

**For information  
on 25 February 2008**

**Legislative Council  
Panel on Administration of Justice and Legal Services**

**Review of the Jurisdiction of the Office of The Ombudsman**

**PURPOSE**

This paper aims to respond to the following issues raised by the Panel on Administration of Justice and Legal Services (AJLS Panel) at the meeting on 13 December 2007 –

- (a) whether the independence and impartiality of the Electoral Affairs Commission (EAC) will be affected if it is subject to The Ombudsman's jurisdiction and, if so, the reasons; and
- (b) why the District Councils (DCs) should not be subject to The Ombudsman's jurisdiction.

2. We have consulted the Constitutional and Mainland Affairs Bureau and the Home Affairs Bureau and the Administration's response is set out in the subsequent paragraphs.

**BACKGROUND**

3. In the light of calls received from time to time to extend her jurisdiction to cover further organizations, The Ombudsman has conducted a review of the jurisdiction of the Office of The Ombudsman. After taking account of their executive powers, extensive interface with or impact on the public and main source(s) of funding<sup>1</sup>, The Ombudsman has recommended in her review the inclusion of, together with six other bodies<sup>2</sup>, the EAC and DCs in Part I<sup>3</sup> of Schedule 1 to The Ombudsman Ordinance (TOO).

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<sup>1</sup> Whether the organization is substantially funded by the General Revenue or statutory fees or charges; or by donations specifically earmarked for a public service or services, the administration of which is undertaken or supervised by the Government or public officials.

<sup>2</sup> Auxiliary Medical Service, Civil Aid Service, Board of Management of Chinese Permanent Cemeteries, Chinese Temples Committee, Consumer Council and Estate Agents Authority.

<sup>3</sup> Section 7(1)(a) of TOO empowers The Ombudsman to investigate any action taken by or on behalf of an organization set out in Part I of Schedule 1 in the exercise of its administrative functions.

**(A) EAC**

*(a) Ensuring Independence and Impartiality*

4. The EAC is established under section 3 of the Electoral Affairs Commission Ordinance (Cap. 541) (EACO). Its main function is to conduct and supervise elections so as to ensure that they are conducted openly, fairly and honestly. Such work includes, amongst others, the making of recommendations to the Chief Executive (CE) on the delineation of geographical constituencies for Legislative Council (LegCo) elections and DC constituencies for DC elections, the making of subsidiary legislation on electoral arrangements and electoral guidelines, handling election-related complaints, etc. By its very nature, the work of the EAC is viewed with much public interest. To safeguard the credibility of the elections, it is of utmost importance to ensure that the EAC is able to conduct its work free from any influence, whether real or perceived. It is of equal importance for the EAC to be viewed by the public as being truly independent and impartial.

*(b) Leveraging Structural Safeguards*

5. Under the law, there are already clear and elaborate provisions to ensure the impartiality as well as the transparency of the EAC's work. The EACO requires that the person appointed as the Chairman of the EAC must be a Judge of the High Court. There are also other stringent statutory criteria governing the membership of the EAC to ensure that it is independent, impartial and apolitical. The EAC has to observe certain statutory criteria in formulating its recommendations to the CE on the delineation of constituencies. It is required by law to conduct public consultation on its recommendation and a summary of the public submissions is to be included in the report to the CE, who shall cause the report to be tabled in the LegCo. The relevant legislation on the delineation of the constituencies is subject to scrutiny by the LegCo.

6. The EAC reviews the guidelines on election-related matters regularly and conducts consultation with the public and the LegCo on its proposed amendments to the guidelines. The LegCo is consulted on the practical arrangements for the elections. The regulations to be made by the EAC concerning the conduct of elections are also subject to the scrutiny of the LegCo. Within three months of the conclusion of each election, the EAC is required to submit a report to the CE, which is made public. Besides, the laws have provided for statutory procedures for candidates and electors to seek redress in relation to election and voter registration matters.

*(c) Monitoring the Administrative Work*

7. As for the administrative work for implementing the EAC's functions, they are supported by the Registration and Electoral Office (REO) and the Home Affairs Department (HAD), which are already under the purview of The Ombudsman. The Administration is not aware of any incident in which any maladministration complaint brought against the REO or the HAD in relation to their election-related administrative work could not be dealt with by The Ombudsman due to the fact that the EAC is not under the purview of The Ombudsman.

8. In conclusion, as explained in paragraphs 5 and 6 above, clear and elaborate safeguards have been put in place for ensuring the impartiality and transparency of the EAC's work. Added to these is The Ombudsman's independent monitoring of the work of the REO and HAD which provide administrative support to the EAC for implementing its functions. It is important to maintain the independence and impartiality of the EAC and that it is seen by the public as such. We maintain the view that the EAC should not be subject to The Ombudsman's jurisdiction.

**(B) DCs**

*(a) Roles and Functions of DCs*

9. Section 61 of the District Councils Ordinance provides that DCs advise the Government on district matters affecting the well-being of the people; the provision and use of public facilities and services; and the use of public funds allocated for local public works and community activities. Consistent with these statutory functions, district minor works and community building projects initiated on the advice of DCs are executed either by district organizations, District Offices, or other government departments responsible for the provision of the relevant public services in districts. DC secretariats are part of the District Office establishment. DCs are not legal entities and there is no provision under the Ordinance for DCs to enter into contracts or employ staff on their own.

*(b) Implementation of the DC Review*

*(i) DCs vis-à-vis Government Departments*

10. From January 2008 onwards, DCs begin to participate in the management of some district facilities (i.e. community halls and district-based libraries, leisure and sports facilities). However, the executive departments, the HAD and Leisure and Cultural Services Department (LCSD), will continue to be the delivery agents in implementing the projects initiated on the advice of DCs and exercise their statutory and administrative powers under their respective

purview, including the day-to-day management of the facilities concerned, having due regard to their statutory obligations, the prevailing government policies on staff and resources management, financial authority or relevant international professional or safety standards.

*(ii) Monitoring the Administrative Work*

11. As explained above, the day-to-day management of the district facilities will continue to be handled by the HAD and LCSD. As these government departments are already subject to The Ombudsman's jurisdiction, the administrative work will continue to be subject to the independent monitoring of The Ombudsman.

*(iii) Allocation of DC Funds by DCs*

12. Some Members noted that the funding at DCs' disposal would be significantly increased during the new DC term. With effect from January 2008, the annual funding for DCs to conduct community involvement activities has been increased to \$300 million, and a dedicated block vote for district minor works has been increased to \$300 million per year. Indeed, the power to allocate DC funds, albeit with significant increase in amount, is consistent with DCs' existing statutory function of advising the Government on the use of public funds for local public works and community activities. The HAD has promulgated a new set of guidelines on the use of DC funds to ensure that public funds are used in a proper, transparent and accountable manner. The Director of Home Affairs remains the vote controller of DC funds.

13. In the light of the above, the Administration remains of the view that DCs should not be subject to The Ombudsman's jurisdiction.

## **LATEST DEVELOPMENTS**

14. The Administration has commenced its consultation with the Auxiliary Medical Service, Civil Aid Service, Board of Management of Chinese Permanent Cemeteries, Chinese Temples Committee, Consumer Council and Estate Agents Authority on the recommendation to subject them to The Ombudsman's jurisdiction. With the benefit of their views, the Government will be in a better position to formulate its final response to the recommendation made in Part 1 of The Ombudsman's review.

Administration Wing, Chief Secretary for Administration's Office  
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