs there is a diverse range of views regarding whether there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status.

### **A comparative review on legislations against discrimination on the grounds of sexual orientation, gender identity and intersex status**

20. Chapter 6 provides a detailed comparative legal review and analysis of how several jurisdictions have legislated against discrimination on the grounds of sexual orientation, gender identity and intersex status. Their experiences are of particular relevance to Hong Kong because they have similar common law or European Union anti-discrimination legislation (Australia, Great Britain, Canada, and the Netherlands), or they are also influenced by Chinese culture (Taiwan and Macau). The cases of Taiwan and Macau demonstrate that influences of Chinese culture and the introduction of anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status are not necessarily incompatible.

21. Chapter 6 also provides an analysis of what lessons can be learnt from the experience of the development and implementation of LGBTI anti-discrimination legislation in other jurisdictions. In particular, it considers the concerns raised in Hong Kong during the study

in relation to balancing of various rights, and other concerns relating to legal, political and social factors. The analysis highlighted that there are workable solutions to those concerns based on the practices in other jurisdictions, the human rights legislation in Hong Kong, the structure of provisions in the existing anti-discrimination Ordinances, how possible LGBTI legislation could be structured (for example with practicable exemptions), and by having effective means to promote understanding of the legislation.

22. In terms of possible ways forward for legislation, several concerns based on the practices in other jurisdictions should be considered. They include which characteristics to cover, the format of legislation, definitions of protected characteristics, prohibited conduct, domains of protection, and exemptions.

- a) Which characteristics to cover: Most jurisdictions reviewed currently cover sexual orientation and gender identity, with several also covering intersex status. Intersex status has been protected more recently, reflecting the recent and increasing awareness among international and national human rights bodies which are beginning to consider extending protection against discrimination on the ground of intersex status.
- b) Format of legislation: There are different options for the structure of the anti-discrimination legislation with consolidated, characteristic-specific or field-specific models. Each has its advantages and disadvantages.
- c) Definitions of protected characteristics: The definitions of sexual orientation, gender identity and intersex status could be drawn from definitions in the other similar jurisdictions as reviewed in Chapter 6, and from international human rights instruments such as the Yogyakarta Principles. Serious consideration should be given as to whether discrimination by perception and association should be covered in ways similar to existing provisions in Hong Kong for discrimination on the grounds of disability and race. In some jurisdictions it has been deemed important to protect people who are perceived to be, or associated with LGBTI people;
- d) Prohibited conducts: The main forms of prohibited conduct in other jurisdictions are direct and indirect discrimination, harassment, victimization and, to a more limited extent, vilification. All of these are also forms of prohibited conduct in Hong Kong

under the existing anti-discrimination Ordinances and therefore could be considered for Hong Kong. There would, however, be a need to carefully consider balancing rights to freedom of expression, for example, in relation to possible vilification provisions.

- e) Domains of protection: In other jurisdictions protection from discrimination in terms of domains on the grounds of sexual orientation, gender identity or intersex status, is similar to those under the existing four anti-discrimination Ordinances in Hong Kong.
- f) Exemptions: Based on the experiences in other jurisdictions and the existing anti-discrimination Ordinances in Hong Kong, consideration to exemptions could be given in fields such as employment, education, provision of goods and services, disposal and management of premises, government functions, special measures, and other areas such as sporting activities in the case of gender identity. As in other jurisdictions and under Hong Kong's existing four anti-discrimination Ordinances, exemptions could be considered where they serve a legitimate aim and are proportionate.
- g) Role of an equality body: In most of the jurisdictions examined, the equality or human rights bodies have a vital role in promoting equality and eliminating discrimination of people on the grounds of sexual orientation, gender identity or intersex status. In order to fulfil those duties they also have wide-ranging powers from enforcing the anti-discrimination legislation to producing guidance and educating the public. Consideration could be given as to whether the EOC's existing duties and powers under the existing four anti-discrimination Ordinances should be extended to the grounds of sexual orientation, gender identity and intersex status.

## **Conclusion and recommendations**

23. In Chapter 7, based on integrative findings covering discrimination experienced by LGBTI people in Hong Kong, public opinions on legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status, and a comparative legal review of how other jurisdictions provide legal protection for LGBTI people against discrimination, recommendations are made on possible viable ways to redress

discrimination on the grounds of sexual orientation, gender identity and intersex status in Hong Kong.

24. The first major recommendation is that the Hong Kong Government should consider conducting a public consultation on introducing anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status. Given the evidence of widespread discrimination against LGBTI people, it is recommended that the consultation focus on the scope and possible content of the legislation, rather than whether there should be legislation. It is recommended that this consultation cover all the key elements of possible anti-discrimination legislation:—which protected characteristics to cover, the format of the legislation, definitions of the protected characteristics, prohibited conduct, domains of protection, possible exemptions, and the role of an equality body.
25. In terms of the format of legislation, three models can be considered for reference: first, the consolidated approach for which a comprehensive anti-discrimination ordinance that would cover newly protected characteristics of sexual orientation, gender identity, and intersex status, alongside the existing characteristics (sex, race, disability, family status). Religion and belief may also be included to relief the concerns raised and to create a more inclusive law; second, the characteristic-specific approach, which could be based on the model of the present four anti-discrimination ordinances, and could involve the passing of a new, separate anti-discrimination ordinance, or the amendment of the Sex Discrimination Ordinance given the relationship between sex discrimination and possible gender identity, sexual orientation or intersex discrimination; and third, the domain-specific approach for which legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status in the public domains of employment and education could be drafted first.
26. Each model has its advantages and disadvantages. The consolidated model provides a clear reference point for anyone in society facing discrimination regardless of their protected characteristic. The emphasis of such a legislative model is on the broader concept of equality rather than individual protected characteristics. A characteristic-specific model is consistent with Hong Kong's current models under the four existing discrimination ordinances. The domain-specific protection model may be less desirable given that it can fail to protect LGBTI people in some crucial aspects of life,



and particularly given that similar non-legislative schemes have not proved to provide adequate protection to LGBTI individuals who experience discrimination.

27. Perhaps the most important question for different stakeholders to consider as a next step is, what exemptions shall be in place in the legislative design to address seemingly competing rights? What exemptions serve a legitimate aim and are proportionate? How far should religious exemptions be granted, e.g. with regard to employment? How should religious functions/activities be defined? How should an exemption for genuine occupational qualifications be drafted? In terms of the protection in the private sphere, what kind of exemptions in private accommodation can be considered? How to reconcile situations where an employment takes place at the residence of an employer?
28. The second major recommendation is that the government should give further consideration to explore claims about possible discrimination on the grounds of religion or belief. First, a number of religious groups in Hong Kong expressed concerns about possible discrimination against them in the context of the possibility of introducing anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status. Second in Hong Kong, unlike many of the other jurisdictions examined, there is protection only in relation to the actions of the Government and public authorities under Article 32 of the Basic Law and Article 15 of the Bill of Rights, which provide for Hong Kong residents' fundamental rights to freedom of conscience and freedom of religious beliefs. So far, there have been very few studies about the extent of discrimination on the grounds of religion or belief in Hong Kong.
29. The third major recommendation is that forums, workshops and training sessions be developed to increase dialogue and better understanding between different groups in society on issues relating to LGBTI equality. This would be important, for example, in relation to LGBTI groups and religious groups so as to develop greater understanding, mutual respect and ways forward to balance each other's rights and concerns. It could also monitor the receptiveness of the general public on legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status.
30. More recommendations are made regarding the establishment of comprehensive guidelines and training for frontline government officials and staff working in public

authorities; regarding the facilitation of further public education and awareness programmes for the general public about LGBTI people and the issues they face, in order to reduce misconceptions and stereotypes; regarding the formulation of new educational curriculums in consultation with key stakeholders to improve understanding of LGBTI people in schools; regarding provision of LGBTI-friendly facilities; regarding the collection and publication of data on LGBTI people; and regarding provision of funding for support services for LGBTI people.

31. In 2016, it will have been 25 years since the decriminalization of homosexuality in 1991 in Hong Kong. Yet, there is still no comprehensive anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status in Hong Kong. This is despite of the widespread evidence of discrimination against LGBTI people across many domains that this Study has documented, and an increasing proportion of Hong Kong citizens and now a clear majority of public support for legislation against discrimination on the grounds of sexual orientation, gender identity and particularly intersex status that this Study has shown. Therefore, the discussion needs to move from the question of whether or not there should be legislation on the grounds of sexual orientation, gender identity and intersex status to that of how such legislation should be designed.
32. There is no question that the Hong Kong Government should launch a public consultation with a view to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. It is crucially important for the consultation exercise to contain as many concrete details as possible to minimize misunderstandings and unnecessary anxieties. In consulting the public, the government should provide clear definitions of the coverage of any possible legislation, including possible domains to be covered, as well as exemptions that can potentially be considered. It would, for example, be important to explain aspects that are outside the scope of anti-discrimination legislation, such as the legalization or not of same-sex marriage or civil unions.
33. In sum, this Study finds that there is clear majority public support for legislation against discrimination on the grounds of sexual orientation, gender identity and particularly intersex status. It is now for the Hong Kong Government to decide how to take this receptiveness forward in order to create a friendly environment for people of different sexual orientation, gender identity and intersex status to work and live in. By taking steps

to introduce comprehensive anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status, there is an opportunity for Hong Kong to become the leading jurisdiction on LGBTI equality in Asia.

## **Chapter 1 Introduction**

### ***1.1 Background***

The Equal Opportunities Commission (EOC) has commissioned the Gender Research Centre (GRC) of the Hong Kong Institute of Asia-Pacific Studies at the Chinese University of Hong Kong to conduct the project “Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status” (the Study)<sup>1</sup>. The Study provides an overview on discrimination encountered by people on grounds of their sexual orientation, gender identity (SOGI) and intersex status, including lesbian, gay, bisexual, transgender and intersex (LGBTI) people from all walks of life in Hong Kong. Furthermore, it solicited views from stakeholders on the feasibility of legislating to outlaw discrimination on the grounds of SOGI and intersex status.

### ***1.2 Objectives***

The Study was a fact-finding exercise with specific objectives as follows:

- a) To systematically understand discrimination encountered by people of different sexual orientation, gender identity (SOGI) and intersex status, including lesbian, gay, bisexual, transgender and intersex (LGBTI) people from all walks of life in Hong Kong, and to solicit their views on how such experiences of discrimination may be redressed through legislation or other means.
- b) To solicit public views on: their awareness (including their contact with and understanding of) LGBTI people, their acceptance of LGBTI people in various aspects of life, their perception of the discrimination encountered by LGBTI people, and their views towards possible legislation against discrimination on the grounds of SOGI and intersex status.
- c) To conduct an extensive literature review to evaluate laws relating to discrimination

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<sup>1</sup> The research team consists of seven faculty members of the Chinese University of Hong Kong. They come from seven departments including Sociology, Cultural Studies, Law, Psychology, Social Work, Education and Public Health.

on the grounds of SOGI and intersex status in other jurisdictions.

- d) To evaluate and make recommendations on the feasibility of legislating against discrimination on the grounds of SOGI and intersex status, the scope of fields where the legislation could apply, possible exemptions and situations in which they may be justified, and strategies of rolling out the legislation.

In order to achieve the objectives of the Study stated above, the research team has conceptualized “feasibility” into the following areas for consideration:

- a) Is there any evidence to suggest a need for legislation?
- b) What are the levels of public awareness, attitudes, knowledge and understanding of the issues of concern?
- c) How have other jurisdictions legislated against discrimination on the grounds of sexual orientation, gender identity and intersex status?

Acknowledging that the topic in question can be controversial, this Study presents robust data collected through rigorous research methods in a bid to provide independent sources of information for understanding the issues of concern. The Study is significant in several ways:

- a) It is the first study of its kind in Hong Kong that provides a thorough understanding of the perspectives about discrimination encountered by LGBTI groups and viewpoints of legislating against discrimination on the grounds of SOGI and intersex status from both LGBTI people as well as the general public.
- b) It is the first study of its kind in Hong Kong that employs various research methods, including both quantitative method in the form of telephone survey and qualitative approaches such as focus groups, interviews and opinion collection via online and postal channels. In view of this comprehensive investigation, it provides not only figures of those supporting and opposing legislating against discrimination on the grounds of SOGI and intersex status but, more importantly, the reasons and nuances behind the support and opposition.

- c) It is the first study of its kind in Hong Kong to analyse a number of jurisdictions around the world with either similar legal systems, or jurisdictions that are also influenced by Chinese cultures that have developed various forms of LGBTI anti-discrimination legislation. The analysis considers different elements of this legislation, as well as what lessons can be learnt from the experience of the legislation's development and implementation.
- d) Previous studies in Hong Kong on discrimination of LGBTI people tended to overlook the experiences of transgender and intersex people, who might be subject to further misunderstanding and marginalization in Hong Kong society. In addition to reaching lesbian, gay and bisexual groups, this Study explicitly paid attention to seeking the viewpoints of transgender and intersex groups so as to include their voices in Hong Kong, and their suggestions on ways of redressing the discrimination they face.

### ***1.3 Structure of the report***

This report is divided into seven chapters. Chapter 1 provides background information of this Study and its objectives, definitions of key terms and concepts, an overview of Hong Kong's legal obligations, and the social and legal situation of LGBTI people in Hong Kong. Chapter 2 presents a literature review of previous studies on discrimination experienced by LGBTI individuals and public attitudes toward legislating against discrimination on the grounds of SOGI and intersex status in Hong Kong. Chapter 3 provides a detailed elaboration on various research methods employed for data collection in the Study.

Key findings are contained in Chapters 4, 5 and 6. Chapter 4 focuses on the experiences of discrimination self-reported by LGBTI people in Hong Kong and their views on legislating against discrimination on the grounds of SOGI and intersex status. In Chapter 5, public attitudes towards legislating against discrimination on the grounds of SOGI and intersex status are presented. Based on the data from the telephone survey and qualitative views collated from the public, analysed results are provided for further discussion. In Chapter 6, comparative legislation against discrimination on the grounds of SOGI and intersex status in a number of other jurisdictions are reviewed, as well as what lessons can be learnt from experiences of the development and implementation of anti-discrimination legislation, such as balancing the rights of religious groups with protection of LGBTI people.

In Chapter 7, the findings from the Study are synthesized, and recommendations on the feasibility of legislating against discrimination on the grounds of SOGI and intersex status, its elements, and possible areas of exemptions are made. This Chapter also provides conclusions and recommendations on related issues such as the need for better awareness and education of people on LGBTI issues, more guidance for frontline staff, and possible anti-discrimination legislation relating to religion.

## ***1.4 Definitions of key terms and concepts***

Given the breadth of the Study, it is important to clarify how key terms and concepts are defined and interpreted with reference to the laws of Hong Kong and international standards.

### ***1.4.1 Key terms and acronyms***

The acronym LGBTI stands for lesbian, gay, bisexual, transgender and intersex. In use since the 1990s, the acronym has become mainstream as a self-designation and has been adopted by the majority of sexuality and gender identity-based communities worldwide. It is noteworthy that LGBTI does not actually encompass all individuals with different sexual orientations and gender identities, and some people find the five-letter acronym restrictive and would like instead to identify themselves as “queer”, signifying that they do not identify with the traditional social norms governing gender and sexuality.

In the Study, SOGI is an acronym which stands for sexual orientation and gender identity. Sexual orientation refers to an enduring pattern of emotional, romantic and/or sexual attractions to people of the opposite sex (heterosexual), same sex (homosexual) or both sexes (bisexual). The term “lesbian” describes women who are sexually attracted to other women, whereas the term “gay” describes men who are sexually attracted to other men. The term “bisexual” describes women or men who are sexually attracted to both sexes. Research over several decades has demonstrated that sexual orientation ranges along a continuum, from exclusive attraction to the other sex to exclusive attraction to the same sex<sup>2</sup>.

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<sup>2</sup> American Psychological Association (2008). Sexual Orientation and Homosexuality, <http://www.apa.org/topics/lgbt/orientation.aspx>. (accessed on 2 Jan 2016).

According to the Yogyakarta Principles<sup>3</sup>, gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or functions by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms<sup>4</sup>. Transgender refers to individuals whose gender identity and/or expression of their gender differs from social norms related to their sex assigned at birth<sup>5</sup>.

Sexual orientation and gender identity are separate concepts and should not be confused. This implies that a transgender person, as anyone else in society, may be heterosexual, homosexual or bisexual<sup>6</sup>. For example, a transgender woman (a person who was assigned male gender at birth but whose self-identifies as a woman) may be attracted to men and described as heterosexual. If she was attracted to other women, she may be described as homosexual.

An intersex person is born with sexual anatomy, reproductive organs and/or chromosome patterns that do not fit the typical definition of man or woman. This may be apparent at birth or become so later in life. An intersex person may identify as male or female or as neither. Intersex status can be related to but is not necessarily about a person's sexual orientation or gender identity<sup>7</sup>.

There have been persistent arguments about whether LGBTI people should be discussed as one group together or whether the kinds of issues that they face are substantially different enough to warrant separate discussions. Yet it is generally acknowledged that LGBTI people face the same overarching issue: being different from the mainstream gender/sexual norms in the society. It is generally considered that such a struggle unites them and, as a result, it may be useful to discuss their wellbeing and the social situation they find themselves in together.

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<sup>3</sup> The Yogyakarta Principles were developed at a meeting of the International Commission of Jurists, the International Service for Human Rights and human rights experts from around the world at Gadjah Mada University, Java from 6 to 9 November in 2006. The Principles are intended to serve as an interpretive aid to the human rights treaties.

<sup>4</sup> See Yogyakarta Principles [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm) (accessed on 2 January 2016).

<sup>5</sup> World Professional Association for Transgender Health (WPATH). (2012). *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (Seventh ed.). Minneapolis: WPATH. [http://www.wpath.org/uploaded\\_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf](http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf).

<sup>6</sup> American Psychological Association. (2011). Answers to your questions about transgender people, gender identity, and gender expression. Retrieved from <http://www.apa.org/topics/lgbt/transgender.aspx>.

<sup>7</sup> UN Free & Equal Campaign's Fact Sheet, [https://www.unfe.org/system/unfe-7-UN\\_Fact\\_Sheets\\_v6\\_-\\_FAQ.pdf](https://www.unfe.org/system/unfe-7-UN_Fact_Sheets_v6_-_FAQ.pdf), (accessed 20 November 2015).



### 1.4.2 Discrimination concepts

There are a number of common forms of prohibited conduct in comparable international and Hong Kong anti-discrimination legislation. These are the core concepts of direct and indirect discrimination, harassment, vilification and victimization and are referred to throughout the report.

At present, anti-discrimination legislation in Hong Kong protects people from discrimination on the grounds of sex, pregnancy and marital status (Sex Discrimination Ordinance)<sup>8</sup>, disability (Disability Discrimination Ordinance)<sup>9</sup>, family status (Family Status Discrimination Ordinance)<sup>10</sup> and race (Race Discrimination Ordinance)<sup>11</sup>.

In the existing anti-discrimination legislation, there is an important distinction between direct and indirect discrimination. *Direct discrimination* is found when someone is treated less favourably because of their sex, pregnancy, marital status, disability, family status or race. (These are the “protected characteristics”).<sup>12</sup> *Indirect discrimination* occurs when a condition or requirement (e.g. rule, policy, practice, criterion or procedure) is applied to all persons equally, but the proportion of persons who possess the “protected characteristics” that can comply with it is considerably smaller. Further, it must be shown that as a result a detriment is suffered by that person or persons, and the condition or requirement is not justifiable. (That is, it does not have a legitimate objective and is disproportionate)<sup>13</sup>.

*Harassment* occurs if a person engages in an unwelcome conduct (such as abusive, insulting or offensive behaviour) on the grounds of another person’s “protected characteristics” that makes the other person feel offended, humiliated or intimidated<sup>14</sup>.

*Vilification* is an activity in public which incites hatred, serious contempt for, or severe ridicule of a person or class of persons because of their “protected characteristics”<sup>15</sup>. Serious

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<sup>8</sup> Sex Discrimination Ordinance (“SDO”) Cap. 480, 1996.

<sup>9</sup> Disability Discrimination Ordinance (“DDO”) Cap. 487, 1996.

<sup>10</sup> Family Status Discrimination Ordinance (“FSDO”) Cap. 527, 1997.

<sup>11</sup> Race Discrimination Ordinance (“RDO”) Cap. 602, 2008.

<sup>12</sup> Direct discrimination is unlawful under all four anti-discrimination Ordinances.

<sup>13</sup> Indirect discrimination is unlawful under all four anti-discrimination Ordinances.

<sup>14</sup> Racial harassment is prohibited under section 7 of the RDO, and disability harassment is prohibited under section 2(6) of the DDO. The related concept of sexual harassment involving unwelcome conduct of a sexual nature is prohibited under the SDO.

<sup>15</sup> Racial vilification is prohibited under section 45 of the RDO and disability vilification is prohibited under

vilification is a more serious criminal offence which involves the same conduct, but in addition the person intentionally incites such hatred and the activity consists of threatening physical harm towards premises or property<sup>16</sup>.

*Victimisation* occurs where a person is treated less favourably because they have done an act such as having brought proceedings against the discriminator or any person under the anti-discrimination ordinances, giving evidence or information in connection with discrimination proceedings, or alleging that the discriminator has committed an act that would be unlawful under the anti-discrimination legislation<sup>17</sup>.

## ***1.5 Overview of Hong Kong's legal instruments and obligations***

Hong Kong, similar to many other jurisdictions and countries, is a party to international human rights instruments. It also has its own constitutional laws relating to human rights and its own civil anti-discrimination laws.

### ***1.5.1 International human rights instruments***

There are a number of core United Nations covenants and treaties to which the Hong Kong Government is a party. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention Against Torture (CAT), the Convention on the Rights of Persons with Disabilities (CRPD) and the International Labour Organisation (ILO) Convention 111 on discrimination in employment and occupation.

Most of those international legal instruments include non-discrimination provisions, such as the International Covenant on Civil and Political Rights (ICCPR)<sup>18</sup>, the International

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section 46 of the DDO.

<sup>16</sup> See section 46 RDO and section 47 DDO.

<sup>17</sup> Victimisation is prohibited under all four anti-discrimination Ordinances.

<sup>18</sup> Article 26 of the International Covenant on Civil and Political Rights (ICCPR).

Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>19</sup>, as well as the International Labour Organization (ILO) Convention 111<sup>20</sup>.

Article 26 of the ICCPR sets out the prohibitions on discrimination and it has been incorporated in Article 22 of the Bill of Rights Ordinance (BORO). It states:

*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.*

Internationally, it is also relevant to note that the United Nations recognizes sexual orientation and gender identity as being grounds on which discrimination is prohibited. For example, the Human Rights Committee (HRC) which monitors States Parties' compliance with the ICCPR has, in a number of proceedings under its complaint mechanism, determined that protection from discrimination extends to the ground of sexual orientation.<sup>21</sup> In addition, gender identity is recognized as among the prohibited grounds of discrimination.<sup>22</sup>

In July 2011 the United Nations Human Rights Council also adopted a resolution on sexual

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<sup>19</sup> Article 2(2) of the ICESCR states that "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." See International Covenant on Economic, Social and Cultural Rights.

<sup>20</sup> Article 1 states: 1. For the purpose of this Convention the term discrimination includes—  
(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;  
(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.  
2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

<sup>21</sup> See Communication no. 488/1992 on Toonen v Australia, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994), in which the Human Rights Committee determined that for the purposes of Article 2 of the ICCPR, 'sex' included sexual orientation. See also for example, Young v Australia, communication No. 941/2000 (CCPR/C/78/D/941/2000), para. 10.4; X v Colombia, communication no. 1361/2005 (CCPR/C/89/D/1361/2005), para. 9; and concluding observations on Mexico (CCPR/C/MEX/CO/5), para. 21, and Uzbekistan (CCPR/C/UZB/CO/3), para. 22.

<sup>22</sup> See United Nations Committee on Economic, Social and Cultural Rights, General Comment 20, E/C.12/GC/20, para. 32.

orientation and gender identity<sup>23</sup>. Further to the Human Rights Council resolution, in November 2011 the United Nations High Commissioner for Human Rights published a detailed report documenting evidence of discriminatory laws and practices as well as acts of violence against individuals based on their sexual orientation and gender identity.<sup>24</sup> It made recommendations that all Member States:

*Enact comprehensive anti-discrimination legislation that includes discrimination on grounds of sexual orientation and gender identity among the prohibited grounds and recognizes intersecting forms of discrimination; ensure that combating discrimination on grounds of sexual orientation and gender identity is included in the mandates of national human rights institutions.*<sup>25</sup>

### **1.5.2 The Basic Law and Bill of Rights Ordinance**

The Basic Law and Bill of Rights are Hong Kong's constitutional laws that provide protections of human rights, including provisions prohibiting discrimination.

The Basic Law sets out the legal system in Hong Kong under the “one country, two systems” of the People's Republic of China. It came into operation on 1 July 1997. Chapter 3 of the Basic Law contains a number of provisions protecting people's human rights. These include provisions that the ICCPR and ICESCR continue to have force in Hong Kong<sup>26</sup>, and that Hong Kong residents are equal before the law.<sup>27</sup>

The Hong Kong Bill of Rights Ordinance (BORO) was enacted on 6 June 1991 and came into operation on 8 June 1991. It implements into Hong Kong law the ICCPR and is, therefore, together with the Basic Law, Hong Kong's primary human rights legislation. The BORO provides that all persons are equal before the law and prohibits discrimination by the Government and public authorities on any grounds, including “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.<sup>28</sup>

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<sup>23</sup> Human Rights Council, seventeenth session, 14 July 2011, A/HRC/RES/17/19.

<sup>24</sup> Report of the United Nations High Commissioner for Human Rights, 17 November 2011, A/HRC/19/41, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/170/74/PDF/G1117074.pdf?OpenElement> (accessed 13 July 2015).

<sup>25</sup> Ibid., page 27.

<sup>26</sup> Article 39 Basic Law.

<sup>27</sup> Article 25 Basic Law.

<sup>28</sup> Article 22, Hong Kong Bill of Rights Ordinance, Cap. 383, which mirrors Article 26 of the International

Both the BORO and the Basic Law are legally binding<sup>29</sup> on the Government, all public authorities, and those acting on their behalf. This means the provisions of BORO and the Basic Law are generally not legally binding upon private bodies or individuals.

There have been several decisions by the courts of Hong Kong that have recognized that sexual orientation is a protected characteristic under the Basic Law and BORO non-discrimination provisions. (See Section 1.6 “Social and legal situation of LGBTI people in Hong Kong”.<sup>30</sup>)

### ***1.5.3 Anti-discrimination legislation***

As stated above, the HKSAR Government has adopted four anti-discrimination Ordinances as the principal means of promoting the fundamental rights to equality of people in Hong Kong, and of providing redress for discriminatory behaviours<sup>31</sup>. The EOC is the statutory body responsible for the elimination of discrimination and promotion of equality in Hong Kong. It has duties and powers to review, enforce, and encourage conciliation of complaints under the existing four anti-discrimination Ordinances, as well as powers to conduct research and issue guidance.

While anti-discrimination law does apply to private bodies (such as corporations or clubs), these laws only apply in certain areas of life. Anti-discrimination legislation generally regulates activities that are conducted in the public sphere including employment, education, provision of goods and services, disposal and management of premises, clubs and government functions. Anti-discrimination legislation *does not* generally regulate the way that individuals and families manage their personal relationships and their households.

Anti-discrimination legislation creates a number of mechanisms for addressing allegations of discrimination, including conciliation, legal proceedings before the courts, and providing

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Covenant on Civil and Political Rights (ICCPR).

<sup>29</sup> Legal binding means that the Government and all public authorities are bound by the law and should comply with the requirements of the law.

<sup>30</sup> *Leung TC William Roy v Secretary for Justice* [2006] 4 HKLRD 211 (CA) and *Secretary for Justice v Yau Yuk Lung Zigo and Lee Kam Chuen* [2006] 4 HKLRD 196 (CFA).

<sup>31</sup> Sex Discrimination Ordinance Cap. 1996, Disability Discrimination Ordinance Cap. 487, 1996, Family Status Discrimination Ordinance Cap. 527, 1997, and the Race Discrimination Ordinance Cap. 602, 2008.

remedies to proven victims of discrimination. However, it is important to note that in Hong Kong the majority of discrimination complaints are dealt with through a process of conciliation and investigation by the EOC<sup>32</sup>. In relation to legal assistance, depending on the case in question, the EOC may provide legal representation, advice or other assistance relating to court proceedings<sup>33</sup>. Cases of alleged discrimination may also be brought to the District Court by individuals without the assistance of the EOC.

Each anti-discrimination Ordinance includes a number of exemptions. Individuals or organizations (such as clubs and corporations) may be exempted from complying with some legislative provisions where the exemptions serve a legitimate aim and are proportionate. There are a number of types of exemptions that vary depending on the protected characteristics. Some common exemptions include genuine occupational qualifications, special measures to promote equality of particular groups, those relating to immigration, and where other legislation explicitly permits discrimination. Exemptions that may be relevant to LGBTI issues that are found in other jurisdictions will be reviewed in Chapter 6.

## ***1.6 Social and legal situation of LGBTI people in Hong Kong***

### ***1.6.1 Criminalization and decriminalization of homosexuality***

In Hong Kong, homosexual activity was first criminalized when Hong Kong became a British colony in 1842, a time when Offences against the Person Act 1828 was enforced in the United Kingdom. Subsequently, the Offences against the Person Act 1861 was adopted in Hong Kong in 1865. The Offences against the Person Act included “unnatural offences” such as sodomy and bestiality. Such laws criminalized sexual intercourse between men, but not between women.<sup>34</sup>

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<sup>32</sup> For the year 2014/15, the EOC handled 716 complaints of discrimination and of those it concluded 495. [http://www.eoc.org.hk/EOC/Upload/AnnualReport/201415/EOC\\_AR2014\\_15.pdf](http://www.eoc.org.hk/EOC/Upload/AnnualReport/201415/EOC_AR2014_15.pdf). (accessed 14 January 2016).

<sup>33</sup> Between 1996 and October 2015, 321 out of 750 applications for legal assistance were granted (i.e. 42.8%). During the year 2014–15 the EOC granted legal assistance in 18 out of 36 applications (i.e. 50%).

<sup>34</sup> Kong, T. S. K. (2012) “A fading Tongzhi heterotopia: Hong Kong older gay men’s use of spaces” in *Sexualities* 12(8): 896–916; Carole J. Petersen (2013) “Sexual Orientation and Gender Identity in Hong Kong: A Case for the Strategic Use of Human Rights Treaties and the International Reporting Process” in *Asian-Pacific Law & Policy Journal* 14:2.

In 1901, following the Criminal Law Amendment Act 1885, in Hong Kong the offence of sodomy committed by two men could be punishable for up to a life sentence, and “gross indecency” could be punishable for up to two years imprisonment.

Although the Sexual Offence Act 1967 decriminalized homosexual acts in private between two consenting male adults over the age of 21 in England and Wales, there were no corresponding changes with regard to the legal status of sexual intercourse between men in Hong Kong at that time.

It was only after the death of the Scottish police inspector John MacLennan in 1980 that more public debates ensued about revising laws governing homosexual conduct. The Law Reform Commission was set up and recommended decriminalization. In 1988, a Government consultation paper was issued, and with the Crime Amendment Bill in 1991, homosexual acts in private between two consenting male adults over the age of 21 were decriminalized.

In 2004, a judicial review was initiated to challenge the unequal age of consent for sexual intercourse and other sexual behaviours between men. The Court of First Instance ruled that sections 118C, 118F(2)(a), 118H and 118J(2)(a) of the Crimes Ordinance breached Articles 25 and 39 of the Basic Law as well as Articles 1, 14 and 22 of the Hong Kong Bill of Rights. The Court found that the provisions unlawfully discriminated against homosexual men on the basis of their sexual orientation. The Court of Appeal affirmed the decision.<sup>35</sup> As a result of the judgment, the age of consent for sexual intercourse between men therefore became 16, the same as for heterosexual people.

In 2007 the Court of Final Appeal also considered section 118F(1) of the Crimes Ordinance which prohibited sexual intercourse between men in public. It decided that the provision also breached Articles 25 and 39 of the Basic Law and Articles 1, 14 and 22 of the Bill of Rights.<sup>36</sup>

The Government made amendments to the Crimes Ordinance in 2014 to implement the orders of the Courts in the *Leung* and *Zigo* decisions.<sup>37</sup>

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<sup>35</sup> *Leung TC William Roy v Secretary for Justice* [2006] 4 HKLRD 211 (CA) [http://legalref.judiciary.gov.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=54227&QS=%2B&TP=JU](http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=54227&QS=%2B&TP=JU) (accessed 13 July 2015).

<sup>36</sup> *Secretary for Justice v Yau Yuk Lung Zigo and Lee Kam Chuen* [2006] 4 HKLRD 196 (CFA).

<sup>37</sup> Statute Law (Miscellaneous Provisions) Ordinance of 2014.

### **1.6.2 Developments relating to anti-discrimination legislation and policy**

There is currently no legislation against discrimination on the grounds of sexual orientation, gender identity or intersex status in Hong Kong.<sup>38</sup>

The then-lawmaker Anna Wu introduced the Equal Opportunities Bill in the 1994–95 legislative session in the form of a Private Member’s Bill in the Legislative Council. The Bill contained provisions outlawing discrimination on a variety of grounds, including sex, disability, age, race and sexuality. However, when the Sex Discrimination Ordinance was enacted in 1996, “sexuality” was not included in the passage of the bill.

The Government did not support the Bill. It considered that sexuality was still a very controversial and highly sensitive issue, and preferred to take a gradual approach. It claimed that legislation that failed to reflect social values would be counter-productive. Instead, the Government undertook to carry out a study in respect of sexual orientation discrimination, which would be followed by a public consultation exercise. A Consultation Paper on “Equal Opportunities - A Study on Discrimination on the Ground of Sexual Orientation” was published in 1996.<sup>39</sup> The Government concluded that an overwhelming majority of those surveyed strongly opposed legislation in respect of sexual orientation. The Government therefore decided to pursue non-legislative means to enhance public understanding and acceptance of different sexual orientations.

Meanwhile, despite the Government’s decision not to introduce legislation, legislator Lau Chin-shek proposed the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill in 1995<sup>40</sup> after Anna Wu stepped down from the Legislative Council. Even though the bill was voted down by a narrow margin of two votes before the handover of Hong Kong, the

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<sup>38</sup> The EOC does consider complaints of discrimination by transgender people under the Disability Discrimination Ordinance where a person has been medically diagnosed with gender identity disorder or gender dysphoria. However, some transgender people and groups working with them prefer not to be characterized as having a disability. Further, to date there has been no definitive determination by any court in Hong Kong that gender identity disorder is considered as a disability under the DDO. Gender dysphoria is defined as a medical condition causing distress of an incongruence between one’s personal gender identity and their assigned gender. It is classified as a medical disorder under the International Classification of Diseases and Related Health Problems (ICD-10) by the World Health Organisation, <http://www.who.int/classifications/icd/en/>; *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5). (accessed on 13 July 2015)

<sup>39</sup> Home Affairs Branch (1996). A Consultation Paper: Equal Opportunities - A Study on Discrimination on the Ground of Sexual Orientation.

<sup>40</sup> The three Bills originated from the Equal Opportunities Bill introduced by Anna WU in July 1994.



efforts of Members of the Legislative Council to eliminate discrimination did not stop there.

The Legislative Council Panel on Home Affairs set up a Subcommittee to follow up related issues in various areas including blood donation, film censorship, medical services, education, and legislating against discrimination. The Subcommittee pointed out in its final report that many homosexual groups were willing to come forward to express their views, which reflected that society was becoming more open towards different sexual orientations. The Subcommittee considered that it was opportune for the Government to conduct another comprehensive consultation on the issue.

In 2006, the Government commissioned a second telephone survey on public attitudes towards homosexuals.<sup>41</sup> Although only about one-third of the people surveyed did not accept the introduction of legislation to prohibit discrimination on the ground of sexual orientation, the Home Affairs Bureau (HAB) reiterated the view that proposals on such legislation would be controversial and, therefore, they needed to conduct further consultation before deciding on the way forward. Based on its assessment, the HAB considered that it was not yet the right time to legislate against discrimination on the ground of sexual orientation.

Although the Government maintained its position on not recognizing same-sex marriages or civil unions, in 2009 it extended protection from domestic violence towards same-sex cohabitants.<sup>42</sup> However, the Government emphasized that such an extension was only introduced in response to “the distinct and unique context of domestic violence” and that it remained the Government’s clear policy not to recognize same-sex relationships and that “any change to this policy stance should not be introduced unless a consensus or a majority view is reached within the society”. The Domestic Violence Ordinance was also renamed as the Domestic and Cohabitation Relationships Violence Ordinance to alleviate the fears that same-sex marriages would be legally recognised, by implication, in Hong Kong.

On 7 November 2012, the Legislative Council debated whether the Government should conduct a public consultation on legislating against discrimination on the ground of sexual orientation. The original motion moved by legislator Cyd Ho and all other related

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<sup>41</sup> Home Affairs Bureau (2006). *Survey on Public Attitudes towards Homosexuals*. Available from: <http://www.legco.gov.hk/yr05-06/english/panels/ha/papers/ha0310cb2-public-homosexuals-e.pdf>. (accessed on 7 January 2016)

<sup>42</sup> Report of the Bills Committee on Domestic Violence (Amendment) Bill 2007. LC Paper No. CB(2)2289/07-08.

amendments made to the motion were not passed in the Legislative Council.

In 2013, a new Advisory Group on Eliminating Discrimination against Sexual Minorities (the Advisory Group)<sup>43</sup> was formed to replace the Sexual Minorities Forum in a bid to advise the Secretary for Constitutional and Mainland Affairs. The Advisory Group looked into problems faced by sexual minorities. Its task is to map out strategies to curb discrimination. As suggested by the Advisory Group, a study on discrimination experienced by sexual minorities was commissioned, with a view to helping ascertain, inter alia, whether sexual minorities were discriminated against in Hong Kong and, if so, the discrimination they had experienced. The findings of the Advisory Group have been published on 31<sup>st</sup> December 2015.<sup>44</sup>

Separately, in relation to policy, the Hong Kong Government introduced a “Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation” (1996–1997) for employers. Although this provides useful guidance for employers, it is not legally binding and enforceable.

It is also relevant to note that various human rights monitoring bodies of the United Nations have repeatedly made specific recommendations to the Hong Kong Government to adopt anti-discrimination legislation relating to sexual orientation and gender identity on a number of occasions: the Human Rights Committee in relation to the ICCPR in 1999 and 2013<sup>45</sup>, and the Committee on Economic, Social and Cultural Rights in relation to the ICESCR in 2001, 2005 and 2014<sup>46</sup>. For example in 2013 the Human Rights Committee, which has responsibility for monitoring compliance with the ICCPR, noted and recommended:

*The Committee is concerned about the absence of legislation explicitly prohibiting discrimination on the basis of sexual orientation and reported discrimination against lesbian, gay, bisexual and transgender persons in the private sector (arts. 2 and 26). Hong Kong, China, should consider enacting legislation that specifically prohibits discrimination on ground of sexual orientation and gender identity, take the necessary*

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<sup>43</sup> Available from: <http://www.info.gov.hk/gia/general/201306/10/P201306100466.htm>

<sup>44</sup> Available from: [http://www.cmab.gov.hk/tc/issues/equal\\_advisory\\_group.htm](http://www.cmab.gov.hk/tc/issues/equal_advisory_group.htm)

<sup>45</sup> ICCPR/C/CHN-HKG/CO/3 paragraph 23, dated 29 April 2013. [http://www.cmab.gov.hk/doc/en/documents/policy\\_responsibilities/the\\_rights\\_of\\_the\\_individuals/Advance\\_Version\\_2013\\_ICCPR\\_e.pdf](http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/Advance_Version_2013_ICCPR_e.pdf) (accessed 13 July 2015)

<sup>46</sup> E/C.12/CHN/CO/2, paragraph 41. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FCHN%2FCO%2F2](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FCHN%2FCO%2F2) (accessed 13 July 2015).

*steps to put an end to prejudice and social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity.*

*Furthermore, Hong Kong, China, should ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples, in line with article 26 of the Covenant.*

### **1.6.3 Same-sex relationships**

In Hong Kong, there is currently no legal right of same-sex couples to enter into either same-sex marriages or other legal relationships similar to marriage, such as civil unions. There is also no legal recognition of same-sex marriages or civil unions from other countries or jurisdictions that do permit such marriages or civil unions. Further, there is no recognition of same-sex relationships for other related purposes such as taxation, property law, inheritance rights and immigration.

However, there are two situations where there is some limited recognition of same-sex relationships. First, there is recognition in the context of protecting people from domestic violence under the Domestic and Cohabitation Relationships Violence Ordinance. The legislation was amended in 2009 to extend protection to persons in cohabiting same-sex relationships. It now provides protection from domestic violence for people in marriages, plus persons in unmarried cohabiting relationships, whether they are in heterosexual or same-sex relationships.

Second, there is recognition in the context of medical treatment of partners. On 13 July 2015, the Government enacted the Electronic Health Record Sharing System Ordinance. The legislation includes provisions by which cohabitating partners (heterosexual or same-sex) are recognized as having rights regarding the medical treatment of their partners, where they themselves are unable (e.g. they are in a coma, unconscious or mentally incapable) to make decisions.

### **1.6.4 Transgender and transsexual people in Hong Kong**

Transgender people refer to individuals whose gender identity and/or expression of their gender differs from social norms related to their sex assigned at birth. Transsexual people

refer to those who whose gender identity and/or expression of their gender differs from social norms related to their sex assigned at birth, *and* who seek to change or who have changed their primary and/or secondary sex characteristics through medical interventions (hormones and/or surgery)<sup>47</sup>.

It is not known exactly how many transgender and transsexual people there are in Hong Kong. In Hong Kong, if a transgender person would like to undergo sex reassignment surgery at a public hospital, the person needs to undergo preliminary assessment and medical treatments provided by the Hospital Authority (HA). The assessment and services involved would then assess whether the person is diagnosed with Gender Identity Disorder (GID)<sup>48</sup> and determine whether the person needs or is suitable for sex reassignment surgery. The first sex reassignment surgery conducted in a publicly funded hospital was in 1981. From 2010 to 2015, there were 495 patients diagnosed with gender identity disorder, and 40 persons have undergone partial or full sex reassignment surgery, according to the Food and Health Bureau<sup>49</sup>. Both the number of patients diagnosed with gender identity disorder and the number of persons who have undergone partial or full sex reassignment surgery have been increasing in the past five years. However, many more people have undergone sex reassignment surgery overseas, in such places as Taiwan, Thailand, the UK and the USA.

In Hong Kong if a transgender person wishes to legally change their gender from male to female, or from female to male, the Government requires that they undergo genital sex reassignment surgery, which normally results in their sterilization. It is only after such surgery that a person will be issued with a new identity card and passport with their affirmed gender.

Internationally it has been recognised that there are many situations where it may not be appropriate for transgender people to undergo surgery. For example such treatment may not be appropriate for physical or psychological reasons when a person has a pre-existing health

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<sup>47</sup> World Professional Association for Transgender Health (WPATH). (2011). *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (Seventh ed.). Minneapolis: WPATH.

[http://www.wpath.org/uploaded\\_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf](http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf).

<sup>48</sup> *W v Registrar of Marriages* [2013] HKCFA 39 (CFA), at paragraph 15.

<sup>49</sup> Number of gender identity disorder patients being followed up by psychiatric specialist services in the past five years, Food and Health Bureau  
[http://gia.info.gov.hk/general/201512/09/P201512090358\\_0358\\_156380.pdf](http://gia.info.gov.hk/general/201512/09/P201512090358_0358_156380.pdf) (accessed on 9 December 2015)

or mental condition<sup>50</sup>. Surgery for female to male transgender people is also more complex and difficult. Further, some transgender people may not wish to undergo surgery as they feel comfortable in their affirmed gender without genital surgery. For example a person may be comfortable with undergoing hormonal treatment and making physical changes to their appearance.

The requirement for genital surgery and resultant sterilization is not compliant with international and domestic human rights obligations regarding people's right to be free from inhuman and degrading treatment, nor with the rights to privacy, family life and non-discrimination. In its recent concluding observations on the fifth periodic report of China with respect to the Hong Kong Special Administrative Region<sup>51</sup>, the United Nations Committee against Torture stated that the Hong Kong Government should "take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and psychological integrity of transgender and intersex persons, including by removing abusive preconditions for the legal recognition of the gender identity of transgender persons, such as sterilisation".

The United Nations has raised human rights concerns regarding requirements for surgery and sterilization.<sup>52</sup> In February 2013, a United Nations report examined the human rights abuses in health care settings.<sup>53</sup> It highlighted concerns that in many countries there was a requirement for transgender people to undergo surgery or sterilization, and that such treatment was a form of unlawful inhuman or degrading treatment.<sup>54</sup> The report called on all States to outlaw "...forced or coerced sterilization in all circumstances."<sup>55</sup>

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<sup>50</sup> World Professional Association for Transgender Health. (2012). *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (Seventh ed.). Minneapolis: WPATH. <http://www.wpath.org/documents/IJT%20SOC.%20V7.pdf>.

<sup>51</sup> United Nations Committee against Torture concluding observations on the fifth periodic report of China with respect to the Hong Kong Special Administrative Region [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fCHN-HKG%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fCHN-HKG%2fCO%2f5&Lang=en). (accessed 1 February 2015)

<sup>52</sup> Report of the United Nations High Commissioner for Human Rights, 17 November 2011, A/HRC/19/41, Ibid paragraphs 72 and 84(h).

<sup>53</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Human Rights Council, 22<sup>nd</sup> session, A/HRC/22/53, 1 February 2013, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf).

<sup>54</sup> Ibid., paragraph 78.

<sup>55</sup> Ibid., paragraph 88.

### **1.6.5 Transgender people's rights of marriage**

The decision in 2013 by the Court of Final Appeal in *W v Registrar of Marriages*<sup>56</sup> was a particularly significant development regarding transgender people's rights. It concerned the applicant W who was born a man and underwent sex reassignment surgery to become a woman. After the surgery, she wished to marry her male partner but was refused by the Registrar of Marriages. The Court of Final Appeal decided that her right to marry under Article 37 of the Basic Law and Article 19 of the Bill of Rights had been breached and that a transsexual person who has legally changed gender must be allowed to marry in their affirmed gender. The Court further recommended that the Government should develop comprehensive gender recognition legislation to set out the process for changing gender, and other relevant provisions on their rights. The orders of the Court took effect on 17 July 2014.

As a related matter, the Government established in January 2014 an Inter-Departmental Working Group to follow up on the *W v Registrar of Marriages* decision.<sup>57</sup> Its role is to consider legislation and incidental administrative measures that may be required to protect the rights of transsexual persons in all legal contexts and to make such recommendations for reform as may be appropriate. It is due to report in 2016.

