

Legislative Council Panel on Home Affairs

Recommendations made in the Report by the Independent Panel of Inquiry on Incidents Relating to the Equal Opportunities Commission

Purpose

This paper informs Members about the Home Affairs Bureau's response to the recommendations made in the report by the Independent Panel of Inquiry on the incidents relating to the Equal Opportunities Commission (the Panel).

Background

2. The Legislative Council had requested the Administration to investigate the incidents relating to the Equal Opportunities Commission (EOC). The Administration decided on 19 February 2004 that the Secretary for Home Affairs should appoint a Panel to look into the incidents relating to the EOC with the following terms of reference -

- (a) to inquire into the appointment and termination of employment of Mr Patrick Yu as Director (Operations) of the EOC and issues related thereto; and
- (b) to inquire into the incidents which have affected the credibility of the EOC and to make recommendations on measures to restore such credibility.

3. The Panel was appointed accordingly on 15 May 2004. The Panel comprised Prof TAM Sheung-wai as the Chairman and Mr Anthony WU Ting-yuk and Mrs Fanny LAI IP Po-ping as members. The Panel had completed and submitted its report on 2 February 2005. At the meeting of the Panel on Home Affairs on 4 February 2005, Members requested that a paper should be prepared on the Administration's response to the recommendations made in the report.

The Recommendations

4. The Panel has made 70 recommendations in its report. More than half of these recommendations are related to the operation of the EOC and would be separately considered by the EOC.

5. Most of the remaining recommendations are accepted by the Administration. About 10 recommendations either require further consideration and/or involve legislative amendments before they could be taken forward. A summary of our response to the relevant recommendations is at the **Annex** for Members' information (the numbering of the recommendations follows that of the report for ease of reference).

Home Affairs Bureau
March 2005

**The Administration's Response to
the Recommendations of the Report**

(A) Recommendations accepted by the Administration

Strengthening the Institutional Framework of the EOC

Guiding Principles

- (1) Six core values should be adopted as the basis for handling EOC matters. They are: Independence, Pluralism, Good corporate governance, Openness, transparency and communication, Efficient and effective performance, and Accountability.
- (2) The Government should consider making reference to the Paris Principles in the appointment to, and the governance of, the EOC.

Comments of the Administration :

The Paris Principles relate to the status and functioning of national institutions for the promotion and protection of human rights. The EOC is not such an institution, in that it is not national, and it does not have a broad mandate in respect of all forms of discrimination. Its mandate is limited to discrimination on the grounds of sex, pregnancy, marital status, disability, and family status.

While the Paris Principles do not strictly apply to the EOC, we believe that we have largely conformed with the Paris Principles and will continue to make reference to the Principles.

Independence

- (4) The Government should continue to adhere to the non-interventionist policy and distance itself from the day-to-day operation of the EOC.
- (5) The Government should give favourable consideration to, and provide assistance in relation to, the EOC's request to join international organizations that are concerned with the elimination of discrimination.

- (6) To maintain the impartiality of the EOC, the EOC should be a non-partisan body. It is desirable to maintain a balance between different interests and prevent predominance by any single interest group.

Pluralism

- (8) Having regard to the Paris Principles and the local conditions, the EOC membership should cover a broad spectrum of people.
- (9) The Commission, as the EOC's governing board, should have Members with financial and legal expertise to enable it to control and account for the use of public resources.
- (10) EOC Members should continue to be appointed in their personal capacity.

The EOC Chairperson

- (20) In making appointment and re-appointment of the EOC Chairperson, the Government should consider the views as presented in the report about the ideal attributes of the EOC Chairperson.
- (21) The Government should continue to adopt the merit principle to appoint the most suitable candidate to the EOC having regard to candidates' expertise, experience and integrity as well as the functions of the EOC. The appointment should be free from political considerations.
- (24) Whilst recognizing the need to enhance transparency and accountability in the system for the appointment to the EOC, the Government should be mindful not to introduce processes that will dampen the wish of capable candidates to contribute to public service and consequently deprive the EOC and Hong Kong of valuable talents.
- (26) Unless there are unforeseen circumstances, the Government should make a firm decision and announce the appointment, re-appointment or cessation of the appointment of the EOC Chairperson two months before the commencement of the new term.

