

立法會
Legislative Council

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LC Paper No. CB(2)1384/16-17

(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 20 March 2017, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon Holden CHOW Ho-ding (Deputy Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Alice MAK Mei-kuen, BBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon LAM Cheuk-ting
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon HUI Chi-fung

Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Nathan LAW Kwun-chung
Dr Hon LAU Siu-lai

Member attending : Hon WU Chi-wai, MH

Members absent : Hon Michael TIEN Puk-sun, BBS, JP
Hon Dennis KWOK Wing-hang
Hon CHUNG Kwok-pan
Hon CHEUNG Kwok-kwan, JP
Hon Kenneth LAU Ip-keung, MH, JP

Public Officers attending : Item IV

Mr Ronald CHAN Ngok-pang, JP
Under Secretary for Constitutional and Mainland Affairs

Miss Rosanna LAW Shuk-pui, JP
Deputy Secretary for Constitutional and Mainland Affairs

Mr D C CHEUNG
Principal Assistant Secretary for Constitutional and Mainland Affairs

Item V

Mr Stephen WONG Kai-yi
Privacy Commissioner for Personal Data

Ms Fanny WONG Kam-hing
Deputy Privacy Commissioner for Personal Data

Miss Rosanna LAW Shuk-pui, JP
Deputy Secretary for Constitutional and Mainland Affairs

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (2) 3

Staff in attendance : Mr Kelvin LEE
Senior Assistant Legal Adviser 3

Miss Cindy HO
Senior Council Secretary (2) 3

Mr Dennis HO
Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

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I. Confirmation of minutes of meeting

[LC Paper No. CB(2)996/16-17]

The minutes of the meeting held on 25 January 2017 were confirmed.

II. Information paper(s) issued since the last meeting

[LC Paper Nos. CB(2)907/16-17, CB(2)948/16-17(01), CB(2)995/16-17(01) and CB(2)1020/16-17(01)]

2. Members noted that the following papers had been issued after the last meeting:

- (a) letter dated 24 February 2017 from Mr IP Kin-yuen and the Administration's response; and
- (b) letter dated 3 March 2017 from Dr LAU Siu-lai and the Administration's response.

III. Items for discussion at the next meeting

[LC Paper No. CB(2)981/16-17(01)]

3. Members agreed to discuss the following items proposed by the Administration at the next meeting on 19 April 2017 at 2:30 pm:

- (a) review of penalties and introduction of address proof requirement in relation to voter registration system; and
- (b) briefing by the Chairperson of the Equal Opportunities Commission ("EOC").

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Other issues raised by members

Admin 4. Mr LAM Cheuk-ting expressed dissatisfaction with the lack of progress of the item "Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests" on the list of outstanding items for discussion in the past five years. He proposed that the Panel should discuss the subject at the next meeting or convene a special meeting to discuss it. The Under Secretary for Constitutional and Mainland Affairs ("USCMA") advised that issues relating to the application of sections 3 and 8 of the Prevention of Bribery Ordinance (Cap. 201) fell within the purview of the Administration Wing. He would relay Mr LAM's request to the Administration Wing for consideration. Mr WONG Kwok-kin did not consider it necessary to hold a special meeting to discuss the subject and suggested that Mr LAM might consider raising a question on it at a Council meeting. The Chairman said that Mr LAM's request should be relayed to the Administration Wing, which should advise on the appropriate timing for discussion of the subject. Admin He requested the Administration to give a reply to the Panel on this matter before June 2017.

5. Regarding the Discrimination Law Review ("DLR") by EOC, Dr Fernando CHEUNG said that EOC had submitted to the Administration a total of 73 recommendations, 27 of which were considered by EOC to be higher priority issues. However, he noted that under agenda item IV to be discussed later, the Administration's paper only included nine of those recommendations and there was no information provided on the rest. He said that as DLR was an important review and stakeholders concerned would like to express views on the relevant issues, the Panel should receive public views on the subject. He proposed to add this item to the agenda of the next meeting and invite deputations to give views. Dr Helena WONG expressed support for Dr CHEUNG's suggestion.

6. Mr WONG Kwok-kin considered that there would not be sufficient time to receive public views on the subject at the next meeting as two items had already been scheduled for discussion. The Chairman expressed the same view. He added that if any member would like to request the Panel to hold a special meeting to discuss the subject, he/she should write to him and he would deal with the matter.