### **1.6.6 Intersex people in Hong Kong**

It is not known how many people there are in Hong Kong with intersex status. The government does not compile any statistics on children who are born with intersex status. However the government has confirmed that the Hospital Authority conducts approximately 50 operations on patients under the age of 18 with Disorders of Sex Development ("DSD") annually.<sup>58</sup>

In its most recent concluding observations on the fifth periodic report of China with respect to the Hong Kong Special Administrative Region<sup>59</sup>, the United Nations Committee against

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<sup>56</sup> [2013] HKCFA 39 (CFA).

<sup>57</sup> <http://www.info.gov.hk/gia/general/201401/13/P201401130474.htm>. (accessed on 13 January 2014).

<sup>58</sup> The Hong Kong Special Administrative Region (HKSAR) Government's Response to the List of Issues adopted by the United Nations Committee against Torture in relation to the sixth periodic report of the People's Republic of China, 2015, paragraph 29.1.

<sup>59</sup> United Nations Committee against Torture concluding observations on the fifth periodic report of China with respect to the Hong Kong Special Administrative Region  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fCHN-HK](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fCHN-HK)

Torture has expressed concern that intersex children are subjected to unnecessary and irreversible surgery to determine their sex at an early stage in Hong Kong. Furthermore, the Committee is concerned at the long term physical and psychological suffering caused by such practices. It has stated that the Hong Kong government should guarantee impartial counselling services for all intersex children and their parents, so as to inform them of the consequences of unnecessary and non-urgent surgery and other medical treatment to decide on the sex of the child and the possibility of postponing any decision on such treatment or surgery until the persons concerned can decide by themselves; guarantee that full, free and informed consent is ensured in connection with medical and surgical treatments for intersex persons and that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give full, free and informed consent; and provide adequate redress for the physical and psychological suffering caused by such practices to some intersex persons.

## **Chapter 2 Literature Review**

This Chapter contextualizes the Study by reviewing previous local studies conducted by non-governmental organizations (NGOs), government-commissioned consultants, as well as academics, on discrimination experienced by LGBTI people in Hong Kong, and public attitudes towards legislating against discrimination on the grounds of SOGI and intersex status. It is noteworthy that most previous studies focused on the experiences of homosexual people in Hong Kong, whereas studies on bisexual and transgender people have been relatively rare, and there has been no known previous study about intersex people in Hong Kong.

### ***2.1 Previous studies on discrimination experienced by LGBT people in Hong Kong***

Previous studies on discrimination experienced by LGBT<sup>60</sup> people in the past 10 years were reviewed. Empirical studies, carried out by the NGOs and academics, on discriminatory experiences self-reported by LGBT people appeared limited. Among the few reports, most of them focused on discrimination experienced by LGBT people in the domains of employment and education, while their experiences in other aspects of lives were rarely covered. In terms of targets, most studies focused on discrimination experienced by homosexuals, whereas studies on discrimination experienced by transgender people were almost non-existent. A list of the references can be found in Appendix I.

#### ***2.1.1 Employment***

##### ***2.1.1.1 Prevalence of discrimination***

In a study by the Women Coalition<sup>61</sup> in 2005, 19% of the self-identified lesbians or bisexual

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<sup>60</sup> Where the studies clearly left out the studies of the intersex people, the term “LGBT” (instead of “LGBTI”) is used.

<sup>61</sup> The Women Coalition conducted a research entitled “Hong Kong Women’s Discrimination cases based on sexual orientation: Phase 1” in 2005. Of the 693 respondents surveyed, 98% of them self-identified as lesbian or bisexual women, and 2% self-identified as men. They did a similar survey “Hong Kong Women’s Discrimination cases based on sexual orientation: Phase 2” in 2009, which covered 510 female respondents.



women who participated in the survey reported that they were discriminated against in the workplace on the ground of their sexual orientation. In addition, 10% of them reported having experienced harassment and 5% reported knowing or suspecting that they were fired due to their sexual orientation.

In the “Visible truth: The report of Hong Kong LGBT equality” (2005)<sup>62</sup>, some examples of discrimination in the domain of employment were presented. They included: a lesbian was transferred to another job because of her refusal to wear a dress, a lesbian social worker was fired after “coming out”, and a lesbian was humiliated in the interview session because of her masculine outlook and nickname.

In another study entitled “Employment discrimination based on sexual orientation: A Hong Kong Study” (Lau & Stotzer, 2011)<sup>63</sup>, 29% of the employees reported that they had experienced discrimination in the last five years in employment due to their sexual orientation, regardless of whether they were gay or lesbian. It also showed that younger and less educated employees were more vulnerable to discrimination.

The study conducted by Community Business (2012)<sup>64</sup> found that nearly 60% of the LGBT employees surveyed were not open to colleagues about their sexuality and gender identity. Their major worries were “how other people would think” (50%), “the possibility of being stereotyped” (46%), and “the possibility of losing social connection or personal relationships with colleagues” (42%). Furthermore, 13% of the LGBT employees reported that they had personally experienced negative treatment because of their sexual orientation and/or gender identity.

Discrimination against LGBT employees took many different forms. In the study undertaken

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<sup>62</sup> “Visible truth: The report of Hong Kong LGBT equality” (2005) is a published booklet with the findings of research done by Civil Rights for Sexual Diversities, F’ Union, Hong Kong Christian Institute, and Blessed Minority Christian Fellowship in 2005. They recruited participations from concerned NGOs to conduct in-depth interviews. In the booklet, they published 60 discriminatory cases based on sexual orientation.

<sup>63</sup> “Employment Discrimination Based on Sexual Orientation: A Hong Kong Study” was conducted by Holning Lau and Rebecca L. Stotzer in 2010. The data was collected by conducting an online survey recruiting 792 people who self-reported as belonging to sexual minority using the snowball sampling method.

<sup>64</sup> Community Business Limited commissioned an online survey “Hong Kong LGBT Climate Study 2011-12: Attitudes to and experiences of lesbian, gay, bisexual and transgender employees”. There were two parts in the research: one on public attitudes, and another one on LGBT employees. The LGBT employee online survey recruited 626 self-reported sexual minorities by snowball sampling, which means that recruited individuals were asked to further recruit their contacts who they thought would fit the study criteria.

by Community Business, the respondents reported that they had been treated with less respect (80%) and were verbally insulted or mocked (60%). Apart from these unfriendly attitudes, the LGBT employees also reported that they had experienced having fewer opportunities of training or development (28%), being denied a promotion that they were qualified for (24%), being asked to leave the job (15%) and being denied a job offer (13%). Notably, a number of the LGBT respondents revealed that they had suffered from sexual harassment (11%) and bullying/violence (5%) in the workplace.

In the “Tongzhi<sup>65</sup> and Transgender Equality Report” (2014)<sup>66</sup>, discrimination experienced by LGBT people in the domain of employment was reported. For example, a lesbian teacher was fired after her principal found out her sexual orientation. Among the 72 transgender people interviewed, 49% reported that they had experienced discrimination in terms of denial of employment, contract termination, and harassment and vilification in the working environment. For example, the supervisor of a transgender woman downgraded her performance in the appraisal when she applied to wear female clothing in the workplace.

#### **2.1.1.2 Impact of discriminatory experiences**

According to these studies, the LGBT people who experienced discrimination suffered from emotional stress and psychological outcomes. In the study by Lau & Stotzer (2011), it was found that among the 792 respondents, those who had experienced discrimination indicated reduced life satisfaction and increased internalized homophobia. In the report of Community Business (2012), 85% of the LGBT employees interviewed expressed that a non-inclusive environment had a negative impact upon them, including that they “needed to lie about their personal life at work” (71%), “found it difficult to build up authentic relationship with colleagues” (54%) and “would avoid certain situation/working opportunities” (38%). They felt exhausted, depressed or stressed because they had to pretend to be someone else (53%), wasted energy worrying about the consequences of “coming out” (51%), felt unhappy at work (40%) and had to decide/consider to leave the job (22%).

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<sup>65</sup> “Tongzhi” is a Chinese term which literally means “comrades”. It has been adopted since the 1980s as an identity label by some members of the Chinese-speaking LGBT communities for self-identification.

<sup>66</sup> “Tongzhi and Transgender Equality Report” (2014) is a published work, conducted by Hong Kong Christian Institute, Leslovestudy, OutandVote and Queer Theology Academy (Collaborative) in 2014. The research collected 30 self-reported LGBT discrimination cases and provided suggestions on anti-discrimination Ordinance on the grounds of sexual orientation and gender identity. This project was funded by Equal Opportunities (Sexual Orientation) Funding Scheme of the HKSAR Government.

## **2.1.2 Education**

### **2.1.2.1 Prevalence of discrimination**

In recent studies by the NGOs, discrimination experienced by LGBT students in the area of education, especially in secondary schools, was highly notable. The study “Visible truth: The report of Hong Kong LGBT equality” in 2005 presented mistreatment experienced by LGBT students. For example, a lesbian student was not allowed to repeat Form 5 in the same school because of her sexual orientation, and another gay student was advised by his school social worker to undergo conversion therapy.

In the study “The situation of Tongzhi students in secondary schools” conducted by the Boys’ and Girls’ Club Association (BGCA)<sup>67</sup> in 2009, about 500 self-identified “Tongzhi” secondary school students were surveyed. Nearly 80% of the respondents reported that their classmates knew their sexual orientation and more than half of them (53%) experienced different degrees of discrimination, including being verbally insulted (42%), being socially excluded (40%) and suffering physical injury or sexual harassment (14%).

In the report “Tongzhi and Transgender Equality Report” released in 2014, 62% of the respondents concealed their sexual orientation on campus. A female secondary student with a masculine appearance expressed that she was forced by teachers to “self-isolate” herself from other classmates. Another gay student was bullied by classmates. Although he sought help from teachers and social workers in school, they did nothing to stop the bullying. Instead, he was advised to change his sexual orientation because homosexuality was considered by the school as a sin. Finally, this gay student left the school. In addition, 36% of the transgender respondents faced discrimination in campus. For example a transgender PhD student was once insulted because of his sexual identity by a professor in front of the whole class.

Recently, a study, “Gender and Sexual-Orientation Harassment and Discrimination

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<sup>67</sup> Boys’ and Girls’ Clubs Association of Hong Kong conducted an online survey in 2009, recruiting 492 people self-identified as “tongzhi” who were currently secondary school students or who had left secondary education for no more than three years. The survey was posted on different sexual minorities’ websites and sent invitation emails to invite past participants of “Elements”, —an LGBT-student supporting programme in BGCA.

Experiences of LGBTQ Students in Secondary Schools”<sup>68</sup>, undertaken by The Hong Kong Institute of Education showed that LGBT teenagers suffered discrimination on both individual and institutional levels. An example of the personal level discrimination involved a student’s classmates throwing water at him after he presented his project about homosexuality in Rwanda in a Liberal Studies class. On the institutional level, examples included strict rules on school uniforms which caused difficulties for transgender students. A transgender student was not allowed to wear a male uniform and to have short hair even though a medical certificate that indicated that he was experiencing gender dysphoria was presented.

### ***2.1.2.2 Impact of discriminatory experiences***

LGBT students who had experienced discrimination on campus reported different forms of emotional stress and psychological outcomes. In the BGCA study, 82% of the respondents tried to conceal their sexual orientation. They reported feeling lonely and helpless (52%), anxious (37%), and even contemplating suicide (14%). Moreover, for those who had experienced discrimination, the corresponding proportions of psychological stress appeared elevated at 61%, 54% and 22%, respectively.

Discriminatory experiences might lead to some victims feeling insecure on campus. In the BGCA study, only 12% of the bullied “Tongzhi” students sought help from teachers, whereas 88% of them did nothing because “teachers could offer no way to help” (72%), they were “in fear of teachers’ discriminatory attitudes against sexual minorities” (53%), and “they were worried that teachers would inform parents about their sexual orientation” (52%). The LBGT students reported that insufficient support measures were found in schools, which included schools not providing resources for students to understand their sexual orientation (64%) and the difficulty in finding a teacher or social worker who was trustworthy to talk with (56%). Even worse, 25% of the respondents reported that teachers themselves stigmatized LGBT students by viewing them as being immoral (17%), coming from a broken family or having trauma in childhood (12%), or being promiscuous (9%).

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<sup>68</sup> “Gender and Sexual-Orientation Harassment and Discrimination Experiences of LGBTQ Students in Secondary Schools” (2015) was conducted by the Department of Special Education and Counselling at The Hong Kong Institute of Education (HKIEd), funded by the Equal Opportunities Commission. The research was divided into two parts: (1) in-depth interviews with 42 LGBTQ youth, 13 parents with sexual minority children and seven community service workers with extensive experience in working with sexual minority youth, and (2) a survey that recruited 322 pre-service teachers in eight tertiary education institutions.

### **2.1.3 Other public domains**

The studies discussed above seldom touched on discrimination experienced by LGBT people in the domains of provision of goods and services, or disposal and management of premises.

When findings of the studies undertaken by the Women Coalition in 2005 and 2009 were compared, the number of lesbians and bisexual women being treated unfavourably based on their sexual orientation in the domain of provision of services rose from 10% in 2005 to 23% in 2009. While 3% of the respondents faced denial of services in both 2005 and 2009, 6% of the lesbians and bisexual women surveyed in 2009 reported that they had experienced discrimination in seeking health services.

In the “Visible truth: The report of Hong Kong LGBT equality” (2005), discriminatory cases in the area of service provision were identified: a gay man was mistreated by the salespersons in cosmetic shops, a lesbian was stopped from using a female toilet by the cleaners and a lesbian couple was not allowed to rent a double-bedded room in a hotel. The “Tongzhi and Transgender Equality Report” (2014) also presented similar cases. For example a salesperson refused to sell “lover rings” to a lesbian couple, and again, a gay couple was not provided with services in renting a double-bedded room.

### **2.1.4 Other areas**

From the research “A study on domestic violence of same-sex couples in Hong Kong”<sup>69</sup> conducted in 2006–2007, 33% of the respondents experienced domestic violence. However, 74% of them did not seek help from family members and friends because they perceived that society would not understand issues that same-sex couples were facing. This lack of social support would make them more vulnerable to domestic violence.

### **2.1.5 LGBT people’s views on legislation against discrimination on the ground of SOGI**

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<sup>69</sup> “A study on domestic violence of same-sex couples in Hong Kong” was conducted by Women Coalition, Hong Kong 10% Club, Hong Kong Rainbow and other concerned LGBT NGOs in 2006–2007. A total of 236 respondents (including 219 homosexuals or bisexuals) were recruited through online survey.

Few studies directly asked LGBT people about their views on legislating against discrimination on the ground of sexual orientation. In the study conducted by Community Business (2012), 85% of the respondents from the local LGBT working population agreed that there was a need for greater inclusiveness of people of different sexual orientation and gender identity in Hong Kong, while 59% of them believed that it was the responsibility of the Government to work towards it.

## ***2.2 Public attitudes towards legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status***

This section reviews previous studies on public attitudes towards discrimination experienced by LGBT people in Hong Kong, including those commissioned by the Hong Kong government, as well as those carried out by NGOs and academics. Overall, such studies were relatively limited in number. A list of references is contained in Appendix II.

### ***2.2.1 Public attitudes towards discrimination experienced by LGBT people in general***

The project “Survey on Public Attitudes towards Homosexuals” (MVAHK, 2006)<sup>70</sup> was commissioned by the Home Affairs Bureau. It showed that 30% of the respondents perceived that discrimination against homosexuals was very serious/serious in Hong Kong. However, an elevated proportion (41%) of those who had contact with homosexuals considered the problem very serious/serious.

The “Survey on discrimination against homosexuality and sexual orientation minorities in Hong Kong Society” (Chan, 2006)<sup>71</sup> showed that certain proportions of the respondents considered “the extent to which Hong Kong people discriminate against people who are homosexual” as serious (13%) and average (64%).

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<sup>70</sup> In the “Survey on Public Attitudes towards Homosexuals” (MVAHK, 2006), conducted by MVA Hong Kong Limited, commissioned by the Home Affairs Bureau of the Hong Kong Government, a total of 2,040 Hong Kong residents, including domestic helpers, aged between 18 and 64 were interviewed through residential landline.

<sup>71</sup> In the “Survey on discrimination against homosexuality and sexual orientation minorities in Hong Kong Society” (Chan, 2006), conducted by the Social Sciences Research Centre, The University of Hong Kong, commissioned by the Hong Kong Alliance for Family, a total of 1,120 Cantonese-speaking people aged between 18 and 64 were interviewed through residential landline.

Another study “Survey on Hong Kong Public’s Attitudes Towards Rights of People of Different Sexual Orientations” (Chung, Pang, Lee & Lee, 2013)<sup>72</sup>, commissioned by lawmaker Cyd Ho, revealed that 76% of the respondents agreed with the statement “Hong Kong people in general discriminate against individuals of different sexual orientations” to a large/certain/small extent, while only 17% perceived that individuals of different sexual orientations faced no discrimination at all.

According to the study conducted by the Community Business (2012), about 80% of the working population thought that LGBT individuals had faced discrimination or negative treatment, and that companies in Hong Kong should take proactive steps to ensure that LGBT employees were treated fairly in the workplace.

In the “Equal Opportunities Awareness Survey 2012” (MSA, 2013)<sup>73</sup> commissioned by Equal Opportunities Commission, 43% of the respondents perceived the seriousness of sexual orientation discrimination in the Hong Kong society as very/quite serious, while 49% considered not quite serious/not serious at all.

## ***2.2.2 Public attitudes towards discrimination experienced by LGBT people in different domains***

### ***2.2.2.1 Employment***

Various past studies indicate that public attitudes towards LGBT people in the workplace are generally that they should be treated equally. In the “Survey on sexual orientation 2002”, 93% of the respondents agreed with the statement that “Homosexuals and heterosexuals should have equal rights in terms of work and career” (Lee & Siu, 2002)<sup>74</sup>. In the “Survey on Public Attitudes towards Homosexuals” (MVAHK, 2006), 88% of the interviewed people agreed

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<sup>72</sup> In the “Survey on Hong Kong Public’s Attitudes Towards Rights of People of Different Sexual Orientations” (Chung, Pang, Lee & Lee, 2013), conducted by 18 or above who speak Cantonese were interviewed through residential landline.

<sup>73</sup> In the “Equal Opportunities Awareness Survey 2012” (MSA, 2013), conducted by Mercado Solutions Associates Ltd, commissioned by the Equal Opportunities Commission, 1504 people in Hong Kong aged 15 or above were interviewed through residential landline.

<sup>74</sup> In the “Survey on sexual orientation 2002” (Lee & Siu, 2002), conducted by Lee, W. Y. & Siu, K. W. of Center of Social Policy Studies, Department of Applied Social Sciences, Hong Kong Polytechnic University, commissioned by the Tongzhi Community Joint Meeting (TCJM), 521 Hong Kong citizens aged above 15 were interviewed through residential landline.

that work ability was not related to homosexuality. In another study (Chan, 2006), 84 % of the respondents said they would not “refuse to employ an applicant with suitable qualities because of sexual orientations”.

Nonetheless, some studies indicate that there remain wide variations in people’s attitudes towards different aspects of working with LGBT people. According to the survey conducted by Community Business (2012), 68% of the Hong Kong working population reported that they were willing to work alongside LGBT colleagues. Furthermore, the survey revealed that those who were more willing to work alongside LGBT colleagues tended to be women (74%), younger people (72%), those who had received tertiary education or above (73%) and those who did not have children (72%). In addition, most respondents expressed that it was unacceptable to exclude LGBT employees from social events at work (82%), deny a qualified LGBT employee of a promotion (82%), not to offer a job to an LGBT individual (69%), and deny a customer-facing role to an LGBT individual (60%).

However, the general public sometimes held views against LGBT persons to work as teachers or clergy. This view was supported by a study, in which 28% of the interviewed people thought that it was unacceptable to have homosexual teachers (MVAHK, 2006). In a 2006 study, 46% of the respondents showed disagreement to hiring homosexuals as teachers in kindergartens, primary or secondary schools (Chan, 2006). Further, 66% of the respondents surveyed in another study expressed disagreement to having clergy who were homosexuals (Lee & Siu, 2002).

#### **2.2.2.2 Education**

In one study, 30% of the respondents agreed with the statement that “A homosexual student is discriminated against at school” is very serious/serious (MVAHK, 2006).

#### **2.2.2.3 Disposal and management of premises**

15% of the respondents in one study considered the extent to which “a landlord refuses to let his/her flat to a homosexual” is very serious/serious (MVAHK, 2006).



#### **2.2.2.4 Membership of clubs**

The findings of one survey showed that 13% of the respondents considered the extent to which “A club/association refuses to admit a homosexual as its member” is very serious/serious (MVAHK, 2006).

#### **2.2.3 Public attitudes towards legislation against discrimination on the ground of sexual orientation**

Survey findings show that public attitudes towards legislating against discrimination on the ground of sexual orientation has shown signs of shifting towards greater acceptance.

Survey findings (MVAHK, 2006) showed that 35% of the respondents strongly agreed/agreed with the statement that “the Government *should not* introduce legislation to outlaw discrimination on the ground of sexual orientation at this stage”, while 34% stood neutral and 29% strongly disagreed/disagreed. For respondents with frequent contact with homosexuals, the corresponding percentages were different – 29%, 23% and 46%, respectively.

More recent studies show changing attitudes. A study (Chung, Pang, Lee & Lee, 2013) showed that 64% of the general public agreed that there should be legislation in Hong Kong to protect individuals with different sexual orientations against discrimination. Meanwhile, about 60% of the respondents in a 2014 survey thought that it was very/quite important to introduce the legislation against discrimination on the ground of sexual orientation (Loper, Lau & Lau, 2014).

##### **2.2.3.1 Public views on possible outcomes of legislation**

Most previous surveys have shown that many members of the public do not have negative views on the possible outcomes of legislating against discrimination on the ground of sexual orientation. In a 2006 study, 62% of the respondents in a study strongly disagreed/disagreed with the statement that “If the Government introduces legislation to outlaw discrimination on the ground of sexual orientation, homosexual behaviour would be encouraged”, and only 28% of the respondents strongly agreed/agreed with the statement (MVAHK, 2006). For respondents with frequent contact with homosexuals, the corresponding percentages of

respondents were 75% and 19%, respectively.

Furthermore, the same survey (MVAHK, 2006) showed that 48% of the respondents strongly agreed/agreed that “If the Government introduces legislation to outlaw discrimination on the ground of sexual orientation, the community of Hong Kong would become more harmonious and accommodating”, while 10% stood neutral and 39% strongly disagreed/disagreed. For respondents with frequent contact with homosexuals, corresponding percentages were 56%, 7% and 35%, respectively.

Nevertheless, there remains some who showed concern about possible outcomes of legislation. The study conducted by Chan (2006) indicated that 57% of the general public agreed with the statement “anti-discrimination legislation will promote homosexual behaviours in the public”, while 39% disagreed. Moreover, 74% of the respondents considered that anti-discrimination legislation would promote legislation of same-sex marriage, while 20% did not think so.

#### ***2.2.4 Other areas of concern***

##### ***2.2.4.1 Negative perceptions towards LGBTI people in general***

Previous studies suggest that negative perceptions about LGBTI people were prevalent.

According to one study, about 39% of the respondents in a study strongly agreed/agreed that “homosexuality contradicts the morals of the community” (MVAHK, 2006).

Previous studies indicate that there is a prevalent view that homosexuality is related to psychological illness. 48% of the respondents in a study strongly agreed/agreed that “Homosexuality is a psychological disorder, which needs therapies” (Lee & Siu, 2002). Furthermore, 42% of the respondents in another study strongly disagreed/disagreed with the statement that “Homosexuals are psychologically normal people” (MVAHK, 2006). About 63% of the general public reported that they did not believe “homosexual-related behaviours are normal” in yet another study (Chan, 2006).

However, such views may be rapidly changing. The Community Business study (2012) found that only 3% of the respondents in that study believed that being LGBT is due to psychological issues.

Around 28% of the general public strongly agreed/agreed that “Homosexuals are more promiscuous than heterosexuals” (Lee & Siu, 2002). Similarly, 29% of the respondents strongly agreed/agreed that “promiscuity is related to homosexuality” (MVAHK, 2006).

#### **2.2.4.2 Public attitudes towards benefits for same-sex couples**

Results of some previous studies suggest that public attitudes toward certain benefits and rights for same-sex couples is generally accepting. In the study conducted by Loper, Lau & Lau (2014)<sup>75</sup>, certain proportions of the general public agreed/somewhat agreed with the following statements:

*If someone in a long-term same-sex relationship is struck and killed by a reckless car driver, his or her partner should be permitted to sue and receive compensation from the reckless driver. (66%)*

*If someone in a same-sex relationship is hospitalized, his or her same-sex partner should be permitted to visit during hospital visitation hours that are for family members. (65%)*

*If a same-sex couple wants to rent a flat together, but the landlord wants to reject them because they are a same-sex couple, they should be allowed the rental. (61%)*

*If someone in a long-term same-sex relationship passes away, his or her partner should inherit some of the property that the deceased partner leaves behind. (55%)*

Overall, 36% of the general public considered that same-sex couples should have all the rights that male-female couples had, whereas 38% were in support of some rights and 26% thought that none of the rights should be provided for them.

In the CSPA study<sup>76</sup> (2014), 28% of the respondents strongly agreed/agreed that “The

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<sup>75</sup> In the study “Public Attitudes towards Gay and Lesbians and towards Sexual Orientation Anti-Discrimination Legislation” conducted by Kelley Loper, Holning Lau and Charles Lau in 2014, a total of 410 Hong Kong residents aged 18 and over were interviewed through residential landline.

<sup>76</sup> This study was conducted by the Social Policy Centre, Department of Applied Social Science, Hong Kong

Government should legislate that employers need to provide benefits to employees' spouses as well as same-sex cohabited partners". Another survey (Chan, 2006) revealed that 48% of the general public supported granting the rights for lesbians or gay men to adopt children while 47% opposed it.

#### ***2.2.4.3 Public attitudes towards institutionalization of same-sex relationships in the form marriage or other similar unions***

A sizeable proportion of the respondents in previous surveys showed some acceptance for the institutionalization of same-sex relationships in the form of marriage or other similar unions. In the study undertaken by Chan (2006), 39% of the general public supported legislation of same-sex marriage. In another study (Chung, Pang, Lee & Lee, 2013), 33% of the general public supported/somewhat supported the legislation of same-sex marriage or registered partnership. In the study conducted by Loper, Lau & Lau (2014), 39% of the respondents completely agreed/somewhat agreed that "same-sex couples should be permitted to marry".

### ***2.3 Limitations of previous studies***

In view of few studies available, caution should be taken in analysing the information. First, public perception is "likely to be poor barometer for the seriousness of sexual orientation discrimination in Hong Kong" because most respondents had no contact with LGBT people (MVAHK, 2006; Community Business, 2012) and may not recognize the hardship they were facing.

Second, since most studies did not ask about sexual orientation of individual respondents, responses of sexual orientation minorities could not be extracted for analysis separately. As highlighted by Lau & Stotzer (2011), the researchers remarked that "the Government's findings potentially obscure the actual situation in Hong Kong".

Third, it had not been fully understood that LGBT people are not legally protected from discrimination on the grounds of SOGI. Only about a half of the respondents knew that there was no existing ordinance to protect individuals of different sexual orientation from being

discriminated against (Chung, Pang, Lee & Lee, 2013; MSA, 2013).

## **2.4 Summary**

The review of previous studies as presented in this Chapter indicate that LGBTI people in Hong Kong have consistently reported experiencing discrimination, with such experiences being particularly notable in the domains of education and employment. On the other hand, although public perceptions of LGBTI people are still laden with biases and stereotypes, survey findings show that public attitudes towards legislating against discrimination on the ground of sexual orientation has shown signs of shifting towards greater acceptance.

## Chapter 3 Research Methods

The Study is conceptualized into three areas of consideration: (1) The need for legislation, (2) public awareness, attitudes, knowledge and understanding and (3) Legislations protecting LGBTI people from discrimination in other jurisdictions. Various research methods, including quantitative and qualitative approaches, are used in the research to address these three areas. Findings from the research methods will be elaborated in the respective chapters. For quality control, every focus group or individual interview was conducted by an experienced facilitator from the research team.

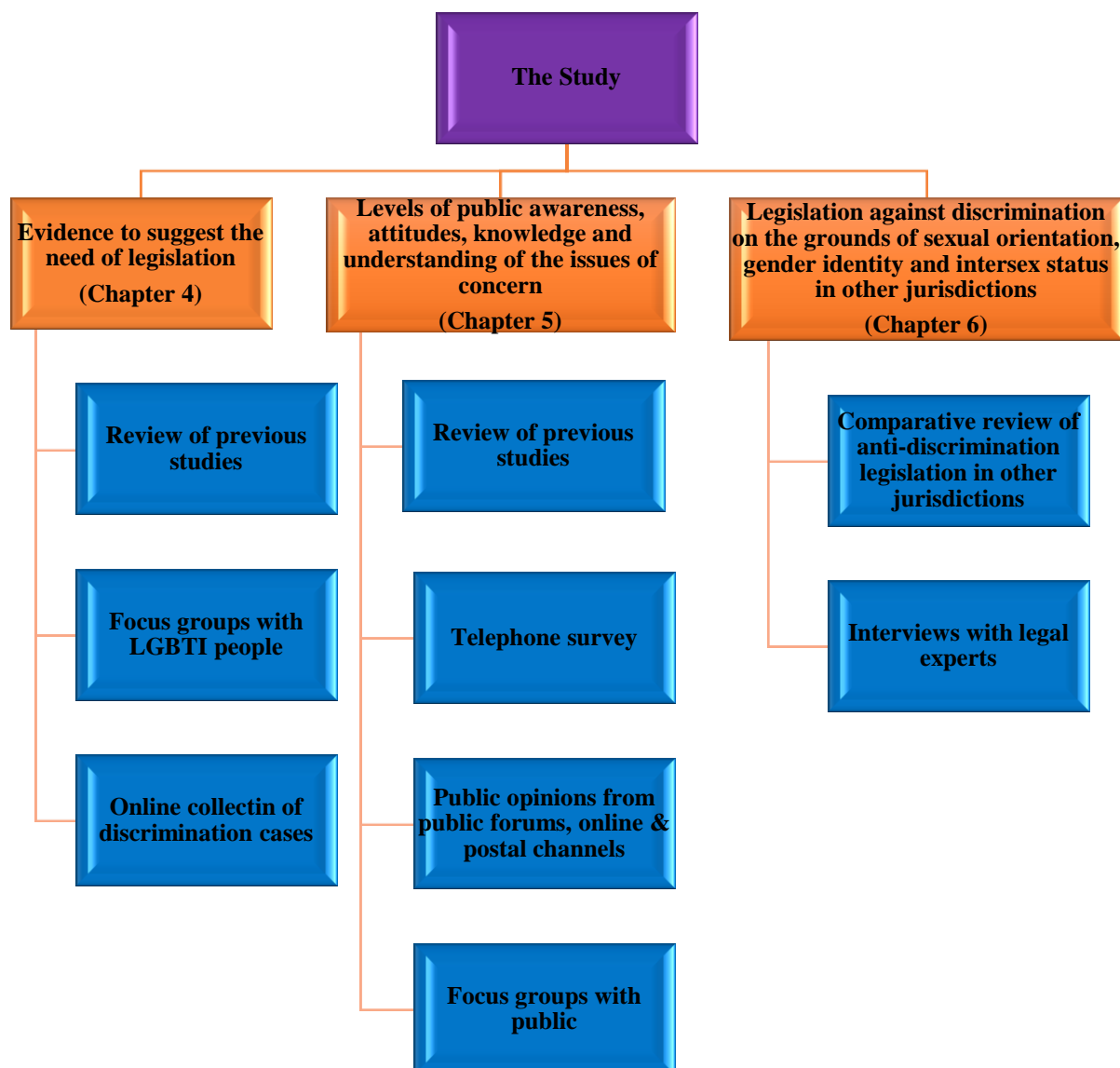


Figure 3-1: An overview of research methods in this Study

### **3.1 *Soliciting views from LGBTI people***

#### **3.1.1 *Focus groups and qualitative interviews with LGBTI people***

A small group of individuals who self-identified as LGBTI were brought together in focus groups to discuss specified topics under the guidance of an experienced facilitator. To facilitate trust and confidence between the respondents and the facilitator, recruitment was undertaken through NGOs working with LGBTI people. Such focus groups have the advantage of encouraging participation from those who are reluctant to be interviewed on their own, such as those who would feel intimidated by the formality and isolation of one-on-one interviews. However, it also has the disadvantage of excluding those who would prefer not to discuss their experiences in a group setting.

A total of 14 LGBTI focus groups were conducted from July 2014 to March 2015. The list of NGOs through which recruitment was conducted can be found in Appendix III. These focus groups were stratified according to different themes including education, social services, employment and religion. Individual interviews were also undertaken in order to provide supplementary data.

Transgender and intersex people face particular and sometimes unique issues relating to gender identity or intersex status. Two focus groups for transgender people were conducted, with one group specifically for those who were sex workers. Moreover, only one interview with an intersex activist was conducted because other intersex people declined participation, citing fear of revealing their identity and suffering further victimization if their experiences of discrimination were exposed.

The research team planned to conduct a focus group for “post-gay” individuals<sup>77</sup> as members of the general public. However, the Post Gay Alliance expressed explicitly that they wished to be classified as one of the LGBTI focus groups.

The focus groups were conducted at university campuses and NGOs’ offices. Each focus group lasted for about 1.5 hours. The participants’ views were solicited in relation to their

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<sup>77</sup> They are a specific group of people who claim that they successfully sought treatment to either change their sexual orientation from being homosexual to heterosexual, or to remain homosexual but are able to not practice same-sex sexual behaviour.

experiences of being discriminated against, views on legislating against discrimination on the grounds of SOGI and intersex status, possible practicable exemptions and justifications for such exemptions, and strategies of rolling out the legislation. The discussion guidelines are shown in Appendix IV.

### ***3.1.2 Online reporting of discrimination cases***

In order to provide alternative channels for individuals to share their self-reported discriminatory experiences, online collection of discrimination cases was provided for individuals to report their cases anonymously. A total of 19 cases were collected from June to November 2014. If the cases contained some information deemed important, the individuals reporting the cases were invited for individual interviews.

## ***3.2 Soliciting views from the general public***

### ***3.2.1 Telephone survey***

A territory-wide representative telephone survey covering all Chinese- and English-speaking household residents aged 18 or above (excluding those who are not ordinarily resident in Hong Kong) was conducted. For each sampled household, the last-birthday selection method was adopted to select a target respondent for the interview. The survey was conducted during the period from 2 January to 5 February 2015 from 18:00 to 22:00 Monday-Friday. Data collected from the survey was weighted to align with the age and sex distribution of the population in late-2014 (issued by the Census & Statistics Department). The overall response rate of the survey was 63.2% (for details, please see Appendix V)

### ***3.2.2 Focus groups with the public and groups with strong opinions***

Ten focus groups were held for the general public, stratified according to the characteristics of age, education, parental status, religion and languages. Such criteria of stratification was based on a literature review of previous studies which shows that age, education, parental status and religion are important socio-economic variables that influence the views of LGBTI people and related protections. Putonghua and English language were included to provide equal opportunities for most people living in Hong Kong to express their opinions. Recruitment was conducted through promotion at the public forums, and respective websites



of the EOC and Gender Research Centre. The focus groups were conducted at university campuses. Each focus group lasted for about 1.5 hours.

In addition, three focus groups were held for concern groups with strong opinions: a strong opinion parental group, a strong opinion religious group, and an LGBTI parental group. For strong opinion focus groups, representatives of organizations were recruited by invitations with phone calls/emails. For strong opinion LGBT parental focus group, participants were recruited via NGO's referrals. A total of 88 participants were interviewed from October to December 2014. Their views were solicited in relation to: (1) understandings and views on LGBTI people and related discrimination scenarios, (2) views on legislation, its coverage and exemptions, (3) views on positive and negative effects of legislating against discrimination on the grounds of SOGI and intersex status. The discussion guidelines are included in Appendix VI.

### **3.2.3 Public forums**

For the purposes of education, exchange of views and recruitment of focus group participants, three public forums were conducted on Hong Kong Island, in Kowloon and New Territories, respectively. The forums were held in fully accessible venues, provided with simultaneous interpretation from Chinese to English and vice versa. Sign language and childcare services were made available although no request was actually received.

For each forum, one-quarter of the venue's total capacity was reserved for members of NGOs serving LGBTI people, one-quarter of the seats reserved for members of concern groups, and half of the seats allocated to the public through online registration. In the cases of the First and Second public forums for which the number of registrants exceeded the capacity of the venue, balloting was used to allocate the seats. Nearly 600 people from the general public attended the three forums. The participants were encouraged to raise questions either orally or by written submission. The order and priority of questions were determined by balloting. Written public opinions were also collected on site. A total of 229 oral and written enquiries (150) and written opinions (79) were collected, and they were coded for analysis.

The video-recorded speeches delivered by the guest speakers and audio-recorded

questions-and-answers have been posted on the Study website<sup>78</sup>. The forums were well covered by the media resulting in over 10 news items. The details of the public forums are shown in Appendix VII.

### ***3.2.4 Public opinions collected via online or postal channels***

A total of 1,694 written opinions were submitted online, by postage or by hand to the Gender Research Centre from June to November, 2014. They were opinions expressed both in opposition and support for legislating against discrimination on the grounds of SOGI and intersex status. They include letters from both the opposing and the supporting sides. Fourteen submissions were not taken into account, since they were dated before the notified date for receiving submissions of 1 April 2014, or because their contents were not relevant to the Study. Another five NGO reports and organizational statements were submitted either online or by postal/hand delivery to the Gender Research Centre.

### ***3.3 Interviews with legal experts***

In-depth semi-structured interviews with 11 legal experts were conducted (see Appendix VIII). These legal experts included human rights advocates, legal academics, legal practitioners (including a Barrister and a former High Court Judge) from a range of jurisdictions including Australia, Hong Kong, the Netherlands, the United Kingdom (UK) and the United States of America (USA). Given the various cultural, legal, political and social contexts involved, the interviews explored the legal framework in respective jurisdictions, including the scope of existing anti-discrimination laws on SOGI and intersex status as well as related exemptions.

### ***3.4 Research ethics***

This Study follows the procedures of “Survey and Behavioural Research Ethics” of the Chinese University of Hong Kong.

All the focus group participants, helpers and transcribers were requested to sign a confidential agreement to ensure the confidentiality of the participants. All focus groups and interviews

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<sup>78</sup> Refer to [www.cuhk.edu.hk/research/sogistudy](http://www.cuhk.edu.hk/research/sogistudy).

were audio-recorded and transcribed verbatim. These textual documents provided the basis for coding and thematic analyses.

### ***3.5 Advantages and limitations of different research methods***

Quantitative methods such as the telephone survey are helpful at generating an overall pattern of a social phenomenon. Since a random sampling is employed, the findings can be generalized to the Hong Kong population about their views towards the concerned issues. The respondents' views can also be analysed with respect to their demographic characteristics so that certain statistical relationships can be assessed. However, quantitative methods are inflexible in being unable to understand underlying reasons and assumptions behind the respondents' answers.

On the other hand, qualitative research methods are useful for understanding the details and nuances behind why a certain view is held.

It is also important to reiterate that there are limitations to both quantitative and qualitative methods of public opinion on the topic. In particular, focus groups usually only attract those who hold stronger opinions on the topic and thus the views of those who were especially vocal on the topic may not be representative of the general public.

## **Chapter 4 Discrimination self-reported by LGBTI people in Hong Kong and LGBTI people's views on legislation**

The following analysis presented in this Chapter is based on the views solicited from LGBTI people relation to: (1) their self-reported experiences of discrimination in Hong Kong, and (2) their views on legislating against discrimination on the grounds of SOGI and intersex status, through focus groups, qualitative interviews and online discrimination cases collection.

### ***4.1 Background***

There are barriers to reaching LGBTI people in Hong Kong. Due to social stigma, many of them remain reluctant to disclose their sexual orientation, gender identity or intersex status. Therefore many of them were hesitant to participate in the research because of the worry that their sexual orientation, gender identity or intersex status may be revealed, despite repeated reassurances from the research team over confidentiality and anonymity. This is particularly the case for transgender and intersex people, because their number in Hong Kong is relatively small and they are thus concerned that they can be identified easily.

It has been extremely difficult to locate intersex people for interviews. In fact, only one intersex person has been interviewed in this Study. While the individual and her contacts with intersex people cannot be taken as a definitive source for understanding intersex people in Hong Kong, it is an important first step in understanding the difficulties intersex people have encountered in Hong Kong.

LGBTI people in general also showed considerable resistance to discussing experiences of discrimination, as some of them are worried about whether discussion of such experiences may lead to further victimization. However, through extensive engagements with LGBTI organizations and support groups, this Study has successfully engaged LGBTI people from a variety of backgrounds and different walks of life in Hong Kong. They came from diverse socioeconomic backgrounds including those who are university students, those who work in the lower economic strata as well as finance professionals from multinational corporations, those who are born locally as well as those who are from overseas and those who are without disabilities as well as those who live with physical disabilities such as hearing impairments.

The Study has also engaged with those who may be at additional risks of being discriminated against, such as gay men who are living with human immunodeficiency virus (HIV), and LGBTI people who are foreign domestic helpers (FDHs) or sex workers.

Since it was respondents' self-reporting, it is noteworthy that in this Chapter incidents were subjectively perceived by LGBTI people as discriminatory experiences and investigation of their validity was not been undertaken. Therefore, what they considered as "discrimination" might not necessarily in all cases be consistent with the legal definitions under the existing anti-discrimination Ordinances in Hong Kong.

#### ***4.1.1 Survey administered in the focus groups***

A brief questionnaire was administered to the focus groups in order to assess quantitatively the extent of discrimination reported by LGBTI people in Hong Kong. Given the small sample size, the statistics cannot be generalized to represent the entire LGBTI population in Hong Kong. Rather, the statistics can serve as an indication of the extent of discrimination that LGBTI people experience in Hong Kong.

Of the 61 participants in the LGBTI focus groups, 48% self-identified as male, 38% as female, 12% as transgender and 3% as others. In respect of sexual orientation, 7% of participants self-identified as heterosexual, 61% as homosexual, 20% as bisexual, and 1.6% as not sure and 11.5% as others. The mean age of these participants was 31.

Of the 43 respondents who completed the questionnaire, 100% opined that discrimination experienced by LGBTI people was either common or very common in Hong Kong, and 93% thought that Hong Kong is not an LGBTI-friendly place. Only 5% said that Hong Kong was LGBTI-neutral, and a mere 2% thought Hong Kong was LGBTI-friendly.

In the past two years, 88% had experienced discrimination because of being LGBTI, and 44% considered that they often/very often encountered discrimination. When the 43 respondents were asked if they had ever encountered discrimination in their lifetime, the corresponding percentages were elevated to 98% and 65% respectively. Only 2% revealed that they had never experienced discrimination on the grounds of sexual orientation, gender identity or intersex status.

In the past two years, 32%, 37%, 50% and 21% of the respondents reported as having experienced discrimination in the domains of employment, education, service provision and the disposal and management of premises respectively.

30% of the respondents had attempted suicide in their lifetime. Alarming, in the past two years 30% contemplated suicide, whereas 7% had attempted suicide.

## ***4.2 Experiences of discrimination self-reported by LGBTI people in different domains***

An analysis of discrimination on the grounds of SOGI self-reported by LGBT people was categorized into four domains: employment, education, provision of goods and services, and disposal and management of premises.

### ***4.2.1 Employment***

LGBT people reported that they experienced discrimination, both at the individual/personal level and the institutional/policy level, throughout the employment cycle from job-seeking, working to dismissal stages. The sources of discrimination included employers, human resource (HR) personnel, colleagues and clients/service users/students in school.

Discrimination at a personal level relates to situation where conduct is directed at the person because of their sexual orientation or gender identity. Commonly this can take the form of direct discrimination or harassment. Discrimination against LGBT individuals in the workplace can also be at the policy level and become institutionalized. Policies and rules for example are often heteronormative. In other words, such policy frameworks assume that heterosexuality is the norm and the needs of LGBT people are not a considered factor in policy formulation. Potentially this can amount to indirect discrimination. These will be explained below.

#### **4.2.1.1 Occurrence in different phases of the employment cycle**

##### ***Job interview***

At the job-seeking stage, some LGBT people faced discrimination when they were being interviewed by their prospective employers or HR personnel. This was particularly common for lesbians who had a more masculine appearance and when transgender people presented ID cards that were inconsistent with their gender identity. In one case a lesbian was invited for a second interview but felt that she was rejected after she was asked directly about her sexual orientation. In another case, a lesbian found out later that she was not given a job because the company disliked lesbians and considered them as “trouble-makers”.

When there were perceived discrepancies between individuals’ gender appearance and their sex as shown on their Hong Kong Identity Card (ID card), there were instances of discriminatory questions being asked of LGBT people before or during job interviews. A transgender respondent reported being rejected because the interviewers questioned her appearance as inconsistent with her sex as recorded on the identity card, even though she opined that she was qualified for the job.

*“In the resumé, I wrote down my name, gender, and some basic information. But when they saw me, holding my ID card, I could see their facial expression grew really suspicious.”*

In some instances, LGBT people were offered jobs, subject to compliance with differential requirements. For example in one case a lesbian with a more masculine appearance was offered a job on the condition that she had to wear a skirt at work.

##### ***Working stage***

Some LGBT people reported that they were treated unfavourably at work. The most serious cases resulted in immediate dismissal. Others involved differential treatments, sexual harassment and unfriendly attitudes from employers and colleagues. This will be further discussed below.

## **Dismissal**

A number of LGBT people reported being dismissed from work due to their sexual orientation or gender identity. A few transgender persons reported immediate dismissal when their transgender identity was made known to their employers. One transgender female reported that she was fired by the school principal, who claimed to be a Catholic.

*“The new principal learnt about my transgender status from my other colleagues. He arranged a meeting with me and after some discussions, he expressed openly, ‘I am a Catholic. That’s why I can’t accept your gender identity.’ ... [The dismissal] was not about my working ability, but about my transgender identity ... The principal wanted to end my contract immediately. Actually my contract was permanent. But finally I thought it was meaningless for me to stay, so I left and found another job.”*

Another case reported was the immediate dismissal from a job after an employer noted a transgender female’s gender appearance. The transgender female visited the company’s headquarters in her dress and was fired immediately after that. Without any evidence, she was accused of being a “potentially a sex offender”. Although the company paid her full compensation for the dismissal, the transgender person lost her job.

