

立法會

Legislative Council

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Report of the Panel on Home Affairs for submission to the Legislative Council

Purpose

This report gives an account of the work of the Panel on Home Affairs during the 2004-2005 Legislative Council (LegCo) session. It will be tabled at the Council meeting on 6 July 2005 in accordance with Rule 77(14) of the Rules of Procedure.

The Panel

2. The Panel was formed by resolution of this Council on 8 July 1998 and as amended on 20 December 2000 and 9 October 2002 for the purpose of monitoring and examining Government policies and issues of public concern relating to district, community and rural matters, human rights, civil education, data protection, press freedom, building management, youth and women matters, the provision of leisure and cultural services as well as matters relating to the development of arts and culture, public entertainment, sport and recreation.

3. The terms of reference of the Panel are in **Appendix I**.

4. The Panel comprises 18 members, with Hon Tommy CHEUNG and Hon TAM Heung-man elected as Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

Major work

Human rights

5. The Panel monitored the submission of reports to the United Nations (UN) under various international human rights treaties by the Hong Kong Special Administrative Region (HKSAR) Government and its progress in following up the recommendations made by the UN Treaty Monitoring Bodies concerned in respect of these reports.

6. After consideration of the reports submitted by HKSAR under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the respective UN Treating Monitoring Bodies had repeatedly expressed their concern about the absence in HKSAR of legal provisions protecting persons from racial discrimination by private persons, groups or organisations. They recommended the HKSAR Government to introduce legislation for such purpose.

7. The Panel had followed up closely the issue of legislating against racial discrimination. In June 2004, the Government announced its decision to legislate against racial discrimination and its plan to introduce a bill into LegCo in the 2004-05 legislative session, to prohibit racial discrimination. In September 2004, the Government issued a Consultation Paper entitled "Legislating Against Racial Discrimination" to collect public views. The Panel discussed the legislative proposals with the Administration and received views from 22 deputations, including representatives of employers' organisations and ethnic minorities.

8. According to the Consultation Paper, discrimination against new arrivals from the Mainland was outside the intended scope of the relevant bill. Some members were of the view that the scope of the bill should be extended to cover discrimination against new arrivals from the Mainland. These members considered that discrimination against new arrivals from the Mainland, which very often arose from difference in cultural background and language barrier, was similar to racial discrimination in nature. They expressed concern that as the problem of discrimination against new arrivals from the Mainland was serious, failure to enact legislation against such discrimination would encourage more discriminatory acts against them.

9. The Administration explained to the Panel that the discrimination experienced by new arrivals from the Mainland was not covered by the definition of racial discrimination under ICERD. It was rather a form of social discrimination and should be resolved by way of strengthening public education and publicity. Moreover, an express provision to protect new arrivals from the Mainland in the bill would not only pose implementation difficulties, but would also constitute racial discrimination, as these new arrivals would be given additional protection in law.

10. Some members queried the need to exempt small companies and employers with less than six employees from the anti-discriminatory provisions (in the field of employment) for three years after enactment of the bill. They considered that a transitional period of one year was adequate because a code of

practice would be issued to provide practical guidance on compliance with the bill.

11. The Administration would report to the Panel once it had completed the analysis of the results of the public consultation exercise.

12. After consideration of the second report of HKSAR under ICESCR, the UN Committee on Economic, Social and Cultural Rights issued its Concluding Observations on the second report on 13 May 2005. The Panel discussed the Concluding Observations with deputations and the Administration. Some members expressed dissatisfaction with the slow progress made by the Administration in implementing the provisions of ICESCR and following up the recommendations made by the UN Committee. The Panel passed a motion urging the Administration to establish a human rights institution for the purpose of promoting the protection and education of human rights and monitoring the implementation of the various international human rights treaties.

Building management

13. On 8 November 2004, the Court of First Instance ordered the owners' corporation (OC) of Albert House to wind up as it was unable to pay the damages arising from a fatal accident occurred in the building in 1994, which was left unpaid by other insolvent parties. The case of Albert House aroused wide public concern about the limit of legal liabilities of owners in respect of claims relating to the common parts of their buildings.