- (27) The appointment and re-appointment of EOC Members should, as far as possible, be announced one month before the commencement of the new term.

Appointment of EOC Members

- (36) In appointing EOC Members, the Government should consider those who possess the following attributes–
- (a) supportive of the principles of equal opportunities;
 - (b) ready and able to devote time and effort to the work of the EOC; and
 - (c) respectable persons who meet a high standard of behaviour.
- (37) The “six-year rule” should be followed in considering the next round of appointments.
- (38) To avoid a bunching effect and to enhance the continuity of the Commission, the term of appointment of EOC Members should be staggered in such a way that the term of no more than one-half of the members will expire in the same year.

Standards of Behaviour of the Governing Board

- (40) In considering appointments to the EOC, the Government should take into account the abilities of possible candidates in meeting certain ethical standard.

(B) Recommendations that require further consideration and/or involve legislative amendments

Pluralism

- (11) In making appointments to the EOC, the Government may consider inviting the EOC to nominate candidates representing relevant community groups. In doing so, the EOC may invite nominations from various organizations representing community groups for its consideration via a nomination committee before submitting its list of recommendations to the Government.

The EOC Chairperson

- (15) The posts of EOC Chairperson and the Chief Executive Officer (CEO) should be separated, and that the post of CEO should be reinstated. It is desirable that the Chairperson be a non-executive position appointed on a part-time basis.
- (16) To allow more flexibility in selecting the most suitable Chairperson for appointment, consideration should be given to amending the relevant legislation to remove the requirement for the EOC Chairperson to be appointed on a full-time basis.
- (17) The responsibilities of the Chairperson should be formally defined in writing and such responsibilities should be distinct from those of the CEO.
- (18) The CEO should be an ex-officio executive member of the Commission. The CEO, if reinstated, should report to the Chairperson and be accountable to the Commission for the performance of the organization and the implementation of the Commission's strategy and policies.

- (19) Pending the consideration of the structural changes recommended above, the powers and responsibilities of the EOC Chairperson vis-à-vis the Commission should be clearly defined. Specifically, the governing board should reserve strategic and other key matters, such as major decisions in relation to resources and senior appointments, for collective decision-making.

Comments of the Administration :

The EOC should also consider this recommendation in terms of what the governing board's powers and responsibilities should be.

- (22) The Government should review the remuneration package of the EOC Chairperson in the context of the overall review of the advisory and statutory boards and committees. The EOC should similarly review the remuneration package of the CEO, if reinstated with an expanded function.

Comments of the Administration :

If the post of CEO is reinstated under the EOC's existing establishment, the remuneration package of the CEO would be reviewed by the EOC. On the other hand, if the post of CEO would become a statutory position, the remuneration package of the CEO would be reviewed by the Government.

- (23) In the context of the overall review of advisory and statutory bodies, the Government may consider the following two suggestions -

- (a) The desirability and feasibility of establishing a nominating committee, comprising Government officials and representatives of key stakeholders, to assist in the appointments to the EOC and other major boards and committees. Under this proposal, vacancies are advertised and nominations invited. The candidate will then be submitted to the Chief Executive for consideration and endorsement.
- (b) Following some overseas models whereby the Government will, after each key appointment, issue a press release attaching the appointee's detailed curriculum-vitae to demonstrate that his/her qualifications and experiences are impeccably linked to the work of the EOC and hence eminently qualified for the position.

- (25) To ensure stability and facilitate longer-term planning, the EOC Chairperson should normally be appointed for a three-year term, renewable once for another term of not exceeding three years.

The Commission

- (30) The Government may consider appointing a Deputy Chairperson, who may act as the Chairperson if the Chairperson is absent from Hong Kong or is, for any other reason, unable to act as Chairperson, or if the office is vacant.