## **Threat of dismissal**

There were also instances where once LGBT respondents’ sexual orientation or gender identity was known by their employers they were threatened with dismissal. For example during confidential discussions with the human resources department in her organization, a lesbian employee disclosed her sexual orientation. The human resources person later breached that confidentiality. She told the lesbian employee that she had discussed her sexual orientation with other persons, and that the lesbian employee should keep her sexual orientation “low profile”. The lesbian employee asked the personnel in question, “Would I lose my job?” and the reply from the personnel was, “We can’t fire you for that, but we will find another reason.”



#### **4.2.1.2 *Differential job conditions/requirements***

Some LGBT employees felt they were given differential job conditions/requirements due to their sexual orientation or gender identity. In one case, a lesbian employee ran into her supervisor when she was walking with her girlfriend down the street. She was ordered by the supervisor to dress up femininely and wear a skirt to work. But this requirement did not apply to other female staff at work. She refused and resigned. In another case, a transgender employee was left idle and given few tasks at work after her transgender identity was disclosed.

The use of toilets has been a major problem confronted by transgender people at work. In one case, a transgender person was advised to undergo a “real-life test” by her doctor, in which she had to live as a woman, including dressing in female attire for a prolonged period of time to ensure that she could endure the reaction and responses from people she interacted with for her new gender in her everyday life to prepare for her sex re-assignment surgery. She notified her supervisors about her medical condition. Her company did not allow her to use the female toilet and required her to use the male toilet only, even though she had presented the medical letter that explained her condition. Finally she was fired shortly afterwards without any reference to her job performance.

#### **4.2.1.3 *Unfriendly attitudes from employers, colleagues and customers***

Unfriendly attitudes in the workplace were reported by LGBT people, especially by lesbians who appeared with a more masculine appearance. In one case, a lesbian with a more masculine appearance was verbally disparaged by her employer who told her colleagues that she was “abnormal”, being neither male nor female, and that they should be careful and stay away from her. The atmosphere at work turned sour and in the end the lesbian left the company.

LGBT employees also reported suffering unfriendly attitudes, verbal attacks and social exclusion from their colleagues. Anti-gay jokes and teasing of LGBT colleagues were common in the workplace. One gay man said that he heard a colleague saying to a HR staff, “Will you stop hiring so many effeminate men?” These unfriendly attitudes made LGBT

respondents feel uncomfortable and unsafe. One lesbian's colleague, after finding out the lesbian had a girlfriend, continually teased her and asked why she had become a lesbian. Another colleague asked her to wear a dress and act like a lady. Yet another colleague asked if it was because there were no men willing to date her. Such gossip and verbal insults made LGBT people feel uncomfortable and unwelcome at work.

Some LGBT employees faced unfriendly attitudes and verbal attacks from customers. It was reported that one customer used such words as, "Go to hell, you faggot!" to insult the service provider because his appearance seemed effeminate.

Some customers lodged complaints to companies based on their employees' intersex status. It was reported that a customer complained about an intersex employee for her use of the female toilet, because the customer thought that the intersex employee was neither male nor female. The intersex person finally resigned because she did not want to put her employer in a dilemma.

#### ***4.2.1.4 Sexual harassment***

LGBT people reported that they faced sexual harassment at work. In one extreme case, after a client complained about a transgender female employee, her supervisor started to treat her unfavourably by asking what had happened to her breasts and asked her to make them smaller. Later she was transferred to another department and her supervisor told her not to come back again.

#### ***4.2.1.5 Fringe benefits***

LGBT people faced difficulties in getting their same-sex partner covered in terms of partnership benefits and insurance. In most companies, partnership benefits would not cover same-sex relationships. A minority of companies did allow LGBT people to name their same-sex partner to be the beneficiary of an insurance policy, but many LGBT employees were still doubtful about whether such an arrangement would be recognized as valid by their insurance company.

In one case, a gay university teacher complained about the inapplicability of fringe benefits to

his partner. In another case, a lesbian was refused by the company to register her partner as the beneficiary of her Mandatory Provident Fund Scheme. Some respondents feel that the absence of the provision of fringe benefits to same-sex partners prevents some companies from recruiting the right talent to work in Hong Kong.

For some organizations, healthcare insurance covers both the employees and their family members. However, as reported by a number of lesbian and gay employees, either their employer or the insurance company claimed that their same-sex partner could not be covered under the insurance scheme. A gay employee reported that he needed to persuade his employer to include his same-sex partner in the healthcare scheme. Even though his employer was willing to offer the healthcare benefits, the matter was kept secret as if it was inappropriate to disclose it to anyone else in or outside the organisation.

The Hong Kong government has issued the “Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation”. This is intended to promote equality and eliminate discrimination in employment for both the public and private sectors. The legally non-binding Code specifically refers to the fact that employers should provide benefits to employees on an equal basis, irrespective of employees’ sexual orientation.<sup>79</sup> Despite this, fringe benefits are not provided for the same-sex partners of civil servants. A gay civil servant reported that although he is married to his same-sex partner overseas, the Government rejected his request to extend his fringe benefits to cover his partner. The gay civil servant perceived that ‘as the largest employer in Hong Kong, the Government has apparently made a poor demonstration by not applying the Code of Practice it developed’.

#### **4.2.1.6     *Sector specific working environments***

##### ***Teachers***

A number of LGBT teachers reported suffering particularly negative treatments in schools. Some respondents expressed that schools monitored LGBT teachers’ behaviours strictly. One gay teacher reported that his school asked all the teachers to sign a pledge against some “immoral behaviours”, including anal sex. The gay teacher felt uncomfortable because he felt

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<sup>79</sup> See paragraph 5.1 of the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation, [http://www.cmab.gov.hk/en/issues/full\\_code\\_of\\_practice.htm](http://www.cmab.gov.hk/en/issues/full_code_of_practice.htm).

that the pledge intrinsically associated gay men with anal sex and other immoral behaviours, and eventually left the school.

Most LGBT teachers in the Study reported feeling the need to conceal their sexual identity in order to keep their job because of the negative stigma attached to LGBT people and the misconception in society that they would be bad role models for their students. Some LGBT teachers even made great efforts to pretend they were heterosexual and that they led a happy family life.

An academic who was also an LGBT activist felt the need to “clean up” her resume in order to avoid negative stereotyping in the mindset of the senior management board. As a result, a major part of her academic achievements regarding LGBT studies as well as community engagement was not recorded, and would not be recognized for consideration of promotion.

Unfriendly attitudes from students in the form of anti-gay jokes and badmouthing of LGBT teachers were also reported. The LGBT teachers faced great pressure working in a hostile environment and some of them eventually resigned.

Similarly, academics who were studying LGBT issues also faced difficulties. It was reported that sometimes their work was regarded as “too progressive” and “too high profile”. In one case, the department head of a tertiary education institution questioned whether a forum on LGBT issues was academic or activist in nature. The academic was asked not to link up the department’s name with the forum because of the institution’s religious background.

It was also reported that an academic was denied funding for a conference because the conference was about an LGBT film festival. His supervisor told him that the senior management did not think research on such a subject was academic and asked the department to fund the academic concerned only if they thought it was worthwhile. The academic felt unsupported and that the situation was unfair.

### ***Foreign domestic helpers***

There are more than 320,000 foreign domestic helpers (FDHs) in Hong Kong<sup>80</sup>, constituting an important proportion of Hong Kong's population. With the intersecting influences of four marginalized statuses – of being an ethnic minority, a woman (given that the foreign domestic helpers are predominately women), a low-salaried worker and a sexual minority – FDHs who self-identified as LGBT appeared particularly vulnerable to discrimination.

In the recruitment stage, some employers intentionally avoided FDHs whose gender appearance appeared to deviate from the norm:

*“If the employer needs to hire a FDH to serve a little girl, he/she would be very concerned if you are a lesbian... The employer will choose someone who appears beautiful and feminine.”*

In the working stage, FDHs generally avoided talking about their sexual orientation. But due to frequent contact in the residence, their sexual orientation might eventually be discovered by their employers. In one case, when an employer discovered that a lesbian FDH had an intimate girlfriend, her contract was immediately terminated. In another case, the lesbian FDH was hired to serve an elderly man. During the probationary period, the FDH disclosed her sexual orientation, and the elderly man responded negatively. Although it was not explicitly stated, the FDH suspected that her sexual orientation was one of the reasons why her contract was not secured after the probation period. Once their contract was terminated, FDHs found it difficult to secure new employment, given that under existing laws they only had two weeks to do so.

In some extreme cases, sexual harassment was reported. A lesbian FDH complained that her male employer only wore underwear at home and tried to kiss her, after finding out that she was a lesbian. He further harassed her by saying,

*“If you have not flirted with a man, how can you know that you are a lesbian? Maybe men would be better for you to flirt with!”*

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<sup>80</sup> A population of 320,988 foreign domestic helpers was identified according to the statistics of the Immigration Department in 2013.

Given power differentials in such situations, the FDHs mostly kept silent about their experiences. Only a few of them reported the cases to their agencies, who blamed them or even laughed at them for being “so stupid” to disclose their sexual orientation to the employers.

### ***Entertainment industry***

This Study also approached a few LGBT people who work in the entertainment industry, a sector that has been assumed by many people to be LGBT-friendly.

The respondents opined that the assumption that the entertainment industry is necessarily more LGBT-friendly is neither fair nor empirically grounded. It was pointed out by the LGBT respondents that their experiences in the entertainment industry were highly dependent on the company they worked in – and like any other industry, some companies were more LGBT friendly and others were not. They also argued that although a few of them had come out, the fact that so few of them had means that the road to travel is not easy and the risks are perceived by many as still very high.

It was also reported that after LGBT artists came out, some of their clients no longer considered them “suitable” to be the spokesperson of their brands, and the LGBT artists lost the jobs.

#### ***4.2.1.7 Impact of discrimination***

In light of the difficulties encountered, most LGBT people chose to conceal their sexual orientation or gender identity in the workplace in order to find or keep a job. These LGBT employees had to be always on guard about sharing information about themselves. Some of them isolated themselves socially from relating with their employers and colleagues. Some avoided applying for jobs in Christian organizations that were perceived to be hostile to LGBT people. If the organization or the job involved was working with children, the LGBT employees were particularly mindful of not disclosing their LGBT-related work experiences so as to conceal their sexual orientation or gender identity.

*“I am working in a music centre as a part-time tutor. I am worried that some parents*

*may have problems with same-sex sexual orientation. That's why I did not mention my sexual orientation in the job interview."*

Often LGBT individuals resigned immediately if they felt the threat of their sexual orientation or gender identity being exposed to other people in their career field. They were worried that once exposed, their career could be ruined. That appeared particularly true for those who worked in religious or educational institutions.

In a working environment that is hostile to LGBTI people, the career prospects of LGBTI employees were hampered, which also meant a substantial loss of valuable human resources and talents for society.

#### **4.2.2        *Education***

Discrimination in the area of education was widely reported by LGBT people in this Study. This was especially the case for those who had come out of the closet, or those whose gender expression deviated from the "social norms" regarding gender. The LGBT respondents reported that they had experienced discrimination from their classmates and peers, but also from their teachers, principals and counsellors.

##### **4.2.2.1   *Sources and types of discrimination***

##### ***Classmates and peers***

Many LGBTI people reported facing unfriendly attitudes and verbal attacks in the form of name-calling and teasing, such as "neither male nor female", while gay men were called "faggot", "pervert", and "butt ghost".

Some of such negative comments towards LGBT students were turned into actions in the forms of social exclusion and bullying. Some LGBT students revealed that they were isolated from social activities and academic group projects. A gay student reported:

*"My homework was stolen and it was hidden somewhere in school. As a result, my homework could not be handed in to my teacher on time. Sometimes, they scrawled on*

*my desk, or wrote my name on the blackboard and said that I was a freak.”*

*“When I was studying in Primary One at about 6 years old, my classmates always mocked me as effeminate and bullied me. They would push me into a toilet cell and make me fall onto a toilet bowl.”*

## **Teachers**

LGBT students also reported facing unfriendly attitudes and verbal attacks from teachers. LGBT students reported that it was commonplace for teachers to talk about LGBT issues in some negative ways. Similar to the ways that some other students did, certain teachers also teased LGBT students. In one case, a gay man recalled that his former teacher teased him and three other gay students as “the Four Beauties” and nicknamed each of them. As mentioned by another gay man, his former teacher once remarked that it was disgusting for him to hold the hand of his male classmate. A lesbian student who appeared more masculine was described by the teacher as neither male nor female before the whole class, and as a result, other students also joined in to laugh and tease her.

Although it was not explicitly directed at the LGBT students themselves, some teachers described LGBT people in general as “abnormal” and “disgusting”, and that gay people would not be able to become good parents and would have a bad influence on children. They also taught students about their views that “homosexuality is immoral and against family values”.

The religious background of schools exerts certain influences in the education domain. In Hong Kong, many of the secondary schools are run by Catholic- and Protestant-sponsoring bodies. Even some tertiary institutions are religiously affiliated. The LGBT people in this Study perceived the message that the “conduct of LGBT people is regarded as immoral” is commonly disseminated in assemblies and religious classes, and sometimes incorporated in school curricula such as integrated humanities or liberal studies. These practices convey messages to LGBT students that the school management board and the teachers are inclined to hold negative views about the LGBT community and their behaviour.

There were also cases where LGBT students faced threats from their teachers. A gay student



activist interviewed by the mass media and was subsequently was warned by the school to keep a low profile or else he would be expelled from the school. He eventually left the school. Another student was threatened by his teacher that if he did not perform well academically the school would inform his parents that he was gay. These actions result in silencing not only the sexual identity and expression of the LGBT students but also deprive them of their right to social engagement, which can be potentially very damaging to the LGBT students' mental health.

### ***Information censorship and monitoring***

Some students mentioned that their teachers monitored and censored how they communicated with peers on topics related to sexuality. They said the teachers only provided them with views against LGBT people. Even in university, it was reported that a lecturer intentionally skipped the topic of homosexuality for no reason, even though it was included in the course syllabus.

The above negative statements or responses thus create a hostile environment for LGBT students. Some respondents said other students tended to treat LGBT peers badly because their teachers took the lead and showed discriminatory attitudes against LGBT students, who were labelled as naughty and deviant. In summary, LGBT students were sometimes regarded by teachers as "bad" students and troublemakers and, as a result, they received lower grades for conduct.

Some LGBT students reported being monitored in schools. Some respondents were asked to isolate themselves from other students and to keep a physical and social distance from good friends of the same sex. They were not allowed to have lunch, or even to go to school together. Also, without the LGBT students' consent, some teachers disclosed, or threatened to disclose their gender identity or sexual orientation to their parents.

### ***Institutionalized practices***

Some institutionalized practices work against LGBT students. For example, girls in some schools were forbidden to have very short haircuts. Instead they were ordered to wear wigs. Lesbian students with a more masculine appearance were required to conform to social norms

of femininity. In one case, it was reported that a gay theology student was refused a dormitory place when boarding is a requirement for all students of the school. In another case, another gay theology student was asked to leave the dormitory by the school after his roommate's parents made complaints to the school after they found out the student's sexual orientation. In both cases the students were deprived of the opportunity to participate in general student life and fellowship.

#### **4.2.2.5 Impact of discrimination**

##### ***Strategies of self-protection***

For many LGBT students, the general circumstances of the school made them feel powerless. They reported being in fear of involuntary disclosure of their sexual identity and the resulting exposure to verbal insult, mockery, isolation or exclusion by classmates and teachers.

*“Once a teacher pointed at my classmate and teased him that his appearance did not match with his gender, and the whole class laughed at him. I immediately realized that if you came out, you would have a miserable life—being attacked, mocked, insulted and isolated. I was frightened. ... The school atmosphere was so unfriendly and you knew if you disclosed your sexual orientation, you would be the next one to be targeted.”*

Alternatively, some LGBT students reported that they survived by “toughening themselves up”. Some students would perform exceedingly well in school in order to avoid being stigmatized by teachers or classmates. Others fought back with classmates who bullied them. The energy expended to cope with this fear and stress often affected their study adversely.

##### ***Loss of education opportunities***

Some LGBT students suffered a loss of educational opportunities because of negative treatment in school. A few respondents revealed that LGBT students were either advised to leave or directly expelled. In other cases, LGBT students were deprived of equal educational opportunities and potential career development. A gay student said,

*“The pressure made my school life miserable. The learning atmosphere was so bad that I didn’t like to go to school.”*

In another case, a lesbian student reported the loss of her scholarship:

*“A scholarship was meant for me but was taken away. I asked the teacher why. She said that after the management saw my picture and heard comments about me from other teachers, they decided to give the scholarship to another student. This was the most blatant discrimination I had experienced.”*

#### **4.2.3 Provision of goods and services**

In the area of provision of services, LGBT people received less favourable treatment by service providers when they were service users, as well as when they were service providers and treated less favourably by service users. Discrimination experiences were reported involving commercial, medical and social services.

##### **4.2.3.1 Commercial services**

Because of their sometimes noticeable inconsistency between their appearance and sex assigned at birth, transgender females reported more incidents of discrimination from commercial service providers. Some respondents complained that they were not allowed to try clothes on in small boutiques, and were rejected services by some beauty parlours. A transgender woman recalled an unpleasant experience of not being welcomed by the salesperson of a nail salon.

*“She said, ‘My client will not be happy if they know that I am serving you. So this would be the last time I am going to do your nails.’ It hurts. Oh yeah, that girl told me that I could not come here again because other clients would hate her for serving me. That’s discrimination.”*

Gay men and lesbians were more prone to face discrimination when they were seeking services as couples or in groups. Some gay couples reported that they were denied services by

the restaurant staff when they made dinner orders on Valentine's Day. It was also reported that a group of lesbians were told by a bar owner to never return to the bar again. An LGBT organization requested to display their leaflets in a bookstore but was refused. Some transgender females and lesbians with a more masculine appearance indicated that there were a few bars and clubs on Hong Kong Island that would simply not let them in. A transgender female recalled that the security guard of a club said to her: "You are a ladyboy! You are not allowed in here."

Organizations that work with LGBT people or work on LGBT issues also reported experiencing denial of service. The organizer of an LGBT event found a printing company for the manufacturing of souvenirs, but the company refused to print on the souvenirs a slogan in support of LGBT issues. There were also reports of denial of service by large companies. In 2008, the organizing committee of the Pride Parade claimed that a bus company rejected their application to rent a bus for their promotion activities. The reason given by the bus company was that, among other factors, the company's public image was a major concern.

### ***Unfriendly attitudes and verbal attacks***

Some gay men reported being stared at or even verbally insulted by waiters in restaurants. Transgender people were gossiped about by restaurant staff behind their back as "monsters".

In another case, a transgender female taxi driver was insulted by a service user. In spite of her long hair and a feminine appearance, the passenger asked her child to address the taxi driver as "uncle" because of her deep voice.

### ***Differential quality and treatment in service provision***

It was reported that some bars charged a higher price for lesbians who appeared more masculine. Some transgender people mentioned that they were questioned excessively by banking personnel in relation to the discrepancy between their gender appearance and the sex stated on the identity card. Similarly, they reported being extensively questioned by the staff of the hotline services of banks or telecommunication companies regarding the discrepancy between the perceived voice and the gender stated in the company record.

#### **4.2.3.2     *Medical and social services***

There were reports of LGBT people denied medical and social services due to their sexual orientation or gender identity.

It was reported that gay men and lesbians were denied the right to visit their partner in hospital. A lesbian woman, who was in a legally recognised civil partnership with her wife overseas, had to send her wife to hospital due to a medical emergency. However, the medical staff said she had no right to be there with her wife:

*“It was about one o’clock or two o’clock in the morning. I had to take her to the hospital. I wanted to be with her in the hospital so that she knew that I would be there when she woke up. The hospital staff basically turned around and asked, ‘Are you her sister?’ I said, ‘No.’ They asked, ‘Are you her mum?’ I said, ‘No, I am her wife. We have been married, I know her for so long. I have to be here for her.’ And they turned around and said, ‘Sorry you can’t be here.’ And I was like, ‘Why? Why can’t I be here with my wife?’ They said, ‘Sorry, it’s our policy, you can’t be here.’”*

She said her partner was very angry waking up in the morning not seeing her around. It also made her feel bad, and she could not sleep the whole night.

Such worries also weighed heavily in many gay men and lesbians interviewed in this Study, particularly those whose partner was getting older.

A lesbian couple with children reported that they found they needed to constantly explain themselves when they were accessing services. Although they had not had experience of being rejected medical services, they felt that this put lesbians and gay men under tremendous stress:

*“It means that lesbians’ and gay men’s and their children’s wellbeing is reliant on individual people’s kindness, but not the system. There is a lot of fear of being judged and unrespected. It is already stressful enough to be in an emergency situation, and in addition, it adds the stress of getting the permission for your partner to be recognized.”*

In the medical arena, and also most notably the Red Cross, people who have had “male-to-male sexual activity” are banned from blood donation for their whole life. This was seen by many gay men as a discriminatory practice.

*“I felt so uncomfortable about the questionnaire. They asked, ‘Are you gay?’ I don’t see that it is relevant to blood donation. It has violated some of my rights.”*

Many gay men insisted that it was a matter of social justice.

*“All these years Red Cross has emphasized that there is insufficient reserve in the blood bank, ... on the other hand they deprive gay men of their right and responsibility to donate blood and save those in need. I think this is grossly unfair and unjust.”*

In another case, a gay man donated blood to the Red Cross only to find out later that his donation was rejected. The notification letter almost exposed his sexual orientation to his parents who lived with him.

### ***Negative attitudes and verbal expressions***

LGBT individuals reported discriminatory experiences directed at them by providers of medical and social services. An HIV-positive gay man received derogatory comments from a nurse when he visited the clinic for a regular check-up.

*“You know ... MSM (men who have sex with men) love to play with their back. Have you heard about it? ... They love to put things inside too. There was a patient who had put a bottle into it. Finally, he needed to go for surgery to take it out!”*

It was obvious to the gay man that the nurse made many assumptions about his HIV status and his sexual orientation, and the kinds of sexual behaviours he would be involved in. This was considered to be sexual harassment by the gay man.

A lesbian couple reported that when they accessed assisted reproduction services in a public hospital, they were told not to have children because they “would ruin the children”.

Transgender people also reported experiences with medical workers who insisted on referring to their biological sex at birth and ignored their self-identified gender identity. A lesbian was also questioned by a nurse about her plan to have a child when she went for checkup at the women's clinic.

One gay man was offended by a social service provider when he sought help for his stressful relationship:

*“My first meeting with him started with talking about my family background. Then I mentioned my boyfriend in the conversation. Then he suddenly said, ‘Stop! You can’t say that he is your boyfriend. You can only say that he is your friend.’ This statement was already very discriminatory. Why can’t I use the term ‘my boyfriend’? After that, the whole meeting was ruined. I didn’t want to answer any questions. He kept emphasizing ‘your friend and you’ in the counselling session. In general, his attitude was very offensive.”*

Many LGBT people felt that some social workers only wanted to minimize the challenges and issues that their LGBT clients were going through, and downplayed the stress experienced by their clients as insignificant or only transitional.

Some counsellors went further to persuade their clients to become “straight” and refused to help any further if they did not comply with their instructions. Others denied service to their clients, or gave poorer treatment in the course of service provision once their sexual orientation was revealed. For example a gay substance user was denied services on the ground of his sexual orientation from a rehabilitation centre with a religious background.

In one case, two gay participants in a programme were gossiped about by the NGO staff.

*“We were camping and I shared a tent with another gay participant. At night, a few organizers sitting outside the tent discussed us. I did not sleep and so I overheard their conversation. They discussed what would happen when we—two gay men—slept in the same tent. I felt really uncomfortable.”*

#### **4.2.4 Disposal and management of premises**

Some LGBT people reported being rejected from using certain premises. An LGBT organization had the availability of a venue confirmed over the phone by an NGO with a Christian background. However, the booking was subsequently cancelled with the official reason given that the venue was no longer available. It was later confirmed that the NGO was unwilling to rent their place out for an exhibition on subjects about sexual minorities.

At the individual level, two men who intended to rent a publicly advertised flat together were rejected by the landlord because they were perceived as a gay couple. In another case, a gay couple reported being refused the rent of a double-bed room by a hotel.

In some cases reported by transgender people, they were denied hotel rental services because they were often perceived to be sex workers who would be likely to engage in illicit sexual activities. It was revealed that these cases happened with a number of room-renting venues, including five-star hotels of international chains.

Some transgender people experienced discrimination when they had to use toilets in public premises. While they found it more convenient to use the disabled toilet in order to avoid being questioned about the apparent inconsistency between their appearance and biological sex, they found that the disabled toilet was usually locked and a special request had to be made for its use. In one case, a transgender person's request to use the disabled toilet was refused by the staff who insisted that she was not a person with a disability (PWD), even though she produced to him her PWD certificate.

In the use of public premises such as parks and building spaces, some LGBT people reported that they experienced differential treatment. A gay man was reprimanded by the security guard for leaning over the shoulder of his boyfriend, saying, "Such kind of behaviour is not allowed!" while nothing was done to stop the heterosexual couples nearby from kissing or hugging.

A lesbian also reported that she experienced a verbal attack from a security guard of the building where she lived:



*“One day the security guard saw me sending my [same-sex] partner off the building. Upon my return by myself, he threw some Chinese words meaning ‘disgusting’ at me.”*

#### **4.2.5 Other domains or areas of concern**

##### **4.2.5.1 Government functions**

Other than the four domains discussed above, LGBT individuals indicated that they experienced discrimination by government bodies such as the Police, the Immigration Department and the Inland Revenue Department. Such occurrences were commonly reported, despite the Government’s issuance of the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation in 1998 and commitment to follow the practices set out in the Code. This is also despite the fact that, as discussed in Chapter 1, the Hong Kong Bill of Rights Ordinance (Cap. 383) and the Basic Law are legally binding on the Government, all public authorities, and those acting on their behalf.

#### ***The Police***

LGBT respondents noted discriminatory experiences of unfriendly attitudes and verbal attacks when they encountered the police.

It was reported that some police officers handled domestic violence between same-sex couples with contempt. Some police officers adopted insulting language to address LGBT people and categorized their cases as fighting, not domestic violence. This was reported, despite the fact that, as discussed in Chapter 1, the Domestic and Cohabitation Relationships Violence Ordinance was amended in 2009 to provide protection from domestic violence for persons in cohabiting same-sex relationships.

In detention, some transgender respondents indicated that some police officers treated them according to their sex at birth and refused to recognize them according to their self-recognized gender identity. The transgender respondents felt humiliated when they were searched by a police officer of the opposite sex or were held in custody in the opposite-sex cell. They considered these experiences as akin to sexual harassment. A transgender person said:

*“[The police officer] started taking off our [the transgender’s and her friend’s] clothes and tried to check our genitalia. When they found that we had no [male] genitalia, they became so agitated. You know, my body is that of a woman and I feel like a woman. And, [they] were checking us and removing all our clothes, everything ... It was very, very ... degrading on my part as a transgender person ...”*

### ***Immigration Department***

Transgender people reported being discriminated by immigration officers when they were applying for travel documents and visas. When there were discrepancies between transgender people’s appearance and their sex as stated on their identification documents, they faced difficulties with the Immigration Department, which either refused to process their applications or treated them with suspicion in the process.

A same-sex couple with a non-biological child reported that after they travelled overseas and returned to Hong Kong, their relationship with their non-biological child was excessively questioned and they were detained.

When LGBT workers were recruited from abroad, and in cases where such workers were already in a legally recognized same-sex marriage or civil partnership overseas, the granting of a dependent visa for their same-sex partner was deemed to be an important issue. Since Hong Kong government does not recognize same-sex marriages or civil partnerships from overseas, the legal partner of an LGBT worker is always refused a dependent visa. The partner is therefore normally only granted a visitor/tourist visa, with the uncertainty as to whether that will be renewed.

It was reported that, where the partner was denied a dependent visa and only held a visitor/tourist visa, the partner would then subsequently be unable to work in Hong Kong, open a bank account, register for a mobile phone contract, and not have any of the other rights of residents such as access to public health care. All in all, they reported feeling very much isolated in the Hong Kong society.

For many same-sex couples where one of them was granted a working visa and the other only held a visitor/tourist visa, it was reported that an enormous tension was put on their

relationship. It was described that many such relationships were at the breaking point because of the tension involved. In some cases, such relationships eventually broke up. One gay couple described that their experience was so “traumatic” that they regretted making the decision to move to Hong Kong.

One couple who had been married overseas decided to move to Hong Kong because one of them had been given a job opportunity. The other man was denied a dependent visa and had no right to work, and he said that his life was completely changed:

*“I used to work for seven days a week – and all of a sudden I lost all of that ... it made me second guess about everything in my life. To see on paper that you have been denied, brushed aside and completely dismissed, is bizarre. It’s just that feeling that you don’t have any kind of feeling of appreciation, you don’t have any kind of feeling that you are needed in any way here in this city. The sense of having a place, the sense of having a purpose, a sense of duty, a sense of identity – you don’t really have any of these. Because you don’t really belong here. You feel like a legal alien. I don’t feel at all grounded.”*

The couple opined that it had an impact on their plan to stay in the city. Being both educated and experienced in their respective industries, they said they asked themselves, “It was originally an opportunity, now it’s more like a sacrifice. We are giving a lot up. Is there benefit of giving it up? Is it worth it?” They specifically directed the source of the problem to be the Government:

*“The hardest part is not the people, or the shops, it’s the government. It’s so archaic. I know that in my industry there is a desire for Hong Kong to be an Asian innovation and entrepreneur hub. There’s a reason why San Francisco is known for that, there’s a reason why New York is known for that. It’s because they don’t bar anyone from contributing. They are open to new ideas and new ways of working. If someone was going to come and work in Hong Kong and were in the same situation, I would ask him or her to think twice” ...*

This points to the wider implications that discrimination faced by LGBT people has for Hong Kong society.

### ***Inland Revenue Department***

Same-sex couples who are in legally recognized same-sex marriages or civil partnerships overseas do not receive benefits (e.g. a tax allowance) that heterosexual married couples are entitled to.

*“My partner [an expatriate] and I are legally married overseas. He worked in Hong Kong and indicated himself as ‘married’ on his tax return form. ... When the Inland Revenue Department found out that our relationship was a same-sex marriage, they revoked our previously approved married persons’ allowance and asked us to pay additional tax immediately.”*

A lesbian couple who was married overseas added that in almost all the forms presented by the government, they were only left with the option to state that they are not married. They perceived it as gross inequality:

*“First, I feel that I am committing an offence, because I am actually married and have to state that I am not. Second, it falsifies our very existence.”*

#### ***4.2.5.2 Religious groups***

Discrimination in religious communities as reported by LGBT people appeared to be very serious, particularly in the Christian community. It was reported that once a member was suspected to be a homosexual, he or she would often be suspended from serving in the church. In some cases, the LGBT Christians were isolated, forced to have confession in Sunday services, or expelled from the church. Some churches disseminated homophobic messages, which placed the LGBT Christians under huge pressure, or requested their LGBT members to receive “conversion therapy”. In one extreme case, a LGBT clergyman was forced to resign from the church. Many LGBT Christians had to leave their churches, forgoing their youth memories and longtime friendships. It was reported that that there was less discrimination within the Buddhist or Taoist community.

In general, most followers of these religions reported keeping silent about their gender identity and sexual orientation so as to avoid troubles. Possible exemptions in relation to activities within religious groups are discussed in Chapter 6.

#### **4.2.5.3    *Family***

A major source of pressure for LGBT people in Hong Kong comes from the family. In particular, the pressure to produce offspring and continue the family line puts many LGBT people under great stress not to disclose their sexual orientation or gender identity to their family members, especially their parents. Although some parents are supportive of their children being LGBT, often on knowing that their children are LGBT, parents feel worried, anxious and maybe guilty. Often LGBT parents have a misconception that sexual orientation and gender identity are only a “phase” and will pass. Some parents may force their LGBT children to change their sexual orientation and/or gender identity. Some LGBT people in the Study reported that they were kicked out of their homes, and in some extreme cases, violence was involved.

Generally, conduct within families are part of private life and are not regulated by anti-discrimination laws that regulate public life. However, such conduct, may be regulated by other legislation (e.g. criminal law in relation to domestic violence).

#### **4.2.5.4    *Intersex People***

It was reported that intersex people faced social difficulties as their gender expression may not fit into the male/female binary in society. In some extreme cases, sexual harassment was experienced.

However, the most suffering-inducing aspect of their lives was when medical treatment and decision were applied on them at an early age without their consent. As it is generally practised presently, a sex is assigned to an intersex baby by the doctor in consultation with the parents who are usually little informed of the possible consequences and other options. Such operations are known to result in the dysfunction of sex organs and the excretory system and sterilization.

Because of the often extensive period of surgeries involved, dire physical and mental consequences were reported. The stress to cope with everyday sufferings as well as the discrepancy between self-perceived gender and the sex assigned at birth was grave. Some intersex people were reported to resort to committing suicide. The intersex community is asking for the right of consent to medical treatment, and sufficient social support to be provided for them in the meantime.

In relation to legislation, there was also discussion about whether intersex people should be protected under the existing Disability or Sex Discrimination Ordinances, or that it should be included as a part of a separate LGBTI anti-discrimination Ordinance, if it was to be developed.

#### **4.2.5.5 “Post-gay” individuals**

Individuals who self-identified as “post-gay”<sup>81</sup> argued that the discrimination reported by the LGBT people was a result of their being oversensitive. Rather, they claimed that it was the “post-gay individuals” who were being discriminated against in society. They argued that they had been receiving attacks from LGBT groups when they stated that sexual orientation could be changed. They were worried that once legislation against discrimination on the ground of sexual orientation was passed, services to support the change of one’s sexual orientation would no longer be available. Some also claimed that an anti-discrimination legislation would only confuse their own identity further.

### **4.3 Ways of redressing discrimination experienced by LGBTI people**

LGBT people were often not provided assistance, but instead they were blamed as the sources of the problem.

As reported by LGBT employees, discrimination experienced in the workplace varies in form and comes from different sources. In the workplace, there is an imbalance in power between employers and employees, which may impose pressure on the LGBT employees not to speak up even when they have experienced discrimination on the grounds of sexual orientation or

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<sup>81</sup> They are a specific group of people who claim that they successfully sought treatment to either change their sexual orientation from being homosexual to heterosexual, or to remain homosexual but are able to not practise same-sex sexual behaviour.

gender identity. Worse still, as reported earlier, some employers were themselves the source of discrimination. Even if the discrimination did not originate from the employer, the company management often ignored or downplayed the complaints from LGBT employees. In one case, an LGBT employee's request was sidelined:

*“It was not included in the agenda. In the meeting I requested that employee's family benefits should be extended to cover same-sex couples. But there was no response. This is unequal treatment. No matter how much contribution you make, your partner is excluded from any family benefits.”*

Similarly, LGBT employees might be discriminated against by clients, whom the employers want to retain.

*“Actually you can't seek any redress. This is only for survival. If you make complaints, then you would lose the client. The company would not stand for you if the clients turned away.”*

In the domain of education, adequate measures of redressing discrimination against LGBT students do not exist or they appear ineffective. It was reported that many teachers would either do nothing or keep a low profile in tackling the problem when LGBT students faced discrimination. The teachers were found to have downplayed or overlooked bullying and some negative treatments encountered by the LGBT students. In the extreme cases, teachers, counsellors and social workers were perceived to be the perpetrators of discrimination.

Even though some teachers were reported to be sympathetic, they either did not know enough about LGBT issues to handle the cases, or they were fearful of being subjected to victimization by the school authority or parents once they express support to LGBT students.

Ways of redressing discrimination is almost non-existent in the domains of the provision of goods, facilities and services, as well as disposal and management of premises.

In relation to government departments and public authorities, LGBT people reported feeling helpless and that their complaints were often ignored when they encountered discrimination. In some cases, judicial review legal proceeding was considered the only means of seeking redress, but that could impose a heavy financial burden and was time consuming for the

LGBT complainants.

#### ***4.4 LGBTI people's views on legislation***

The LGBTI respondents showed an overwhelming support for legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status in Hong Kong. They considered legislation as the best tool for the protection of the basic human rights of LGBTI people. They felt that the Government hid behind the excuse of “divided opinion” and lacked the political will to push through the legislative process, despite Hong Kong’s obligations to comply with international human rights instruments on the protection of sexual minorities from discrimination.

In the survey conducted for the LGBTI focus groups, 98% of the respondents stated that it is extremely important to have a legislation that protects LGBTI people from discrimination. All (100%) of the respondents indicated that the domains of employment, education, provision of goods, services and facilities, disposal and management of premises and membership of clubs should be included in the legislation, among which employment and education were deemed by them to be the most important areas to be considered.

LGBTI people perceived that legislation is the crucial start of a process that could protect them from negative treatment in society due to the following reasons:

- Other measures, such as educational and promotion activities, are not effective enough to redress discrimination against LGBTI people on the grounds of SOGI and intersex status.
- Legislation sends clear signals to society that discrimination against LGBTI people on the grounds of SOGI and intersex status is unacceptable.
- Legislation provides an effective means of redressing discrimination when negative treatment against LGBTI people on the grounds of SOGI and intersex status takes place.

They believed that if the legislation is passed, LGBTI issues would become more visible. People and organizations would have the “mandate” to take steps to provide a more



LGBTI-friendly environment. An anti-discrimination legislation would empower members of the community to come out of the closet, which would be beneficial for LGBTI people themselves, the organizations and companies they worked in, and Hong Kong society as a whole. The LGBTI people were dismayed at Hong Kong lagging behind other international cities in terms of embracing gender diversity and LGBTI people's rights.

#### **4.4.1 Areas of consensus**

LGBTI people agreed that each person in society should be respected regardless of one's sexual orientation, gender identity or intersex status. The legislation should aim to protect not just LGBTI people, but also cover situations where a person is perceived to be LGBTI and experiences discrimination.

Furthermore, less favourable treatment of those who are associated with LGBTI people should be prohibited because there is evidence that, for example, those who have supported LGBTI people are prone to be discriminated in Hong Kong. They thought that it is important to protect those who are associated with LGBTI people, such as their family members, partners, employers or even colleagues who are supportive of them, such as "straight allies".

Most respondents expressed that the protection provided by the four existing antidiscrimination Ordinances would be a very useful reference for drafting legislation against discrimination on the grounds of SOGI and intersex status in Hong Kong. However, they highlighted that unlike in the Race Discrimination Ordinance, government functions and powers should be expressly covered under the legislation.

#### **4.4.2 Areas of disagreement**

Despite overwhelming support for legislation being found among LGBTI people, there are areas of disagreement among LGBTI people with regard to the specificities of the legislation. They include: (1) extent of legal coverage and (2) exemptions.

#### ***Extent of legal coverage and balancing freedom of expression***

There were some divergent views on the appropriate balance between protecting LGBTI people from discrimination, and maintaining the right to freedom of expression. Some LGBTI people were keen that freedom of expression should be allowed for all people in society, including those who showed disapproval about LGBTI people. Others insisted that media and school curricula content had to be regulated in order to ensure that such content does not discriminate against LGBTI people (e.g. perpetuating stereotypes and prejudices).

### ***Exemptions***

The topic of exemptions raised significant debate. Some LGBTI people objected to the whole idea of exemptions and argued that the purposes of the legislation would be compromised. They also believed that if exemptions were allowed, they would be the likely sectors in which discrimination against LGBTI people on the grounds of SOGI and intersex status could be the most widespread (for example in education).

Other LGBTI respondents supported exemptions because of political exigency. They believed that, in reality, compromise would be needed for the balance of interests among different stakeholders in society.

The scope of exemptions was also discussed. The general view held by LGBTI people was that even in religious schools, exemptions in employing staff should be confined to jobs that were strictly related to religious functions. For example, most LGBTI people found it understandable if a religious school declined to employ a gay man as a clergyman on the grounds of doctrinal conflicts, but this should not apply, for example, in the employment of a teacher of mathematics, where the sexual orientation of a person should not be relevant to the particular role.

Most LGBTI people were adamant that religious exemptions, if in place, should not apply to schools without limits. They argued that discrimination against LGBTI people in the education sector was serious since there appeared to be an obvious hierarchy of power between school educators and LGBTI students.

A majority of the LGBTI people were in favour of an opt-out system instead of a cross-the-board exemption. This could mean that although an exemption is available to all

religious organizations, they could choose not to invoke it.<sup>82</sup> Given an opt-out system, religious organizations would be encouraged to conduct a thorough discussion within their organizations before coming to a decision as to whether to invoke the exemption or not.

#### **4.4.3 Other suggestions**

Other than legislation, the respondents agreed that additional measures had to be taken to eliminate discrimination against LGBTI people in society. They made it clear that they saw such measures as additional to legislation but not alternatives.

They suggested that even if an anti-discrimination ordinance was in place, educational and promotion programmes should be formulated to raise public awareness and understanding of LGBTI issues. Furthermore, specific target groups including government officials, police officers, doctors, teachers and social workers should be encouraged to attend these programmes of public education. Moreover, guidelines for social institutions and business sectors in the provision of an LGBTI-friendly environment should be prepared and published. If legislation is enacted, a rigorous monitoring mechanism should be set up to monitor the effectiveness of the implementation of legislation and suggestions could be made for improvement.

In particular, transgender people suggested that gender-neutral toilets should be provided in the workplace, on campus and in public facilities.

### **4.5 Summary**

#### **4.5.1 Prevalence of discrimination (mainly based on LGBTI people's self-reported experiences)**

Experiences of discrimination reported by LGBTI people were extensive, in the areas of education, employment, service provision, disposal and management of premises, as well as government functions. The prevalence of discrimination is notable regardless of places of

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<sup>82</sup> A similar system exists in the United Kingdom. For example, in the context of religious institutions, they have an option as to whether or not they agree to conduct same-sex marriages (see section 26A Marriage (Same Sex Couples) Act 2013).

occurrence, life stages of the victims, and demographic characteristics of the perpetrators.

### ***Where***

Discrimination was reported to have taken place in different aspects of daily lives, including schools (including primary, secondary and tertiary education), workplaces, restaurants, beauty salons, bookstores and other commercial shops, five-star hotels, publicly advertised housing rental, parks and even in police stations and detention centres.

### ***When***

Discrimination was reported to have been experienced during different life stages, from adolescence to elderly, including the time for studying, working, consuming, seeking social services and counselling and medical services, travelling and finding spiritual life.

### ***From whom***

The source of discrimination was reported as coming from various persons, including, on the individual level, teachers and headmasters, peers, services users, clients, professionals, security guards and police officers, and at the institutional level, schools, companies, medical institutions, and government bodies such as the Immigration Department and Inland Revenue Department.

Nevertheless, some LGBTI groups appeared more prone to discrimination. It showed:

- transgender females are heavily stigmatized in different aspects of daily life, especially those who find it difficult to “pass”, and
- those who are out of the closet reported more direct and frequent experiences of discrimination.

In general, all the subgroups of LGBTI people had faced discrimination. They included the lower-income groups such as FDHs as well as higher-income earners such as those working in the finance or entertainment industries. It seems that only the forms of discrimination that

LGBTI people of different backgrounds face are qualitatively different.

#### **4.5.2     *Reported means of redressing discrimination experienced by LGBTI people***

The means of redress in key sectors of employment, education, provision of goods and services, disposal and management of premises, as well as government functions was considered to be minimal or non-existent. In the context of government functions, although there is the possibility of bringing judicial review legal proceedings, this is often costly and time consuming both for the individual and the government which finances the cases by public funds.

Many LGBTI people indicated that the sources of perpetrators in the discriminatory situations were higher up in the power hierarchy than themselves, such as their employers, senior administrators or teachers, rendering means of redressing discrimination either not useful or virtually non-existent.

Without effective means of redress, a sense of insecurity greatly affected LGBTI people, and it was reported that they often felt pressure to adopt some self-protection mechanisms for survival. Most of LGBTI people tried their best to conceal their sexual orientation or gender identity in various ways, including staying in the closet (e.g. at home, in the workplace, on the school campus), monitoring their appearances and behaviours in order to avoid being targeted and bullied, keeping silent when witnessing other LGBT people being bullied, avoiding building close relationships with colleagues and working partners, pretending to be straight by telling lies, avoiding discussing LGBTI issues and participating in LGBTI events, “de-gayng” their CVs, limiting their job choices to organizations that were not hostile to LGBTI, resigning immediately at once when there are risks of being exposed, concealing their situation, rejecting medical and social services, and avoiding encounters with the police and other government bodies. These self-protection mechanisms also limit the choices of education and career development for LGBTI people.

#### **4.5.3     *LGBTI people’s views on legislation***

LGBTI people showed an overwhelming support for legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status in Hong Kong. They

considered legislation as the best tool for protecting the basic human rights of LGBTI people. All the respondents indicated that the domains of employment, education, provision of goods, services and facilities, management of premise and membership of clubs, as well as government functions, should be included in the legislation, among which, employment and education were the most important areas to be considered.

To conclude, this Chapter has documented the substantial discrimination that LGBTI people face in Hong Kong in a wide range of domains of public life. However, there is currently minimal or no means of redress for such discrimination, and therefore there is strong support by LGBTI people for legislation.

## **Chapter 5 Public attitudes towards legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status**

This Chapter provides an analysis of public attitudes towards legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status from a number of sources: the quantitative data collected through the territory-wide representative survey, and the qualitative findings collected from the public forums, the focus groups for the public, and online and postal submissions of public opinions.

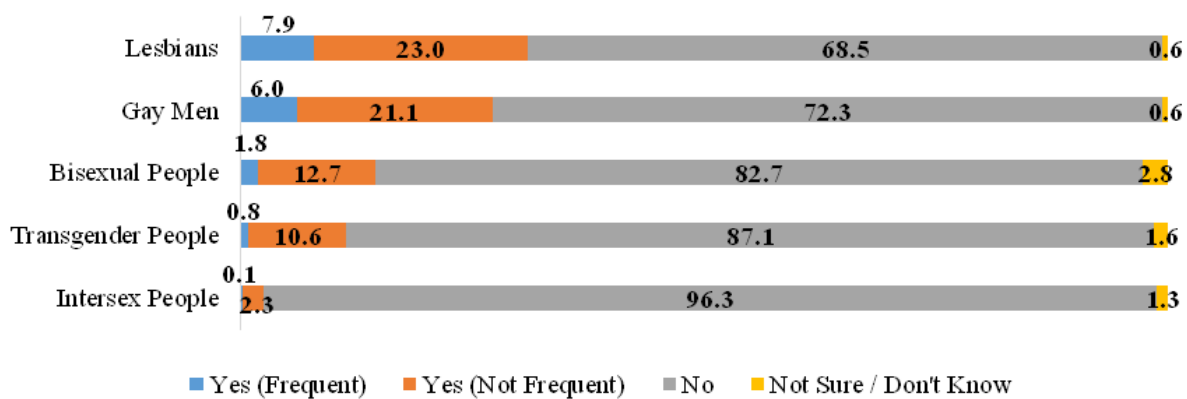
### ***5.1 Key findings of telephone survey***

The telephone survey was conducted from January to February 2015. A total of 1,005 respondents were sampled. Data collected from the survey was weighted to align with the sex-age distribution of the population in the fourth quarter of 2014 (issued by the Census and Statistics Department) so that findings of the survey were representative of the opinions and views of the population aged 18 and above in Hong Kong. The questionnaire is contained in Appendix IX, whereas the profile of the respondents is summarized in Appendix X.