14. The Panel held a special meeting to discuss measures to protect owners from legal liability or claims arising from or in respect of unauthorised building works (UBWs) or common parts of their buildings. Some members suggested that in view of the case of Albert House, a fund, similar to the Protection of Wages on Insolvency Fund, with contributions from premiums for third party insurance, should be set up to help property owners meet compensation payments. The Administration, however, considered it inappropriate to use public money to set up a fund for property owners to settle judgment debts.

15. Members expressed concern that it would be difficult for owners to comply with the mandatory insurance requirement to be imposed if their buildings had UBWs. Since insurance companies were unwilling to provide coverage for buildings with UBWs, some members suggested that the Administration should consider setting up a statutory body, similar to the Hong Kong Export Credit Insurance Corporation, to undertake insurance for such buildings and also for those without OCs. The Administration explained that the Home Affairs Department would continue to encourage owners to form OCs for the management of their buildings, and would work with the Housing, Planning

and Lands Bureau and the Buildings Department to strive for early removal of UBWs in these buildings.

16. Members strongly urged the Administration to provide all possible assistance to the owners of Albert House, especially those who were old and had genuine financial difficulties. Some members requested the Administration to consider setting up a charity fund to help owners of Albert House in paying the compensation.

17. The Administration stressed that it would explore possible options to assist owners of Albert House, including helping the owners arrange for mortgages to obtain loans. As a last resort, the option of establishing a charity fund through donation from the community might be considered.

18. The Panel discussed regulation of property management companies by legislation. Some members expressed concern that the interests of property owners could not be protected in the absence of a licensing regime for property management companies or any penalties to be imposed on property management companies against improper practices. They suggested that a tribunal for handling building management disputes between property management companies and property owners or OCs should be set up. They also suggested that guidelines on the avoidance of conflict of interests should be issued to property management companies.

19. The Administration explained to the Panel that there were divergent views as to whether a statutory regulatory mechanism should be put in place for property management companies. There were concerns that the operation of small to medium-sized property management companies, which mostly provided services to old private buildings, would be adversely affected if such a mechanism was imposed and these companies might need to increase their management fees. The Administration undertook to consider the suggestions put forward by members to strengthen the regulation of property management companies.

20. The Panel also discussed the problems of formation of OCs in buildings with more than one deed of mutual covenant (DMC). Members pointed out that it was difficult for owners of these buildings to manage their properties as they could only form two or more OCs under the respective DMCs, instead of having one OC. Members suggested that the Administration should devise measures to address the problems even though the number of these buildings was relatively small. Members also suggested that the Administration should consider setting up a mechanism under which applications could be made to the court to amend provisions of a DMC if not less than 80% or 90% of the owners concerned consented to the amendment and approval of the Secretary for Home Affairs (SHA) was obtained.

Review of advisory and statutory bodies

21. During the session, the Administration provided an interim report on the establishment of a Public Affairs Forum and a progress report on the overall review of advisory and statutory bodies (ASBs) in the public sector to the Panel.

22. The Administration proposed to establish a consultative forum, which would operate mainly through a dedicated website to canvass the views of business, professional and middle class people on political affairs and public issues in Hong Kong. A majority of members expressed reservations about the effectiveness of establishing such a Public Affairs Forum. They considered that the proposal fell far short of expectations on how the Government would, as undertaken in the 2004 Policy Address, involve more middle class people in political affairs and the policy-making process.

23. Members noted with concern that as at 31 March 2005, there were 1 408 and 461 non-official posts of ASBs which were taken up by appointed members who had served in the same post for over six years and for over 10 years respectively. They expressed dissatisfaction with the slow progress made by the Administration in improving non-compliance with the six-year and six-board rules.