#### ***5.1.1 Personal contact***

The results indicated that most of the respondents did not have much contact with LGBTI people. Of the respondents, 68.5% did not have any personal contact with lesbians and 72.3% did not have any personal contact with gay men. The respondents had even less contact with bisexual, transgender and intersex people. 82.7% of the respondents from the Hong Kong public did not have any contact with bisexual people, 87.1% did not have any contact with transgender people, and 96.3% did not have any contact with intersex people.

Among the respondents who had personal contact with LGBTI people, such contact was usually infrequent. Only 7.9%, 6%, 1.8%, 0.8% and 0.1% of the respondents had frequent contact with lesbians, gay men, bisexual people, transgender and intersex people respectively.

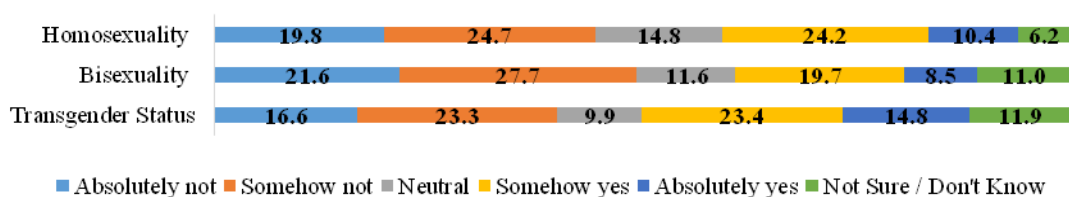


**Figure 5-1: Personal contact with LGBTI people reported by the telephone survey respondents**

It was reported that 76.5% of the respondents from the general public had no contact with homosexuals in a previous study (MVAHK, 2006). Compared with this Study, the personal contact that the Hong Kong public have with LGBT people seems to have increased but only very slightly.

### **5.1.2 Attribution of sexual orientation and transgender status**

Next, public attitudes towards LGBTI people were examined. About a third (34.6%) of the respondents thought that homosexuality was “somewhat/absolutely” inborn, more than a quarter (28.2%) of the respondents thought bisexuality was “somewhat/absolutely” inborn, 38.2% of the respondents thought transgender status was “somewhat/absolutely” inborn.



**Figure 5-2: Attribution of sexual orientation and transgender status reported by the by the telephone survey respondents**

These findings were similar to findings from another recent study (Community Business, 2012), which found that 33% and 29% of the working population attributed the ‘cause’ of sexual orientation and gender identity to being “born that way”, while 35% and 27% attributed sexual orientation and gender identity to being “due to upbringing or environment.”

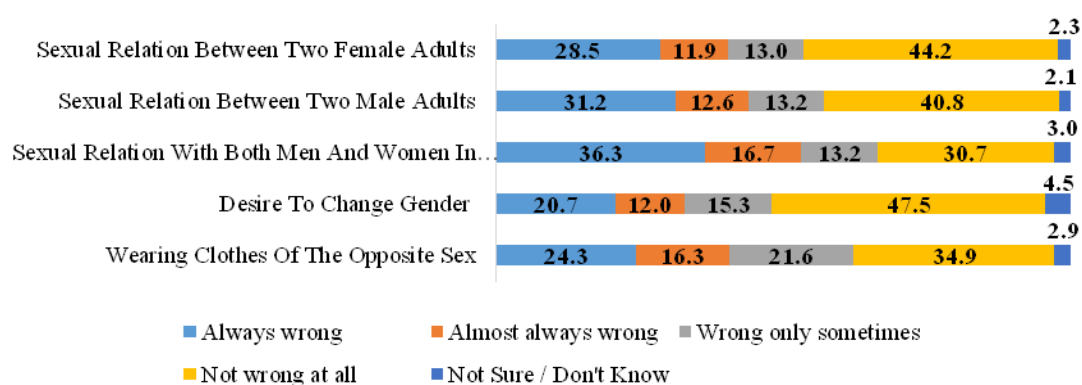


### **5.1.3 Views on different sexual relations and transgender status**

The majority of the respondents disagreed with same-sex sexual relations but showed slightly higher acceptance of sex reassignment surgery.

More than half (53.4%) of the respondents considered that sexual relations between two female adults is wrong to varying degrees (viz. always wrong/almost always wrong/wrong only sometimes) and more than a half (57.0%) of the respondents thought that sexual relations between two male adults is wrong to varying degrees. The acceptance of bisexuals was even lower. Two-thirds (66.2%) of the respondents thought that individuals having sexual relations with both men and women in their lifetime is wrong to varying degrees.

Divergent views emerged regarding transgender issues with 48.0% of the respondents holding the opinion that individuals desiring to change the gender assigned at birth is wrong to varying degrees, while 47.5% thought that it is not wrong at all. However, there was less public acceptance towards cross-dressing. More than two-thirds (62.2%) of the respondents thought that individuals who like to wear clothes of the opposite sex/different from the biological sex they are assigned at birth is wrong to varying degrees, while 34.9% did not think so.



**Figure 5-3: Views on different sexual relations and transgender status reported by the telephone survey respondents**

### **5.1.4 Awareness of the four existing anti-discrimination Ordinances**

Among the four existing anti-discrimination Ordinances, the Disability Discrimination Ordinance (Cap. 487) is known to the largest number of respondents (85.8%), followed by

Race Discrimination Ordinance (Cap. 602) (68.7%), Sex Discrimination Ordinance (Cap. 480) (65.5 %) and the Family Status Discrimination Ordinance (Cap. 527) (41.8%).

It is noteworthy that 16.4% of the public surveyed erroneously perceived that there was already an existing ordinance against discrimination on the ground of sexual orientation in Hong Kong, whereas only 66.3% of them could correctly point out that there is no such existing ordinance in Hong Kong. Such awareness of the lack of legal protection for LGBTI people is at about 47% and 51% as in two recent studies (Chung, Pang, Lee & Lee, 2013; MSA, 2013). However, this Study still shows that many members of the public are unaware of the social and legal situation of LGBTI people in Hong Kong.

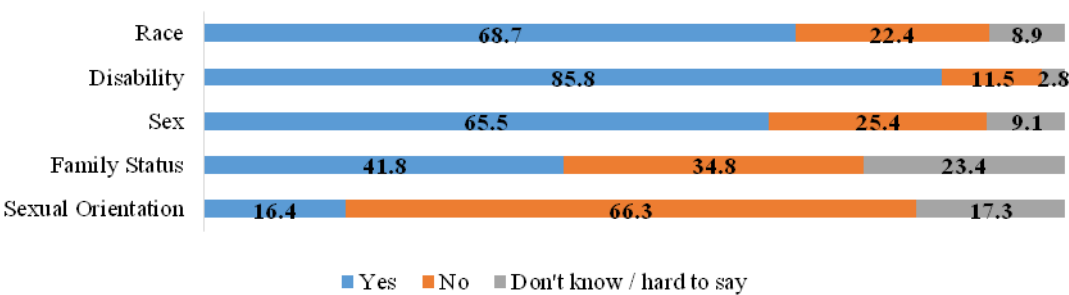


Figure 5-4: Awareness of the four existing anti-discrimination Ordinances reported by the telephone survey respondents

5.1.5 Views on legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status

Respondents were asked about whether they agreed with legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status in some specific areas of life, including (1) employment, (2) education and training, (3) provision of goods and services, (4) leasing of apartment/office, (5) membership of club/association.

The majority of respondents agreed to varying degrees that there should be legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status in different areas. Respectively, 59.8%, 63.9%, 59.1%, 52.7%, and 50% of the respondents “somewhat/completely” agreed that legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status in the specific areas of (1) employment, (2) education and training, (3) provision of goods and services, (4) leasing of apartment/office,

(5) membership of club/association.

**Should legal protection against discrimination be provided for people of different sexual orientation, gender identity and intersex status in the following areas?**

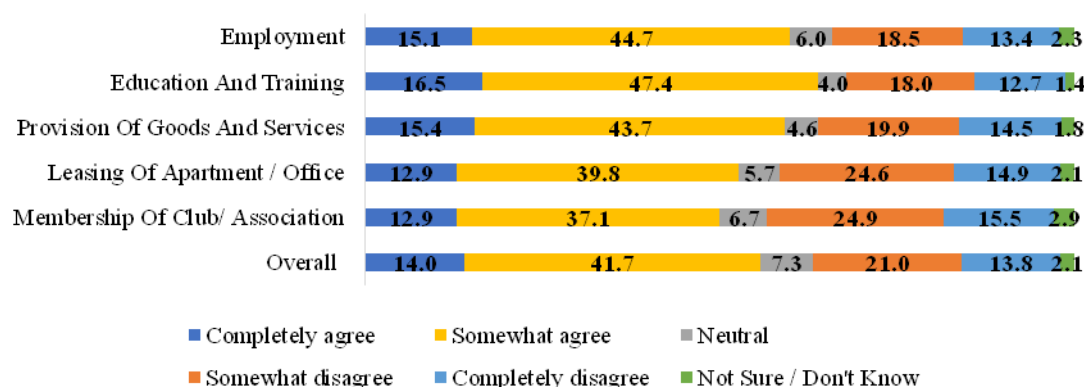


Figure 5-5: Views on Legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status in different domains reported by the telephone survey respondents

Of the respondents, 55.7% “somewhat/completely” agreed that overall, there should be legal protection against discrimination for people of different sexual orientation, gender identity and intersex status in Hong Kong, 7.3% were neutral on the question, while only 34.8% “somewhat/completely” disagreed.

**Overall speaking, should legal protection against discrimination be provided for people of different sexual orientation, gender identity and intersex status in Hong Kong?**

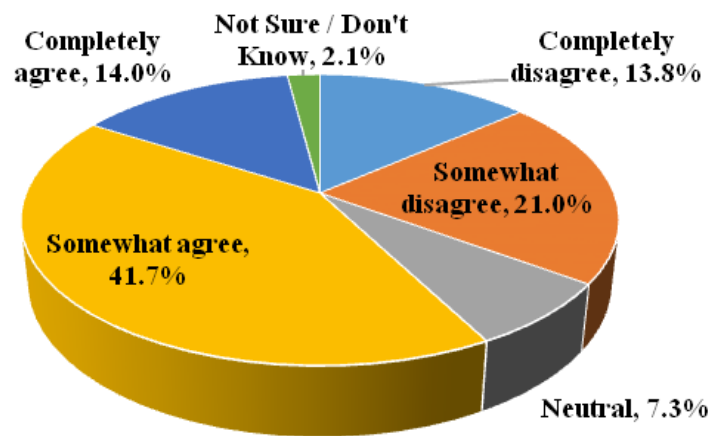


Figure 5-6: Views on legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status reported by the telephone survey respondents

An earlier study in 2005 (MVAHK, 2006) revealed that only 28.7% would like the Government to introduce legislation to outlaw discrimination on the ground of sexual orientation, 33.7% were neutral and 34.6% opposed.

A comparison of the two sets of data shows that despite similar percentages of respondents “completely/somewhat” disagreeing (34.6% (MVAHK, 2006) vs 34.8% (this Study)) that there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status, the support for legislation has almost doubled in a decade from 2005 (28.7%) to 2015 (55.7%).

#### ***5.1.6 Sub-group analysis on views on legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status***

It is noteworthy that respondents aged 18–24 are especially supportive of legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status in Hong Kong – 91.8% of them agreed that there should be legal protection against

discrimination on the grounds of sexual orientation, gender identity and intersex status.

It shall also be noted that of those respondents with religious beliefs, 48.9% agreed that, overall there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status. This indicates that among people with religious beliefs there is a diverse range of views regarding whether there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status.

Respondents with secondary education level or above, respondents with craft/operators/elementary as occupations, respondents with monthly incomes lower than \$40,000, respondents who were never married, respondents with no children, respondents with no religion, and respondents with self-declared very liberal/liberal political attitudes, also had a higher degree of support for legislation.

Those respondents who had any personal contacts with lesbians/gay men/bisexual individuals/transgender individuals/intersex individuals had a higher degree of support for legislation compared to respondents who had no such personal contact.

Respondents who attributed the cause of homosexuality to be inborn, as well as those who felt bisexuality/transgender status was fully/partially inborn, had a higher degree of support for legislation, compared to respondents who attributed homosexuality to causes other than inborn.

On the other hand, respondents who considered sexual relations between two female adults/two male adults/individuals having sexual relations with both men and women in their lifetime as always wrong, respondents who considered individuals desiring to change the gender that was assigned at birth as always wrong, and respondents who considered individuals who like to wear clothes of the opposite sex/different from the biological sex they are assigned at birth as always wrong, had a lower degree of support for legislation, compared with respondents who held the opposite opinions respectively.

For details, please refer to the table below and Appendix XI.

Overall speaking, should legal protection against discrimination be provided for people of different sexual orientation, gender identity and intersex status in Hong Kong? (Somewhat agree/completely agree)			Base
Have you had any contact with LGBTI people in everyday life in Hong Kong?	No/Not Sure	50.4%	610
	Yes	64.1%	395
Total		55.7%	1005
Age	18-24	91.8%	98
	25-34	69.1%	175
	35-44	55.7%	183
	45-54	49.7%	200
	55-64	48.2%	170
	65 or above	36.7%	177
	Refused to answer	50.0%	2
Total		55.7%	1005
Education	Primary or below	38.3%	133
	Secondary	59.4%	440
	Post-secondary	57.9%	425
	Refused to answer	14.3%	7
Total		55.7%	1005
Employment Status	No job	55.6%	471
	Working	55.8%	532
	Refused to answer	50.0%	2
Total		55.7%	1005
Occupation	Manager/Professionals/Associate Professionals	50.2%	231
	Clerical/Service workers	59.6%	248
	Craft/Operators/Elementary	65.9%	41
	Refused to answer	57.1%	14
	No job	55.6%	471
Total		55.7%	1005
Personal Income	No Income	56.8%	350
	\$1 - \$15,000	55.1%	245
	\$15,000 - \$39,999	58.9%	270
	\$40,000 or above	49.0%	102
	Refused to answer	42.1%	38
Total		55.7%	1005

Race/ethnic origin	Chinese	55.5%	1001
	Caucasian	100.0%	3
	Refused to answer	N/A	1
Total		55.7%	1005
Marital status	Never married	68.9%	309
	Married	50.9%	640
	Cohabiting	100.0%	3
	Divorced/Separated/Widowed	38.0%	50
	Refused to answer	N/A	3
Total		55.7%	1005
Children	No children	68.4%	370
	Have children	48.9%	613
	Refused to answer	36.4%	22
Total		55.7%	1005
Religion	No Religion	59.2%	664
	Have Religion	48.9%	333
	Refused to answer	50.0%	8
Total		55.7%	1005
Political attitude	Very Liberal/Liberal	65.5%	644
	Conservative/Very Conservative	36.8%	223
	Refused to answer	40.6%	138
Total		55.7%	1005
Gender	Male	56.9%	455
	Female	54.5%	549
	Transgender	100.0%	1
Total		55.7%	1005
Sexual orientation	Heterosexual	55.4%	983
	Lesbians, gay men, bisexual people or other	83.3%	18
	Refused to answer	N/A	4
Total		55.7%	1005
To what extent is homosexuality inborn?	Absolutely not/Somehow not	47.2%	447
	Neutral	57.4%	148
	Somehow yes/ Absolutely yes	67.2%	348
	Not Sure / Don't Know	46.8%	62

Total		55.7%	1005
To what extent is bisexuality inborn?	Absolutely not/Somehow not	48.6%	493
	Neutral	63.8%	116
	Somehow yes/Absolutely yes	66.0%	285
	Not Sure/Don't Know	53.2%	111
Total		55.7%	1005
To what extent is transgender status inborn?	Absolutely not/Somehow not	48.1%	400
	Neutral	61.0%	100
	Somehow yes/Absolutely yes	65.2%	385
	Not Sure/Don't Know	45.8%	120
Total		55.7%	1005
About sexual relations between two female adults.	Always wrong	29.7%	286
	Almost always wrong/ Wrong only sometimes	59.0%	251
	Not wrong at all	71.7%	445
	Not Sure/Don't Know	34.8%	23
Total		55.7%	1005
About sexual relations between two male adults.	Always wrong	32.2%	314
	Almost always wrong/ Wrong only sometimes	60.2%	259
	Not wrong at all	72.2%	411
	Not Sure/Don't Know	33.3%	21
Total		55.7%	1005
About people having sexual relations with both men and women in their lifetime.	Always wrong	35.1%	366
	Almost always wrong/ Wrong only sometimes	65.1%	301
	Not wrong at all	72.7%	308
	Not Sure/Don't Know	40.0%	30
Total		55.7%	1005
What do you think about people desiring to change the gender that is assigned at birth?	Always wrong	31.3%	208
	Almost always wrong/ Wrong only sometimes	55.5%	274
	Not wrong at all	67.9%	478
	Not Sure/Don't Know	40.0%	45
Total		55.7%	1005
What do you think about people who	Always wrong	35.4%	243



like to wear clothes of the opposite sex/ different from the biological sex they are assigned at birth?	Almost always wrong/Wrong only sometimes	59.3%	381
	Not wrong at all	67.5%	352
	Not Sure/Don't Know	37.9%	29
Total		55.7%	1005

Figure 5-7: Sub-group analysis on views on legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status reported by the telephone survey respondents

## ***5.2 Key findings of qualitative public opinions collected***

Apart from the telephone survey, public opinions were collected by means of public forums, public focus groups, online and postal submissions. Despite these different means of collection, the content of the opinions collected was more or less similar. Reasons for opposition to and support of legislating largely overlapped varying only with some degree of elaboration.

In general, the respondents held polarized views and were either strongly supportive or strongly against legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. Such polarized views were expressed in the public forums, the public focus groups and submission of written opinions. In the focus groups conducted with the public, there was blanket resistance from non-supportive respondents to considering any legislative framework to protect LGBTI people against discrimination, and also to possible related exemptions. A few respondents who were in support of legislating against discrimination of LGBTI people suggested a gradual process of education in order to prepare the public for accepting LGBTI people. However, many of the supportive respondents saw legislation as the only way to address the imminent and urgent need to respond to the discrimination that LGBTI people were facing on a daily basis in Hong Kong.

Similar to the findings shown in the telephone survey, there was a tendency for stronger support for legislating against discrimination of LGBTI people among focus group participants aged 40 or below, who had attained post-secondary education, and who had no children.

However, there were diverse views among members of the parental groups. The right of LGBT people to same-sex marriage was raised specifically by the group of the LGBT parents who believed that only legislation could redress the discrimination faced by their children.

Similarly, there were diverse views among Christians in the focus groups. Although it was commonly observed that strong opposition against legislation came from respondents who claimed that their religion was Christianity, there were some Christians who showed support for legislating to protect LGBTI people from discrimination.

It was highlighted throughout the Study that legislating against discrimination on the ground of intersex status was perceived to be far less controversial, when compared to legislating

against discrimination of LGBT people because intersex status was considered as inborn. Most participants of the focus groups agreed that general knowledge about intersex people was poor in Hong Kong society. There was an urgent need for more public education on the subject and there was consensus that legislation against discrimination on the ground of intersex status should be enacted. In this regard, sexual orientation and gender identity were considered individual preferences. As such, legislation to protect against discrimination on such grounds was seen as debatable. However, it is worth noting that this line of reasoning may be problematic – it is questionable whether the decision to protect a characteristic should depend on whether it is changeable. For example, under the Bill of Rights and ICCPR there is protection from discrimination on grounds of religion, political and other opinions which are changeable, but nevertheless these are considered characteristics for which there should be protection from discrimination. It also remains inconclusive from existing scientific evidence whether sexual orientation and gender identity are inborn or not.

There was also a clear consensus among all members of the public interviewed that there was a need to promote and implement education about LGBTI non-discrimination in schools and among the general public, whether or not LGBTI anti-discrimination legislation is introduced.

As examined below, the debate centred on whether there should be legal protection against discrimination for LGBT people. Most objections to legislating against discrimination referred primarily to objecting to legislating against discrimination on the ground of sexual orientation, with fewer people objecting to legislating against discrimination on the ground of gender identity. Where appropriate, “LGBT” (rather than “LGBTI”) is adopted to reflect this distinction in the comments below.

Those who supported and those who did not support legislation to protect LGBTI people disagreed in these regards:

1. The extent of discrimination experienced by LGBTI people and the need for legislation against discrimination of them;
2. Whether legislation is an appropriate means to redress the negative experiences reported by LGBTI people;
3. The effectiveness of legislation as a means of addressing the problems faced by LGBTI people.

## ***5.2.1 The extent of discrimination experienced by LGBTI people and the need for legislation against discrimination of them***

The supportive and non-supportive respondents disagreed about the definition of discrimination, the prevalence of discrimination of LGBTI people in society, and whether legislation against discrimination of LGBTI people should be given priority over other forms of discrimination.

### ***5.2.1.1 Different views on the definition of discrimination***

As described in Chapter 1, under existing anti-discrimination Ordinances, *direct discrimination* is found when someone is treated less favourably because of their sex, marital status, pregnancy, disability, family status or race. (These are “protected characteristics”.) *Indirect discrimination* occurs when a condition or requirement (e.g. rule, policy, practice, criterion or procedure) is applied to all persons equally, but the proportion of persons who possess the “protected characteristics” that can comply with it is considerably smaller. Further, it must be shown that as a result a detriment is suffered by that person or persons. In this way the condition or requirement is not justifiable. (That is, it does not have a legitimate objective and is disproportionate).

The non-supportive respondents disagreed with these definitions of discrimination as elaborated in the four anti-discrimination Ordinances. They did not believe that differential treatment should always be delineated as unfavourable treatment (either directly or indirectly) of the parties concerned.

The non-supportive respondents argued that not all differential treatment of individuals is discriminatory in nature – it may simply reflect the fact of diverse views. They contended that differential treatment of individuals based on different circumstances (e.g. persons with physical disabilities are not recruited as firefighters) or convictions (e.g. an employee with religious or moral values that contradict the company’s mission can be dismissed) should not be considered as discrimination. There was, however, confusion and misunderstanding of the definitions and related concepts of discrimination as illustrated in these examples:

*“Some fat people would also complain about being discriminated by others looking at*

*them, right? I am, too, discriminated against by people because of my being fat or wearing a pair of thick spectacles. This is to say, there are so many things you can call discrimination!*<sup>83</sup>”

*“So what do you really mean by discrimination? In fact, I don’t think differential treatment is necessarily discriminatory. Say for example, I find this woman more beautiful and I would like to court her, whereas I find the other one less pretty and would not do so. Am I being discriminatory then? Do I discriminate against the woman who is not pretty?”*<sup>84</sup>”

There were also some fears expressed about the possible effect of a broad legal definition, when there may be a number of other reasons, for not employing a person:

*“For a regular firm, hiring will only be done on the basis of working abilities. Yet the nature of the company should also not be overlooked. Say, would a certain hire affect the clients we intend to serve? One must be very careful that any legislation should not violate the right of the company but to protect it. If I lay down a set of rules [for my company] and you do not agree with them, you should go to another company. You can’t sue me for discrimination if I don’t hire you. ... there could be so many reasons, it is entirely unjustified for you to assume that I reject you because you are gay. It is such a trap for employers, we would be so anxious. How could anyone proceed then? How could anyone make a decision on hiring?”*

However such a view does not take into account that under the existing anti-discrimination Ordinances, less favourable treatment on the ground of a protected characteristic need only be one of the reasons for such treatment for it to be unlawful. For example if a person is not employed partly because the employer does not like people of the candidate’s race, and partly because the person could not start employment for several months, that could still be race discrimination as one of the reasons for less favourable treatment is the person’s race.

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<sup>83</sup> In fact, wearing a pair of thick spectacles may be related to a disability of being short- or long- sighted, and being fat may be connected to certain disabilities such as eating disorders. As a result, such issues potentially raise issues of discrimination under the Disability Discrimination Ordinance.

<sup>84</sup> Under international human rights instruments and Hong Kong’s Bill of Rights, physical preferences in terms of physical attraction are not considered a protected characteristic. This can be contrasted with the characteristics of sexual orientation and gender identity that have been internationally recognised as appropriate characteristics to protect from discrimination: see Chapter 1.

Some non-supportive respondents also denied the validity of the discrimination experiences reported by LGBTI people. In this regard, the experiences of discrimination reported by the LGBTI community were argued to be either trivial or minor expressions of disapproval towards LGBTI people's behaviours by some members of the general public. It is noteworthy that these views are also not consistent with the definitions and interpretation of discrimination under the existing anti-discrimination Ordinances. In order to prove discrimination the key criterion is whether there was less favourable treatment on the ground of a protected characteristic, not the subjective views of the person doing the acts as to their seriousness.

A numbers of the views expressed therefore demonstrated misunderstandings of the ways in which the current anti-discrimination Ordinances operate, and how the same definitions would apply under possible LGBTI anti-discrimination legislation.

#### ***5.2.1.2 Disagreement on the prevalence of discrimination of LGBTI people***

Non-supportive respondents argued that the prevalence of discrimination faced by LGBTI people in Hong Kong was not serious. They questioned whether the experiences of discrimination reported by LGBTI persons were due to LGBTI people's over-sensitivity to some unpleasant encounters, which had not been backed up with concrete evidence. They cited the EOC's report (MSA, 2013) that only 0.2% of the respondents experienced sexual orientation discrimination but over 60% encountered age discrimination.<sup>85</sup> Some of them claimed that they had contact with LGBTI people in work, in school or in the family and found no evidence of discrimination. Moreover, LGBTI people were perceived to have equal opportunities in employment, education, use of services and facilities as well as political participation. They perceived that many LGBTI people have fared very well in the financial sector, political circles and the entertainment business.

*“Well ... it is so common to see [homosexuals] holding hands openly, embracing one another...on the street, in the busy city centres, everywhere. There is neither*

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<sup>85</sup> It must be noted that the quantitative survey conducted by Mercado Solutions Associates Ltd. for EOC in 2013 had 70% respondents aged above 40, with 51% of them aged above 50; and only about 1% of the respondents claimed that they were homosexual or bisexual. The high 64% for age discrimination and the decimal 0.2% for discrimination on the ground of sexual orientation in the workplace must be read in context. (MSA, 2013: 16)

*harassment nor discrimination against them. Where is the harassment? Where is the discrimination?”*

For some non-supportive respondents, they attributed LGBTI people's negative experiences to their perceived “misbehaviours” such as their deviant gender appearance and high profile disclosure of their sexual orientations and/or gender identities. They also believed that sometimes LGBTI people were oversensitive to other people's comments and easily take negative remarks as discrimination:

*“It is dangerous trying to legislate for everything in society. Say, if I am discriminated against because I am a Christian ... and I am scolded by others as a ‘Jesus boy or Jesus girl’, should I ask for legislation to protect me? ... You can’t ask for legislation ... to resolve every problem [in society] ... this is dangerous.”*

On the basis of such arguments, experiences of discrimination by LGBTI people were reduced to a matter of perception. It was argued such experiences could be simply ignored as another set of nasty comments in life. These comments reflect a lack of understanding of the often more serious difficulties LGBTI people reported in Chapter 4 as discrimination.

In contrast, the supportive respondents believed that discrimination faced by LGBTI people in Hong Kong was very serious. They contended that legislation was essential for the protection of LGBTI people from discrimination in public domains.

The forms and scope of discrimination reported by the supporters of legislation were extensive. They argued that LGBTI people face notable direct and indirect discrimination in Hong Kong. They often referred to earlier studies about the prevalence of discrimination of LGB people, which was perceived by the public to be over 60%. The LGBTI employees in the fields of education and social work, in some religiously-affiliated institutions were the most vulnerable. Many of them had to remain in the closet and this resulted in social isolation. Furthermore, LGBTI people were generally denied the rights of married couples in terms of housing benefits, social welfare, emergency hospital visits, medical decisions relating to their dying or incapacitated/unconscious same-sex partners, and inheritance rights upon the death of their same-sex partners.

The supportive respondents cited incidents of bullying and harassment on campus. For the education sector, school administrators and teachers were often mentioned as the perpetrators who disciplined LGBTI students by administering measures such as social isolation and termination of their study.

The supportive respondents cited that, for discrimination in the workplace, transgender individuals whose gender appearance did not match with the sex shown on their identity card faced the greatest hardship. They faced denial of job interviews, unfair dismissal and reassignment of job duties against their will. (For example a transgender police cadet was reassigned to a clerical position for no reason). They were also denied access to public facilities such as toilets or changing rooms of their self-identified gender. Their right to marry was only granted if they had completed full sex reassignment surgery, which can pose a grave threat/ unfair and undue hardship to transgender people's health conditions and their rights to bodily/ physical autonomy and integrity. One participant expressed that transgender people could not survive if there was no legislation against discrimination of them.

Those supportive respondents revealed that despite significant levels of discrimination against LGBTI people, the victims might not lodge complaints or even talk publicly because they were worried about adverse consequences or victimization. In that regard, few complaints were lodged with statutory bodies such as the EOC. In fact, the EOC has no express powers to consider complaints of discrimination related to sexual orientation, gender identity or intersex status. However, it should be noted and as discussed in Chapter 1, the EOC does consider complaints of discrimination by transgender people under the Disability Discrimination Ordinance where a person has been medically diagnosed with gender identity disorder or gender dysphoria.

Parents of LGBTI people also reported discrimination by association. In one case, the father of a transgender son received negative comments from friends during a social gathering. In another case, it was reported that there was discrimination by perception. A mother and her daughter who looked masculine were perceived to be a lesbian couple and were scolded with foul language when they walked down the street holding hands.

Although supportive respondents showed acceptance of existing anti-discrimination Ordinances as the basis for legislation against discrimination on the grounds of SOGI and



intersex status, they expressed that some verbal and physical bullying faced by LGBTI people in their daily life could not be tackled sufficiently via the framework of the existing anti-discrimination Ordinances.

#### ***5.2.1.3 Disagreement on the priority of legislation against LGBTI discrimination over discrimination on other grounds***

Given that there were disagreements on the definition of discrimination and the prevalence of discrimination of LGBTI people, the need for legislation was weighted differently. The non-supportive respondents opined that age discrimination should be given first priority in formulating further anti-discrimination legislation in Hong Kong. They argued that priorities should be set in order to make the best use of public resources. They argued that since sexual orientation and gender identity are believed to be a matter of personal choice, there is no obligation to protect LGBTI people in the society.

The supportive respondents expressed the view that protection from age discrimination and discrimination on the grounds of SOGI and intersex status are not mutually exclusive. They considered them both to be important areas in which anti-discrimination legislation should be introduced. Given the significant levels of discrimination of LGBTI people, and in response to the numerous recommendations by the United Nations human rights committees, they believed that the Hong Kong government should take action by enacting comprehensive anti-discrimination legislation on the grounds of SOGI and intersex status.

They also noted two further points. First, they considered that anti-discrimination legislation should be considered on the basis of evidence of discrimination experienced by groups possessing the characteristics, but not as described above by comparing levels of discrimination between different characteristics (e.g. sexual orientation and age). Second, they believed that the question of “choice” for LGBT people is highly controversial. Even if certain characteristics are acquired by choice (e.g. religion, political opinion), that does not mean that those characteristics are less “worthy” of protection from discrimination.

#### ***5.2.2 Whether legislation is an appropriate means to redress the negative experiences reported by LGBTI people***

Neither the supportive nor the non-supportive respondents went into much concrete

discussion about what legal provisions should be made available or are most suitable for the Hong Kong society. Rather, both sides expressed only a general understanding of the values and purpose of anti-discrimination Ordinances. However they showed very different understandings of the relationship between law and social values, and the relationship between “consensus by the majority” and the enactment of a law. Some were also concerned about conflicts when different parties exercised their rights, while others saw that such perceived conflicts have been overplayed.

#### **5.2.2.1 Relationship between law and social values**

Fundamentally, the non-supportive respondents believed the law should take a reactive stance in reflecting that LGBTI people were, in their mind, still not accepted in society. They saw legislating against discrimination of LGBTI people a threat to alter social orders. They believed that it would lead to adverse social consequences such as the deterioration of morality and family values. Worse still, they believed, efforts to resist these imminent “social corruptions” would be greatly undermined once the legislation was passed.

The non-supportive respondents opined that legal provisions should only be introduced in areas that they believed to be generally approved by society (e.g. heterosexuality and heterosexual marriages to continue the family line). They believed that legislation against discrimination of LGBTI people was unacceptable because it conveyed a message of public approval of homosexuality or transgender identity. The non-supportive respondents were concerned that such an act would give “a green light to promote homosexual relationships” in society. The non-supportive respondents believed that LGBTI people were still viewed as socially and culturally unacceptable because they contradicted “Chinese traditional family values”. There were also heated debates about same-sex marriage.

*“Don’t you dare to destroy the moral order of our society that has been there for thousands of years... that is something that I want to keep. You may do whatever you like but don’t destroy the marriage institution, it is something holy, don’t you understand? Only heterosexual relationship is able to bring about offspring, if you go for test-tube babies that’s your personal business whatsoever ... but you must not upset the order of nature.”*

*“No, I don’t want change, that is, to call a man woman or a woman man. I would be totally confused. It implies fundamental change to society and morality. This is absolutely unacceptable.”*

*“I am a housewife, married and have children. I disagree with the meaning of the marriage institution being changed. I always know marriage to be between a man and a woman. If it is not between a man and a woman, you can call it whatever, a game or whatever, but it is not called marriage.”*

The non-supportive respondents also believed that if there was legislation against discrimination of LGBTI people, it would lead to an explosion of the LGBTI population. They were worried that more people would “turn” LGBTI if there was legislation.

*“Just like the time after soccer betting was legalized in 2003, the overall average age of gamblers was lowered. Once [discrimination toward LGBTI people was] legislated, honestly speaking, the immediate result would be that there would be more lesbians, more gay men... and that’s it ...”*

*“Children are like a piece of blank paper. If there is legislation, they would be affected, and their risk [of being LGBTI] would increase ... they would be easily under influence ...”*

Further, they argued that such change would result in the decline in “social productivity”, which would even escalate population ageing:

*“I am strongly against same-sex marriage and teaching children about same-sex marriage. This would strongly influence how the society operates, lower the population size and would escalate population ageing, and therefore also affect the next generation and social sustainability.”*

Referring to the idea of a domino effect, and based on stereotypes and misconceptions, non-supportive respondents further linked legislation against discrimination of LGBTI people

to the promotion of polyamory or bestiality. Further, they claimed that public health would be jeopardized, claiming that the number of HIV/AIDS infections would increase. Some of them claimed to be particularly worried about cases of sexual assault in public facilities such as toilets.

*“Why should a woman be forced to allow a transgender man in the women’s changing room who might take off his clothes and bathe with all other women there naked. ... When I changed dress for my work at [the company] there were many lesbians present [in the changing room]. They would gaze around while they were changing dress and those were terrible gazes. So if legislation [against discrimination toward LGBTI people] was passed it would be giving these people more encouragement [to do so]. You can imagine how unsafe it would become whenever we have to get changed then!”*

One non-supportive respondent argued that there should not be legislation, because otherwise gay men would rape people and they would not be charged:

*“Toilet is a special place where, for the sake of privacy, no closed-circuit television (CCTV) could be installed. Just imagine a case where a weak and slim man ran into a gay man with strong built in a public toilet. In case the moment when this slim man exposed his penis and was ready to pee and unexpectedly got the strong gay man sexually aroused who could force him into anal sex. ...the gay man could possibly be acquitted due to lack of evidence (CCTV record) ... whereas the slim man could be convicted [of vilification] if only he threw words of hatred at gay people during the incident. I think legislating against discrimination on the ground of sexual orientation would lead to unnecessary tragedy and legal dispute.”*

However, it is important to note that international organizations such as the World Health Organization have pointed out that discrimination and stigma faced by LGBT people are the major barriers of HIV prevention. Sexual assault itself is a criminal offence and it is prohibited by Hong Kong law.

There were also specific concerns raised regarding the domino effect of the discrimination legislation on legislating for same-sex marriage.

Based on their moral beliefs a majority of Christian respondents (viz. Catholics and Protestants) did not support legislating against discrimination of LGBTI people.

In contrast, the supportive respondents argued that legislation against LGBTI discrimination was about recognition of equal rights, but would not necessarily mean recognition of same-sex marriage or subversion of family values. All LGBTI people need are equal opportunities and the same rights in the public domain. They would be able to lodge complaints or file court cases when undue discrimination on the grounds of SOGI and intersex status was encountered.

The supportive respondents further suggested that the law would induce a paradigm shift to alter how the society viewed LGBTI people, who would certainly benefit from a safer and more inclusive environment.

In contrast to the reactive approach, some supportive respondents argued that the law should take a proactive stance in changing how society thinks about LGBTI people, even if society may not be entirely approving of diverse sexual orientations and gender identities. For them, discrimination law might help to provide a safe and inclusive working environment for the LGBTI people. The availability of discrimination law was seen as a tool allowing victims of discrimination to be heard and to pursue justice.

The supportive respondents contended that it would “change the social order” but only for the better, because it would positively influence society’s ability to accept homosexuality, transgender identity and intersex status. Some believed that such a change had already started when same-sex acts were decriminalized in Hong Kong.

*“As members of the dominant group, we find that there are times when the interests of the minorities have to be protected. Given the privilege we enjoy, it is natural to feel that some of our interests are being taken away once we support equality ... It is unjustifiable if we deny others of their right to equality based on our fear of losing our privileges. I am among the minorities [in the dominant group] who support legislating [against discrimination of LGBTI people] because I find it a positive step towards educating the mainstream about the minorities. And whether you agree with it or not,*

*it takes a formal policy to announce to society that, regardless of one's sexual orientation or sexualities, we shall be inclusive and treat everyone equally. This is a very positive educational process."*

In particular, the supportive respondents argued that worries over so-called domino effects were unfounded. For example, they argued that the opposition tended to believe that, after the legislation, more people would turn "LGBT". The parent of a transgender person said that was completely beyond imagination, as being LGBT was something deeply felt and that there were dire consequences:

*"No one would opt for the [sex reassignment] surgery that my daughter went through [if there is not the need]. It is not a simple matter. Those who are worried about people seeking surgeries easily after anti-discrimination legislation, have they lost their mind? Such pain, my God, was absolutely unbearable, [seeing them go through it] we parents were scared to death! ... who would stand these sufferings if one does not have the need to go through it?"*

As much as there were worries about social disintegration and moral disorder resulting from legislation against discrimination of LGBTI people, the parent of a transgender daughter assured the non-supportive respondents that legislation would be put into good use by most LGBTI people.

#### **5.2.2.2 Relationship between "consensus by the majority" and the enactment of**

The non-supportive respondents argued that there should be a consensus by the majority before legislating against discrimination of LGBTI people could be considered. They believed that otherwise there would be too many kinds of minorities, including those who were fat or short for example, who would ask for protection from discrimination. They objected to the idea of providing legal protection for the sexual minorities because they felt this would "grant them a privilege" over other minority groups as well as overriding the rights of the majority.

The non-supportive respondents opined that, in ensuring equality for all, the enactment of a law should protect the rights of the minorities due to the fact that their interests could easily be ignored or overridden by the majority. Legislation is important to prevent "tyranny of the

majority”. They believed that minority rights should be protected by law as a matter of principle, and public opinions should not be the determining factor.

The supportive respondents further said that, in principle, an open society based on the rule of law could only operate by protecting the rights of the minorities. Where there was an act of discrimination, freedom of opinion and expression can legitimately be restricted to protect the rights of the minorities. The supportive respondents believed that it was a basic human right for the LGBTI people in same-sex relationships to have equal access to primary benefits such as insurance coverage, emergency hospital visits, inheritance entitlements and other spousal rights of heterosexual married couples.

#### **5.2.2.3 Worries about conflicts between different parties in exercising their rights**

The non-supportive respondents opined that legislation against discrimination of LGBTI people would involve the Government excessively intervening in the personal family life and moral values of people. They believed it could infringe upon the rights (e.g. freedom of speech, freedom of religion and freedom of conscience) of those who did not approve of LGBTI people. They believed that if disapproval of homosexuality or LGBTI people’s conduct was prohibited in the public domains, a type of “reverse discrimination” would result.

*“I teach at a primary school and I am quite concerned. Would the passing of an anti-discrimination bill result in the compulsory teaching of a one-sided story for the church, for teachers and staff? If they were not allowed to voice their opposition, this would be an intrusion into our personal right, the right to oppose!”*

*“You use legislation to restrict people ... what if they don’t like ‘the thing’ itself? ... what about freedom of speech? Especially what if it is a child who just expresses that s/he dislikes homosexuals. Then are you going to sue him/her? That’s not ok.”*

*“When disagreeing becomes discriminatory, that’s deadly! There are many cases overseas. People lose all their money, and companies go bankrupt, all because they are being sued for discrimination.”*

*“Once homosexuality is baptized by legislation ... society won’t get to hear oppositional voice ... If none is allowed to teach, talk or act against it ... this is brainwashing.”*

The non-supportive respondents were worried about losing their right to freedom of expression, and in particular to openly denounce or disapprove of homosexuality in church and school. Anxieties about LGBTI people also include their making use of the law as a “weapon” to “advance their interests whenever possible”. Further, the non-supportive respondents were worried that the law would place the burden of proof on the defendants. They believed that if there was legislation, employees could claim that they were LGBTI “conveniently” and that employers could be put into legal disputes “too easily”. They argued that too many lawsuits could lead to disharmony in society as well as in the workplace. They thought the process would enable LGBTI people to sue them and penalize them:

*“I might be complained against by a homosexual at the Equal Opportunities Commission because of a minor issue. This could be unjust. In the case of a lawsuit, the accuser has nothing to lose, but the person accused would have to become the defendant and be held responsible for the cost incurred! This is outright unfair! I am so afraid!”*

*“No, listen to me! The problem is that if a person has to change the gender, go and change the gender! If one wears a skirt and tells me she is a woman today, and wears a shirt and tells me he is a man tomorrow, this sort of [changeable] orientation is hard for me to catch up with, it will easily lead me into a trap to be penalized.”*

*“If physically he is a male, but his gender identity is female and wishes to use female changing room, toilet, ... it would offend other females. ... If there was legislation and he was protected, he could sue me for my expression of shock which made him uncomfortable...how is legislation going to protect people like us?”*

The non-supportive respondents were most concerned that their freedom of expression would be compromised once the legislation was passed. They were worried that the law would place the burden of proof on the defendants.



A number of these concerns demonstrate misunderstandings of the ways in which the existing anti-discrimination Ordinances or human rights legislation operates. For example in relation to the burden of proof, under the existing anti-discrimination Ordinances the burden of proof always remains with the complainant to prove that there was discrimination. Further, under the Bill of Rights, freedom of expression is protected, but it is not an unlimited right. This is discussed further in Chapter 6.

Furthermore, concerns were raised that if the legislation was enacted, it might affect their “private life”, for example by making it unlawful to refuse to employ LGBTI private tutors or domestic helpers.

Questions about the definitions of sexual orientation and gender identity (refer to Section 1.3) were also raised by the non-supportive respondents. They opined that sexual orientation and gender identity are difficult to define.

For the supportive respondents, they saw that the aim of legislation was to protect LGBTI people, and that LGBTI people would avoid the legal channel unless it became necessary. For them, legislation could protect LGBTI people from undue discrimination. They questioned the prioritization of the majority group’s right over the minorities, and believed in balancing the rights of the majority group and those of the minorities for the benefit of society as a whole.

*“For the general society, the question is whether we should weigh someone’s freedom to vilify others over the basic human rights of the minorities?”*

*“I think the process of legislation must speed up. Because we are talking about basic human rights, not special privileges, it is about elimination of discrimination, ... it is a matter of concern for everyone.”*

The supportive respondents highlighted that being a signatory of the International Covenant on Civil and Political Rights (ICCPR) and other international conventions, the Hong Kong government should comply with the international human rights standards and respond to the recommendations by the United Nations to legislate against discrimination of LGBTI people.

*“As a cosmopolitan city like Hong Kong today, the lack of an anti-discrimination ordinance for sexual minorities places it behind many developed countries. That is why I think either for LGBTI people, or for Hong Kong, the legislation is badly needed.”*

*“I strongly agree and demand legislation to take place. ... it is already much delayed, we are a signatory country to these international human rights treaties ... ”*

*“I think the important thing for us to ask is ... in a society, is the right for people to vilify and have their freedom of speech completely unrestricted more important, or the rights of minorities that are more important?”*

### ***5.2.3 The effectiveness of legislation as a means of addressing the problems faced by LGBTI people***

Both the supportive and non-supportive respondents agreed on the limitations of the law in redressing all forms of undue discrimination. Their views diverged at whether legislation could be an effective starting point.

The non-supportive respondents believed that discriminatory attitudes against LGBTI people could not be resolved by legislation. In their view, school bullying, unfair job dismissal, refusal of access to services and facilities, social isolation and family rejection would continue to take place as long as “difference” exists in people’s minds. Rather than eliminating discrimination, they believed that legislation would only instigate further resentment among peers and family members. The non-supportive respondents argued that if LGBTI people were asking for love and affirmation by others, what they wanted would be unlikely to be provided by means of an anti-discrimination legislation.

On the other hand, the supportive respondents opined that legislation against discrimination of LGBTI people was an important first step and it could alleviate LGBTI people’s suffering from psychological stress, depression and suicidal behaviours. It would help to ensure equal opportunities for everyone regardless of their sexual orientation and gender identity. It was the only way to protect sexual minorities from discrimination in the public domains. Furthermore, the supportive respondents considered that legislation against discrimination of

LGBTI people will make the society a better place for the LGBTI community and their future generations.

*“Provided that there is legislation, the parties involved may have at least a chance to debate over it in court. ...Just like after the passing of the Disability Discrimination Ordinance, ...we’ve got to learn about it in our class on civic education, ...name calling or discrimination of the disabled has been much reduced in school since then. ...[Legislation] would provide a valuable opportunity for education and the nurturing of a better social environment.”*

*“Legislation [against anti-discrimination] ...would allow more [LGBTI] people to come out of the closet. ... These people have been much suppressed, some of them have to see psychiatrists ... or have suffered depression over the years, or more seriously, contemplated suicide. ...If legislation is passed, it could encourage them to disclose their identities and relieve their deep stress. ... Once there is legislation, this group of people would have some official recognition by the government, and would be assured that everyone enjoys equality of rights. This is the most direct way to promote the values of equality, freedom and love.”*

Even if respondents in support of legislation agreed with the non-supportive respondents on the limitation of law in eliminating discrimination completely, they argued that legislation was an important first step. For example the parent of an LGBT child commented:

*“I think having such a legislation is better than not ... If justice would be affirmed in the ordinance, it would make the road of our (LGBTI) children a little less difficult.”*

*“Even if legislation today would not change the mind of those who are in their 40s, 50s or 60s, at least children who are born from now onward would be able to acquire the relevant information ... which would then be passed on from one generation to another until a time homosexuality would not be seen from a negative angle. That is absolutely a good thing to me.”*

#### **5.2.4      Legislation and exemptions**

There were very few discussions on the scope and content of legislation. Only a few

comments from supportive and non-supportive respondents were collected.

Supportive respondents proposed referring to overseas jurisdictions if legislation were to be proposed. With respect to legislation, the experiences of the United Kingdom and Australia in formulating anti-discrimination Ordinances on the grounds of SOGI and intersex status were suggested for review and study. Some discussions were about the extent of coverage such as vilification, and possible exemptions in some domains. In general, exemptions that take into consideration the views of the concerned parties were accepted by some respondents as a way of balancing different stakeholders' interests.

However, for non-supportive respondents, exemptions were rejected because such practices would imply that the concerned parties were the problematic groups. They maintain that, out of personal morality and conscience, all people should enjoy the freedom of showing disapproval of homosexuality. The Catholic respondents opined that no individuals or organizations should be privileged by having exemptions, quoting "The Catholic Church is not asking for special privilege but the common good for society".

In relation to the practical application of exemptions, some difficulties were highlighted, for example the use of toilets in schools, arrangements of male and female hospital wards, Christian-owned enterprises, and teachers advocating LGBTI rights in religious schools. One participant said, "It is too complicated to set exemptions...the less troublesome the better". Whether exemptions should be provided for employers of domestic helpers who work in the household environment was also raised. In short, exemptions were considered unfavourably by the respondents not supporting legislation.

Some supportive respondents totally opposed the inclusion of exemptions in the legislation against discrimination of LGBTI people. Some were opposed to any exemption in the areas of employment, education and/or religion.

Those who considered that exemptions could be used as a way of balancing different stakeholders' interests expressed the view that exemptions should be confined to religious functions, and should be restricted to a period of three to ten years, by the end of which the concerned parties should comply with the legislation.

A minority of Christian respondents supported legislation against discrimination of LGBTI people. They considered that exemptions could be used as a way of balancing different stakeholders' interests so that Christians would not be accused of imposing religious moral values on other people.

#### **5.2.5     *Alternative/additional measures of redressing discrimination against LGBTI people***

Both the supportive and non-supportive respondents debated alternative/additional measures of redressing discrimination against LGBTI people.

#### ***Education***

**Public Education:** Both the supportive respondents and non-supportive respondents agreed that public education in the media and promotion by the Government should continue in order to address stereotyping, stigma and prejudice against LGBTI people in the society. It was seen also as an important instrument for the alleviation of the anxiety and fear in society. Christian schools were believed to have similar, if not more, responsibility in this respect. It was also suggested that education and training programmes for the public, especially educators and professionals who were involved in working with LGBTI people, are particularly needed.

**Education in schools:** Apart from legislation, it was believed by the respondents that there should be strengthening of education against discrimination including (1) new school curricula about nurturing mutual respect for diversity, (2) seminars for the exchange of views and dissemination of a comprehensive understanding of the issues involving LGBTI people and (3) school education about inclusiveness for all and zero tolerance of discrimination of LGBTI people.

**Research:** It has also been pointed out that ongoing research into monitoring the severity of discrimination of LGBTI people is needed.

#### ***Administrative guideline in employment***

It was proposed that there should be monitoring of compliance with the existing Code of

Practice on sexual orientation discrimination in the area of employment.

### ***Supportive service for LGBTI people***

Setting up of a designated service centre to provide support for LGBTI people has also been proposed.

## ***5.3 Summary***

### ***5.3.1 Quantitative findings***

In comparison to a similar study on whether or not there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status, the support for legislation has almost doubled in a decade from 2005 (28.7%) (MVAHK, 2006) to 2015 (55.7%) (this Study). However, the proportion of people that disagreed appears to have remained relatively stable: 34.6% (MVAHK, 2006) vs 34.8% (this Study).

Both the telephone survey and the focus group interviews showed that stronger support for legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status is found among members of the public who were aged 40 or below, who had attained post-secondary education, who were never married, who had no children and/or religion, and who had contact with LGBTI people in everyday life.

It is noteworthy that respondents aged 18–24 are in particular supportive of providing legislation to protect people of different sexual orientation, gender identity and intersex status in Hong Kong from discrimination. Of this group 91.8% agreed that overall, there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status.

It should also be noted that among those respondents with religious beliefs, 48.9% agreed that overall, there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status. This denotes that, among people with religious beliefs, there is also a diverse range of views in terms of whether LGBTI people should be legally protected from discrimination or not.

### **5.3.2     *Areas of consensus***

It was revealed throughout the Study that legislating against discrimination of intersex people was perceived to be far less controversial, compared with legislating against discrimination of people of different sexual orientation and gender identity, because intersex status was considered as inborn. Most participants of the focus groups agreed that general knowledge about intersex people was poor in Hong Kong society. There was an urgent need for more public education on the subject and there was consensus that anti-discrimination legislation in relation to intersex status should be enacted.

### **5.3.3     *Areas of disagreement***

The views of those who are supportive or non-supportive of legislation were polarized. There are three main areas of disagreement:

- The extent of discrimination experienced by LGBTI people and the need for legislation against discrimination of them;
- Whether legislation is an appropriate means to redress the negative experiences reported by LGBTI people;
- The effectiveness of legislation as a means of addressing the problems faced by LGBTI people.

Those who did not support legislation against discrimination of LGBTI people disagreed with the definitions of discrimination in the existing anti-discrimination Ordinances, did not consider the discrimination experienced by LGBTI people serious, and disagreed with the urgency for protection of LGBTI people from discrimination over other social groups. Furthermore, they disagreed with potential legislation as they thought it would imply social approval of homosexual conduct. They disagreed with the idea of the protection of minority rights over the rights of the majority, and were worried that legislation against discrimination of LGBTI people would infringe their own rights to freedom of expression, religion and privacy. Finally, they disagreed with the effectiveness of legislation as a means to address the problems faced by LGBTI people. They argued that, rather than redressing discrimination, legislation would only result in further resentment in the community.

Some of the views expressed by the respondents not supportive of legislation demonstrate misunderstanding of the legal definitions of discrimination and other concepts. This misunderstanding has generated fears and anxiety. Some of the other fears were centred on LGBTI people's potential abuse of the legal provision once legislated. These fears were based on a misunderstanding of how legal proceedings operate (for example the burden of proof).

This indicates that much needs to be done to educate the general public more effectively about the definitions, concepts and operation of the four existing anti-discrimination Ordinances of Hong Kong. In addition, relevant concerns from the public will be addressed in Chapter 6.

For respondents who supported legislation, they found discrimination of LGBTI people very serious, and believed that legislation was the only means to redress this discrimination. In their view, legislation is needed to induce a paradigm shift to ensure equality for all, and to alter the negative views of the society of LGBTI people so that these people may feel safe to live, study and work on an equal basis with others. Although legislation might not eliminate discriminatory attitudes, respondents supportive of legislation opined that it was an important first step towards making society a better place for the LGBTI community and future generations.



## **Chapter 6 A Comparative Review of Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status**

This Chapter provides a comparative legal review and analyses of how several jurisdictions have legislated against discrimination on the grounds of sexual orientation, gender identity and intersex status.

As discussed, the findings presented in Chapter 4 indicate that LGBTI people in Hong Kong strongly support legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. While LGBTI individuals recognize that legislation alone will not eliminate all the forms of discrimination that they experience, anti-discrimination legislation is perceived to be the only effective means of providing adequate redress for the discrimination that they continue to face in many different domains.

Chapter 5 indicated that mixed opinions were received from the general public with regard to the development of anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status. The territory-wide telephone survey conducted from January to March 2015 concluded that more than half of the general public (55.7%, a majority) was in support of anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status, and that this figure is significantly higher than 10 years ago in Hong Kong. However, a sizeable minority of the public (34.8%) oppose the adoption of any such legislation. Some members of the public also raised a number of concerns about the implications of legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status.

This Chapter is divided into two parts. Part One of the chapter provides an overarching summary of anti-discrimination legislation in a number of jurisdictions in Australia,; Great Britain (England, Wales and Scotland) in the United Kingdom of Great Britain and Northern Ireland, Canada, New Zealand, the Macau Special Administrative Region (SAR), the Netherlands and Taiwan.

The decision to primarily focus on these jurisdictions is based on a number of factors,

including the scope and remit of anti-discrimination legislation relating to sexual orientation, gender identity or intersex status, similarities between Hong Kong's current anti-discrimination legislation and the anti-discrimination legislation in these other jurisdictions, the legal systems in place and similarities with Hong Kong's legal system, cultural similarities in the case of Taiwan and Macau as they are both influenced by Chinese culture, and the presence of comparable mechanisms for enforcing and promoting understanding of anti-discrimination legislation.

The chapter focuses primarily on the development of anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status in the jurisdictions of England and Wales in the United Kingdom (U.K.) and in Australia. This is for several reasons. First, Hong Kong's current anti-discrimination legislation was based on the anti-discrimination legislation in both England and Wales and in Australia, so useful references can be taken from developments there. Second, those jurisdictions have developed comprehensive anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status (in the case of two jurisdictions of Australia). Third, Hong Kong retains a similar common law legal system, which is relevant to the way the legislation is enforced, including the role of statutory equality/ human rights bodies and the role of the courts.

Experiences of legislating against discrimination on the grounds of sexual orientation and/or gender identity in Taiwan and Macau, a special administrative region of China, are also considered as they provide important comparators of other societies influenced by Chinese culture. Reference is made to Taiwan, which has some anti-discrimination legislation that covers sexual orientation and gender identity in the domains of employment and education. A brief summary is also given of the Macau SAR where appropriate, as the region has legislated against discrimination on the ground of sexual orientation in several fields.

Where appropriate, reference is also made to other similar common law jurisdictions of Canada and New Zealand, as well as an European Union (EU) member state, the Netherlands, which has well-developed and long-standing anti-discrimination legislation.

The analysis of the anti-discrimination legislations considers all the key elements of the legislation, such as which groups are protected from discrimination, the format of the

legislation, the ways in which the groups are defined, the forms of prohibited conduct, the domains in which the legislation operates, exemptions to prohibitions on discrimination, and the duties and powers of the equality or human rights bodies for example in providing education, guidance and promoting equality. The summary is intended to be indicative, rather than exhaustive, noting major points relevant for consideration for Hong Kong society.

Part Two of the Chapter analyses in detail what lessons can be learnt from the experiences of the development and implementation of anti-discrimination legislation in other jurisdictions. While experiences of legislating against discrimination on the grounds of sexual orientation and gender identity vary across jurisdictions, members of the Hong Kong public raise similar concerns that have been expressed in other legal, political and social contexts.

These concerns include balancing the protection of LGBTI people from discrimination with:

- the right to freedom of expression (6.2.1);
- the rights to freedom of conscience and religion (6.2.2);
- the right to privacy (6.2.3);

Other concerns relating to legal, political and social factors include:

- concerns about social consequences and the relationship between anti-discrimination legislation and relationship rights (6.2.4);
- lack of majority support in society for legislation (6.2.5);
- the definitions regarding LGBTI groups (6.2.6);
- whether anti-discrimination legislation would be effective (6.2.7).

## ***6.1 Overview of anti-discrimination legislation in other jurisdictions***

Globally, over the last twenty years there has been a clear pattern of an increasing number of jurisdictions that have introduced anti-discrimination legislation on the grounds of sexual orientation, gender identity, and to a significantly lesser extent intersex status. For example, there are anti-discrimination laws on the grounds of sexual orientation or gender identity in all 28 EU member states, North America (19 States of the United States of America, at the federal and provincial levels in Canada, Mexico), South America (nine countries), Australasia (at the federal level and all states in Australia, and New Zealand), and South Africa.

The development of anti-discrimination legislation in other jurisdictions on the grounds of

sexual orientation, gender identity and intersex status has been influenced by a number of legal, political and social factors.

Some common factors relating to the development of anti-discrimination laws have included evolving attitudes as to which groups in society should be protected from discrimination, the impact of international human rights treaties and how such treaty provisions have been interpreted and applied in domestic settings<sup>86</sup> and how domestic constitutional provisions on non-discrimination have been interpreted or amended to include protections for minority groups. The signing of international treaties by member states of the UN (particularly the International Covenant on Civil and Political Rights, which has been implemented into Hong Kong law)<sup>87</sup> has significantly influenced the development of the anti-discrimination legislation on a number of grounds in many signatory countries. Even though Taiwan is not in a position to become a signatory to any international treaty, existing international treaty frameworks have influenced the development of domestic laws.

For European jurisdictions, membership of the European Union has been one of the principal factors that has contributed to the development of domestic laws. For European jurisdictions, one core element of the European Union's goals, legislation and institutions is to promote equality and respect for human rights.<sup>88</sup> The European Union also has specific powers to introduce anti-discrimination legislation.<sup>89</sup> This has been instrumental for the development of legislative protections to prevent discrimination and promote equality. EU member states are required to take appropriate steps to implement EU directives<sup>90</sup> such as the Employment Equality Directive of 2000<sup>91</sup>, which covers sexual orientation. The Netherlands provides an

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<sup>86</sup> For example, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) non-discrimination provisions have been interpreted to apply to the grounds of sexual orientation and gender identity within "other status". See Chapter 1.

<sup>87</sup> International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, 999 U.N.T.S.171. This has been implemented in Hong Kong by the Bill of Rights Ordinance. See Chapter 1.

<sup>88</sup> See article 2, Treaty of the European Union:  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012M/TXT> and see European Union Agency for Fundamental Rights (2010)  
[http://fra.europa.eu/sites/default/files/fra\\_uploads/1510-FRA-CASE-LAW-HANDBOOK\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA-CASE-LAW-HANDBOOK_EN.pdf).  
(accessed on 16 December 2015).

<sup>89</sup> See article 19 of the Treaty on the Functioning of the European Union, which gives the European Union powers to introduce legislation to eliminate discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

<sup>90</sup> EU Directives are EU legislation that are normally required to be implemented by all EU member states by implementing domestic legislation in those areas.

<sup>91</sup> The Framework Directive 2000/78/EC,  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>. (accessed on 16

example of an European Union jurisdiction that has well-developed anti-discrimination legislation including coverage of sexual orientation expressly, and gender identity as interpreted through relevant case law. It also has a statutory equality/human rights body that promotes understanding and enforces the anti-discrimination legislation.

In some jurisdictions, such as Australia, the dual federal and state systems of government mean that both federal and state anti-discrimination legislation has evolved and influenced one another over time.

In a number of the jurisdictions, the development of anti-discrimination legislation to cover sexual orientation, gender identity and intersex status has been incremental, following the introduction of anti-discrimination legislation to protect other groups such as women, racial groups and persons with disabilities. This has reflected evolving national and sometimes regional attitudes as to which groups in society should be protected from discrimination.

#### ***6.1.1 Comparative analysis of the scope and remit of anti-discrimination legislation***

It is important to understand the broad context to the anti-discrimination legislation in the jurisdictions examined including its relationship with constitutional legislation providing related protections of human rights. This section examines the legal, political and social contexts in each of the jurisdictions examined. It also examines whether the characteristics of sexual orientation, gender identity or intersex are covered by the legislation, and if so, how.

### **Australia**

Australia is unusual for being the only “Western” democratic country that does not have a domestic Bill of Rights setting out the constitutional human rights of people, including the right to non-discrimination. Despite this, Australia has well-developed federal- and state-level anti-discrimination legislation. The federal anti-discrimination legislation was incrementally enacted to provide protection in relation to the characteristics of race<sup>92</sup>, sex<sup>93</sup> and disability.<sup>94</sup> These protections apply where federal acts and legislation are engaged, such as federal

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December 2015).

<sup>92</sup> The Racial Discrimination Act 1975.

<sup>93</sup> The Sex Discrimination Act 1984.

<sup>94</sup> The Disability Discrimination Act 1992.

government matters involving immigration or federal government employment.

The Sex Discrimination Act 1984 previously provided protection from discrimination in relation to the protected characteristics of sex, marital or relationship status, pregnancy, and breastfeeding. In 2013, the Australian federal-level Sex Discrimination Act 1984 was amended to include the grounds of sexual orientation, gender identity and intersex status.<sup>95</sup>

Although Australia does not have a federal-level anti-discrimination law protecting discrimination on the grounds of religion or belief, it is important to note that religious beliefs (or non-belief) are protected under the Human Rights and Equal Opportunity Commission Act (1986) in the domain of employment.

There is also anti-discrimination legislation in the six states of Australia.<sup>96</sup> These legal protections apply in relation to state jurisdiction matters, for example in relation to possible discrimination by state government departments. The form of the state legislation can be contrasted with the federal anti-discrimination legislation as every state's legislation covers all the protected characteristics in one piece of legislation.<sup>97</sup> Every state's anti-discrimination legislation provides protection from discrimination on the grounds of sexual orientation and gender identity (albeit defined differently), and there is some express protection from discrimination on the ground of intersex status.<sup>98</sup>

## **Canada**

Canada has well-developed human rights constitutional legislation and anti-discrimination legislation at both the federal and provincial levels.

The Canadian Charter of Rights and Freedoms is Part 1 of the Constitution Act 1982 and includes non-discrimination provisions, which have been interpreted to include protection from discrimination on the ground of sexual orientation.<sup>99</sup>

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<sup>95</sup> The Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013.

<sup>96</sup> The Anti-Discrimination Act 1977 (New South Wales); the Equal Opportunity Act 2010 (Victoria); the Equal Opportunity Act 1984 (Western Australia); the Anti-Discrimination Act 1991 (Queensland); the Equal Opportunity Act 1984 (South Australia); and the Anti-Discrimination Act 1998 (Tasmania).

<sup>97</sup> For example covering race, sex, disability, religion, political opinion, age, sexual orientation, gender identity and other characteristics in one Act.

<sup>98</sup> Under the Anti-Discrimination Act 1998 in Tasmania there is express protection from intersex status discrimination.

<sup>99</sup> *Haig v Canada* (1992), 9 O.R. (3d) 495, 94 D.L.R. (4th) 1 (C.A.).

The Canadian Human Rights Act (1977) is Canada's federal anti-discrimination legislation. It applies to businesses and activities regulated by federal law and prohibits discriminatory practices in both the public and private sectors in relation to fields such as employment, provision of goods and services, and premises.

The Human Rights Act was amended to include the ground of sexual orientation discrimination in 1996.<sup>100</sup> Gender identity is not yet explicitly protected in the legislation, however the Canadian Human Rights Commission has indicated that complaints of discrimination by transgender people will be received and investigated on the ground of "sex".<sup>101</sup> The new Liberal government elected in October 2015 has also promised to add gender identity as another protected ground.<sup>102</sup>

There is also provincial and territorial anti-discrimination legislation that includes express protection from discrimination on the ground of sexual orientation, and in several provinces and territories also includes gender identity.<sup>103</sup>

## **Macau**

Macau also provides a useful comparator as it is also a Special Administrative Region (SAR) of China. Macau has enacted several pieces of legislation that provide some form of protection from discrimination on the ground of sexual orientation. First, the Labour Relations Act No.7/2008 provides for rights relating to employment including all aspects of working conditions such as pay and taking leave. The Labour Relations Act also includes an obligation on employers not to discriminate against employees on a number of grounds including sexual orientation:

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<sup>100</sup> The prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered: section 3(1).

<sup>101</sup> BC Teachers Federation, *A chronology of Advances in LGBT Rights in Canada, and in BC*, 2006, <https://bctf.ca/socialjustice.aspx?id6100>.

<sup>102</sup> <https://www.liberal.ca/realchange/trans-rights/>.

<sup>103</sup> The Provincial legislation is the Alberta Human Rights Act; the British Columbia Human Rights Code; the Manitoba Human Rights Act 1970 and the Human Rights Code (Manitoba); the New Brunswick Human Rights Act 1973; the Newfoundland Anti-Discrimination Act 1979 and the Newfoundland Human Rights Code 1969; the Northwest Human Rights Act 2004; the Nova Scotia Human Rights Act 1963/1991; the Ontario Human Rights Code; the Prince Edward Island Human Rights Act; the Quebec Charter of Human Rights and Freedoms 1975; the Saskatchewan Human Rights Code 1979; and the Yukon Human Rights Act 1987.

*No employee or applicant for employment shall be unduly privileged, or discriminated against or deprived of any right or exempted from any duty on ground of, inter alia, national or social origin, descent, race, colour, gender, sexual orientation, age, marital status, language, religion, political or ideological beliefs, membership of associations, education or economic background.*<sup>104</sup>

Other protections relating to sexual orientation include a prohibition against discrimination in the protection of personal data<sup>105</sup> and discrimination by the Ombudsman<sup>106</sup>, as well as the work of the Commission Against Corruption.<sup>107</sup>

## **The Netherlands**

The Netherlands has human rights constitutional laws as well as distinct anti-discrimination legislation.

Pursuant to Article 1 of the Dutch Constitution 2008, all persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, or sex or on any other grounds whatsoever shall not be permitted.

In 1994, the Netherlands enacted the Equal Treatment Act, which applies to the fields of employment, provision of goods and services and education. Section 1 of the Act prohibits discrimination based on religion, belief, political views, race, sex, heterosexual or homosexual orientation, or civil status.

Cases have determined that discrimination on the basis of a person being transgender may be prohibited under the Equal Treatment Act on the basis that this is discrimination based on a person's sex.

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<sup>104</sup> Article 6/2 of Law No. 7/2008 Labour Relations Act.

<sup>105</sup> Article 7/1,2 of Law No. 8/2005 Personal Data Protection Act.

<sup>106</sup> Article 31-A of Law No. 10/2000, as amended by Law 4/2012.

<sup>107</sup> Article 31-A of Law No. 10/2000, as amended by Law 4/2012. This prohibits the Commission Against Corruption from discrimination on grounds including sexual orientation.



## **New Zealand**

New Zealand has well-developed human rights constitutional legislation and anti-discrimination legislation. New Zealand accords everyone the right to freedom from discrimination under section 19 of the Bill of Rights Act 1990.

The Human Rights Act 1993 is New Zealand's main anti-discrimination legislation. The fields of coverage include government and public bodies, employment, partnerships, certain associations and bodies, access to places, vehicles and facilities, provision of goods and services, land, housing and other accommodation and education.

Section 21 of the Human Rights Act prohibits discrimination on a number of grounds including sexual orientation and sex.<sup>108</sup> A Crown Law opinion issued in 2006 confirmed that sex discrimination may also include discrimination on the basis of gender identity.<sup>109</sup> The New Zealand Human Rights Commission also has stated that intersex people are covered by the anti-discrimination legislation.<sup>110</sup> This is likely to be as a form of sex discrimination.

## **Taiwan**

The jurisdiction of the Republic of China (ROC) (Taiwan) provides another useful comparator of a society influenced by Chinese culture. Some anti-discrimination legislation covering the fields of education and employment has been adopted. In 2003 the government introduced the Gender Equity Education Act 2003, which prohibits discrimination in public and private education on the grounds of gender, gender temperaments, gender identity or sexual orientation.<sup>111</sup> Further, the Act of Gender Equality in Employment was passed in 2007 and prohibits discrimination in public or private sector employment on the grounds of gender and sexual orientation.<sup>112</sup>

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<sup>108</sup> The prohibited grounds of discrimination are: sex, which includes pregnancy and childbirth, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, which includes nationality or citizenship, disability, age, political opinion, employment status, family status, and sexual orientation.

<sup>109</sup> Crown Law opinion ATT395/9, 2 August 2006, citing court decisions from Canada, the United Kingdom, Europe and South Africa.

<sup>110</sup> HRC, *To Be Who I Am—Report of the Inquiry into Discrimination Experienced by Transgender People* 2007 at page 4, accessed from the HRC website at [www.hrc.co.nz](http://www.hrc.co.nz). (accessed 15 December 2015)

<sup>111</sup> <http://law.moj.gov.tw/Eng/LawClass/LawContent.aspx?PCODE=H0080067>. (accessed 16 December 2015)

<sup>112</sup> <http://law.moj.gov.tw/Eng/LawClass/LawContent.aspx?PCODE=N0030014>. (accessed 16 December 2015)

## **United Kingdom (UK)**

The United Kingdom has both quasi-constitutional human rights protections under the Human Rights Act 1998 as well as anti-discrimination legislation. The Human Rights Act incorporates into UK domestic law the majority of provisions of the European Convention on Human Rights (ECHR) and includes the right to non-discrimination in enjoying other fundamental rights contained within the ECHR.<sup>113</sup>

In the UK, the development of anti-discrimination law in Great Britain (England & Wales, and Scotland) has taken place over several decades since the 1960s with the ground of race first legislated (Race Relations Acts 1965, 1968 and 1976). Subsequent anti-discrimination legislation and other legislative protections were adopted on the ground of sex in the 1970s (Equal Pay Act 1970; Sex Discrimination Act 1975) and disability in the 1990s (Disability Discrimination Act 1995). As a result of an EU Directive<sup>114</sup> which established a general framework for equal treatment in employment and occupation, secondary legislation was adopted in 2003 covering discrimination on the ground of sexual orientation in employment.<sup>115</sup> Similarly, protection from religion or belief discrimination in employment was introduced by secondary legislation of the Employment Equality (Religion or Belief) Regulations 2003. And protection from age discrimination in employment was introduced by secondary legislation of the Employment Equality (Age) Regulations 2006. In 2007, protection from discrimination on grounds of sexual orientation was extended to the fields of provision of goods, facilities and services, education, premises, the government and public authorities.<sup>116</sup>

In relation to gender identity, in 1996 the European Court of Justice in *P v S and Cornwall County Council* decided that gender identity discrimination was a form of sex discrimination.<sup>117</sup> As a result, from that point the UK and other European Union jurisdictions

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<sup>113</sup> Article 14 of the European Convention on Human Rights on the Prohibition of Discrimination states that “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

<sup>114</sup> EU Directive 2000/78/EC, 27 November 2000. This required member states to introduce anti-discrimination legislation in the field of employment on grounds of disability, sexual orientation, religion and age.

<sup>115</sup> Employment Equality (Sexual Orientation) Regulations 2003.

<sup>116</sup> The Equality Act (Sexual Orientation) Regulations 2007.

<sup>117</sup> *P v. S and Cornwall County Council*, Case C-13/94, [1996] IRLR 347. The case concerned Article 5(1) “Application of the principle of equal treatment with regard to working conditions, including the conditions

were required to interpret their domestic sex discrimination legislation as incorporating protection against discrimination for a reason related to gender reassignment.

Most recently, the Equality Act 2010 was adopted, which aimed to modernise and streamline multiple primary and secondary legislative provisions on non-discrimination within one statute.<sup>118</sup> The Equality Act 2010 provides protection from discrimination on the grounds of age, disability, gender reassignment (which relates to gender identity), sex, pregnancy and maternity, being in a marriage or a civil partnership, race including colour, nationality, ethnic or national origin, religion or belief/lack of belief, and sexual orientation. The Equality Act 2010 also allows for claims based on the intersection of multiple forms of discrimination. For example, individuals who simultaneously experience discrimination based on sex and race would be able to bring one complaint (not two), though the person would need to prove discrimination on each ground.

Further, the Equality Act 2010 includes protection against discrimination *by perception* (a person is perceived to have a protected characteristic), as well as discrimination *by association* (a person is associated with another person who has a protected characteristic). For example, the Equality Act 2010 would cover the case of a cross-dresser who experiences discriminatory behaviour because someone mistakenly believes (by perception) he or she is a transgender person undergoing gender reassignment surgery. The Equality Act 2010 would also cover situations where, for example, a heterosexual male is himself discriminated against because of his association with a homosexual male.

Additionally, and unlike other jurisdictions examined, the Equality Act 2010 also incorporates positive equality duties in the form of a Public Sector Equality Duty. This applies to all the protected characteristics and compels public authorities to consider how the development and implementation of any policies and practices as well as service provision, may impact upon people with the protected characteristics in society.<sup>119</sup> Specifically, under section 149 of the

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governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on the ground of sex” of the Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

<sup>118</sup> For a detailed discussion of the development of the Great Britain Equality Act see Hepple, B. “The new single Equality Act in Britain” in *The Equal Rights Review* 5, 11–24.

<sup>119</sup> The Public Sector Equality Duty came into force on 5 April 2011. See Equality Act 2010 c.15, Part 11, Chapter 1, Section 149. It should be noted that although this general Public Sector Equality Duty applies equally to England, Wales and Scotland, there are differences between the specific duties (which set out

Equality Act 2010:

*“A public authority must, in the exercise of its functions, have due regard to the need to—*

*(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

*(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*

*(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”*

These provisions require public authorities to proactively consider how their policies and practices can promote equality and eliminate discrimination.

Jurisdictions	Protected characteristics		
	Sexual orientation	Gender identity	Intersex status
Great Britain	✓	✓	Not covered
Netherlands	✓	✓ (interpreted as a form of sex discrimination)	Not covered
Canada	✓	✓ (interpreted as a form of sex discrimination)	Not covered
New Zealand	✓	✓ (interpreted as a form of sex discrimination)	Possibly as a form of sex discrimination
Australia	✓ <sup>120</sup>	✓ <sup>121</sup>	✓ <sup>122</sup>
Taiwan	✓ <sup>123</sup>	✓ <sup>124</sup>	Not covered
Macau	✓ <sup>125</sup>	Not covered	Not covered

It is noteworthy that in a number of jurisdictions where gender identity and intersex status are not expressly included as protected characteristics, they have been interpreted as a form of sex discrimination.

In relation to sexual orientation there have also been some arguments put forward by legal scholars that this can be a form of sex discrimination.<sup>126</sup> In addition, recently the US Federal Equal Employment Opportunity Commission has decided that sexual orientation

<sup>120</sup> At the federal level and in all state anti-discrimination legislation.

<sup>121</sup> At the federal level and in a number of state anti-discrimination legislation.

<sup>122</sup> At the federal level and in the State of Tasmania.

<sup>123</sup> Only in relation to the fields of employment and education.

<sup>124</sup> Only in relation to the fields of employment and education.

<sup>125</sup> Only in relation to the field of employment.

<sup>126</sup> Koppelman, A. (1994) "Why discrimination against lesbians and gay men is sex discrimination" in *New York University Law Review* 69(2): 197–287; Wintemute, R. (1997) "Recognising new kinds of direct sex discrimination: Transsexualism, sexual orientation and dress codes" in *Modern Law Review* 60(3): 334–359.

discrimination can be a form of sex discrimination.<sup>127</sup> However, it should be noted that this approach is not consistent with existing case law from some common law jurisdictions such as Great Britain, which to date has not held that sexual orientation discrimination is a form of sex discrimination.

### **6.1.2 Format of anti-discrimination legislation**

The format of legal protections against discrimination on the grounds of sexual orientation, gender identity and intersex status varies across different jurisdictions. There are three main formats:

**Consolidated equality legislation** (e.g. Canada, New Zealand, Great Britain and the Netherlands) where all protected characteristics are consolidated into one anti-discrimination legislative structure, which covers all the fields in which discrimination is prohibited. For example, Great Britain has included sexual orientation and gender reassignment as two of nine grounds of protected characteristics in the Equality Act 2010, while the Netherlands has included sexual orientation as a ground of protection against discrimination in its Equal Treatment Act 1994. Both jurisdictions also include religion or belief as one of their protected grounds.

**Characteristic-specific legislation** (e.g. Australia at the federal level): In Australia, as discussed above, the anti-discrimination protections are currently divided by characteristic-specific separate legislation relating to racial, disability and sex discrimination. Since 2013, anti-discrimination protections on the basis of sexual orientation, gender identity and intersex status are also included within the remit of the Sex Discrimination Act 1984. This structure is similar to the model adopted by Hong Kong with the four anti-discrimination Ordinances. This was also the model previously adopted in Great Britain before the consolidated Equality Act 2010 was introduced.

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<sup>127</sup> The EEOC's decision in *Baldwin v. Dep't of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015) holds that discrimination on the basis of a person's sexual orientation is discrimination because of sex. On p.6 of the EEOC Appeal No. 0120133080, the decision was that: "Discrimination on the basis of sexual orientation is premised on sex-based preferences, assumptions, expectations, stereotypes, or norms. 'Sexual orientation' as a concept cannot be defined or understood without reference to sex. A man is referred to as 'gay' if he is physically and/or emotionally attracted to other men. A woman is referred to as 'lesbian' if she is physically and/or emotionally attracted to other women ..."

**Domain-specific legislation** (e.g. Taiwan): In Taiwan, as described above, legal protections against discrimination based on the grounds of sexual orientation and gender identity have been included in two distinct pieces of legislation related to the domains of education and employment.

For the specific characteristic of gender identity, several of these jurisdictions have provided additional legislative protections related to the process of gender recognition and related rights, such as in the Gender Recognition Act 2004 in England and Wales.<sup>128</sup>

<b>Format</b>	<b>Jurisdiction</b>	<b>Related legislation</b>
1. Consolidated	Great Britain	Equality Act 2010
	Netherlands	General Law on Equal Treatment 1994; Article 1, Right to Equality Constitutional
	Canada	Canadian Human Rights Act 1977
	New Zealand	New Zealand Human Rights Act 1993
2. Characteristic-specific	Australia	Sex Discrimination Act 1984 (amended in 2013)
3. Domain-specific	Taiwan	Gender Equity Education Act 2004; Act of Gender Equality in Employment 2007

### **6.1.3 Definitions of sexual orientation, gender identity and intersex status**

Sexual orientation, gender identity and intersex status have been defined to varying degrees across different jurisdictions. Sexual orientation is clearly defined as a protected characteristic in the majority of jurisdictions that have been examined.

Gender identity is defined within legislation to a lesser extent. This is partly because there are fewer jurisdictions that provide express protection from discrimination on the grounds of gender identity, and partly because in a number of jurisdictions, discrimination on the ground of gender identity is recognised as a form of sex discrimination, which is already a protected characteristic. The inclusion of gender identity within the scope of sex discrimination has

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<sup>128</sup> Gender Recognition Act 2004: <http://www.legislation.gov.uk/ukpga/2004/7/contents>. (accessed 16 December 2015).

been decided or interpreted, for example, by the courts in relevant judgments and equality/human rights bodies.

In relation to intersex, it is the characteristic that has the least express protection across jurisdictions and has only been recognized as a group that should be protected more recently. As a result, there is only one definition referred to under Australia's federal level Sex Discrimination Act 1984 (amended in 2013) and Tasmania's Anti-Discrimination Act 1998.

The scope of protection from discrimination by perception and association is also examined given these are related concepts in the way in which protected characteristics are defined.

### **Sexual orientation**

Internationally, and in many jurisdictions, protection against discrimination of the characteristic of "sexual orientation" refers not only to homosexuality, but also other sexual orientations.

At the international level, sexual orientation is understood to refer to "each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender".<sup>129</sup> In other words, this definition refers to different sexual orientations of being heterosexual, homosexual (gay and lesbian) or bisexual.

Many of the jurisdictions examined define sexual orientation and provide protection from discrimination of persons of all sexual orientations, not just homosexuals. In Great Britain sexual orientation is defined as a person's sexual orientation towards persons of the same sex, opposite sex, or either sex and therefore covers persons of all sexual orientations.<sup>130</sup> The Equality Act 2010 also protects those who are thought to have a certain sexual orientation (discrimination by perception) or those who are associated with someone with a certain sexual orientation (discrimination by association).

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<sup>129</sup> Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2008. [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm). (accessed 16 December 2015)

<sup>130</sup> Section 12(1) Equality Act 2010.



In Australia at the federal level, under the Sex Discrimination Act 1984 sexual orientation is defined as sexual orientation towards persons of the same sex, or persons of a different sex, or persons of the same sex and persons of a different sex.<sup>131</sup> At the state level there is also protection from discrimination for different sexual orientations including heterosexuals, apart from New South Wales.<sup>132</sup>

In New Zealand sexual orientation and the protection from discrimination is also defined to cover different sexual orientations.<sup>133</sup>

## **Gender identity**

Across different jurisdictions, “gender identity” is defined both broadly as well as more narrowly in relation to gender reassignment only.

At the international level, gender identity has been defined as:

*each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.*<sup>134</sup>

There is more variation in the definitions of gender identity across the jurisdictions examined. The Australian Sex Discrimination Act 1984 includes a broad definition of gender identity:

*gender identity is 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.*

Gender identity is also defined across Australian states’ anti-discrimination legislation to

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<sup>131</sup> Section 4 Sex Discrimination Act 1984.

<sup>132</sup> Section 49ZG(1) Anti-Discrimination Act 1977 (NSW).

<sup>133</sup> Crown Law opinion ATT395/9, 2 August 2006, at paragraphs 4 and 27.

<sup>134</sup> Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2008.

varying degrees. For example in Tasmania, the definition is very similar to that of the federal Sex Discrimination Act 1984. In Queensland, the definition of gender identity is in relation to a person who “identifies, or has identified, as a member of the opposite sex by living or seeking to live as a member of that sex”.<sup>135</sup>

In Great Britain’s Equality Act 2010 a narrower definition of gender reassignment, not gender identity, is listed as a protected characteristic. The Act (s. 7) states that,

- *A person has the protected characteristic of gender reassignment if the person 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;*
- *A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment; and*
- *In relation to the protected characteristic of gender reassignment—*
  - *a reference to a person who has a particular protected characteristic is a reference to a transsexual person;*
  - *a reference to persons who share a protected characteristic is a reference to transsexual persons.*

In some other jurisdictions although there is no express coverage of gender identity in the anti-discrimination legislation, such discrimination has been interpreted as a form of sex discrimination. In New Zealand this occurred in 2006 when the Acting Solicitor-General, Cheryl Gwyn, gave an opinion in regard to the Human Rights (Gender Identity) Amendment Bill and suggested that persons of transgender identity could seek redress using the ground of sex discrimination under the Human Rights Act 1993.<sup>136</sup> In 2008, New Zealand’s Human Rights Commission also stated that “sex” should be interpreted to include gender identity<sup>137</sup>.

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<sup>135</sup> Anti-Discrimination Act 1991, section 4 and the Schedule.

<sup>136</sup> Crown Law opinion ATT395/9, 2 August 2006, citing court decisions from Canada, the United Kingdom, Europe and South Africa.

<sup>137</sup> New Zealand Human Rights Commission “To be who I am: Report of the inquiry into discrimination

In Canada, the Canadian Human Rights Commission investigates complaints by transgender people as sex discrimination.<sup>138</sup> In the Netherlands, as a result of the European Court of Justice's decision in *P v S* and *Cornwall County Council*<sup>139</sup>, as well as decisions by the domestic courts, gender identity discrimination is held to be a type of sex discrimination.

### **Intersex status**

In relation to intersex status very few jurisdictions expressly provide protection against discrimination, and generally those protections have been implemented more recently.

There is express protection in Australia at the federal level under the Sex Discrimination Act 1984 and in one state, Tasmania. At both federal level and in Tasmania, intersex status is defined as:

*the status of having physical, hormonal or genetic features that are: (a) neither wholly female nor wholly male; (b) a combination of female and male; or (c) neither female nor male.*<sup>140</sup>

### **Discrimination by perception or association**

Discrimination by perception concerns situations where a person is perceived or imputed to have a particular characteristic (even if they do not) and as a result are treated less favourably. For example this could cover a situation where a heterosexual man is believed to be gay and as a result is less favourably treated at work. Discrimination by association concerns situations where a person who associates with a person of a particular characteristic is less favourably treated. This can cover associations with family members, friends and workmates. For example this could cover a situation where a transgender girl at school and her friend are both bullied by other students, and the students are bullying the friend because of her association with the transgender girl.

In some jurisdictions, there is also express or implied protection from discrimination by perception or association in relation to all the protected characteristics, including sexual

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<sup>138</sup> experienced by transgender people" (note 25).  
<sup>138</sup> BC Teachers Federation, *A chronology of Advances in LGBT Rights in Canada, and in BC*, 2006, <https://bctf.ca/socialjustice.aspx?id6100>.

<sup>139</sup> Case C-13/94, 30 April 1996.

<sup>140</sup> Section 4, Sex Discrimination Act 1984 (Federal), and Section 3, Anti-Discrimination Act 1998 (Tasmania).

orientation and gender identity.<sup>141</sup> There is protection from discrimination by perception and association in Australia<sup>142</sup>, New Zealand<sup>143</sup> and Great Britain.<sup>144</sup>

Discrimination by association is already prohibited under Hong Kong's existing anti-discrimination legislation under the Disability Discrimination Ordinance (DDO) and the Race Discrimination Ordinance (RDO). Discrimination by perception is also prohibited under the DDO.

Jurisdiction	Definition of protected characteristics			Perception	Association
	Sexual orientation	Gender identity	Intersex status		
Great Britain	Defined to cover all sexual orientations	(Defined to cover gender reassignment)	Not covered	Yes	Yes
Netherlands	Not defined in the legislation	✓ (interpreted as a form of sex discrimination)	Not covered	No	No
Canada	Not defined in the legislation	✓ (interpreted as a form of sex discrimination)	Not covered	No	No

<sup>141</sup> This is important in order to ensure that the anti-discrimination provisions are broad enough to protect any persons who are less favourably treated, even when they themselves don't have that characteristic.

<sup>142</sup> In a number of the Australian state anti-discrimination legislation there is also express protection from discrimination by perception and association in relation to all the protected characteristics, including sexual orientation and gender identity: for example in Victoria under the Equal Opportunity Act 2010, Queensland under the Anti-Discrimination Act 1991 and Tasmania under the Anti-Discrimination Act 1998.

<sup>143</sup> In New Zealand there is also express protection from discrimination by perception and association for all the protected characteristics, including sexual orientation and sex (which has been interpreted to cover gender identity). Section 21(2) Human Rights Act 1993.

<sup>144</sup> The Equality Act 2010 has also been interpreted to provide protection from discrimination by perception and association in relation to all protected characteristics, including sexual orientation and gender reassignment.

New Zealand	✓ Defined to cover all sexual orientations	✓ (interpreted as a form of sex discrimination)	Not explicit but may be interpreted as a form of sex discrimination <sup>145</sup>	Yes	Yes
Australia	✓ Defined to cover all sexual orientations <sup>146</sup>	✓ Defined broadly at federal level and in most states	Defined at the federal level and in Tasmania	Yes in some states	Yes in some states
Taiwan	No definition	✓ Defined broadly	Not covered	No	No

#### 6.1.4 Prohibited conducts

Jurisdictions differ in terms of the scope of the prohibited conduct in their relevant anti-discrimination or other relevant legislation. The main forms of prohibited conduct examined are direct and indirect discrimination, victimization, harassment and vilification/incitement to hatred. This is because they are the main forms of prohibited conduct under Hong Kong's current anti-discrimination and in most of the jurisdictions examined.

Chapter 1 referred to the definitions of these forms of prohibited conduct under Hong Kong's existing anti-discrimination legislation. *Direct discrimination* is found when someone is directly treated less favourably because of protected characteristics. For *indirect discrimination*, this occurs when a condition or requirement (e.g. rule, policy, practice, criterion or procedure), is applied to all persons equally, but the proportion of persons who have protected characteristics that can comply with the requirement is considerably smaller. Further, it must be shown that as a result a detriment is suffered by that person or persons, and the condition or requirement is not justifiable (having a legitimate objective and is proportionate).

*Harassment* occurs if a person engages in an unwelcome conduct (such as abusive, insulting

<sup>145</sup> HRC, "To Be Who I Am – Report of the Inquiry into Discrimination Experienced by Transgender People" 2007 at page 4, accessed from the HRC website at [www.hrc.co.nz](http://www.hrc.co.nz).

<sup>146</sup> At both federal and state levels sexual orientation is defined to provide protection from discrimination on grounds of being heterosexual, homosexual or bisexual, except for New South Wales where there is only protection from discrimination against homosexuals.

or offensive behaviour) because of another person's protected characteristics, which makes that person feel offended, humiliated or intimidated.<sup>147</sup>

*Vilification* is an activity in public that incites hatred, serious contempt for, or severe ridicule of a person or class of persons because of their protected characteristics.<sup>148</sup>

*Victimisation* occurs where a person is treated less favourably because they have made an allegation, brought proceedings or done some other act under the anti-discrimination legislation, giving evidence or information in connection with discrimination proceedings, or alleging that the discriminator has committed an act that would be unlawful under the anti-discrimination legislation.<sup>149</sup>

There are similar forms of prohibited conduct, which extend to the grounds of sexual orientation and gender identity in most of the anti-discrimination legislation of the other jurisdictions examined.

In Great Britain, direct and indirect discrimination, harassment and victimization are all prohibited under the Equality Act 2010. In relation to vilification, this is dealt with by the criminal law: the provisions on incitement to hatred in the Public Order Act 1986. It is unlawful to incite hatred on the ground of sexual orientation in England and Wales.<sup>150</sup> Similarly, incitement of racial and religious hatred is also prohibited under the same criminal legislation.

In Australia, at the federal level there is protection from direct and indirect discrimination, as well as victimization on grounds of sexual orientation, gender identity and intersex status. However, there is no protection from sexual orientation or gender identity harassment or vilification.

At the state level in Australia, there is protection from direct and indirect discrimination on

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<sup>147</sup> Harassment is prohibited under the Race Discrimination Ordinance, and the Disability Discrimination Ordinance. The related concept of sexual harassment involving unwelcome conduct of a sexual nature is prohibited under the Sex Discrimination Ordinance.

<sup>148</sup> Vilification is prohibited under the Race Discrimination Ordinance and the Disability Discrimination Ordinance.

<sup>149</sup> Victimization is prohibited under all the existing anti-discrimination Ordinances.

<sup>150</sup> Section 29AB Public Order Act 1986.

the grounds of sexual orientation and gender identity in all those states that have such protections. There is also protection from victimization on the grounds of sexual orientation and gender identity in most states. There is no distinct protection from harassment, but this could potentially be dealt with as a form of direct discrimination. There is also protection from vilification on the ground of homosexuality in New South Wales, on the ground of sexual orientation in Tasmania, and on the grounds of sexuality and gender identity in Queensland.

In New Zealand, there is protection from direct and indirect discrimination as well as victimization, but not harassment or vilification on the grounds of sexual orientation or gender identity.

In Canada, there is protection from direct and indirect discrimination, victimization and harassment in most fields.

In the Netherlands there is also protection from direct and indirect discrimination, victimization and harassment in all fields covered by the legislation.

In Taiwan, although there is a prohibition on discrimination on grounds of sexual orientation and gender identity in the education and employment legislation, there is no explicit reference to whether it covers both direct and indirect discrimination. Harassment on the grounds of sexual orientation or gender identity is covered as a form of sexual harassment, but there are no vilification or explicit victimization provisions.