24. The Administration explained to the Panel that given the diverse circumstances of ASBs, bureaux in the past had been given the discretion not to strictly comply with the six-year and the six-board rules if they considered it necessary and appropriate to do so. Any exception to the rules, however, was required to be reasonable and proportionate to the special circumstances of the case. In October 2004, the Home Affairs Bureau (HAB) had issued a circular memorandum to all bureaux and departments reminding them of the need to comply with the rules in the appointment of non-official members to ASBs. The situation of non-compliance had since been improving.

25. Some members were also concerned about the gender balance in ASBs. They considered that the 25% gender benchmark was low, and that the Administration should make reference to the gender benchmark adopted in Norway, which was at least 40% for each gender. The Administration pointed out that it planned to raise the gender benchmark in line with international norms, i.e. between 30% and 40%, in the longer term.

Proposed reforms to betting duty system on horse racing bets

26. The Panel discussed the proposed reforms to betting duty system on horse racing bets with the Administration. The Panel also received views from

deputations, including the Hong Kong Jockey Club and concern groups on the proposed reforms.

27. A member belonging to the Liberal Party (LP) indicated that LP was supportive of the proposed reforms. Some members, however, considered that the proposed reforms was not in compliance with the Government's long-standing policy of not encouraging people to gamble. They stressed that the Administration should combat illegal gambling by strengthening law enforcement actions, rather than enhancing the competitiveness of authorised horse race betting which would encourage more people to gamble. The Administration should examine the social costs before deciding whether to introduce the proposed reforms.

28. Some members considered that the real purpose of the Administration in introducing the proposed reforms was to increase betting duty revenue. They, however, pointed out that with the implementation of authorised football betting, the overall revenue from betting duty had not dropped significantly.

29. The Administration explained to the Panel that the illegal gambling market based on Hong Kong's horse races had been aided by low operating cost and improved communication technology. The Administration had to tackle the structural problems which had led to a shrinking share of authorised horse race betting in the overall gambling market. The Administration considered that the proposed reforms would not lead to substantial increase in the number of gamblers but would achieve social benefits which included combating illegal gambling and maintaining the betting duty revenue at a steady level.

Issues relating to the Equal Opportunities Commission

30. The Government announced on 13 December 2004 that Mrs Patricia CHU would leave office as the EOC Chairperson on 15 December 2004, upon the expiry of her current term of appointment. On 15 December 2004, the Government announced the appointment of Mr Raymond TANG as the EOC Chairperson for five years. Some members were of the view that the Administration had failed to handle the appointment of past EOC Chairpersons and their contract renewal matters in a satisfactory manner.

31. The Panel held discussions on the appointment of the EOC Chairperson. Some members queried why the new EOC Chairperson had been appointed for five year when the initial period of appointment for previous EOC Chairpersons was only three years. The Administration explained to the Panel that EOC had conducted two internal reviews, the results of which showed that the internal management of EOC were in need of improvements. The Administration considered it necessary to appoint an EOC Chairperson for a longer period, so

that he would have more time to implement the recommendations in these two reviews.

32. Some members queried the selection criteria of the Government in appointing the new EOC Chairperson. They considered that the EOC Chairperson should have a track record of human rights work, particularly in promoting equal opportunities. These members expressed concern that the lack of objective and clear criteria for the selection of the EOC Chairperson would adversely affect the credibility of EOC and people's perception of its independence. Members also exchanged views with the new EOC Chairperson about his aspiration and future work plan.

33. The Panel of Inquiry appointed by SHA to inquire into the incidents relating to the Equal Opportunities Commission (EOC) submitted its report to SHA on 2 February 2005. The Panel discussed the report with EOC, concern groups and the Administration.

34. Some members were of the view that LegCo should appoint a select committee to conduct another inquiry into the incidents relating to EOC, as the report of the Panel of Inquiry did not have an in-depth analysis of the causes of the problems under investigation. They considered that the inquiry conducted by the Panel of Inquiry lacked credibility given that its members were appointed by SHA who was a target of the inquiry and the Panel of Inquiry was serviced by staff of HAB. The inquiry process which was conducted behind closed doors also lacked transparency.

35. Some other members objected to the proposal of LegCo appointing a select committee to conduct an inquiry. They considered that LegCo had already conducted very detailed discussions on the relevant issues, and most of the parties concerned had attended open meetings of the Panel to answer questions. These members were concerned that should the controversies surrounding EOC drag on, its operation would be affected further.

36. The Administration stressed that once the Panel of Inquiry was established, the Panel including its secretariat had worked independently without any Government intervention. The Administration further pointed out that the tenure of office of most of the current EOC members was due to expire soon, and the Administration was going to make a new round of appointments. The Administration hoped that EOC could be given a chance to concentrate on its work and rebuild its credibility. The Chairman of EOC explained to the Panel that EOC had accepted almost all the recommendations relating to its operation made in the report of the Panel of Inquiry and some of which were being implemented. He considered that controversies surrounding EOC should come to an end with the release of the report.

Reports on Privacy and Media Intrusion and Civil Liability for Invasion of Privacy published by the Law Reform Commission of Hong Kong

37. The Panel discussed the Reports on Privacy and Media Intrusion and Civil Liability for Invasion of Privacy published by the Law Reform Commission of Hong Kong (LRC) with the press industry, concern organisations, LRC and the Administration.

38. While members in general expressed concern about the approach adopted by some journalists in reportage, they considered that any intervention of the Government would lead to doubts about the independence and freedom of the press. Some members were of the view that the press industry should be allowed to regulate its conduct as far as possible. Some other members, however, considered that self-regulation of the press industry had not proved to be effective over the years and it was unacceptable that no effective mechanism was available for the public to lodge complaints or seek any remedy when they fell victim to media intrusion. They suggested that the scope of legal aid be expanded to cover libel cases and a mandatory membership of the Press Council might need to be imposed on members of the press industry.

39. The Administration stressed that protection of privacy and press freedom were the core values of Hong Kong and a balance between the two would have to be struck. The Administration would listen to the views of the industry and parties concerned in deciding whether or not to accept the LRC's recommendations in the two reports.

Provision of leisure and cultural services facilities

40. In his 2005 Policy Address, the Chief Executive announced that the Government had initially identified 25 leisure and cultural services (LCS) projects for priority treatment after having reviewed the ex-Municipal Councils (ex-MC) projects. The Panel received a briefing from the Administration on the details of these projects.

41. Members expressed disappointment at the delay in the implementation schedule in respect of LCS projects of ex-MCs. They noted with concern that even for the 25 LCS projects identified for priority treatment, most of them were not scheduled for commencement until the years between 2008 and 2011. Some members also criticised the Administration for failing to prioritise the implementation of the LCS projects in accordance with the pressing needs of the local community. A subcommittee was set up by the Panel to monitor the Government in following up the outstanding LCS projects of ex-MCs and implementing other relevant projects.

The Centre for Youth Development project

42. The Panel had monitored the progress of the Centre for Youth Development (CYD) project. According to the original proposal, a limited company would be set up to assume responsibility for the management and operation of CYD and the Centre should be able to remain financially viable during the initial 10 years of operation.

43. The Administration briefed the Panel on its proposal to adopt a Public Private Partnership (PPP) approach for the CYD project in the form of the Operation and Maintenance (O & M) model with a single contract. The Administration informed the Panel that HAB had commissioned a consultancy study to assess, among others, the feasibility of constructing, financing, operating and maintaining CYD through an appropriate PPP approach. The findings of a consultancy study had concluded that the CYD would incur an operating loss in all possible scenarios under a public sector delivery model. The adoption of the proposed PPP approach could ensure that CYD would operate on a self-financing basis.