<b>Jurisdiction</b>	<b>Direct and indirect discrimination</b>	<b>Harassment</b>	<b>Vilification</b>	<b>Victimization</b>
Great Britain	✓	✓	Applies to sexual orientation	
Netherlands	✓	✓	Not covered by legislation	✓
Canada	✓	Applies to provision of goods, services, facilities or accommodation available to the public; provision of commercial premises or residential accommodation; and matters related to employment	Applies to sexual orientation	✓
New Zealand	✓	Not covered by legislation	Not covered by legislation	✓
Australia (Federal)  Australia (States)	✓ Yes all states	Not covered at federal level or state level	Yes in some states of New South Wales, Tasmania and Queensland	✓ Yes in most states
Taiwan	Discrimination is generally prohibited	Covered for both sexual orientation and gender identity as a form of sexual harassment	Not explicitly stated in the legislation	Not explicitly stated in the legislation



### **6.1.5 Domains of protection**

There is a large degree of commonality between most of the jurisdictions examined in terms of the domains in which discriminatory conduct is prohibited on the grounds of sexual orientation, gender identity and other protected characteristics. Generally anti-discrimination legislation applies to the public sphere and not the private sphere (for example activities in one's home or the religious doctrines practised in a church). In Great Britain, Australia at federal and state levels, New Zealand, Canada and the Netherlands there is protection in the domains of employment and education, goods and services, accommodation/premises, and often clubs and sporting activities. For example, in the Netherlands, the Equal Treatment Act 1994 prohibits discrimination on the ground of sexual orientation in the fields of goods or services provided by (1) businesses, (2) in the course of exercising a profession, (3) by the public service, (4) by institutions providing services in housing, social services, health care, cultural affairs or education and (5) by private individuals who make such offers publicly. There are no exemptions to this legislation.

In Great Britain and Australia there is express reference to the legislation covering government functions, where the conduct is not within the scope of employment or provision of services.

The main exception is in Taiwan where there is currently only domain-specific legislative protection covering employment and education. Taiwan does not have any specific anti-discrimination legislation protecting LGBT persons in, for example, the provision of goods, services and facilities.

The scope and domains of protection in most of the jurisdictions examined is therefore very similar to the current domains in which Hong Kong's existing anti-discrimination legislation applies: employment, education, goods and services, premises, clubs, sporting activities<sup>151</sup> and government functions.<sup>152</sup>

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<sup>151</sup> For disability discrimination under the Disability Discrimination Ordinance.

<sup>152</sup> For all the anti-discrimination ordinances except the Race Discrimination Ordinance.

<b>Jurisdiction</b>	<b>Employment</b>	<b>Education</b>	<b>Provision of goods and services</b>	<b>Accommodation/ premises</b>	<b>Government functions</b>
<b>Great Britain</b>	✓	✓	✓	✓	✓
<b>Netherlands</b>	✓	✓	✓	✓	✓
<b>Australia</b>	✓	✓	✓	✓	✓
<b>Canada</b>	✓	✓	✓	✓	✓
<b>New Zealand</b>	✓	✓	✓	✓	✓
<b>Taiwan</b>	✓	✓	Not covered by legislation	Not covered by legislation	Not covered by legislation
<b>Macau</b>	✓ <sup>*153</sup>				

#### **6.1.6 Exemptions by domain**

In the jurisdictions examined there are a wide range of exemptions to prohibited conduct in a number of domains, including education, employment, provision of goods and services, access to and disposal of premises, government function, as well as other areas such as sporting activities and insurance in the case of gender identity.

Exemptions have been commonly adopted across jurisdictions in situations where it is considered that there is a legitimate aim for the exemption, and the means of achieving that aim is proportionate. Some of the main exemptions in different domains are examined below.

<sup>153</sup> The Labour Relations Act No.7/2008 provided some form of protection from discrimination on the ground of sexual orientation.

## **Employment**

In the field of employment, the most common exemptions relate to genuine occupational qualifications, such as religiously linked employment positions, and employment in domestic environments such as employment related to domestic or personal services, and employment linked to the care of children.

In relation to genuine occupational qualifications these exemptions are common for all protected characteristics, not only sexual orientation and gender identity. The aim of these types of exemptions is to allow for situations where, due to the nature of a particular employment role, it is considered that there is a legitimate aim in selecting individuals based on a protected characteristic. This type of exemption would be applicable if the protected characteristics of, for example, sex, race, or sexual orientation were considered to be relevant to a particular employment role. Such exemptions apply in Australia (federal and states), Canada, the Netherlands, and Great Britain.

In relation to religious exemptions in employment, these usually relate to situations where employment of persons of a particular sexual orientation or gender identity is necessary in order to comply with the doctrines of the religion. The exemptions usually apply either to appointment of priests and ministers of religion or, in several jurisdictions in Australia (at the federal and state levels), to employment in educational institutions conducted according to religious doctrines.<sup>154</sup>

In Australia (at the state level)<sup>155</sup>, New Zealand<sup>156</sup> and the Netherlands<sup>157</sup>, there are also exemptions relating to employment in domestic situations given that this can raise issues of privacy and whether employers should have the right to choose, for example, the sex, sexual orientation or gender identity of persons where the employee is working in the home of the employer.

It is important to note that exemptions in the area of employment related to the care of children, domestic or personal services generate controversy and diverse views. It could be

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<sup>154</sup> In Australia at federal level and in several states.

<sup>155</sup> For example section 38C(3) of the Ant-Discrimination Act 1977 (NSW) and sections 35AC and 35P, Equal Opportunity Act 1984 (WA).

<sup>156</sup> Section 27(2) Human Rights Act 1993.

<sup>157</sup> Section 5(3) Equal Treatment Act.

argued, for example, that sexual orientation is not relevant to a person's ability to perform any employment, even if it is employment in a person's home. On the other hand, it could also be argued that the home is a part of a person's private life and that therefore they should be able to choose who to employ, for example, on the basis of sexual orientation or sex. That is why there are, for example, similar exemptions for employment in domestic environments in relation to sex in some of the jurisdictions.

Jurisdiction	Employment	Exemptions	Exemptions		Others
		Genuine Occupational Qualifications	Religious	Domestic Employment	
Great Britain	Protected by legislation. Also covers business partnerships, limited liability partnerships, employment service-providers, trade organisations	Genuine occupational qualifications (GOQs) <sup>158</sup>	Employment for the purpose of an organised religion and job requirement that engages compliance or non-conflict principles <sup>159</sup>		-Insurance provided by employers (related to gender reassignment) <sup>160</sup> -Armed forces and gender reassignment <sup>161</sup>
Australia (federal and some states)	Protected by legislation. Also covers commission agents, contract	GOQs are in federal and state laws	Exemptions for: appointment for priests and	Employment related to domestic or personal services	

<sup>158</sup> Great Britain Equality Act 2010, Schedule 9, part 1. "A person (A) does not contravene a provision mentioned in sub-paragraph (2) by applying in relation to work a requirement to have a particular protected characteristic, if A shows that, having regard to the nature or context of the work—  
(a) it is an occupational requirement,  
(b) the application of the requirement is a proportionate means of achieving a legitimate aim, and  
(c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).

<sup>159</sup> Great Britain Equality Act 2010, Schedule 9, para 2.

<sup>160</sup> Great Britain Equality Act 2010, Schedule 9 para.20 As a result of the Test-Achats judgment of the Court of Justice of the EU, this exemption was omitted from the Equality Act 2010. It does not apply to future insurance contracts but does apply to such contracts concluded before 21 December 2012: The Equality Act 2010 (Amendment) Regulations 2012.

<sup>161</sup> Great Britain Equality Act 2010, Schedule 9, para.4.

	workers, partnerships, qualifying bodies and employment agencies		ministers of religion and employment at an educational institution established for religious purposes <sup>162</sup> (Note: intersex status not included within exemption)	(some states)	
New Zealand	Covers all types of employment, partnerships	No	Yes, exemption relating employment for an organized religion	Yes, regarding domestic employment	
Canada	All types and stages of employment	Yes	Yes, by the concept of reasonable accommodation for religious groups		
Netherlands	Coverage of all types of employment and professions	No exemption	Yes, regarding religious positions, eg Minister	Yes, for private employment relationships	
Taiwan	Covers all types and stages of employment	GOQ applies to gender			

<sup>162</sup> Australia (federal) Sex Discrimination Act 1984. Section 38 Educational institutions established for religious purposes, (1) & (2).

## Education

Only three of the jurisdictions examined have some form of exemptions relating to the field of providing education and these generally relate to religious based educational institutions.

In Australia (at the federal level and in some states), there is an exemption relating to sexual orientation and gender identity for religious-based educational institutions in relation to the provision of education and the exemption is in order to avoid injury to the religious susceptibilities of adherents to that religion.<sup>163</sup>

In Taiwan, there is an exemption which states that the legislation does not apply to schools, classes, curricula with a historical tradition, or special educational missions, upon the approval of the competent authority.<sup>164</sup>

Jurisdictions	Education	Exemptions—religious	Note
<b>Great Britain</b>	Protected by legislation	No exemptions	
<b>Australia (federal and some states)</b>	Protected by legislation	Exemption for educational institution established for religious purposes <sup>165</sup>	
<b>New Zealand</b>	Protected by legislation	No exemptions	Counselling in education where it involves highly personal matters
<b>Canada</b>	Protected by legislation	No exemptions (Schools are usually regulated by provincial and territorial anti-discrimination laws.)	

<sup>163</sup> Section 38(3) of the Sex Discrimination Act 1984: “Nothing in section 21 renders it unlawful for a person to discriminate against another person on the ground of the other person’s sexual orientation, gender identity, marital or relationship status or pregnancy in connection with the provision of education or training by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.”

<sup>164</sup> Taiwan Gender Equity Education Act 2004, Chapter 2 Learning environment and resources, Article 13.

<sup>165</sup> Australia (federal) Sex Discrimination Act 1984, section 39 (3), Educational institutions established for religious purposes. (3) “Nothing in section 21 renders it unlawful for a person to discriminate against another person on the ground of the other person’s sexual orientation, gender identity, marital or relationship status or pregnancy in connection with the provision of education or training by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.”

<b>Netherlands</b>	Protected by legislation	No exemptions	
<b>Taiwan</b>	Protected by legislation	Does not apply to schools, classes, curricula with historical tradition, or special educational missions, upon the approval of the competent authority. <sup>166</sup>	

## **Provision of goods and services**

In several jurisdictions, there are a range of exemptions related to the provision of goods, services and facilities. In the area of provision of services, religious exemptions, and exemptions for charities/voluntary bodies are in place in some jurisdictions, as well as exemptions for single-sex services with respect to gender reassignment in Great Britain. At both the federal and state levels in Australia there are exemptions for charities and voluntary bodies.

In Great Britain the religious exemption provides that it is not discriminatory in the provision of services and facilities for churches and other similar religious institutions to refuse to conduct same-sex marriages or marriages of persons that have undergone gender reassignment.<sup>167</sup>

Exemptions in Australia relating to charities and voluntary bodies are to enable organisations to provide their services to particular groups (for example identified by sexual orientation or a given gender identity) given those charities may wish to provide targeted support for such groups.<sup>168</sup>

<sup>166</sup> Taiwan Gender Equity Education Act 2004, Chapter 2 Learning environment and resources, Article 13. “Article 13 The school shall not discriminate against prospective students and their admission acceptance on the basis of their gender or sexual orientation. This does not apply to schools, classes and curricula with historical tradition, special educational missions, other non-gender related reasons, upon the approval of the competent authority.”

<sup>167</sup> Marriage (Same Sex Couples) Act 2013, ss. 4–5; Equality Act 2010, s. 29 and Schedule 3, para. 24.

<sup>168</sup> For example this could involve a charity wishing to provide services to gay men living with HIV, or a charity wishing to provide services to transgender people experiencing depression.

Jurisdiction	Provision of services	Exemptions	
		Religious	Others
<b>Great Britain</b>	Protected by legislation	<ul style="list-style-type: none"> <li>• Membership of religious organizations</li> <li>• Religious solemnization of marriage for sexual orientation and gender identity</li> </ul>	<ul style="list-style-type: none"> <li>• Blood donation for sexual orientation</li> <li>• For gender reassignment: Exemptions for the provision of single-sex or separate-sex services as long as it is proportionate to achieve a legitimate aim.<sup>169</sup></li> </ul>
<b>Australia</b>	Protected by legislation		Charities conferring benefits <ul style="list-style-type: none"> <li>• Voluntary bodies admission and benefits<sup>170</sup></li> </ul>
<b>New Zealand</b>	Protected by legislation		<ul style="list-style-type: none"> <li>• Counselling</li> </ul>
<b>Canada</b>	Protected by legislation		
<b>Netherlands</b>	Protected by legislation		
<b>Taiwan</b>	Not protected	NA	

## Disposal and management of premises

In terms of disposal and management of premises, the main exemptions relate to the occupation and disposal of premises where the person or near relative lives in the premises. This is similar to the issue of exemptions for domestic employment as it also raises issues of privacy. In other words, such exemptions acknowledge that people should generally have a right to choose whether or not they live with persons based on their sexual orientation or gender identity.

<sup>169</sup> Great Britain Equality Act 2010, Schedule 23, para. 3.

<sup>170</sup> Australia (federal) Sex Discrimination Act 1984. Part II, Division 4—Exemptions 4: section 36 Charities, section 39 Voluntary bodies.



Jurisdiction	Disposal and management of premises	Exemptions	
		Religious	Sales of premises
<b>Great Britain</b>	Protected by legislation		Exemption for private disposal (not through an estate agent or advert) for owners who live at the premises Exemption for disposal or occupation of small premises where the person or relative continues to live there <sup>171</sup>
<b>Australia</b>	Protected by legislation	In some states accommodation provided by a religious body	In some states in relation to disposal and occupation where the person or relative resides at the premises
<b>New Zealand</b>	Protected by legislation	No exemptions	No exemptions
<b>Canada</b>	Protected by legislation	No exemptions	No exemptions
<b>Netherlands</b>	Protected by legislation	No exemptions	No exemptions
<b>Taiwan</b>	Not protected	NA	

### Other domains

The other main domains in which there are exemptions include government functions such as acts that are done pursuant to other legislation that permit discrimination, and competitive sports activities with respect to gender identity. Such exemptions have been adopted based on the fact that persons who have changed gender could potentially have a competitive advantage (for example a male to female transsexual competing against cisgender women).

<sup>171</sup> Great Britain Equality Act 2010. Schedule 5, paras 2 and 3.

Finally, a number of jurisdictions (Great Britain, Australia, New Zealand and Canada) have express exemptions relating to positive action, or special measures. These are exemptions that relate to policies, training or other measures to promote substantive equality of particular groups in society, for example women, certain racial groups, gay men and lesbians, and transgender people where there is evidence that they are at a particular disadvantage. For example, it would not be discrimination where there is evidence that transgender persons are more likely to commit suicide and an NGO decides to set up a counselling service to counsel transgender people in relation to the issues they face.

<b>Jurisdiction</b>	<b>Government functions</b>	<b>Exemptions to government functions</b>	<b>Sports</b>	<b>Exemptions to sports</b>	<b>Positive action/special measures</b>
<b>Great Britain</b>	Protected by legislation	General Acts done under statutory authority <sup>172</sup>  For gender reassignment, exemptions are given in armed forces with the purpose of ensuring the combat effectiveness. <sup>173</sup>	Not explicit	Exemptions for restriction of transsexual person participation in sports competitions (with the principle of upholding fair or safe competitions) <sup>174</sup>	Positive action measures are lawful in relation to all protected characteristics including sexual orientation and gender reassignment <sup>175</sup>
<b>Australia (federal)</b>	Protected by legislation	Compliance with an order of a court or tribunal, or	Protected by legislation	Only for gender identity: exemptions for exclusion of	Special measures are lawful in relation to sexual orientation, gender

<sup>172</sup> Equality Act 2010, Schedule 22.

<sup>173</sup> Great Britain Equality Act 2010, Schedule 3, para. 4.

<sup>174</sup> Great Britain Equality Act 2010. Part 14, s. 195.

<sup>175</sup> Sections 158 and 159, Great Britain Equality Act 2010.

		with legislation. <sup>176</sup>		person from participation in any sporting activities with regard to the competitive standards. <sup>177</sup>	identity and intersex status <sup>178</sup>
<b>New Zealand</b>	Protected by legislation			Exemption for competitive sporting activity on grounds of sex where strength, stamina or physique is relevant <sup>179</sup>	Measures to achieve equality on all grounds including sexual orientation are lawful <sup>180</sup>
<b>Canada</b>	Protected by legislation	No exemption		No exemption	Special programs or plans to prevent disadvantage including on grounds of sexual orientation are lawful <sup>181</sup>
<b>Netherlands</b>		No exemption		No exemption	No exemption for sexual orientation or gender identity
<b>Taiwan</b>	Not explicit	NA			

<sup>176</sup> Australian Sex Discrimination Act 1984. Section 40, acts done under statutory authority.

<sup>177</sup> Australian Sex Discrimination Act 1984. Section 42 Sport.

<sup>178</sup> Section 7D Sex Discrimination Act 1984.

<sup>179</sup> Section 49(1) and (2) Human Rights Act 1993.

<sup>180</sup> Section 73, New Zealand Human Rights Act 1993.

<sup>181</sup> Section 16, Canadian Human Rights Act 1977.

### **6.1.7 The role of equality or human rights bodies**

In almost all of the jurisdictions examined, with the exception of Taiwan<sup>182</sup>, equality and/or human rights bodies play a critical role in the enforcement of anti-discrimination legislation. This is because they have statutory duties and powers to eliminate discrimination and promote equality in society. These duties and powers include working on eliminating discrimination and promoting equality of opportunity in relation to sexual orientation and gender identity.<sup>183</sup> A number of the organizations also have wider duties and powers relating to human rights. For example in Great Britain, the Equality and Human Rights Commission also has powers relating to enforcing the Human Rights Act 1998.

A number of the organizations are also accredited as National Human Rights Institutions (NHRI) under the United Nations Paris Principles, which governs the constitutions and roles of such bodies globally. An important aspect of this is that the organizations are independent from government. This is of particular importance since the scope and remit of these organizations' work relates to monitoring anti-discrimination and equality legislation, policies and practices of governments to ensure that particular groups in society do not face discrimination.

Most of the equality and human rights bodies in the jurisdictions analysed have a wide range of powers relating to considering and conciliating complaints of discrimination/human rights abuses, providing legal assistance to individuals or conducting legal proceedings in its name, conducting education and producing guidance to improve the public's understanding of the obligations in the anti-discrimination/human rights legislation, conducting research into issues relating to discrimination or human rights, conducting investigations into organizations or sectors where there systemic issues of concern, doing advocacy or policy work relating to legislative proposals that have implications relating to discrimination or human rights and

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<sup>182</sup> Although there is no formal equality or human rights body in Taiwan, a number of tools are used by the government to promote and advance international human rights standards, particularly in relation to gender equality. Taiwan has adopted a Gender Impact Assessment Form for legislation as well as programmes that scrutinize the implications of any proposed legislation or programme on both men and women. Further, the Gender Equity in Education Act 2004 provided that within schools or a competent authority, there should be a Gender Equity Education Committee to investigate complaints and provide relief. The courts also play a role in adjudicating complaints beyond the Gender Equity Education Committees. See Gender Equity Act 2004 at Chapter 5.

<sup>183</sup> As discussed in section 6.1.1, some of the Equality or Human Rights Bodies such as in Canada and New Zealand have interpreted gender identity discrimination as a form of sex discrimination.

monitoring the government's compliance with national or international human rights obligations such as the United Nations human rights instruments described in Chapter 1.

The equality and human rights bodies employ the above powers in relation to all of the protected characteristics it has jurisdiction over, including, where appropriate, sexual orientation, gender identity or intersex status. Even where sexual orientation and/or gender identity have yet to be included as protected characteristics, many of the equality and human rights bodies take a proactive stance in understanding the needs of LGBTI people in their respective societies.

The role of the equality and human rights bodies is therefore important in promoting understanding and educating the public on issues relating to sexual orientation, gender identity or intersex status, as well as enforcing the legislation where necessary.

<b>Jurisdiction</b>	<b>Organisation</b>	<b>Dealing with complaints and conciliation</b>	<b>Legal assistance/proceedings in own name</b>	<b>Education and guidance</b>	<b>Research</b>	<b>Investigations</b>	<b>Advocacy work</b>	<b>Monitoring compliance</b>
<b>Great Britain</b>	Equality and Human Rights Commission	Yes, can provide financial support to cases in employment tribunals and county courts, but does not decide cases itself	Yes	Yes	Yes	Yes	Yes	Yes
<b>Australia</b>	Australian Human Rights Commission	Yes	No	Yes	Yes	Yes	Yes	Yes
<b>New Zealand</b>	New Zealand Human Rights Commission	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Canada</b>	Canadian Human	Yes	No	Yes	Yes	Yes	Yes	Yes

	Rights Commission							
<b>Netherlands</b>	Netherlands Institute for Human Rights	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Taiwan</b>	No Equality Body							

## ***6.2 Lessons learnt from experiences of developing and implementing anti-discrimination legislation on SOGI in different jurisdictions***

The second part of this Chapter analyses in detail what lessons can be learnt from experiences of developing and implementing human rights and anti-discrimination legislation in other jurisdictions, while also giving consideration to the existing human rights provisions and anti-discrimination legislation in Hong Kong. In particular, section two of the chapter seeks to consider how the overseas and Hong Kong legislation address some of the main concerns raised by some groups. These concerns can be grouped into two areas: rights-related concerns, and legal, political and social factors, including the practicalities of legislating.

The rights-related concerns include balancing the protection of LGBTI people from discrimination with:

- the right to freedom of expression (6.2.1);
- the rights to freedom of conscience and religion (6.2.2);
- the right to privacy (6.2.3);

Legal, political and social factors include:

- concern about social consequences and the relationship between anti-discrimination and relationship rights (6.2.4);
- lack of majority support in society regarding legislation (6.2.5);
- the definitions regarding LGBTI groups (6.2.6);
- whether anti-discrimination legislation would be effective (6.2.7).

Despite the historical and cultural differences in the contexts of the various jurisdictions discussed, many similar issues were raised by the public in their respective processes of developing and implementing anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status.

For a better understanding of the processes of legislation in the various jurisdictions, interviews with legal experts from a range of jurisdictions were conducted to learn more about the particular legal, political and social context and how this affected the development of laws.



Where appropriate, reference is made to those legal interviews in this section. Following standard qualitative research practice, the specific names of legal experts from whom the quotations below are cited are not disclosed.

### ***6.2.1 Balancing the right to freedom of expression and protection of LGBTI people***

There are concerns among some members of the public in Hong Kong about whether legislating against LGBTI discrimination will impact upon their exercise of freedom of expression. Some opponents to such legislation are worried that they may not be able to express their personal disapproval of homosexuality, bisexuality and transgender identity, and are concerned whether they would still be able to hold negative opinions such as “homosexuality is immoral” if legislation were passed.

It is useful to respond to these concerns by considering how human rights protections and anti-discrimination legislation are structured in other jurisdictions as well as in Hong Kong, to consider how such rights are balanced with the rights to freedom of expression.

Internationally under the ICCPR the right to hold opinions and of freedom of expression is protected.<sup>184</sup> Most of the jurisdictions examined have some form of constitutional human rights protection of the right to freedom of expression. For example in the UK, the right to freedom of expression is protected by the Human Rights Act, which incorporates into UK law Article 10 of the European Convention on Human Rights (ECHR). In New Zealand, the right to freedom of expression is protected under section 14 of the Bill of Rights Act 1990.

Although protected under international human rights treaties including the ICCPR, as well as by domestic human rights legislation, the right to freedom of expression is not absolute. For example the ICCPR recognizes that there can be lawful restrictions on the right of freedom of expression in order to protect the rights of others in society.<sup>185</sup> This includes the lawful prohibition on discrimination and incitement of hatred against groups in society, which is implemented by anti-discrimination or other legislation relating to hate speech.

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<sup>184</sup> Article 19 ICCPR.

<sup>185</sup> Article 19(3) ICCPR.

The manner in which anti-discrimination and related legislation in other jurisdictions has been constructed also takes into account the right to freedom of expression. Dependent on the individual jurisdiction, the results are the adoption of carefully defined concepts of harassment and incitement of hatred. First, anti-discrimination legislation is usually restricted to public aspects of life such as employment, education and the provision of goods and services. People are free to hold their own opinions in their private life. However, they are not necessarily free to express them to their co-workers, customers or students, if it would amount to discrimination, harassment or incitement to hatred of those persons. Second, the legislation is constructed by adopting a sufficiently high and objective threshold to prove discrimination or hatred. Overseas jurisdictions have considered these questions particularly in relation to the balance between freedom of speech and opinions with the protection of minority rights. This has been done by defining the scope of what kind of speech and opinions are acceptable or not.

In Great Britain, harassment is carefully defined in the Equality Act 2010 as conduct related to a relevant protected characteristic that has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for a person.<sup>186</sup> The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex and sexual orientation.

In Great Britain, the Public Order Act 1986 prohibits incitement of hatred on the grounds of race, religion and belief, and sexual orientation in England and Wales. It is an offence to use threatening words or behaviour or to display, publish or distribute any written material that is threatening if there is intent to stir up hatred on the ground of sexual orientation. There are two important safeguards to protecting freedom of expression in the way that the legislation is constructed. First, there must be intent, not mere recklessness, in stirring up hatred. Second, the words used must be threatening, not merely abusive or insulting. Freedom of expression is further protected by section 29JA of the Act, which provides that "for the avoidance of doubt, the discussion or criticism of sexual conduct or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening."<sup>187</sup> Thus there is a high threshold in order to establish incitement to hatred on the ground of sexual orientation.

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<sup>186</sup> Great Britain Equality Act 2010, s. 26.

<sup>187</sup> Public Order Act 1986, s.29JA (England and Wales).

Significantly, the judgment of the European Court of Human Rights<sup>188</sup> in the case of *Vejdeland v Sweden* provides a useful illustration of the boundaries of freedom of expression and hate speech. The case concerned the distribution of leaflets in an upper secondary school, which were considered to be offensive towards homosexuals. The leaflets included a series of statements suggesting that homosexuality was responsible for the development of HIV and AIDS as well as allegations that homosexuality was a “deviant sexual proclivity” and had “a morally destructive effect on the substance of society”. The Swedish Supreme Court convicted the applicants of agitation against a national or ethnic group<sup>189</sup>.

The applicants challenged the Swedish Supreme Court’s 6 July 2006 ruling which convicted the applicants of agitation against a national or ethnic group on the basis that their freedom of expression had been violated under Article 10 of the European Convention on Human Rights. In their judgment, the European Court of Human Rights found that although these statements did not directly recommend individuals to commit hateful, violent or criminal acts, these were nevertheless serious and prejudicial allegations. Accordingly, “Attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating racist speech in the face of freedom of expression exercised in an irresponsible manner. In this regard, the court stresses that discrimination based on sexual orientation is as serious as discrimination based on ‘race, origin or colour.’”<sup>190</sup>

In Hong Kong, the legal basis for the protection of freedom of expression and opinions already exists and should be considered in legislating against LGBTI discrimination. Article 16 of the Bill of Rights Ordinance (BORO) (cf. ICCPR Art. 19) states that:

- *everyone shall have the right to hold opinions without interference;*

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<sup>188</sup> *Vejdeland and others v Sweden* (Application no. 1813/07) (9 May 2012).

<sup>189</sup> Para. 19 of the judgment explains that “Agitation against homosexuals as a group was made a criminal offence by an amendment of the law that came into effect on 1 January 2003. According to the preparatory work on that amendment, as reproduced in Government Bill [2001/02:59](#) (pp. 32–33), **homosexuals constitute an exposed group** [emphasis added], which is often subjected to criminal acts because of their sexual orientation, and national socialist and other racist groups agitate against homosexuals and homosexuality as part of their propaganda. The preparatory work also stated that there were good reasons to assume that the homophobic attitude that had caused certain offenders to attack individuals on account of their sexual orientation derived from the hate, threat and inflammatory propaganda against homosexuals as a group that was spread by the majority of Nazi and other right-wing extremist groups in the country.’ See *Vejdeland and others v Sweden* (Application no. 1813/07) (9 May 2012) available at [http://hudoc.echr.coe.int/eng?i=001-109046#{"itemid":\["001-109046"\]}](http://hudoc.echr.coe.int/eng?i=001-109046#{) accessed 10 December 2015.

<sup>190</sup> *Ibid.*, at para. 55.

- *everyone shall have the right to freedom of expression: this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

These rights can be restricted where they are provided by law and are necessary:

- for respect of the rights or reputations of others; or
- for the protection of national security or of public order, or of public health or morals.

In Hong Kong, neither the Disability Discrimination Ordinance (DDO) nor the Racial Discrimination Ordinance (RDO) prohibit people from holding opinions against people living with a disability or those from different racial backgrounds. Conduct will only be unlawful where it meets the relevant test for harassment or vilification.

Harassment is prohibited by both the DDO and the RDO. In the case of the RDO, a person commits racial harassment if a person engages in an unwelcome, abusive, insulting or offensive behaviour because of another person's or the person's near relative's race, which makes him feel offended, humiliated or intimidated.<sup>191</sup> Examples of racial harassment cited by the EOC include a person engaging in name calling, which people of certain racial groups may find offensive, or a person using a disparaging or offensive tone when communicating with people on the ground of their race.

The DDO and the RDO also prohibit vilification, which is public conduct that "incite[s] hatred, serious contempt for, or severe ridicule" of a person or class of persons defined by their disability or race.<sup>192</sup> There is also a criminal offence of serious vilification under the two Ordinances where the persons intended to incite hatred.

The tests of vilification in Hong Kong are similar to those in Great Britain and Australia, which impose high thresholds and an objective test in order to protect freedom of expression.

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<sup>191</sup> Racial Discrimination Ordinance, Cap. 602, Section 7.

<sup>192</sup> Disability Discrimination Ordinance Cap. 478 (1995), section 46; Racial Discrimination Ordinance, Cap. 602 (2008), section 45.

For example, in Hong Kong only three claims of vilification have been brought to date (all on grounds of disability), and only one claim of disability vilification was substantiated. In the case of *Tung Lai Lam v Oriental Press Group*<sup>193</sup> the court found that the *Sun* newspaper had not vilified persons with mental disabilities and that a reasonable person would have interpreted that the comments were directed at the Hospital Authority.

If anti-discrimination legislation was introduced on the grounds of sexual orientation, gender identity or intersex status, the same structures could be employed in relation to possible harassment and vilification provisions in order to safeguard legitimate freedom of expression.

In summary, the rights to freedom of opinion and freedom of expression are arguably well protected in Hong Kong, and the anti-discrimination legislation could be structured in a manner that simultaneously protects LGBTI people from discrimination, while allowing for legitimate freedom of expression.

### ***6.2.2 Freedom of religion and freedom of conscience***

Freedom of thought, conscience and religion weigh heavily on the mind of some opponents to anti-discrimination on the grounds of SOGI. Some members of the religious sectors are especially concerned about the possible loss of freedom in their religious practice and expression of “moral conscience” if there were to be legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status.

Indeed, interviews with legal experts from the overseas jurisdictions all underlined the importance of addressing religious groups’ opposition and concerns about anti-discrimination legislation in their respective legislative processes. Careful examination of the reasons behind any opposition is crucial in order to ensure that the interests of various parties are taken into consideration.

In overseas jurisdictions it is apparent that some religious groups have been some of the strongest public oppositional voices. However, according to several overseas legal experts interviewed, one of the most prevalent misunderstandings is that all religions are against

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<sup>193</sup> DCE06/2001.

LGBTI rights whereas there are actually diverse views even within the same religion. For example, in the United Kingdom, the Anglican and other Protestant churches appear to have shown greater willingness to engage in dialogue and discussion on LGBTI rights in comparison with the Catholic Church.

It should also be noted that in Hong Kong, the “Covenant of the Rainbow: Towards a Truly Inclusive Church”<sup>194</sup> campaign has been initiated by Christian organizations, local churches and theological student fellowships from diverse backgrounds in the city to highlight that they are LGBT inclusive and LGBT friendly. In their words:

*We believe God loves everyone. We affirm all lives and uphold equality for all people regardless of their race, gender, language, age, occupation, sexual orientation and gender identity, or level of abilities. Therefore, the church should promote an inclusive and equal community where people embrace each other with respect and acceptance. The core value of the gospel is love, not hatred and discrimination.*

*In the midst of the heated debate about anti-discrimination legislation against sexual minorities, we launch this campaign as a concrete action to cultivate and express the core Christian ideal of loving each other in unity and harmony. We cherish the gift of diversity and respect differences in God’s creation of human sexuality. Via humble and empathic listening, churches can develop deep understanding towards these sexual minorities with genuine loving kindness.*

At the international level, freedom of thought, conscience and religion is a fundamental right under the ICCPR, and is incorporated into Hong Kong law by article 15 of the Bill of Rights Ordinance (BORO). Article 18(1) of the ICCPR states that:

*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.*<sup>195</sup>

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<sup>194</sup> Rainbow Covenant of Hong Kong <http://www.rainbowcovenant.com.hk/home/>.

<sup>195</sup> *Supra* note 1, Article 18(1).

However, this freedom may be restricted in accordance with Article 18(3), which states:

*Freedom to manifest one's religion or belief 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.*<sup>196</sup>

Most of the jurisdictions examined also have constitutional protections, which include the right to freedom of thought, conscience and religion. For example, in the UK, the Human Rights Act 1998 implements Article 9 of the European Convention on Human Rights which states:

*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*<sup>197</sup>

*Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*<sup>198</sup>

Similar to the right to freedom of expression, the right to freedom of thought, conscience or religion is not absolute and it may be subject to restrictions, where it is necessary to protect the rights and freedoms of others in society. This includes restricting the right to freedom of thought, conscience or religion in order to protect particular groups from discrimination.

In the majority of jurisdictions examined, religious belief or conscience is protected in anti-discrimination laws. This is particularly the case in jurisdictions where the consolidated legislation model is adopted (i.e. where all the protected characteristics are contained in one piece of anti-discrimination legislation). In Great Britain and Canada, as well as in New Zealand, discrimination on both the grounds of sexual orientation and religious belief is prohibited in a number of domains, although there are exemptions as discussed in the first part

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<sup>196</sup> *Supra* note 1, Article 18(3).

<sup>197</sup> [http://www.echr.coe.int/Documents/Convention\\_ZHO.pdf](http://www.echr.coe.int/Documents/Convention_ZHO.pdf)

<sup>198</sup> *Supra* note 1, Article 18(3).

of this Chapter.

In the jurisdictions examined that have protection from discrimination on the grounds of sexual orientation, gender identity or intersex status, a number of them have some exemptions relating to religion or belief. This is in order to balance the rights of persons not to be discriminated on the grounds of sexual orientation, gender identity and intersex, and the right to freedom of religion.

As described in the first part of this Chapter, there are exemptions in some jurisdictions in relation to religion or belief in the fields of employment, education and provision of services and facilities. These consist of exemptions in an employment context in relation to appointment of priests and ministers of religion. In Australia there is an exemption relating to employment as well as education (to avoid conflict with religious teachings) in religious-based schools, and in Great Britain, an exemption relating to the provision of goods and services, which means that churches are not compelled to conduct same-sex marriages.

For example, the Great Britain Equality Act 2010, paragraph 2 of Schedule 23 provides an exemption for religious or belief organizations with regard to the provisions of services, public functions, premises and associations. By this exemption, a religious organization is permitted to impose restrictions on the membership of the organization, participation in its activities, the use of its goods, services or facilities and the use of its premises. However, in order to balance freedom of religion and the rights of sexual minority groups, there are limitations on those exemptions. First, the types of organizations exempted are those that exist to practise, advance or teach a religion or belief, allow people of a religion or belief to participate in any activity or receive any benefit related to that religion or belief, or promote good relations between people of different religions or beliefs.<sup>199</sup> Organizations whose main purpose is commercial are not entitled to use this exemption.<sup>200</sup> Second, the exemption only applies in relation to sexual orientation where a restriction is necessary to comply with the doctrine of the organization or in order to avoid conflicts with the strongly held convictions of members of the religion or belief that the organization represents. Third, exemptions will not be applicable if the religious organization contracts with a public body to carry out an activity

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<sup>199</sup> Great Britain Equality Act 2010, Schedule 23.

<sup>200</sup> Great Britain Equality Act 2010, Schedule 23, para. 2(2).



on that body's behalf.<sup>201</sup>

There are two important points that need to be noted here. First, these religious exemptions in different jurisdictions usually apply to activities of religious organizations, but not religious individuals. Second, it is clear that when religious organizations are not engaging in religious activities, they are not eligible for religious exemptions. As Professor Robert Wintemute asked:

*Is every aspect of every activity of a religious institution automatically religious in nature and therefore entitled to an exemption from [anti-discrimination] legislation? Some activities are clearly not religious even when a religious institution undertakes them. (2002: 143)*<sup>202</sup>

An example in English case law illustrates how religious belief and sexual orientation have been balanced under anti-discrimination legislation. In the case of *Bull and Bull v Preddy and Hall*<sup>203</sup>, a Christian couple who ran a small hotel refused to honour the booking of a double-bedded room by a gay couple in a civil partnership. While religious belief and sexual orientation are both protected grounds, the Supreme Court found that although citizens have a fundamental right to practise their religion, this right can be limited by the obligation to protect the rights of others. In balancing these competing rights, the Court clearly stated that if Mr Preddy and Mr Hall were to deny a double-bedded room to the Bulls on the ground of their Christian beliefs, they would have to face the legal consequences. The Supreme Court explained that the purpose of Regulations under the Equality Act (Sexual Orientation) Regulations 2007<sup>204</sup> was to ensure that homosexual people are treated equally with heterosexual people by those who supply commercial and public goods, facilities or services.

In Hong Kong, both the Basic Law and the Bill of Rights Ordinance include the right to freedom of thought, conscience and religion. Article 32 of the Basic Law states that:

*Hong Kong residents shall have freedom of conscience.*

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<sup>201</sup> Great Britain Equality Act 2010, Schedule 23, para. 2(10).

<sup>202</sup> Wintemute, R. (2002). "Religion vs. Sexual Orientation: A Clash of Human Rights?" in *Journal of Law and Equality* 1(2): 126–154.

<sup>203</sup> *Bull and Bull v Preddy and Hall* [2013] HKSC 73.

<sup>204</sup> The case concerned The Equality Act (Sexual Orientation) Regulations 2007, s. 3 of which defines both direct and indirect discrimination on the ground of sexual orientation.

*Hong Kong residents shall have freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public.*<sup>205</sup>

The Bill of Rights states that:

*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.*

*No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*

*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.*

*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.*<sup>206</sup>

Further, the existing four anti-discrimination Ordinances take into account the right to freedom of thought, conscience or religion and several have specific exemptions related to freedom of religion. For example, the Sex Discrimination Ordinance (SDO) of Hong Kong provides for religious exemptions. In the area of employment, for example, Part 1 of the SDO does not apply “to employment for the purposes of an organized religion where the employment is limited to one sex so as to comply with the doctrines of the religion or to avoid offending the religious susceptibilities common to its followers.”<sup>207</sup> In addition, under s. 22(2) “nothing in section 17 [of the SDO] applies to an authorization or qualification (within the

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<sup>205</sup> Article 32, The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted at the Third Session of the Seventh National People's Congress on 4 April 1990. Promulgated by Order No. 26 of the President of the People's Republic of China on 4 April 1990. Effective as of 1 July 1997).

<sup>206</sup> Article 15, Hong Kong Bill of Rights Ordinance Cap. 383, 1991.

<sup>207</sup> s. 22(1), Sex Discrimination Ordinance Cap. 480 (1995).

meaning of that section) for the purposes of an organized religion where the authorization or qualification is limited to one sex so as to comply with the doctrines of the religion or to avoid offending the religious susceptibilities common to its followers”.<sup>208</sup>

Similarly, the Race Discrimination Ordinance (RDO) of Hong Kong does not apply “to employment for the purposes of an organized religion where the employment is limited to a particular racial group so as to comply with the doctrines of the religion or to avoid offending the religious susceptibilities common to its followers.”<sup>209</sup> Further, under s.23(2) “nothing in section 19 [of the RDO] applies to an authorization or qualification (within the meaning of that section) for the purposes of an organized religion where the authorization or qualification is limited to a particular racial group so as to comply with the doctrines of the religion or to avoid offending the religious susceptibilities common to its followers.”<sup>210</sup>

Thus there are already clear examples of how exemptions on the ground of religious belief have been incorporated into existing anti-discrimination legislation. In developing anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status, specific reference could be drawn from how exemptions have been constructed in other jurisdictions in domains such as employment, education or the provision of goods and services. Consultation with both LGBTI people and religious organizations would also be important in the deliberation of possible exemptions.

Equally, it may also be appropriate for the government to consider whether there is a need to simultaneously introduce anti-discrimination legislation protecting people from discrimination on the ground of religion or belief. Many of the jurisdictions examined have anti-discrimination legislation relating to religion or belief. In some jurisdictions such religious anti-discrimination legislation was developed simultaneously with protections on the grounds of sexual orientation and gender identity (e.g. Great Britain, when implementing the EU Employment Equality Directive in 2003).

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<sup>208</sup> *Ibid.*, s.22(2).

<sup>209</sup> s. 23(1), Race Discrimination Ordinance Cap. 602 (2008).

<sup>210</sup> *Ibid.*, s. 23(2).

### 6.2.3 *Right to privacy*

Another concern raised by some of the public during the Study is that their private lives may be affected and anti-discrimination legislation could prevent them from being able to make choices regarding their private life. For example, some members of the public were concerned about the employment of workers in their homes such as employing foreign domestic helpers: they wanted to be able to have the right to choose their employee in their homes based on their sexual orientation.

Internationally, the right to privacy is also protected under the ICCPR. Article 17 provides that:

*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*<sup>211</sup>

The right to privacy is also protected in the constitutional human rights legislation in many of the jurisdictions examined. For example in the UK the Human Rights Act 1998 implements Article 8 of the European Convention on Human Rights (ECHR) on the right to privacy:

*Everyone has the right to respect for his private and family life, his home and his correspondence.*

*There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*<sup>212</sup>

The anti-discrimination legislation in other jurisdictions takes into account the right to privacy in several ways. First, the anti-discrimination legislation only applies to aspects of public and not private life. In general, it does not, for example, regulate family relationships. Second, some of the jurisdictions examined have specific exemptions relating to privacy and the

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<sup>211</sup> ICCPR s. 17

<sup>212</sup> ECHR s. 8.

home.

In relation to employment, as described in the first part of this Chapter, in Australia (in some states), New Zealand and the Netherlands there is an exemption that states that it is not unlawful to discriminate on grounds including sexual orientation or gender identity where it relates to employment in a private household.

In relation to the disposal and occupation of premises, as described in the first part of this Chapter, in Great Britain and in some states of Australia, there are exemptions that provide that it is not unlawful to discriminate on a number of grounds including sexual orientation or gender identity where it relates to the disposal or occupation of premises and the owner or near relative of the owner lives at the property.

In Hong Kong, the Bill of Rights Ordinance implements the ICCPR into Hong Kong law and therefore also provides constitutional protection of the right to privacy.

In addition, under the existing anti-discrimination Ordinances there are similar exemptions to the other jurisdictions relating to privacy in employment and disposal and occupation of premises. In relation to employment, under the SDO there is an exemption to discrimination on the ground of sex in relation to employment in private homes.<sup>213</sup> In relation to disposal and occupation there are exemptions under the DDO,<sup>214</sup> SDO,<sup>215</sup> RDO,<sup>216</sup> and FSDO<sup>217</sup> for premises where a person owns and occupies the premises, or they are small premises owned and occupied by the owner or near relatives.

Based on the experience of both other jurisdictions and Hong Kong's existing anti-discrimination legislation, exemptions to protect the right to privacy in people's homes could be developed accordingly.

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<sup>213</sup> Section 12(3) SDO.

<sup>214</sup> Sections 28(3) and 30 of the DDO.

<sup>215</sup> Section 29(3) and 31 SDO.

<sup>216</sup> Section 28(3) and 30 RDO.

<sup>217</sup> Section 20(3) and 22 FSDO.

#### **6.2.4 Concerns about social consequences and the relationship between anti-discrimination and relationship rights**

A number of opponents expressed a concern regarding the possible implications of introducing anti-discrimination on the grounds of sexual orientation, gender identity or intersex status. Some people perceive that any such legislation may lead to the approval of same-sex relations as moral sexual conduct, which was contrary to “majority” (heterosexual) practices. For example, some opponents are worried that “more people in society would turn LGBT”.

The experiences of the overseas jurisdictions are worth considering here. Many overseas legal interviewees noted that although there were a lot of concerns in their respective jurisdictions prior to the adoption of anti-discrimination legislation on the grounds of SOGI, the feared negative consequences did not materialize. A leading transgender rights expert and other interviewees drew on the image of “the sky did not fall down” to describe the situation after legislation was introduced in England and Wales. It was noted by some legal experts that on the contrary, society as a whole was improved as more non-heterosexual people felt confident and able to access health care services because of reduced stigma in society. The benefits of such legislation to economic productivity and public health seem to have outweighed any negative consequences in the various jurisdictions which have adopted anti-LGBT discrimination laws.

Another issue is the concern over a rapid increase of litigation in society, resulting in the excessive use of public resources on the part of the government. Experiences in other jurisdictions indicate that there has not been a significant increase in litigation following the adoption of legislation.<sup>218</sup> Further, the experience of the existing anti-discrimination Ordinances in Hong Kong indicate that the majority of complaints are dealt with through a process of investigation and conciliation.<sup>219</sup> Only a limited number of cases reach the courts.

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<sup>218</sup> For example, in Great Britain in relation to claims of discrimination on grounds of sexual orientation in employment, for the year 2013–14, there were only 509 such claims out of a total of 275,561 employment claims (including claims of all forms of discrimination, unfair dismissal, and breach of contract). Further, the proportion of sexual orientation discrimination claims was much lower than some other grounds, such as sex discrimination (13,537), and disability discrimination (6,872): Employment Tribunal Statistics Tables, April to June 2014, Table 2.2. <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2014> (accessed 30 June 2015)

<sup>219</sup> In the period 2006–10 for example, legal assistance from the EOC was sought in 72 complaints brought

Given the low levels of litigation in Hong Kong, one interviewee suggested that there is even less reason not to legislate, especially when the government is not required to commit excessive resources into monitoring complaints or the court systems.

Heightened anxieties are expressed by some members of the public towards the perceived domino effect of legislating against LGBTI discrimination, which they suggest will lead to the legalization of same-sex marriage. However, the experience of other jurisdictions is that the different domains of law related to the protection of sexual minority rights such as decriminalization of same-sex sexual acts, equalization of the age of consent between homosexuals and heterosexuals, anti-discrimination law, and provisions for civil partnerships and same-sex marriage do not follow any natural sequence. For example, in the United States, since the 2015 US Supreme Court decision of *Obergefell v Hodges*<sup>220</sup> same-sex marriage is now legalized in all states across America, however, as of September 2015, discrimination on the grounds of sexual orientation is only legally prohibited in 22 states, and not at the federal level. The presence of anti-discrimination legislation in various US states did not influence the legalization of same-sex marriage – rather it was the result of legal challenges brought under the constitution. In Australia, sexual orientation was added to the anti-discrimination legislation of the Australian state of New South Wales in 1982, but same-sex couples are still unable to marry there or in any other state, more than 30 years later.

Further, the introduction of anti-discrimination legislation in itself would not require legalization of same-sex marriages or civil partnerships. This is because in other jurisdictions (as in Hong Kong), whether same sex couples have the right to marriage or civil partnerships are not within the fields covered by of civil anti-discrimination legislation. A good example of a jurisdiction that illustrates the relationship between civil anti-discrimination legislation and marriage legislation is Australia. In Australia, although there is legal protection against discrimination on the ground of sexual orientation at the federal and state levels, this does not require same-sex marriage to be legalized and there is currently no right to same-sex marriage. There is also a specific exemption under the Sex Discrimination Act 1984 (Commonwealth),

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under the SDO. In 2006–11, the total number of applications for legal assistance under all four existing anti-discrimination ordinances stood at 203. Out of these applications, 42.4% (86 applications) were granted legal assistance. Out of those 86 cases granted legal assistance, 47.7% (41 applications) were then settled out of court and only two trials had concluded in the time period. See Barrow, Amy (2012) “Institutional Mechanisms for the Advancement of Women” in *Women and Girls in Hong Kong: Current Situations and Future Challenges* Choi Susanne Y.P. and Fanny M. Cheung (eds.), Hong Kong Institute of Asia-Pacific Studies, The Chinese University of Hong Kong at 301–303.

<sup>220</sup> *Obergefell v Hodges* 14–556, 26 June 2015.

which states that the anti-discrimination provisions do not affect the Marriage Act 1961.<sup>221</sup>

It is also important to note that even in jurisdictions that have the right to same-sex marriages or civil partnerships, as described earlier in the Chapter in some jurisdictions there are exemptions relating to religious groups. For example in Great Britain, churches are not required to conduct same-sex marriages if they do not wish to do so because of their religious convictions.<sup>222</sup>

Further, in relation to gender identity there is also an exemption for churches in relation to situations where a person has undergone gender reassignment, whether from male to female, or from female to male. Churches are not required to conduct the marriage (to an opposite sex person) if the church reasonably believes the person has changed gender.<sup>223</sup>

As demonstrated by the overseas experiences, the adoption of anti-discrimination legislation does not automatically lead to the legalization of same-sex marriage. Further, in some of the jurisdictions such as Great Britain where same-sex marriages/civil partnerships are legalized or where transsexuals have the right to marry in their acquired gender, there are specific exemptions for churches allowing them not to perform such marriages. These precedents are also of relevance to responding to the concerns made by some members of the public in Hong Kong regarding the implications of SOGI anti-discrimination legislation on whether it automatically require legalisation of same-sex relationships, and whether religious institutions such as Churches would have to perform the ceremonies.

### ***6.2.5 Lack of majority support in society***

Opponents to the adoption of anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status often state that as there is no majority support in society, and therefore Hong Kong is not ready for such legislation. Opponents questioned how many complaints of discrimination were made by LGBTI people (perceived to be small

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<sup>221</sup> Section 40(2A) Sex Discrimination Act 1984.

<sup>222</sup> Section 29 Equality Act 2010; Marriage (Same Sex Couples) Act 2013, ss. 4–5 (religious organisations may only marry same-sex couples if they voluntarily ‘opt-in’; the Church of England may not ‘opt-in’ without an amendment to the Act).

<sup>223</sup> Section 5B of the Marriage Act 1949 as inserted by Schedule 4, Item 3 of the Gender Recognition Act 2004.



in number) to the Equal Opportunities Commission and hence the need for legislation.<sup>224</sup>

Similar objections by religious and family groups were raised in a number of the jurisdictions prior to SOGI anti-discrimination legislation being introduced. It is thus useful to consider how the jurisdictions examined responded to such objections prior to and during the development of legislation.

It is worth considering whether or not there is in fact already a majority support in Hong Kong regarding legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. According to the survey findings presented in Chapter 5, as well as some other previous research reviewed in Chapter 2, there is already a majority (more than 50% of those surveyed) that support providing legal protection for LGBTI people against discrimination.

Further, a number of points were made by legal experts in the overseas jurisdictions in relation to the reasoning for opposition against SOGI anti-discrimination legislation. First, given that the protection of human rights of people often concerns the protection of minorities in society, a lack of consensus in society should not be determinative as to whether it is appropriate to introduce legislation. Good examples of this are the status of women, persons with disabilities, and ethnic minorities who often are more marginalized or have less power in society. Otherwise there could be the danger of “the tyranny of the majority”.

In reference to the British context, one interviewee suggested that it was not appropriate to determine legal protections based on the size of a minority, stating that “human rights are not about numbers, they’re about human rights, and therefore even if ... Jewish people make up less than 1% of the British population ... everyone accepts that they deserve equal rights.”

Similar analogies have been made by the courts in Hong Kong regarding whether legislative provisions are in breach of the rights of sexual minorities. First, in the 2006 case of *Leung v Secretary of Justice*<sup>225</sup> the Court of Appeal examined whether a number of provisions of the

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<sup>224</sup> It should be noted that the EOC currently does not have any express powers to consider complaints of discrimination in relation to sexual orientation, gender identity or intersex status. It currently only considers complaints of gender identity discrimination where a person is diagnosed with gender dysphoria and such complaints are considered as possible disability discrimination. As a result, the numbers of complaints made to the EOC does not necessarily reflect the levels of discrimination, given some of the public is aware of the limitations on the EOC’s current powers.

<sup>225</sup> CACV317/2005. At paragraph 53 of the judgment. [2006] 4HKLRD211.

Crimes Ordinance were in breach of the Basic Law and Bill of Rights Ordinance by differentiating between the age of consent for sexual intercourse between homosexual men as compared with the age of consent for heterosexual couples. The then Honourable Justice Ma of the High Court in holding that the provisions were discriminatory stated that minorities must be protected from the “excesses of the majority.”<sup>226</sup>

Second, the case of *W v Registrar of Marriages*<sup>227</sup> is relevant to the status of transsexuals in Hong Kong. The case concerned a transsexual woman who was denied the right to marry a man. The Court of Final Appeal decided that her right to marry under the Basic Law and Bill of Rights had been breached. The Court of Final Appeal rejected the argument that as there was no consensus in Hong Kong society whether a transsexual person in such circumstances should be able to marry, no breach of her human rights should be found. The court stated:

*Reliance on the absence of a majority consensus as a reason for rejecting a minority’s claim is inimical in principle to fundamental rights.*<sup>228</sup>

A further point in response to the concerns raised about consensus is that such a consensus may be difficult to quantitatively determine. For instance, although there is a significant opposition from some religious groups (particularly Christians) in Hong Kong, they do not necessarily represent the majority view of people in Hong Kong (see the survey findings in Chapter 5). For example, the number of people in Hong Kong who consider themselves to be Christian is approximately 859,000, made up of approximately 379,000 Catholics and 480,000 Protestants.<sup>229</sup> Overall, these figures represent approximately 8.5% of the population.

One interviewee warned against the quantification of “public opinion” by either the amount of public/media attention received or by letters received, which may not be representative of the views of the whole society. Referring to the development of legislation in Great Britain, this interviewee suggested that while lobbying efforts against SOGI anti-discrimination legislation were extensive, religious opposition groups themselves could also be recognized as a minority group and such views were not representative of wider society.

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<sup>226</sup> At paragraph 53 of the judgment.

<sup>227</sup> [2013] HKCFA 39.

<sup>228</sup> At paragraph 116.

<sup>229</sup> “Hong Kong the facts: religion and custom”, Information Services Department, November 2015, <http://www.gov.hk/en/about/abouthk/factsheets/docs/religion.pdf>. (accessed 17 Jan 2016)

With regard to culture, as with religion, it has been pointed out that values are never static. One example is that Chinese family norms in Hong Kong have evolved over time from polygamy to monogamy and large families to the smaller nuclear family over time. Also, the assertion that Chinese culture is inherently more conservative is questionable. Historians have argued that in China, early emperors and scholars had engaged in homosexual relationships alongside heterosexual ones<sup>230</sup>. It was argued that in ancient Chinese civilization, there was no concept of homosexuality and heterosexuality, and that opposition to homosexuality in China originated in the medieval Tang Dynasty, attributed to the rising influence of Christianity and Islam, but did not become fully established until the late Qing Dynasty and the Republic of China.<sup>231</sup> In fact, unlike in the US and Europe, in contemporary China sodomy has never been explicitly criminalized.

#### **6.2.6 Definitions of sexual orientation, gender identity and intersex status**

Given many people in society do not have a well-developed understanding of LGBTI people in society, some members of the Hong Kong public expressed concerns about whether sexual orientation, gender identity and intersex status are clearly definable as characteristics for protection in anti-discrimination legislation. Some groups are especially anxious about how gender identity is defined in relation to transgender individuals, which may include people who have undergone different levels of gender reassignment processes, including whether or not they have had any surgical intervention.

There are several responses to these concerns. First, as described earlier in this Chapter and in Chapter 1, there are internationally accepted definitions of the characteristics of sexual orientation, gender identity and intersex status.<sup>232</sup> These could form the starting point for considering how to define these characteristics.

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<sup>230</sup> Mann, S. (2000). "The Male Bond in Chinese History and Culture" in *The American Historical Review* 105 (5), 1600–1614; Ruan, F. & Tsui, Y. (1987). "Male homosexuality in traditional Chinese literature" in *Journal of Homosexuality* 14 (3-4), 21–34.

<sup>231</sup> Hinsch, B. (1990). *Passions of the Cut Sleeve: The Male Homosexual Tradition in China*. California: University of California Press.

<sup>232</sup> See for example the Yogyakarta Principles on the application of international human rights law to sexual orientation and gender identity: <http://www.yogyakartaprinciples.org/>.

Second, as discussed earlier in this Chapter, there are clear definitions in almost all the jurisdictions examined of sexual orientation, a number of jurisdictions in relation to gender identity and, at the Australian federal level and in the state of Tasmania, in relation to intersex status. In almost all jurisdictions, sexual orientation is defined to include sexual orientation of a person towards another person of the same sex, the different sex or either sex.

One interviewee emphasized the importance of including everyone in the characteristic of sexual orientation, explaining that “sexual orientation is not only about lesbians and gay men, it’s about any sexual orientation [including heterosexual or bisexual]”. In other words, any legal protections on the basis of sexual orientation should protect people of all sexual orientations, not only homosexuals. In the case of Great Britain and some Australian states, protection is also provided to people who are thought to have a certain sexual orientation or gender identity (discrimination by perception), or those who are associated with someone with a certain sexual orientation or gender identity (discrimination by association).

In relation to gender identity, the Australian definitions tend to be broader than in Great Britain. For example the Australian Sex Discrimination Act 1984 defines gender identity to include “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”, whereas the Great Britain Equality Act 2010 adopts gender reassignment (a person proposing to undergo, undergoing or has undergone a process, or part of a process), not gender identity, as a protected characteristic. Australia uses what has come to be the internationally-recognised term, “gender identity”. This would be more preferable for Hong Kong than the unusual and rather narrower term used in Great Britain of “gender reassignment”.

For the characteristics of intersex status, the Australian Sex Discrimination Act 1984 provides a good basis for consideration by defining it as “the status of having physical, hormonal or genetic features that are: (a) neither wholly female nor wholly male; (b) a combination of female and male; or (c) neither female nor male.”

As a result, there are a number of potential models for how to define sexual orientation, gender identity and intersex status based both on international human rights standards and constitutional and anti-discrimination provisions in the jurisdictions examined.

### **6.2.7 The effectiveness of LGBTI anti-discrimination legislation**

Another relevant question raised by some members of the public is whether the legislation would be effective in the elimination of discrimination against LGBTI people. Evidently, discrimination on the grounds of disability, family status, race and sex has not been completely eliminated in Hong Kong despite the adoption of a number of characteristic-specific Ordinances. Similarly, discrimination on the grounds of sexual orientation, gender identity and intersex status has not been entirely eradicated in overseas jurisdictions despite often longstanding legal protections. It is clear that legislation alone cannot eradicate all discriminatory attitudes. It is nevertheless worth considering if legislating against LGBTI discrimination would serve as an effective starting point, and one method by which attitudes may be influenced, for example with guidance and education about the legislation.

That is also one reason why, in some jurisdictions, in addition to the minimum standards of non-discrimination, the relevant legislations require proactive efforts to be paid to eliminating discrimination and fostering equal opportunities for LGBTI people in society.

In Great Britain, in addition to the prohibition against discriminatory behaviour within the Equality Act 2010, in order to seek to address systemic issues of equality, there is also a public sector equality duty. In sum, when public authorities carry out their functions, the Equality Act 2010 stipulates that they must give due regard or think about the need to do following things:

- To eliminate unlawful discrimination;
- To advance equality of opportunity between people who share a protected characteristic and those who don't; and
- To foster or encourage good relations between people who share a protected characteristic and those who don't.<sup>233</sup>

In Taiwan, Chapter 7 of the Gender Equity Education Act<sup>234</sup> provides supplementary provisions for:

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<sup>233</sup> Great Britain Equality Act, s. 149.

<sup>234</sup> Taiwan Gender Equality Act, Ch. 7.

- Students to access higher education.
- Developing programmes for girls to have the same opportunities as boys to participate in sports and physical education in schools.
- Reviewing sex stereotyping (such as the depiction of women as secretaries rather than as managers) in curriculums and textbooks.
- Specific obstacles to education faced by girls must be addressed through gender-responsive measures. These barriers include the lack of toilet facilities for adolescent girls, the absence of women teachers and female role-models in villages, the distance to schools that causes an impediment to a girl child's security, and the fact that girls often become surrogate caregivers in the event of need in the family.

### **6.3. Conclusion**

In summary, this Chapter has provided a foundation for consideration of experiences of legislating against LGBTI discrimination in a number of jurisdictions. The Chapter also considers the questions and doubts raised by some members of the public in Hong Kong. An overview of the various jurisdictions demonstrates that many of the issues of concern are not culturally bound and have been raised in a similar manner in other cultural, legal, political and social contexts. These comparative experiences can therefore serve as an important reference for consideration of how Hong Kong may legislate against LGBTI discrimination.

## **Chapter 7 Conclusion and Recommendations**

This Chapter concludes the Study by integrating findings presented in the previous chapters, including discrimination experienced by LGBTI people in Hong Kong, public opinions on legislating against discrimination of LGBTI people, and a comparative legal review of how other jurisdictions provide legal protection for LGBTI people against discrimination. Based on the evidence-based research findings collated through robust methods, this Chapter makes recommendations on possible viable ways to redress discrimination on the grounds of sexual orientation, gender identity and intersex status in Hong Kong, among which the feasibility of legislation is taken into consideration.

### ***7.1 Integrated analysis of the current situation and findings***

#### ***7.1.1 Current social and legal situation of LGBTI people in Hong Kong***

Chapter 1 has provided an overview of the current social and legal situation of LGBTI people in Hong Kong. It shows that in Hong Kong, although same-sex sexual acts between consenting male adults over the age of 16 have been decriminalized, that currently there is an equal age of consent between homosexuals and heterosexuals, that same-sex partners are included under the “Domestic and Cohabitation Relationships Violence Ordinance,” and that the court has ruled that a transsexual person who has legally changed gender must be allowed to marry in their affirmed gender, there is currently no comprehensive legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status.

Chapter 1 also highlights that international and Hong Kong human rights instruments apply to LGBTI people including the human rights obligations to protect LGBTI people from discrimination. In Hong Kong, the international human rights obligations under the International Covenant on Civil and Political Rights have been implemented by the Basic Law and Bill of Rights. However the Basic Law and Bill of Rights only apply to the actions of the government and public authorities. There is therefore no comprehensive anti-discrimination legislation on the grounds of sexual orientation, gender identity or intersex status. It was also noted that the United Nations has repeatedly expressed concern over the lack of legal protection against discrimination on the grounds of sexual orientation, gender

identity and intersex status in Hong Kong and repeatedly recommended the Government to introduce anti-discrimination legislation to better protect the human rights of LGBTI people.

### **7.1.2      *Literature review***

In Chapter 2, previous studies of the past 10 years on discrimination experienced by LGBT people, as well as public attitudes towards legislating against discrimination on the grounds of SOGI and intersex status, were reviewed. Empirical studies, carried out by NGOs and academics, on discriminatory experiences self-reported by LGBT people focused mostly on the experiences of LGBT people in the fields of employment and education. Only a limited number of studies examined the experiences of LGBT people in other fields such as the provision of goods and services, or the disposal and management of premises. In terms of the study population, most studies focused on discrimination experienced by homosexuals, and studies on discrimination experienced by bisexual and transgender people were very limited. Further, there were no previous studies that examined discrimination faced by intersex people.

In summary, LGBT people consistently reported experiencing considerable levels of discrimination, particularly in the fields of employment and education. The previous studies also indicated that the discrimination experiences had significant effects on LGBT people's lives in the forms of emotional stress, other psychological impacts such as feeling the need to conceal their sexual orientation, and even to contemplate suicide.

In relation to public attitudes towards legislating against discrimination on the ground of sexual orientation, the studies indicate that there appear to be signs of a shift in attitudes among the Hong Kong public during the last 10 years with increasing support for legislation. In a survey in 2006 (MVAHK, 2006) only 29% of those surveyed strongly disagreed/ disagreed that "the Government should not introduce legislation to outlaw discrimination on the ground of sexual orientation at this stage". Thereafter, another study (Chung, Pang, Lee & Lee, 2013) showed that 64% of the respondents agreed that there should be legislation in Hong Kong to "protect individuals with different sexual orientations against discrimination". In the same year, about 60% of the respondents in another survey thought that it was very/quite important to introduce the legislation against discrimination on the ground of sexual orientation (Loper, Lau & Lau, 2014).



### ***7.1.3 Evidence of discrimination experiences as self-reported by LGBTI people and their views on legislation***

Chapter 4 focused on experiences of discrimination self-reported by LGBTI people in Hong Kong and the views of LGBTI people on legislating against discrimination on the grounds of SOGI and intersex status. Experiences of discrimination reported by the LGBTI people were extensive, in the areas of employment, education, provision of services, disposal and management of premises, and government functions. The prevalence of discrimination was notable, regardless of places of occurrence, life stages of the victims, and demographic characteristics of the perpetrators.

Means of redress were also reported to be minimal or non-existent. It has been reported that LGBTI people experienced problems when accessing supporting professionals such as teachers, counsellors, social workers and healthcare personnel, caused by problematic attitudes of these professionals, as well as outdated approaches to homosexuality and transgenderism.

When discrimination took place, it often brought serious consequences to the LGBTI people as well as to the wider society. These people often became victims of direct discrimination by losing out on equal education and employment opportunities or indirect discrimination by having had to use different strategies to escape from unfriendly or even hostile environments such as avoiding the use of health care services.

It only seems reasonable to conclude that the Hong Kong society as a whole needs to consider how discrimination experienced by LGBTI people can be addressed. It was reported in Chapter 4 that many LGBTI people were disappointed by the ineffectiveness of education alone in eliminating discrimination over the years, and that many LGBTI people saw legislating to protect them from discrimination and to promote their equal opportunities as an important and necessary first step to protect their basic human rights.

It was reported that intersex people faced social difficulties as their gender expression may not fit into the male/female binary in society. In some extreme cases, sexual harassment was experienced.

However, the most suffering-inducing aspect of their lives was when medical treatment and decisions were applied to them at an early age without their consent. As it is generally practised presently, a sex is assigned to an intersex baby by the doctor in consultation with the parents who are usually little informed of the possible consequences and other options. Such operations are known to result in the dysfunction of sex organs and the excretory system and sterilization.

The intersex community is asking for the right of consent to medical treatment, and sufficient social support to be provided for them in the meantime. In relation to legislation, there was also discussion about whether intersex people should be protected under the existing Disability or Sex Discrimination Ordinances, or whether appropriate clauses should be included as a part of a separate LGBTI anti-discrimination ordinance, if it was to be developed.

#### **7.1.4      *Views from the general public***

As reported in Chapter 5, the public's views were gathered by two methods: a territory-wide telephone survey of more than 1,000 respondents, as well as qualitative approaches that collected findings through public forums, focus groups, online and postal submissions.

In Chapter 5, it has been shown that there are clear objections by some members of the public to the prospect of legislation. They raised a number of considerations. First, they disagreed that discrimination of LGBTI people is prevalent. Second, they were particularly concerned that legislation could create a conflict with their rights such as freedom of expression, freedom of thought, conscience and religion, and the right to privacy. Some members of the public used the term "reverse discrimination" to describe such concerns. Third, they did not believe that legislation would be effective in addressing discrimination experienced by LGBTI people. They believed that legislation could create further division in society and that education and guidance would be more effective.

However, those who supported the legislation believed that it was important to introduce legislation for a number of reasons including that there was evidence of widespread discrimination against LGBTI people, legislation was important to protect the human rights of

LGBTI people and provide them with access to justice, and that legislation would help to change public attitudes towards LGBTI people by sending a clear signal that discrimination of LGBTI people is unacceptable.

Such concerns have generally been taken as divided opinion among the public. This has for a long time stalled further discussion and action on the part of the Government, and hence no advancement has been made towards addressing discrimination experienced by LGBTI people. However, such concerns must be contextualized in the wider society. Although such oppositional voices have been vocal, the representative survey of this Study noted a significant increase of public support for legislation in the past 10 years from 28.7% (MVAHK, 2006) to 55.7% in this Study (March 2015) who “somewhat/ completely” agreed that there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status as a whole. In this Study, it was found that only 34.8% of the public objected to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status.

It is noteworthy that respondents aged 18–24 are especially supportive of legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status in Hong Kong – 91.8% of them agreed that there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status.

It shall also be noted that of those respondents with religious beliefs, 48.9% agreed that, overall there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status. This indicates that among people with religious beliefs there is a diverse range of views regarding whether there should be legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status.

#### **7.1.5      *Comparative legal perspectives on anti-discrimination legislation***

Chapter 6 has provided a detailed comparative legal review and analysis of how several jurisdictions have legislated against discrimination on the grounds of sexual orientation, gender identity and intersex status. In particular, it examined Australia, Great Britain, Canada, New Zealand, Macau Special Administrative Region, the Netherlands, and Taiwan. Their

experiences are of particular relevance to Hong Kong because they have similar common law or European Union anti-discrimination legislation (Australia, Great Britain, Canada, and the Netherlands), or they are also influenced by Chinese culture (Taiwan and Macau). The cases of Taiwan and Macau demonstrate that influences of Chinese culture and the introduction of anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status are not necessarily incompatible. Many aspects of the legislation were examined—the format or structure of the legislation, the ways in which the groups are defined, the forms of prohibited conduct, the domains in which the legislation operates, exemptions to prohibitions on discrimination, and the duties and powers of the equality or human rights bodies.

Chapter 6 also provided an analysis of what lessons can be learnt from the experience of the development and implementation of LGBTI anti-discrimination legislation in other jurisdictions. In particular, it considered the concerns raised in Hong Kong during the Study in relation to balancing of various rights (the right to non-discrimination by LGBTI people and the rights to freedom of expression, religion and privacy of others), other concerns relating to legal, political and social factors and how those concerns may be addressed by the structure of the legislation and education measures.

Not surprisingly, despite differences in their respective contexts and cultures, experiences in many jurisdictions show similar trajectories of social concerns raised and debated and subsequent legislation, which has taken into account the perspectives of multiple stakeholders. Relevant points of comparison were highlighted for consideration of the local situation if legislation is to be considered.

In terms of possible ways forward for legislation, the following conclusions can be drawn from Chapter 6:

- **Which characteristics to cover:** Most jurisdictions reviewed currently cover sexual orientation and gender identity with several also covering intersex status. Intersex status has been protected more recently, reflecting the recent and increasing awareness among international and national human rights bodies which are beginning to consider extending protection against discrimination on the ground of intersex status.

- **Format of legislation:** There are different options for the structure of anti-discrimination legislation including consolidated, characteristic-specific or field-specific models. Each has its advantages and disadvantages.
- **Definitions of protected characteristics:** The definitions of sexual orientation, gender identity and intersex status could be drawn from other similar jurisdictions as reviewed in Chapter 6, and from international human rights instruments such as the Yogyakarta Principles. Serious consideration should be given to whether discrimination by perception and association should be covered in ways similar to existing provisions in Hong Kong for discrimination on the grounds of disability and race. In some jurisdictions it has been deemed important to protect people who are *perceived to be*, or *associated with* LGBTI people.
- **Prohibited conducts:** The main forms of prohibited conduct in other jurisdictions are direct and indirect discrimination, harassment, victimization, and, to a more limited extent, vilification. All of these are also forms of prohibited conduct in Hong Kong under the existing anti-discrimination Ordinances and therefore could be considered for Hong Kong. There would, however, be a need to carefully consider the right to freedom of expression, for example, in relation to possible vilification provisions.
- **Domains of protection:** In other jurisdictions protection from discrimination in terms of domains on the grounds of sexual orientation, gender identity or intersex status, is similar to those under the existing four anti-discrimination Ordinances in Hong Kong.
- **Exemptions:** Based on the experiences in other jurisdictions and the existing anti-discrimination Ordinances in Hong Kong, consideration to exemptions could be given in fields such as employment, education, provision of goods and services, disposal and management of premises, government functions, special measures, and other areas such as sporting activities in the case of gender identity. As in other jurisdictions and under Hong Kong's existing four anti-discrimination Ordinances, exemptions could be considered where they serve a legitimate aim

and are proportionate.

- **Role of an equality body:** In most of the jurisdictions examined, the equality or human rights bodies have a vital role in promoting equality and eliminating discrimination of people on the grounds of sexual orientation, gender identity or intersex status. In order to fulfil those duties they also have wide-ranging powers from enforcing the anti-discrimination legislation to producing guidance and educating the public. Consideration could be given as to whether the EOC's existing duties and powers under the existing four anti-discrimination Ordinances should be extended to the grounds of sexual orientation, gender identity and intersex status.

#### **7.1.6 Recommendations**

Based on the findings of this Study, including the literature review, focus groups with LGBTI people and submissions from the public, it appears clearly that LGBTI people in Hong Kong do face a wide range of discrimination in all aspects of public life including employment, education, the provision of goods and services, disposal and management of premises and government functions. It is therefore reasonable to conclude that discrimination experienced by LGBTI people in Hong Kong is in great need to be addressed.

The literature review and the representative telephone survey also appear to demonstrate that there is generally growing public awareness of the discrimination faced by LGBTI people and support for the introduction of anti-discrimination legislation over the last ten years. In this Study, in addition to the 7.3% of the respondents who reported being “neutral” on the issue, 55.7% of the general public in Hong Kong “somewhat/ completely” agreed that there should be legal protection on the grounds of sexual orientation, gender identity and intersex status as a whole.

However, there are a small number of self-proclaimed religious and family groups in society that are opposed to the introduction of SOGI legislation for a number of reasons. These reasons include concern over how the protected groups and the prohibited conduct would be defined, the need to protect freedom of expression, freedom of thought, conscience and religion and the need to protect the right to privacy, concerns over the scope of possible

exemptions, and the possibility of anti-discrimination legislation leading to legalization of same-sex marriage or civil partnerships to which some groups are opposed.

A careful legislative design that takes concerns raised by the general public seriously, through thoughtful definitions of format, scope and exemptions of legislation, seems to be the most reasonable way to move the debate forward. A number of recommendations are made to the Government and other stakeholders for consideration, in order to move the issue forward while having incorporated all relevant factors:

## **1. Development and possible content of LGBTI anti-discrimination legislation**

### ***Public consultation***

It is recommended that the Hong Kong Government should consider conducting a public consultation on introducing anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status. Given the evidence of widespread discrimination against LGBTI people, it is recommended that the consultation should focus on the scope and possible content of the legislation, rather than whether there should be legislation.

It is recommended that this consultation should cover all the key elements of possible anti-discrimination legislation: which protected characteristics to cover, the format of the legislation, definitions of the protected characteristics, prohibited conduct, domains of protection, possible exemptions, and the role of an equality body.

### ***Protected characteristics to cover***

It is recommended that the consultation should consider the newly protected characteristics of sexual orientation, gender identity and intersex status.

### ***Format of legislation***

It is recommended that the consultation should consider different possible formats of the legislation to determine what would be the most effective and suitable for Hong Kong.

In terms of the format of legislation, three models can be considered for reference:

- i. *The consolidated approach*: the drafting of a comprehensive anti-discrimination ordinance that would cover both the newly protected characteristics of sexual orientation, gender identity, and intersex status, alongside the existing characteristics (sex, race, disability, family status). Religion and belief may also be included to relief the concerns raised and to create a more inclusive law. Reference can be drawn from the existing international conventions such as ICCPR and Bill of Rights Ordinance as guaranteed by the Basic Law. The Equality Act 2010 in the UK, the Canadian Human Rights Act and the Netherlands Equal Treatment Act provide examples of such a legislative format.
- ii. *The characteristic-specific approach*: based on the model of the present four anti-discrimination Ordinances, legal protection on the grounds of sexual orientation, gender identity and intersex status could involve the passing of a new, separate anti-discrimination ordinance, or the amendment of the Sex Discrimination Ordinance given the relationship between sex discrimination and possible gender identity, sexual orientation or intersex status discrimination. It should be noted that there has been no controversy with regard to the need to legislate against discrimination experienced by intersex people. Public opinion collected has shown general support to address their particular needs.
- iii. *The domain-specific approach*: A domain-specific approach has been taken by the Government in relation to the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation. Similar to that approach, legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status in the public domains of employment and education could be drafted first. Evaluation of the effectiveness of such domain-specific legislation and subsequent amendments could be made following a three-year



review period to expand into other domains such as the provision of goods, services and facilities, premises and government functions.

Each model has its advantages and disadvantages. The consolidated model provides a clear reference point for anyone in society facing discrimination regardless of their protected characteristic. The emphasis of such a legislative model is on the broader concept of equality rather than individual protected characteristics. A characteristic-specific model is consistent with Hong Kong's current models under the four existing anti-discrimination Ordinances. The domain-specific protection model may be less desirable given that it can fail to protect LGBTI people in some crucial aspects of life, and particularly given that similar non-legislative schemes have not proved to provide adequate protection to LGBTI individuals who experience discrimination.

The most efficient method, given Hong Kong's current structure of anti-discrimination legislation, may be the characteristic-specific model either by amending the Sex Discrimination Ordinance or by developing a new ordinance to cover the grounds of sexual orientation, gender identity and intersex status.

### ***Definitions of sexual orientation, gender identity and intersex status***

The consultation should consider definitions of sexual orientation, gender identity and intersex status based on international human rights instruments and other jurisdictions. Further, consideration should be given to providing protection from discrimination on the grounds of perception and association.

### ***Prohibited conducts***

Chapter 6 also showed that in the different jurisdictions reviewed, the forms of prohibited conduct cover direct and indirect discrimination, harassment, victimization and in some jurisdictions vilification, while at the same time freedom of expression is also safeguarded.

Besides direct and indirect discrimination, to what extent should the legislation prohibit harassment and vilification? To alleviate concerns of those who fear such legislation may

reduce freedom of expression, harassment and vilification should be clearly defined with adequate safeguards. For example this can include having an objective element to the test of harassment, and that the test of vilification takes into account the right to freedom of expression.

### ***Domains to be covered***

Taking into account the concerns of the general public, legislation should follow existing discrimination Ordinances to regulate the public sphere but not the private sphere, particularly the spheres of religion, home and family life. It would seem appropriate for the legislation to apply to the same fields as the four existing anti-discrimination Ordinances being employment, education, goods and services, premises, clubs, sporting activities and government functions.

### ***Exemptions to address seemingly competing rights***

It is further recommended that as part of the consultation, careful consideration be given to the need to balance the rights of LGBTI people not to be discriminated against, and the rights of others in terms of freedom of expression, freedom of thought, conscience and religion, and the right to privacy.

Perhaps the most important question for different stakeholders to consider as a next step is, what exemptions shall be in place in the legislative design to address seemingly competing rights? What exemptions serve a legitimate aim and are proportionate? How far should religious exemptions be granted, e.g. with regard to employment? How should religious functions/activities be defined? How should an exemption for genuine occupational qualifications be drafted? In terms of the protection in the private sphere, what kind of exemptions in private accommodation can be considered? How to reconcile situations where an employment takes place at the residence of an employer?

Exemptions could be considered where they serve a legitimate aim and are proportionate in fields such as employment, education, provision of goods and services, disposal and management of premises, government functions, special measures, as well as other areas such as sporting activities and insurance in the case of gender identity.

## ***The role of the EOC***

Should the EOC have the same duties and powers in relation to eliminating discrimination and promoting equality of opportunity as it has in relation to the existing four anti-discrimination Ordinances?

### **2. Consideration of claims about possible discrimination on the ground of religion or belief**

It is recommended that the Government should give further consideration to explore claims about possible discrimination on the ground of religion or belief. First, a number of religious groups in Hong Kong expressed concerns about possible discrimination against them in the context of the possibility of introducing anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status. Second, in Hong Kong unlike many of the other jurisdictions examined, there is protection only in relation to the actions of the Government and public authorities under Article 32 of the Basic Law and Article 15 of the Bill of Rights that provide for Hong Kong residents' fundamental rights to freedom of conscience and freedom of religious beliefs. So far, there have been very few studies about the extent of discrimination on the ground of religion or belief in Hong Kong.

### **3. Developing a constructive dialogue between stakeholders**

It is recommended that forums, workshops and training sessions be developed to increase dialogue and better understanding between different groups in society on issues relating to LGBTI equality.

This would be important for example in relation to LGBTI groups and religious groups developing greater understanding, mutual respect and ways forward to balance each other's rights and concerns. It could also monitor the receptiveness of the general public on legislating against discrimination of LGBTI people.

#### **4. Guidelines and training for frontline government and public authority agents**

It is recommended that comprehensive guidelines and training together with goals with measureable objectives and outcomes should be provided for frontline government officials and staff working in public authorities on promoting equality and eliminating discrimination of LGBTI people including in relation to the response of service providers, police and other stakeholders.

This is recommended for several reasons. First, all government officials and staff working for public authorities must comply with the Bill of Rights Ordinance. This includes an obligation not to discriminate against people on the grounds of sexual orientation or gender identity.

Second, there is a lack of comprehensive understanding of LGBTI individuals and the broader LGBTI community, especially regarding the issues of equality and non-discrimination that stakeholders ought to be aware of in their work such as police and prison staff in responding to the specific needs of transgender persons or in cases of domestic violence with LGBTI individuals.

#### **5. Promotion of greater public understanding and awareness**

It is recommended that further public education and awareness programmes should be facilitated for the general public to educate them about LGBTI people and the issues they face, in order to reduce misconceptions and stereotypes.

As indicated by LGBTI respondents and members of the public interviewed in this Study, discriminatory attitudes cannot be removed by means of legislation alone. Rather, when there is more awareness of the issues faced by LGBTI people, the general public will have a better understanding of sexual minorities' difficulties and needs. Improved public awareness of LGBTI people could also help to reduce misconceptions and misunderstandings about who LGBTI people are and the issues they face.

## **6. New educational curriculums**

Given the extent of marginalization and discrimination faced by many LGBTI students, it is recommended that new curriculums should be formulated to improve understanding of LGBTI people, and policies and practices be improved to prevent discrimination of LGBTI students at schools.

This is important as the evidence from the Study indicated that LGBTI students often experience discrimination, harassment and bullying at schools by classmates and sometimes by teachers, which can lead in some cases to underachievement at school, dropping out of schools, serious mental health issues and even suicide.

Since a number of stakeholders may have concerns about freedom of expression, freedom of religion and freedom of conscience, it is recommended that the Government should take a proactive role in convening a consultative task force which should comprise of all the key stakeholders including educators, school sponsoring bodies, parents, people with religious affiliations, and family groups, in order that their concerns can be adequately taken into account when the new educational curricula are formulated.

## **7. Collection and publication of data on LGBTI people**

It is recommended that the Government should collect and publish data on LGBTI people in Hong Kong in its relevant Government and public authority research and publications.

It is found throughout the Study that little is known about LGBTI people's lives in Hong Kong. Because the number of LGBTI people remains unknown in Hong Kong, their needs in relation to particular services can be grossly underestimated. Collection of data on LGBTI people can help to guide policy decisions and resource allocations.

Given the extent of discrimination self-reported by LGBTI people in Hong Kong, and given that a significant proportion of LGBTI people still find it difficult socially to reveal their sexual orientation, gender identity or intersex status, it is recommended that any collection of such data should be subject to strict confidentiality. To enhance LGBTI

people's trust and willingness to share their personal information, the purposes of data collection and the ways in which the data is stored and handled should be carefully and clearly explained.

## **8. Provision of LGBTI-friendly facilities**

It is recommended that public facilities or premises that adequately take into account the needs of LGBTI people, particularly transgender people, should be provided. This could, for example, involve the government installing more gender neutral toilets, showers and changing rooms.

## **9. Provision of funding for support services for LGBTI people**

Taking into account the pervasiveness of discrimination that LGBTI people face as found in this Study, it is recommended that funding be provided for support services for LGBTI people.

For example, in the arena of education, such services can help LGBTI people to build a positive self-image when they need to negotiate both the challenges of studying and also the challenges of identity development. In the arena of employment, such services might provide career advice and planning, and mentorship programmes. In addition, there is a great need to provide support services in terms of mental health support, given that as presented in Chapter 4, LGBTI people reported facing discrimination in all the different domains of everyday life in Hong Kong, and given the alarming figure that in the past two years, 30% of those who filled in the questionnaire in the focus group had contemplated suicide.

## **7.2 Conclusion**

In 2016, it will have been 25 years since the decriminalization of homosexuality in 1991 in Hong Kong. Yet, there is still no comprehensive anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status in Hong Kong. This is despite of the widespread evidence of discrimination against LGBTI people across many domains, which this Study has documented, and an increasing proportion of Hong Kong citizens and now a clear majority of public support for legislation against discrimination on the grounds of sexual orientation, gender identity and particularly intersex status that this Study has shown. Therefore, the discussion needs to move from the question of whether or not there should be legislation on the grounds of sexual orientation, gender identity and intersex status to that of how such legislation should be designed.

There is no question that the Hong Kong Government should launch a public consultation with a view to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. It is crucially important for the consultation exercise to contain as many concrete details as possible to minimize misunderstandings and unnecessary anxieties. In consulting the public, it is recommended that the Government should provide clear definitions of the coverage of any possible legislation, including possible domains to be covered, and exemptions that can potentially be considered. It would, for example, be important to explain aspects that are outside the scope of anti-discrimination legislation, for example the question of the legalization or not of same sex marriage or civil unions.

In sum, this Study finds that there is clear, majority public support for legislation against discrimination on the grounds of sexual orientation, gender identity and particularly intersex status. It is now for the Hong Kong Government to decide how to take this receptiveness forward in order to create a friendly environment for LGBTI people. By taking steps to introduce comprehensive anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status, there is an opportunity for Hong Kong to become the leading jurisdiction on LGBTI equality in Asia.

## **Appendix I: List of literature on discrimination experienced by LGBTI people in Hong Kong**

Cho et al. (2014). *Tongzhi and Transgender Equality Report* (同志及跨性別平權報告). Hong Kong: Hong Kong Christian Institute, Leslovestudy, Out and Vote and Queer Theology Academy (Collaborative).

<http://issuu.com/makmingyee/docs/> /1 (accessed 10 July 2015).

Community Business (2012). *Hong Kong LGBT Climate Study 2011–12: Attitudes to and experiences of lesbian, gay, bisexual and transgender employees*.

Hong Kong Christian Institute, Blessed Minority Christian Fellowship, Civil Rights for Sexual Diversities & F'Union (2006). *Visible truth: The report of Hong Kong LGBT equality* (看得見的真相: 香港同志平權報告).

Kwok, D. (2015). *Gender and Sexual-Orientation Harassment and Discrimination Experiences of LGBTQ Students in Secondary Schools* (同性/雙性戀及跨性別中學生在校園遇到的騷擾和歧視經歷). Department of Special Education and Counselling, The Hong Kong Institute of Education.

Lau, H., and Stotzer, R. L. (2011). “Employment discrimination based on sexual orientation: a Hong Kong study” in *Employee Responsibilities and Rights Journal*, 23(1), 17–35.

Boy's and Girls' Club Association (2009). *The situation of Tongzhi students in secondary schools* (同志學生在中學的處境).

Women Coalition of HKSAR (2005). *Hong Kong Women's Discrimination cases based on sexual orientation: Phase 1* (「香港女性因性傾向受歧視個案」第一期研究報告). Hong Kong: Women Coalition of HKSAR.

Women Coalition of HKSAR (2007). *The study of Domestic Violence of same-sex couples* (同性伴侶家庭暴力研究問卷調查). Women Coalition of HKSAR, Hong Kong 10% Club,



Rainbow of Hong Kong, Horizons, QS Queer Sister.

Women Coalition of HKSAR. (2009). *Hong Kong Women's Discrimination cases based on sexual orientation: Phase 2* (「香港女性因性傾向受歧視個案」第二期研究報告).

Hong Kong: Women Coalition of HKSAR.

## **Appendix II: List of literature on public attitudes towards LGBT people in Hong Kong**

- Centre of Social Policy Studies (CSPS) (2014). “Public opinion on sexual orientation discrimination”(公眾對性傾向歧視意見). Hong Kong: Centre of Social Policy Studies, Department of Applied Social Sciences, Hong Kong Polytechnic University.
- Chan B. S. (2006). *Survey on discrimination against homosexuality and sexual orientation minorities in Hong Kong Society* (香港社會對同性戀及性傾向歧視意見調查). Hong Kong: Social Sciences Research Centre, The University of Hong Kong; Hong Kong Alliance For Family.
- Community Business (2012). *Hong Kong LGBT Climate Study 2011–12: Attitudes to and experiences of lesbian, gay, bisexual and transgender employees*.
- Chung, T. Y., Pang, K. L., Lee W. Y. and Lee, K. W. (2013). *Survey on Hong Kong Public’s Attitudes toward Rights of People of Different Sexual Orientations*. Hong Kong: Public Opinion Programme, The University of Hong Kong; Hon Cyd Ho Sau-lan, Legislative Councillor.
- Lee, W. Y. & Siu, K. W. (2002). *Survey on sexual orientation 2002* (性傾向民意調查 2002). Hong Kong: Centre of Social Policy Studies, Department of Applied Social Sciences, Hong Kong Polytechnic University; Tongzhi Community Joint Meeting.
- Loper, K. A., Lau, H., and Lau, C. (2014). *Research Shows a Majority of People in Hong Kong Support Gay and Lesbian Couples’ Rights, Not Necessarily Marriage*. Briefing Paper, Centre for Comparative and Public Law, The University of Hong Kong.
- Mercado Solutions Associates Ltd. (2013). *Equal Opportunities Awareness Survey 2012*. HKSAR: Equal Opportunities Commission.
- MVA Hong Kong Limited (2006). *Survey on Public Attitudes toward Homosexuals*. HKSAR: Home Affairs Bureau.

### **Appendix III: List of NGOs contacted for LGBTI focus groups**

Action Q (大專同志行動)

Aids Concerns (關懷愛滋)

Big Love Alliance (大愛同盟)

Blessed Minority Christian Fellowship (基恩之家)

Concerns.IS (藩籬以外－認識和關愛雙性人)

Hong Kong Bauhinias Deaf Club (紫荊聚集)

Hong Kong Rainbow (香港彩虹)

Midblue Night (午夜藍)

NuTongXueShe (女同學社)

One Body in Christ (眾樂教會)

Pink Alliance (粉紅同盟)

Post Gay Alliance (後同盟)

Queer straight Alliance, HKU

Queer Theology Academy (性神學社)

Rainbow Action (彩虹行動)

Scholars Alliance for Sexual and Gender Diversity (學人性聯盟)

Sex and Gender Concern Group, CUHK (中大性/別關注組)

The Association of World Citizens (世界公民)

The Boys' & Girls' Clubs Association of Hong Kong (BGCA) Project Touch (小童群  
益會性向無限計劃)

Transgender Resources Centre (跨性別資源中心)

Women's Coalition of HKSAR (香港女同盟會)

## **Appendix IV: LGBTI focus group interview guide**

### LGBTI focus group discussion flow

Sessions	Content in brief	Time (approx.)
1	Self-introduction by the research team, and a brief introduction to the research, the flow of focus group discussion, ground rules and confidentiality agreement	10 mins
2	As participants will talk about their experiences of being discriminated, the facilitator needs to explain the term “discrimination” under the existing discrimination Ordinances	5 mins
3	Facilitator invites participants to share experiences of being discriminated in the four domains	45 mins
4	Facilitator invites participants to share views on legislation, as well as opinions on the coverage and exemptions in legislation	45 mins
5	Facilitator summarizes and acknowledges the participants’ contributions	5 mins

### Focus group ground rules

- Participants are required to register.
- All participants are required to sign a consensus form to keep what is shared in the focus groups confidential.
- No photography, audio or video recording is allowed.  
(The research team will take recordings for the purpose of data collection in the research.)

Focus group lasts for around 1.5 hours. During the discussion, everyone please

- Respect each other and listen patiently.
- Be open to different viewpoints.
- Stay on the topic and observe the flow of discussion.
- Be aware on the time limit for your expression of views.

- Elaborate your points with reasons and/or beliefs behind.
- Priority will be given to those who have not yet spoken or have spoken less.
- Do not make personal attacks.