44. Some members expressed concern that if a single private sector operator took over the management and operation of CYD, it would need to operate CYD on commercial principles in order to achieve the self-financing objective. As a result, the youth development objectives of CYD might be undermined. These members also pointed out that once the right of operation was granted to the operator, there would be difficulties for the Administration to effectively supervise the operation of CYD.

45. The Panel held a special meeting to receive views from 27 deputations, including youth groups and the Eastern District Council, on the CYD project. While almost all the deputations attending the meeting did not object to the implementation of the CYD project, they expressed various concerns about the future operation of CYD, such as whether the single operator would coordinate well with youth service providers and whether youth service providers could have fair access to the use of the facilities, etc.

46. Some members were of the view that in order to ensure fulfillment of the youth development objectives of CYD, the Centre should best be managed and operated by a non-profit making organisation which had participated in youth development work on a long-term basis. These members further proposed that the Administration should relax the restriction that CYD should operate on a self-financing basis during the initial 10-year period, so that the Administration could have more flexibility in exploring alternative modes of management and operation of CYD. The Administration eventually decided to assume the direct overall operation and management responsibility over CYD, and the Centre would no longer be operated on a self-financing basis.

Promotion of cultural and creative industries

47. The Administration reported to the Panel on the tasks completed by HAB in promoting cultural and creative industries and the plans for that purpose.

48. Members expressed disappointment with the slow progress made by the Administration. They considered that concerted efforts of various bureaux/departments and interdisciplinary cooperation would be needed in promoting cultural and creative industries as the scope of such industries was very wide. The Administration pointed out that HAB acknowledged that the scope of cultural and creative industries straddled different policy bureaux. HAB had also enlisted the assistance of organisations, such as the Hong Kong Arts Centre and the Arts Development Council, in organising arts-related courses and programmes to promote interest in and appreciation of various art forms. Members suggested that the Administration should identify venues for young people to display their creative products, and organise exhibitions to help promote appreciation of creativity and marketing of these products.

Other issues

49. The Panel received briefings from the Administration on the Chief Executive's Policy Address 2005 and the major findings of the first stage public consultation on the Review of Built Heritage Conservation Policy conducted by HAB. The Panel was also briefed on the Administration's proposals of conducting a survey on public attitudes toward sexual minorities and of revising the fees and charges for services not directly affecting people's livelihood under the purview of HAB.

50. The Panel discussed four capital works projects on Tseung Kwan O Sports Ground, Dr Sun Yat-sen Museum, District Open Space in Area 35 Tsuen wan (Phase II), and Local Open Space in Areas 25, 25A and 25B, Tin Shui Wai, Yuen Long before they were submitted to the Public Works Subcommittee.

Meetings held

51. From October 2004 to June 2005, the Panel held a total of 14 meetings.

Panel on Home Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to district, community and rural matters, human rights, civic education, data protection, press freedom, building management, youth and women matters, the provision of leisure and cultural services as well as matters relating to development of arts and culture, public entertainment, sport and recreation.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

Panel on Home Affairs

Membership list for 2004-2005 session

Chairman	Hon Tommy CHEUNG Yu-yan, JP
Deputy Chairman	Hon TAM Heung-man
Members	Hon Albert HO Chun-yan Hon James TO Kun-sun Dr Hon Philip WONG Yu-hong, GBS Hon WONG Yung-kan, JP Hon LAU Wong-fat, GBS, JP Hon Emily LAU Wai-hing, JP Hon CHOY So-yuk Hon Andrew CHENG Kar-foo Hon Timothy FOK Tsun-ting, GBS, JP Hon Albert CHAN Wai-yip Hon LI Kwok-ying, MH Hon Daniel LAM Wai-keung, BBS, JP Dr Hon Fernando CHEUNG Chiu-hung Hon CHEUNG Hok-ming, SBS, JP Hon WONG Ting-kwong, BBS Hon Patrick LAU Sau-shing, SBS, JP (Total : 18 Members)
Clerk	Miss Flora TAI Yin-ping
Legal Adviser	Mr Stephen LAM Ping-man
Date	12 October 2004