LGBTI focus group discussion topics

<b>Experiences of being discriminated on the grounds of sexual orientation, gender identity and intersex status, in the following situations:</b>	
Employment	<ul style="list-style-type: none"> <li>✧ Recruitment criteria, recruitment process, e.g. tests, interviews</li> <li>✧ Treatment upon entry of work</li> <li>✧ Job allocation and salary</li> <li>✧ Welfare, facilities and interests, e.g. welfare and insurance for employees</li> <li>✧ Work environment</li> <li>✧ Verbal violence, physical violence</li> <li>✧ Dismissal/ termination of contract</li> <li>✧ Others</li> </ul>
Education and training	<ul style="list-style-type: none"> <li>✧ Admission criteria/admission process, e.g. tests, interviews</li> <li>✧ Welfare, facilities and interests, e.g. hostel, washroom</li> <li>✧ Treatment from teachers</li> <li>✧ Programme design</li> <li>✧ Learning environment</li> <li>✧ Verbal violence/physical violence/bullying</li> <li>✧ Internship arrangement</li> <li>✧ Withdrawal/convinced withdrawal</li> <li>✧ Support from education institution (e.g. teachers/social workers in school/other departments)</li> <li>✧ Campus environment and culture</li> <li>✧ Others</li> </ul>
Provision of goods, facilities and services	<ul style="list-style-type: none"> <li>✧ Provision of goods, facilities and services, e.g. printing shops, restaurants, hotels, gymnasium ...</li> <li>✧ Qualities of goods, facilities and services</li> </ul>

	✧ Renting and leasing of premises
Disposal and management of premises	✧ Criteria set for applicants ✧ Access to and use of public premises ✧ Others
Harassment, vilification, serious vilification	✧ Any experiences of facing harassment, vilification or serious vilification?
<b>Views on legislation, as well as opinions on the contents, coverage and exemptions in legislation</b>	
Views and opinions	✧ Necessity ✧ Urgency
Contents	✧ Areas of coverage (the four included areas in existing anti-discrimination laws and others) ✧ Harassment, vilification, serious vilification ✧ Applicability of terms, e.g. victimization, vicarious liability, genuine occupational qualification, reasonable accommodation and unjustifiable hardship
Exemptions	✧ Exemption for religions (form, extent, mechanism, etc.) ✧ Exemption for households (form, extent, mechanism, etc.)
<b>Apart from legislation, other solutions for consideration, e.g. education, policy</b>	

Finally, facilitator acknowledges contribution from participants:

- Request participants to fill in a questionnaire about their personal profile.
- Remind participants to observe and follow the confidentiality agreement.
- Invite participants to express their further opinions through the online opinion collection, and to consider applying for the public forum.

## **Appendix V: Survey Methodology**

### **Coverage**

The survey covered all Chinese and English speaking household residents in Hong Kong aged 18 or above, excluding those who are not ordinarily resident in Hong Kong.

### **Sample design and data collection method**

Telephone numbers were initially randomly drawn from the telephone database. For each sampled household, a last-birthday selection method (i.e. a respondent aged 18 or above in a household who just had his/her birthday would be selected to participate in the telephone interview.) was adopted to select a target respondent for the interview.

### **Pilot Survey**

Before the commencement of the main fieldwork, two pilot surveys covering 8 and 20 respondents were conducted on November 24, 2014 and December 9, 2014 respectively to test the survey logistics and flow of the questionnaire. The first pilot survey was conducted, however the time taken to complete the survey was too long. Therefore the questionnaire was shortened and the second pilot survey of 20 respondents was conducted. The results of second pilot survey revealed that there was no need to further modify the questionnaire design.

### **Fieldwork Period, Sample Size and Response Rate**

The main fieldwork of the telephone survey was conducted during the period 2 January to 5 February 2015 from 18:00 to 22:00 for Monday-Friday. The mean time (SD) for the questionnaire interview was 15.7 (3.0) minutes. A total of 12,409 households were contacted, out of which a prospective eligible respondent aged 18 or above was identified in 1,590 households. Of these 1,590 prospective respondents, 254 (16.0%) refused to join the study; 314 (19.7%) could not be contacted; 17 (1.1%) started but did not complete the interview; 1,005 (63.2%) completed the study. The response rate defined as percentage of eligible persons contacted completing the interview is hence 63.2%. Details of enumeration results are summarized as below:

<b>(a) Total number of phone calls made</b>	<b>12,409</b>
<b>(B) Invalid calls (no eligible person identified for various reasons)</b>	<b>10,819</b>
Non-residential lines	179
Fax lines/ invalid lines/ telephone numbers requiring password	1,807
Cut line immediately	3,422
Non-contact (after 3 attempts)	5,411
<b>(C) Number of households with an eligible prospective participant but interview was not successfully conducted</b>	<b>585</b>
Incomplete interviews	17
Could not contact the eligible persons after three attempts made	314
Refusal	254
<b>(D) Household with a participant completing the interview</b>	<b>1 005</b>

$$\text{Response rate} = (D) / [(C) + (D)] \times 100\% = 63.2\%$$

## Weighting

Data collected from the survey was weighted to align with the age and sex distribution of the population in late-2014 (issued by the Census & Statistics Department).

## Rounding of Figures

There may be a slight discrepancy between the sum of individual items and the sub-total / total as shown in the tables / charts of this report owing to rounding after weighting.



## **Appendix VI: Public focus group interview guide**

### **Public focus group discussion flow**

<b>Sessions</b>	<b>Content in brief</b>	<b>Time (approx.)</b>
1	Self-introduction by the research team, and a brief introduction to the research, the flow of focus group discussion, ground rules and confidentiality agreement	10 mins
2	Facilitator needs to explain the term “discrimination” under the existing discrimination Ordinances	5 mins
3	Facilitator invites participants to share understandings and views on LGBTI people and related discrimination scenarios	20 mins
4	Facilitator invites participants to share views on legislation, as well as opinions on the coverage and exemptions in legislation	45 mins
5	Facilitator invites participants to share their views on positive and negative effects upon legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status	25 mins
6	Facilitator summarizes and acknowledges the participants’ contributions	5 mins

### **Focus group ground rules**

- Participants are required to register.
- All participants are required to sign a consensus form to keep what is shared in the focus groups confidential.
- No photography, audio or video recording is allowed.  
(The research team will take recordings for the purpose of data collection in the research.)

Focus group lasts for around 1.5 hours. During the discussion, everyone please

- Respect each other and listen patiently.
- Be open to different viewpoints.
- Stay on the topic and observe the flow of discussion.
- Be aware on the time limit for your expression of views.
- Elaborate your points with reasons and/or beliefs behind.
- Priority will be given to those who have not yet spoken or have spoken less.
- Do not make personal attacks.

## **Topics of public focus group**

<b>Invite participants to share understandings of and views on LGBTI people and related discrimination cases</b>	
<b>Knowledge of LGBTI people and personal contact</b>	
Relationship: Family members, relatives and friends, colleagues, personal life experiences Other channels: books, media, churches, community organizations etc.	
<b>Knowledge of LGBTI discrimination cases</b>	
Relationship: Family members, relatives and friends, colleagues, personal life experiences Other channels: books, media, churches, community organizations, etc.	
Areas	<b>Employment, education, provision of goods, facilities or services, disposal and management of premises</b>
<b>Invite participants to share views on legislation, as well as opinions on the coverage and exemptions in legislation</b>	
When people are discriminated on the grounds of their SOGI, what safeguard(s) should society provide? How will the public advise on handling the problem?	
Employment	<ul style="list-style-type: none"> <li>✧ Recruitment criteria, recruitment process, e.g. tests, interviews</li> <li>✧ Treatment upon entry of work</li> <li>✧ Job allocation and salary</li> <li>✧ Welfare, facilities and interests, e.g. welfare and insurance for employees</li> <li>✧ Work environment</li> <li>✧ Verbal violence, physical violence</li> <li>✧ Dismissal/termination of contract</li> <li>✧ Others</li> </ul>
Education and training	<ul style="list-style-type: none"> <li>✧ Admission criteria/ admission process, e.g. tests, interviews</li> <li>✧ Welfare, facilities and benefits, e.g. hostel, washroom</li> <li>✧ Treatment from teachers</li> <li>✧ Programme design</li> <li>✧ Learning environment</li> <li>✧ Verbal violence/physical violence/bullying</li> <li>✧ Internship arrangement</li> </ul>

	<ul style="list-style-type: none"> <li>✧ Withdrawal/convinced withdrawal</li> <li>✧ Support from education institution (e.g. teachers/social workers in school/other departments)</li> <li>✧ Campus environment and culture</li> <li>✧ Others</li> </ul>
Provision of goods, facilities, and services	<ul style="list-style-type: none"> <li>✧ Provision of goods, facilities, and services, e.g. printing shops, restaurants, hotels, gymnasium ...</li> <li>✧ Quality of goods, facilities, and services</li> <li>✧ Renting and leasing of premises</li> </ul>
Disposal and management of premises	<ul style="list-style-type: none"> <li>✧ Criteria set for applicants</li> <li>✧ Access to and use of public premises</li> <li>✧ Others</li> </ul>
Feasible exemptions	
Areas	Exemption for religions, exemption for households, and others
<b>Positive and negative effects upon legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status</b>	
Areas	Freedom of speech, freedom of religion and faith, multiculturalism, protection of human rights, fair treatment, and others
Apart from legislation, other solutions for consideration, e.g. education, policies	
Areas	Education, policies, and others

Finally, facilitator acknowledges contribution from participants:

- Request participants to fill in a questionnaire about their personal profile.
- Remind participants to observe and follow the confidentiality agreement.
- Invite participants to express their further opinions through the online opinion collection, and to consider applying for the public forum.

## **Appendix VII: Public forums**

### **First Public Forum**

Retrospect and Prospect: LGBT and Intersex Status @ Hong Kong

Date: 29 June, 2014, Sunday

Time: 2:00 - 4:00 pm (1:30pm Registration)

Venue: Lecture Theatre TU201, The Hong Kong Polytechnic University

Guest speakers:

Dr. LUK Kit Ling

Lecturer, Hong Kong Community College of the Hong Kong Polytechnic University  
Chairperson, The Association for the Advancement of Feminism

Mr. CHONG Yiu Kwong, Solicitor

Teaching Fellow, The Hong Kong Institute of Education  
Deputy Chairperson, Hong Kong Human Rights Monitor.

Rev. Po Kam Cheong

The General Secretary of the Hong Kong Christian Council

For sharing session:

Video: <https://www.youtube.com/watch?v=KY00jDvdycA&feature=youtu.be>

For Q &A session:

(To make sure participants can express their views without any hesitations, the Q&A session is publicized in audio format.)

Audio: [http://www.cuhk.edu.hk/research/sogistudy/SOGI\\_1stpublicforum.mp3](http://www.cuhk.edu.hk/research/sogistudy/SOGI_1stpublicforum.mp3)

## **Second Public Forum**

Interregional Comparison: The Practices and Implications of Legislation Against  
Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status

Date: 30 August, 2014, Saturday

Time: 10:00 am -12:30 pm (9:30am Registration)

Venue: Lecture Theatre, Central Library

Guest speakers:

Prof. Stephen Whittle

Professor of Equalities Law, Manchester Metropolitan University

Mr. Boris Dittrich

Former Dutch Legislator,

Advocacy Director, Lesbian, Gay, Bisexual and Transgender Rights Program, Human  
Rights Watch

Ms. Alice Molan

Registered Foreign Lawyer, King & Wood Mallesons

Mr. Chang Hong Cheng

Adjunct Lecturer in Law, National Taiwan University of Science and Technology,  
Taipei, Taiwan

Miss Margaret Ng

Practicing Barrister, Former Legislative Councilor

For sharing session:

Video: <https://www.youtube.com/watch?v=GTktq7XZXV4&feature=youtu.be>

For Q&A session:

Audio: [https://www.youtube.com/watch?v=PIUWdlb\\_4VQ&feature=youtu.be](https://www.youtube.com/watch?v=PIUWdlb_4VQ&feature=youtu.be)

### **Third Public Forum**

Fight or Flight? An Analysis of the Social Effects and Impact of Legislation Against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status in Hong Kong

Date: 27 September, 2014, Saturday

Time: 2:30 - 5:30 pm (2:00pm Registration)

Venue: Lecture Theater 1, Cheng Yu Tung Building, The Chinese University of Hong Kong

Guest Speakers of the 3rd public forum:

Education	Prof. Choi Po-King Associate Professor, Department of Educational Administration and Policy, CUHK
	Mr. Geoffrey Yeung Policy & Advocacy Secretary, Action Q
Parents	Mr. Roger Wong Convener, Family School SODO Concern Group
	Ms. Linda Wong Parent
Community Service	Mr. Ng Sze Yuen Director, Soul-mate Association
	Ms. Joanne Leung Chairperson, Transgender Resource Center
Religion	Mr. Choi Chi Sum General Secretary, The Society for Truth and Light
	Mr. Yu Kwok Pan Vice Chairperson, Hong Kong Society of Humanities
Employment	Ms. Wu Mei Lin Director, Hong Kong Women Workers' Association
	Mr. Kevin Burns Programme Manager, Community Business
Sexual Minority	Dr. Joseph Cho Man-kit Executive Co-director, Nu Tong Xue She
	Small Luk An activist concerning intersex status

For Guest Sharing, Session 1:

Video: [http://youtu.be/Oc1TFLoc8\\_A](http://youtu.be/Oc1TFLoc8_A)

For Q & A, Session 1:

Audio: [http://youtu.be/4yq9G\\_6Fkww](http://youtu.be/4yq9G_6Fkww)

For Guest Sharing, Session 2:

Video: <http://youtu.be/zXoLLMIn4eU>

For Q & A, Session 2:

Audio: <http://youtu.be/c6xEBcLvjMs>

## **Appendix VIII: List of legal experts interviewed in this Study**

(in alphabetical order)

Nicholas Bamforth, Fellow in Law, The Queen's College, University Lecturer in Law,  
University of Oxford

Chang Hong Cheng, Adjunct Lecturer in Law, National Taiwan University of Science and  
Technology, Taipei, Taiwan

Boris Dittrich, Advocacy Director, Lesbian, Gay, Bisexual, and Transgender Rights Program,  
Human Rights Watch and former Dutch legislator

Professor Jonathan Herring, Professor of Law, University of Oxford

Dr Tarunabh Khaitan, Associate Professor of Law, University of Oxford

The Hon. Michael Kirby, Former Justice of the High Court of Australia

Professor Holning S. Lau, Professor of Law, UNC Law School, University of North Carolina

Professor Leslie J. Moran, Professor of Law, Birkbeck College, University of London

Peter Tatchell, Director, the Peter Tatchell Foundation

Professor Stephen Whittle, Professor of Equalities Law, Manchester Metropolitan University

Professor Robert Wintemute, Professor of Human Rights Law, King's College London



## Appendix IX-Telephone survey Questionnaire

### Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status

#### Questionnaire Survey

Respondent's Number:		Telephone Number of Respondent:		
Respondent's Name:		Interviewer's Code:		
Interview Date:		Interview Time: (hh:mm)	From:	To:

#### Introduction

Hello! The Gender Research Centre of the Hong Kong Institute of Asia Pacific Studies of the Chinese University of Hong Kong has been commissioned by the Equal Opportunities Commission to undertake a feasibility study on legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status, and would like to conduct a quick interview with a member of your household. The whole interview would last for around 20 minutes. Your opinions are of vital importance to our research.

#### Screening

- S1. May I know how many persons are there in your household, who are aged 18 or above? I mean those who live here at least 5 nights a week. Please exclude live-in domestic helpers.

Record the no. of person(s): **[If more than 1, ask S2; if not, invite this member for interview.]**

- S2. We wish to invite one of them to conduct the interview by a random selection method.  
Among these [answer of S1] persons, may I know whose birthday has just passed, and can you ask him/her to respond to us on the phone?

(If the respondent does not understand: that means... today is the of , so whose birthday is the latest birthday?)

I am the one ☐ **[Read out] [Start the interview]**

Others ☐ **[Read out] [Repeat the introduction & start the interview]**

**[If the selected respondent is not at home or not available, interviewer should make appointment or call again later]** May I know his/her name? When should I call him/her again? Through which phone number can I reach him/her? **[Record the information and later contact the respondent]**

**[If the respondent refuses the interview, read out]** Your opinion is very important for this study. The interview will take about minutes. And don't worry, the information you provide will be treated with strict confidence and will be used for aggregate analysis only. What is the reason of not accepting the interview?

**[Record the reason. If a solution is identified, the interviewer can propose it to the respondent]**

~~~~~

**[Start the interview]**

Hello, Sir/Madam. Thank you for participating in the interview. Please be assured that the information you provide will be treated with strict confidence and will be used for aggregate analysis only.

**[Read whenever necessary: If you have any question about this study, please contact the Gender Research Centre, the Chinese University of Hong Kong: 3943 1199]**

Below I will read out the definitions of some terms used in this study, in order to make sure that participants have certain understanding of important concepts mentioned in the questions.

**[Definition of LGBTI people (modified from the study brief provided by the EOC)]**

**(A) Contact with LGBTI people**

“Homosexual” describes females/males who are emotionally and/or sexually attracted to same sex people enduringly, then

1 (i) have you had any contact with lesbians / gay men in everyday life in Hong Kong? (If the answer of the respondent is “Yes”, continue to ask “Is it frequent or not?”)

2 (i) have you had any contact through media (e.g. newspaper, television, etc) with them in Hong Kong? (If the answer of the respondent is “Yes”, continue to ask “Is it frequent or not?”)

“Bisexual” describes females or males who are emotionally and/or sexually attracted to both males and females enduringly, then

1 (ii) have you had any contact with them in everyday life in Hong Kong? (If the answer of the respondent is “Yes”, continue to ask “Is it frequent or not?”)

2 (ii) have you had any contact through media (e.g. newspaper, television, etc) with them in Hong Kong? (If the answer of the respondent is “Yes”, continue to ask “Is it frequent or not?”)

“Transgender” describe people whose gender identity is different from the sex assigned at birth. For example, one is assigned as a male at birth but he identifies himself as a female; alternatively, one is assigned as a female at birth but she identifies herself as a male, then

1 (iii) have you had any contact with them in everyday life in Hong Kong? (If the answer of the respondent is “Yes”, continue to ask “Is it frequent or not?”)

2 (iii) have you had any contact through media (e.g. newspaper, television, etc) with them in Hong Kong? (If the answer of the respondent is “Yes”, continue to ask “Is it frequent or not?”)

“Intersex” describes people who display a variation in sex characteristics including chromosomes, gonads, and/or genitals since birth that do not allow them to be distinctly identified as male or female, then

1 (iv) have you had any contact with them in everyday life in Hong Kong? (If the answer of the respondent is “Yes”, continue to ask “Is it frequent or not?”)

2 (iv) have you had any contact through media (e.g. newspaper, television, etc) with them in Hong Kong? (If the answer of the respondent is “Yes”, continue to ask “Is it frequent or not?”)

**Record:**

| <b>1. Have you had any contact with them in everyday life in Hong Kong? (If the answer of the respondent is “Yes”, continue to ask “Is it frequent or not?”)</b> | <b>1-Yes(Frequent)</b> | <b>2-Yes(NotFrequent)</b> | <b>3-No</b> | <b>4-NotSure/Don'tKnow</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|---------------------------|-------------|----------------------------|
| i) Lesbians                                                                                                                                                      |                        |                           |             |                            |
| ii) Gay men                                                                                                                                                      |                        |                           |             |                            |
| iii) Bisexual people                                                                                                                                             |                        |                           |             |                            |
| iv) Transgender people                                                                                                                                           |                        |                           |             |                            |
| v) Intersex people                                                                                                                                               |                        |                           |             |                            |

| <b>2. Have you had any contact through media (e.g. newspaper, television, etc) with them in Hong Kong? (If the answer of the respondent is “Yes”, continue to ask “Is it frequent or not?”)</b> | <b>1-Yes(Frequent)</b> | <b>2-Yes(NotFrequent)</b> | <b>3-No</b> | <b>4-NotSure/Don'tKnow</b> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|---------------------------|-------------|----------------------------|
| i) Lesbians                                                                                                                                                                                     |                        |                           |             |                            |
| ii) gay men                                                                                                                                                                                     |                        |                           |             |                            |
| iii) Bisexual people                                                                                                                                                                            |                        |                           |             |                            |
| iv) Transgender people                                                                                                                                                                          |                        |                           |             |                            |
| v) Intersex people                                                                                                                                                                              |                        |                           |             |                            |

**(B) Attitudes towards LGBTI people**

|                                                                                                                                                  | 1                      | 2                             | 3                              | 4                          | 5 | N- Not Sure/ Don't Know        |
|--------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-------------------------------|--------------------------------|----------------------------|---|--------------------------------|
| 3. To what extent is homosexuality inborn? '1' is 'absolutely not', '5' is 'absolutely yes'.                                                     |                        |                               |                                |                            |   |                                |
| 4. To what extent is bisexuality inborn? '1' is 'absolutely not', '5' is 'absolutely yes'.                                                       |                        |                               |                                |                            |   |                                |
| 5. To what extent is transgender status inborn? '1' is 'absolutely not', '5' is 'absolutely yes'.                                                |                        |                               |                                |                            |   |                                |
| <b>How would you evaluate the followings?</b><br><b>Please rate in a scale of 1-4. '1' is 'Always wrong', whereas '4' is 'Not wrong at all'.</b> | <b>1- Always wrong</b> | <b>2- Almost always wrong</b> | <b>3- Wrong only sometimes</b> | <b>4- Not wrong at all</b> |   | <b>N- Not Sure/ Don't Know</b> |
| 6. About sexual relations between two female adults.                                                                                             |                        |                               |                                |                            |   |                                |
| 7. About sexual relations between two male adults.                                                                                               |                        |                               |                                |                            |   |                                |
| 8. About people having sexual relations with both men and women in their lifetime.                                                               |                        |                               |                                |                            |   |                                |
| 9. What do you think about people desiring to change the gender that is assigned at birth?                                                       |                        |                               |                                |                            |   |                                |
| 10. What do you think about people who like to wear clothes of the opposite sex/ different from the biological sex they are assigned at birth?   |                        |                               |                                |                            |   |                                |

**(C1) Personal attitudes towards LGBTI people (Designed based on information collected in the focus groups)**

I want to talk about different roles and situations. If you play the following roles in the situations described, will you behave in the way described?

Rotate and read out different roles. For each role, ask the respective situation with different LGBTI group.

**If you play the role as a/an (rotate and read out the role), will be behave in that way? (rotate LGBTI group and read out respective situation)**

[1 – Yes, 2 – No, N – Not sure / Don't know]

| 11.                                                            | Role                             | Situation                                                                                 | LGBTI group |          |             |          |
|----------------------------------------------------------------|----------------------------------|-------------------------------------------------------------------------------------------|-------------|----------|-------------|----------|
|                                                                |                                  |                                                                                           | Homosexual  | Bisexual | Transgender | Intersex |
| Employment                                                     |                                  |                                                                                           |             |          |             |          |
| A                                                              | Employer                         | If you know your employee is _____, would you continue to employ this person?             |             |          |             |          |
| Education and training                                         |                                  |                                                                                           |             |          |             |          |
| B                                                              | Teacher                          | If you know your student is _____, would you discipline this student?                     |             |          |             |          |
| Provision of goods and services                                |                                  |                                                                                           |             |          |             |          |
| C                                                              | Service provider in a restaurant | If you know your customer is _____, would you refuse to provide service to this person?   |             |          |             |          |
| Leasing of apartment / office; membership of club/ association |                                  |                                                                                           |             |          |             |          |
| D                                                              | Landlord                         | If you know your tenant is_____, would you continue to lease your premise to this person? |             |          |             |          |

**(C2) Perceived extent of discrimination experienced by LGBTI people**

| Please rate in a scale of 1-5. '1' is 'Completely disagree', whereas '5' is 'Completely agree'.                                                                                                                                                                                                                                                                                          | 1 Very serious | 2 Serious | 3 Average | 4 Pore little problem | 5 No problem at all | N/Not Sure/Don't Know |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-----------|-----------|-----------------------|---------------------|-----------------------|
| <b>12.</b> At present, _____ are discriminated against in Hong Kong because of their sexual orientation.<br>i) Lesbians<br>ii) Gay men<br>iii) Bisexual people<br>iv) At present, transgender people are discriminated against in Hong Kong because of their gender identity.<br>v) At present, Intersex people are discriminated against in Hong Kong because of their intersex status. |                |           |           |                       |                     |                       |

**(D1) Knowledge about discrimination legislation**

|                                                                                                                            | Yes | No | Don't know / hard to say | Refuse to answer |
|----------------------------------------------------------------------------------------------------------------------------|-----|----|--------------------------|------------------|
| <b>13.</b> As far as you know, is there any existing ordinance against discrimination on the ground of _____ in Hong Kong? |     |    |                          |                  |
| i) Race                                                                                                                    |     |    |                          |                  |
| ii) Disability                                                                                                             |     |    |                          |                  |
| iii) Sex                                                                                                                   |     |    |                          |                  |
| iv) Family Status                                                                                                          |     |    |                          |                  |
| v) Sex Orientation                                                                                                         |     |    |                          |                  |

(If said "yes" for sex orientation, clarify the misunderstanding, and tell that there is actually 'no legal protection against discrimination on the ground of sex orientation in Hong Kong'.)

**(D2) Views on providing LGBTI people with legal protection**

| 14. Should legal protection against discrimination be provided for people of different sexual orientation, gender identity and intersex status in the following areas?<br>Please rate in a scale of 1-5. '1' is 'Completely disagree', whereas '5' is 'Completely agree'. | 1- Completely disagree | 2- Somewhat disagree | 3- Neutral | 4- Somewhat agree | 5- Completely agree | N- Not Sure / Don't Know |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------|------------|-------------------|---------------------|--------------------------|
| i) Employment                                                                                                                                                                                                                                                             |                        |                      |            |                   |                     |                          |
| ii) Education and training                                                                                                                                                                                                                                                |                        |                      |            |                   |                     |                          |
| iii) Provision of goods and services                                                                                                                                                                                                                                      |                        |                      |            |                   |                     |                          |
| iv) Leasing of apartment / office                                                                                                                                                                                                                                         |                        |                      |            |                   |                     |                          |
| v) Membership of club/ association                                                                                                                                                                                                                                        |                        |                      |            |                   |                     |                          |
| 15. Overall speaking, should legal protection against discrimination be provided for people of different sexual orientation, gender identity and intersex status in Hong Kong?                                                                                            |                        |                      |            |                   |                     |                          |

**(E) Same-sex marriage**

| Please rate in a scale of 1-5. '1' is 'Very much oppose', whereas '5' is 'Very much support'.                                                                                                            | 1- Very much oppose | 2- Oppose | 3- Neutral | 4- Support | 5- Very much support | N- Not Sure / Don't Know |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|-----------|------------|------------|----------------------|--------------------------|
| 16. For the legislating of same sex marriage, what is your view?                                                                                                                                         |                     |           |            |            |                      |                          |
| 17. If a homosexual couple can have the same rights as a heterosexual couple in Hong Kong through the legal procedure of 'civil partnership', without being recognized as 'marriage'. What is your view? |                     |           |            |            |                      |                          |

**(F) Human rights and family values**

| 18. Do you agree with the following views?<br>Please rate in a scale of 1-5. '1' is 'Completely disagree',<br>whereas '5' is 'Completely agree'. | 1- Completely disagree | 2- Somewhat disagree | 3- Neutral | 4- Somewhat agree | 5- Completely agree | N- Not Sure/ Don't Know |
|--------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------|------------|-------------------|---------------------|-------------------------|
| i) <b>Human Rights:</b> Everyone in society should be equal in terms of their dignity and rights.                                                |                        |                      |            |                   |                     |                         |
| ii) <b>Family Values:</b> Fulfilling parental expectations and following their thoughts are very important.                                      |                        |                      |            |                   |                     |                         |

**(G) Extent of discrimination on the grounds of other characteristics**

| 19. Do you agree with the following views?<br>Please rate in a scale of 1-5. '1' is 'Completely disagree',<br>whereas '5' is 'Completely agree'. | 1- Completely disagree | 2- Somewhat disagree | 3- Neutral | 4- Somewhat agree | 5- Completely agree | N- Not Sure/ Don't Know |
|--------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------|------------|-------------------|---------------------|-------------------------|
| a) Males are generally more suitable than females to perform management or leading roles                                                         |                        |                      |            |                   |                     |                         |
| b) People with disabilities can only pick up junior works                                                                                        |                        |                      |            |                   |                     |                         |
| c) People with mental illness are not suitable for work, because they may be emotionally unstable.                                               |                        |                      |            |                   |                     |                         |
| d) People living with HIV pose a hazard to fellow employees as they may infect others when working together.                                     |                        |                      |            |                   |                     |                         |
| e) South Asians are not suitable to do office work because they have only attained low educational level.                                        |                        |                      |            |                   |                     |                         |
| f) Single persons will pay greater efforts on work than married persons                                                                          |                        |                      |            |                   |                     |                         |
| g) The working attitude for most of the new immigrants from the Mainland is perfunctory.                                                         |                        |                      |            |                   |                     |                         |
| h) Young people are not patient enough to learn, and thus it will waste company's resources on their training.                                   |                        |                      |            |                   |                     |                         |
| i) Middle-aged persons work less efficiently than younger persons.                                                                               |                        |                      |            |                   |                     |                         |
| j) Homosexual people should not work as teachers, because they will impose negative impacts on students' morality.                               |                        |                      |            |                   |                     |                         |



**(H) Demographic details**

**20. Age**

Could you tell me your age?

|                   |     |
|-------------------|-----|
| 18-24             | 1   |
| 25-29             | 2   |
| 30-34             | 3   |
| 35-39             | 4   |
| 40-44             | 5   |
| 45-49             | 6   |
| 50-54             | 7   |
| 55-64             | 8   |
| 65 or above       | 9   |
| Refused to answer | 999 |

**21. Education**

Could you tell me your level of education?

|                              |     |
|------------------------------|-----|
| No schooling / Pre-primary   | 0   |
| Primary                      | 1   |
| Lower Secondary (F.1 to F.3) | 2   |
| Upper Secondary (F.4 to F.7) | 3   |
| Post-secondary or above      | 4   |
| Refused to answer            | 999 |

**22. Employment Status**

|                                             |     |
|---------------------------------------------|-----|
| Unemployed                                  | 0   |
| Employees                                   | 1   |
| Employers                                   | 2   |
| Self-employed                               | 3   |
| Unpaid family workers (including housewife) | 4   |
| Students                                    | 5   |
| Retired                                     | 6   |
| Other (please specify) :                    | 888 |
| Refused to answer                           | 999 |

### **23. Occupation**

Could you tell me your occupation?

|                                                                            |     |
|----------------------------------------------------------------------------|-----|
| Managers and administrators                                                | 1   |
| Professionals                                                              | 2   |
| Associate professionals                                                    | 3   |
| Clerical support workers                                                   | 4   |
| Service and sales workers                                                  | 5   |
| Craft and related workers                                                  | 6   |
| Plant and machine operators and assemblers                                 | 7   |
| Elementary occupations                                                     | 8   |
| Skilled agricultural and fishery workers; and occupations not classifiable | 9   |
| Others (Please specify)                                                    | 10  |
| Refused to answer                                                          | 999 |

### **24. Personal Income**

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 security (e.g. Comprehensive Social Security Assistance, Disability Allowance), investment income, etc.

|                   |     |
|-------------------|-----|
| No Income         | 1   |
| < 2,000           | 2   |
| 2,000 – 3,999     | 3   |
| 4,000 – 5,999     | 4   |
| 6,000 – 7,999     | 5   |
| 8,000 – 9,999     | 6   |
| 10,000 – 14,999   | 7   |
| 15,000 – 19,999   | 8   |
| 20,000 – 24,999   | 9   |
| 25,000 – 29,999   | 10  |
| 30,000 – 39,999   | 11  |
| 40,000 – 59,999   | 12  |
| >= 60,000         | 13  |
| Refused to answer | 999 |

### **25. Race/ ethnic origin**

Could you tell me your ethnic origin?

|                           |     |
|---------------------------|-----|
| Chinese                   | 1   |
| Caucasian                 | 2   |
| Others (please specify) : | 888 |

|                   |     |
|-------------------|-----|
| Refused to answer | 999 |
|-------------------|-----|

## 26. Marital status

Could you tell me your marital status?

|                           |     |
|---------------------------|-----|
| Never married             | 1   |
| Married                   | 2   |
| Cohabiting                | 3   |
| Divorced/ separated       | 4   |
| Widowed                   | 5   |
| Others (please specify) : | 888 |
| Refused to answer         | 999 |

## 27. Children

Do you have any children, including adopted children?

|                                                 |           |
|-------------------------------------------------|-----------|
| No                                              | 0         |
| Yes <input type="checkbox"/> How many children? | 1/2/3/... |
| Refused to answer                               | 999       |

No..... 0

Yes ☐ How many children?..... 1/2/3/...

Refused to answer..... 999

## 28. Religion

Do you have any religion?

|                           |     |
|---------------------------|-----|
| No                        | 0   |
| Catholicism               | 1   |
| Protestantism             | 2   |
| Buddhism                  | 3   |
| Taoism                    | 4   |
| Muslim                    | 5   |
| Others (please specify) : | 888 |
| Refused to answer         | 999 |

## 29. Political attitude

How would you describe your political views?

|                              |     |
|------------------------------|-----|
| Very Liberal                 | 1   |
| Liberal                      | 2   |
| Conservative                 | 3   |
| Very Conservative            | 4   |
| Not sure / refused to answer | 999 |

**[Read] As this research asks about the public's views on sexual orientation, gender identity and intersex status, we would like to understand the relationship between individuals' sexual orientation or gender identity and their viewpoints. All information will be kept confidential and no individuals will be identified in the research. You may also refuse to answer these questions below.**

**30. Gender**

**Could you tell me your gender?**

|                                         |   |
|-----------------------------------------|---|
| Male, Please say 1                      | 1 |
| Female, Please say 2                    | 2 |
| Transgender, Please say 3               | 3 |
| Bisexual, Please say 4                  | 4 |
| Others, Please say 5 (please specify) : | 5 |
| Refused to answer, Please say 6         | 6 |

**31. Sexual orientation**

What is your sexual orientation? Do you self-identify as:

|                                        |   |
|----------------------------------------|---|
| Homosexual, Please say 1               | 1 |
| Bisexual, Please say 2                 | 2 |
| Heterosexual, Please say 3             | 3 |
| Others, Please say 4 (please specify): | 4 |
| Not sure, Please say 5                 | 5 |
| Refused to answer, Please say 6        | 6 |

**~ Thank you for your co-operation! ~**

## Appendix X: Demographic information of telephone survey respondents

(Percentage of the respondents)

|                                                |                    |                                 |                    |
|------------------------------------------------|--------------------|---------------------------------|--------------------|
| <b>Q20: Age</b>                                | <b>Base = 1005</b> | <b>Q25: Race/ ethnic origin</b> | <b>Base = 1005</b> |
| 18-24                                          | 9.7%               | Chinese                         | 99.6%              |
| 25-34                                          | 17.5%              | Caucasian                       | 0.3%               |
| 35-44                                          | 18.2%              | Refused to answer               | 0.1%               |
| 45-54                                          | 19.8%              | <b>Q26: Marital status</b>      | <b>Base = 1005</b> |
| 55-64                                          | 17.0%              | Never married                   | 30.7%              |
| 65+                                            | 17.5%              | Married                         | 63.6%              |
| Refused to answer                              | 0.2%               | Cohabiting                      | 0.3%               |
| <b>Q21: Education</b>                          | <b>Base = 1005</b> | Divorced/ separated             | 2.1%               |
| No schooling / Pre-primary                     | 2.7%               | Widowed                         | 2.9%               |
| Primary                                        | 10.6%              | Refused to answer               | 0.3%               |
| Lower Secondary (F.1 to F.3)                   | 9.5%               | <b>Q27: Children</b>            | <b>Base = 1005</b> |
| Upper Secondary (F.4 to F.7)                   | 34.3%              | No children                     | 36.9%              |
| Post-secondary or above                        | 42.3%              | One                             | 15.5%              |
| Refused to answer                              | 0.6%               | Two                             | 32.2%              |
| <b>Q22: Employment Status</b>                  | <b>Base = 1005</b> | Three                           | 9.9%               |
| Unemployed                                     | 1.3%               | Four                            | 2.6%               |
| Employees                                      | 47.7%              | Five                            | 0.4%               |
| Employers                                      | 3.0%               | Six                             | 0.2%               |
| Self-employed                                  | 2.3%               | Eight                           | 0.1%               |
| Unpaid family workers<br>(including housewife) | 18.1%              | Refused to answer               | 2.2%               |
| Students                                       | 7.9%               | <b>Q28: Religion</b>            | <b>Base = 1005</b> |
| Retired                                        | 19.5%              | No                              | 66.0%              |
| Refused to answer                              | 0.2%               | Catholicism                     | 4.9%               |
| <b>Q23: Occupation</b>                         | <b>Base = 1005</b> | Protestantism                   | 17.9%              |
| Managers and<br>administrators                 | 6.7%               | Buddhism                        | 8.2%               |
| Professionals                                  | 27.5%              | Taoism                          | 2.0%               |
| Associate professionals                        | 9.3%               | Muslim                          | 0.2%               |

|                                                                            |                    |                                |                    |
|----------------------------------------------------------------------------|--------------------|--------------------------------|--------------------|
| Clerical support workers                                                   | 23.8%              | Refused to answer              | 0.9%               |
| Service and sales workers                                                  | 22.5%              | <b>Q29: Political attitude</b> | <b>Base = 1005</b> |
| Craft and related workers                                                  | 3.0%               | Very Liberal                   | 6.0%               |
| Plant and machine operators and assemblers                                 | 1.8%               | Liberal                        | 58.0%              |
| Elementary occupations                                                     | 2.4%               | Conservative                   | 21.8%              |
| Skilled agricultural and fishery workers; and occupations not classifiable | 0.4%               | Very Conservative              | 0.3%               |
| Refused to answer                                                          | 2.6%               | Refused to answer              | 13.8%              |
| None                                                                       | 47.1%              |                                |                    |
| <b>Q24: Personal Income</b>                                                | <b>Base = 1005</b> | <b>Q30: Gender</b>             | <b>Base = 1005</b> |
| No Income                                                                  | 35.0%              | Male                           | 45.2%              |
| < 2,000                                                                    | 4.0%               | Female                         | 54.7%              |
| 2,000 – 3,999                                                              | 3.6%               | Transgender                    | 0.1%               |
| 4,000 – 5,999                                                              | 1.4%               | <b>Q31: Sexual orientation</b> | <b>Base = 1005</b> |
| 6,000 – 7,999                                                              | 1.4%               | Heterosexual                   | 97.8%              |
| 8,000 – 9,999                                                              | 2.5%               | Homosexual                     | 0.9%               |
| 10,000 – 14,999                                                            | 11.5%              | Bisexual                       | 0.8%               |
| 15,000 – 19,999                                                            | 8.3%               | Others                         | 0.1%               |
| 20,000 – 24,999                                                            | 9.6%               |                                |                    |
| 25,000 – 29,999                                                            | 3.2%               |                                |                    |
| 30,000 – 39,999                                                            | 5.8%               |                                |                    |
| 40,000 – 59,999                                                            | 5.2%               |                                |                    |
| >= 60,000                                                                  | 4.9%               |                                |                    |
| Refused to answer                                                          | 3.7%               |                                |                    |

## **Appendix XI: Subgroup analysis of views on Legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status**

|                                                                                                                                                                                                                 |                                               |       |      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-------|------|
| Overall speaking, should legal protection against discrimination be provided for people of different sexual orientation, gender identity and intersex status in Hong Kong?<br>(Somewhat agree/completely agree) |                                               |       | Base |
| Have you had any contact with LGBTI people in everyday life in Hong Kong?                                                                                                                                       | No/Not Sure                                   | 50.4% | 610  |
|                                                                                                                                                                                                                 | Yes                                           | 64.1% | 395  |
| Total                                                                                                                                                                                                           |                                               | 55.7% | 1005 |
| Age                                                                                                                                                                                                             | 18-24                                         | 91.8% | 98   |
|                                                                                                                                                                                                                 | 25-34                                         | 69.1% | 175  |
|                                                                                                                                                                                                                 | 35-44                                         | 55.7% | 183  |
|                                                                                                                                                                                                                 | 45-54                                         | 49.7% | 200  |
|                                                                                                                                                                                                                 | 55-64                                         | 48.2% | 170  |
|                                                                                                                                                                                                                 | 65 or above                                   | 36.7% | 177  |
|                                                                                                                                                                                                                 | Refused to answer                             | 50.0% | 2    |
| Total                                                                                                                                                                                                           |                                               | 55.7% | 1005 |
| Education                                                                                                                                                                                                       | Primary or below                              | 38.3% | 133  |
|                                                                                                                                                                                                                 | Secondary                                     | 59.4% | 440  |
|                                                                                                                                                                                                                 | Post-secondary                                | 57.9% | 425  |
|                                                                                                                                                                                                                 | Refused to answer                             | 14.3% | 7    |
| Total                                                                                                                                                                                                           |                                               | 55.7% | 1005 |
| Employment Status                                                                                                                                                                                               | No job                                        | 55.6% | 471  |
|                                                                                                                                                                                                                 | Working                                       | 55.8% | 532  |
|                                                                                                                                                                                                                 | Refused to answer                             | 50.0% | 2    |
| Total                                                                                                                                                                                                           |                                               | 55.7% | 1005 |
| Occupation                                                                                                                                                                                                      | Manager/Professionals/Associate Professionals | 50.2% | 231  |
|                                                                                                                                                                                                                 | Clerical/Service workers                      | 59.6% | 248  |
|                                                                                                                                                                                                                 | Craft/Operators/Elementary                    | 65.9% | 41   |
|                                                                                                                                                                                                                 | Refused to answer                             | 57.1% | 14   |
|                                                                                                                                                                                                                 | No job                                        | 55.6% | 471  |
| Total                                                                                                                                                                                                           |                                               | 55.7% | 1005 |
| Personal Income                                                                                                                                                                                                 | No Income                                     | 56.8% | 350  |

|                    |                                             |        |      |
|--------------------|---------------------------------------------|--------|------|
|                    | \$1 - \$15,000                              | 55.1%  | 245  |
|                    | \$15,000 - \$39,999                         | 58.9%  | 270  |
|                    | \$40,000 or above                           | 49.0%  | 102  |
|                    | Refused to answer                           | 42.1%  | 38   |
| Total              |                                             | 55.7%  | 1005 |
| Race/ethnic origin | Chinese                                     | 55.5%  | 1001 |
|                    | Caucasian                                   | 100.0% | 3    |
|                    | Refused to answer                           | N/A    | 1    |
| Total              |                                             | 55.7%  | 1005 |
| Marital status     | Never married                               | 68.9%  | 309  |
|                    | Married                                     | 50.9%  | 640  |
|                    | Cohabiting                                  | 100.0% | 3    |
|                    | Divorced/Separated/Widowed                  | 38.0%  | 50   |
|                    | Refused to answer                           | N/A    | 3    |
| Total              |                                             | 55.7%  | 1005 |
| Children           | No children                                 | 68.4%  | 370  |
|                    | Have children                               | 48.9%  | 613  |
|                    | Refused to answer                           | 36.4%  | 22   |
| Total              |                                             | 55.7%  | 1005 |
| Religion           | No Religion                                 | 59.2%  | 664  |
|                    | Have Religion                               | 48.9%  | 333  |
|                    | Refused to answer                           | 50.0%  | 8    |
| Total              |                                             | 55.7%  | 1005 |
| Political attitude | Very Liberal/Liberal                        | 65.5%  | 644  |
|                    | Conservative/Very Conservative              | 36.8%  | 223  |
|                    | Refused to answer                           | 40.6%  | 138  |
| Total              |                                             | 55.7%  | 1005 |
| Gender             | Male                                        | 56.9%  | 455  |
|                    | Female                                      | 54.5%  | 549  |
|                    | Transgender                                 | 100.0% | 1    |
| Total              |                                             | 55.7%  | 1005 |
| Sexual orientation | Heterosexual                                | 55.4%  | 983  |
|                    | Lesbians, gay men, bisexual people or other | 83.3%  | 18   |
|                    | Refused to answer                           | N/A    | 4    |



|                                                                                 |                                              |       |      |
|---------------------------------------------------------------------------------|----------------------------------------------|-------|------|
| Total                                                                           |                                              | 55.7% | 1005 |
| To what extent is homosexuality inborn?                                         | Absolutely not/Somehow not                   | 47.2% | 447  |
|                                                                                 | Neutral                                      | 57.4% | 148  |
|                                                                                 | Somehow yes/ Absolutely yes                  | 67.2% | 348  |
|                                                                                 | Not Sure / Don't Know                        | 46.8% | 62   |
| Total                                                                           |                                              | 55.7% | 1005 |
| To what extent is bisexuality inborn?                                           | Absolutely not/Somehow not                   | 48.6% | 493  |
|                                                                                 | Neutral                                      | 63.8% | 116  |
|                                                                                 | Somehow yes/Absolutely yes                   | 66.0% | 285  |
|                                                                                 | Not Sure/Don't Know                          | 53.2% | 111  |
| Total                                                                           |                                              | 55.7% | 1005 |
| To what extent is transgender status inborn?                                    | Absolutely not/Somehow not                   | 48.1% | 400  |
|                                                                                 | Neutral                                      | 61.0% | 100  |
|                                                                                 | Somehow yes/Absolutely yes                   | 65.2% | 385  |
|                                                                                 | Not Sure/Don't Know                          | 45.8% | 120  |
| Total                                                                           |                                              | 55.7% | 1005 |
| About sexual relations between two female adults.                               | Always wrong                                 | 29.7% | 286  |
|                                                                                 | Almost always wrong/<br>Wrong only sometimes | 59.0% | 251  |
|                                                                                 | Not wrong at all                             | 71.7% | 445  |
|                                                                                 | Not Sure/Don't Know                          | 34.8% | 23   |
| Total                                                                           |                                              | 55.7% | 1005 |
| About sexual relations between two male adults.                                 | Always wrong                                 | 32.2% | 314  |
|                                                                                 | Almost always wrong/<br>Wrong only sometimes | 60.2% | 259  |
|                                                                                 | Not wrong at all                             | 72.2% | 411  |
|                                                                                 | Not Sure/Don't Know                          | 33.3% | 21   |
| Total                                                                           |                                              | 55.7% | 1005 |
| About people having sexual relations with both men and women in their lifetime. | Always wrong                                 | 35.1% | 366  |
|                                                                                 | Almost always wrong/<br>Wrong only sometimes | 65.1% | 301  |
|                                                                                 | Not wrong at all                             | 72.7% | 308  |
|                                                                                 | Not Sure/Don't Know                          | 40.0% | 30   |
| Total                                                                           |                                              | 55.7% | 1005 |
| What do you think about people desiring to change the gender that is            | Always wrong                                 | 31.3% | 208  |
|                                                                                 | Almost always wrong/                         | 55.5% | 274  |

|                                                                                                                                            |                                          |       |      |
|--------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------|------|
| assigned at birth?                                                                                                                         | Wrong only sometimes                     |       |      |
|                                                                                                                                            | Not wrong at all                         | 67.9% | 478  |
|                                                                                                                                            | Not Sure/Don't Know                      | 40.0% | 45   |
| Total                                                                                                                                      |                                          | 55.7% | 1005 |
| What do you think about people who like to wear clothes of the opposite sex/ different from the biological sex they are assigned at birth? | Always wrong                             | 35.4% | 243  |
|                                                                                                                                            | Almost always wrong/Wrong only sometimes | 59.3% | 381  |
|                                                                                                                                            | Not wrong at all                         | 67.5% | 352  |
|                                                                                                                                            | Not Sure/Don't Know                      | 37.9% | 29   |
| Total                                                                                                                                      |                                          | 55.7% | 1005 |



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