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IV. An initial assessment of the recommendations in the Discrimination Law Review submitted by the Equal Opportunities Commission
[LC Paper Nos. CB(2)981/16-17(02) and (03)]

7. At the invitation of the Chairman, USCMA briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)981/16-17(02)].

Discussion

Proposal to prohibit direct and indirect discrimination on grounds of breastfeeding

8. Dr CHIANG Lai-wan expressed concern that it might not be clear to members of the public as to what kinds of behaviour constituted "indirect discrimination" on grounds of breastfeeding. In order to avoid unnecessary controversy, she suggested that the Administration might consider taking forward the proposal to prohibit only direct discrimination on grounds of breastfeeding first. USCMA briefed members on the notion of indirect discrimination, which was also provided for under the existing anti-discrimination ordinances. He added that the Administration would take into consideration the concerns raised by Dr CHIANG and would assist the public in understanding the meaning of indirect discrimination in the future.

9. Mr POON Siu-ping enquired about the timetable for implementing this proposal and the progress of the Government's work in promoting the "breastfeeding friendly workplace" policy. USCMA advised that a concrete timetable was not yet available. Nevertheless, on-going efforts were made to promote support for breastfeeding in different sectors of the community through the work of the Committee on Promotion of Breastfeeding as detailed in Annex A to the Administration's paper. In particular, the Government itself had been proactive in implementing the "breastfeeding friendly workplace" policy. Most government bureaux and departments had put in place the breastfeeding friendly measures to facilitate employees to continue breastfeeding after returning to work.

10. The Deputy Chairman declared that he was a member of EOC. He enquired whether the proposal would impose a requirement on owners of private premises to provide babycare rooms. USCMA said that this proposal was not intended to introduce substantive changes to the Family Status Discrimination Ordinance (Cap. 527) ("FSDO"), which did not require the owner of private premises to provide babycare rooms.

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Admin 11. Mr Nathan LAW suggested that the Administration should consider introducing provisions to FSDO to protect women from being harassed in relation to breastfeeding in view of the recent spate of incidents of such harassment. USCMA said that the Administration would consider the suggestion.

12. Dr Helena WONG considered that to better facilitate female employees to breastfeed their new born infants, the duration of the statutory maternity leave period should be reviewed and extended. She requested the Constitutional and Mainland Affairs Bureau to follow up with the Labour and Welfare Bureau. Dr LAU Siu-lai also urged the Administration to take on board EOC's recommendation to introduce a statutory right of women to return to their previous work position after maternity leave by amending the relevant legislation.

Proposal to amend the Race Discrimination Ordinance to prohibit direct discrimination on the ground of race of a "near relative" by replacing the definition of "near relative" by a definition of an "associate" which was wider in scope

13. In response to Dr Priscilla LEUNG's enquiry about the rationale of this proposal, USCMA said that the scope of coverage of the proposed definition of an associate was set out in Annex B to the Administration's paper, which included five categories of persons. He explained that the scope would be wider than the definition of near relative and this would also align the Race Discrimination Ordinance (Cap. 602) ("RDO") with the Disability Discrimination Ordinance (Cap. 487) ("DDO") in protection. Regarding the proposed definition of an associate, Dr LEUNG requested the Administration to note that the Chinese version of the category "another person who is in a business, sporting or recreational relationship with the person" was different from that of the same category in DDO.

14. Mr LUK Chung-hung expressed concern whether the wider scope of the definition of an "associate" might result in abuse. USCMA reiterated that this proposal only aimed to make RDO align with protection under DDO, and there was no evidence of abuse arising from the wider scope of protection in light of implementation experience of DDO.

Timetable for implementing the nine prioritized recommendations

15. Mr LUK Chung-hung welcomed the nine prioritized recommendations. Dr Helena WONG also expressed support in principle for the nine prioritized

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recommendations and enquired about their implementation timetable. USCMA advised that the Administration would continue to carefully study the proposals and consider how to follow up while maintaining communication with EOC.

Other recommendations under the Discrimination Law Review

16. Dr Fernando CHEUNG and Mr CHAN Chi-chuen pointed out that EOC had made a total of 73 recommendations, including 27 which were considered by EOC to be of higher priority. They said that amongst the 27 recommendations of higher priority, EOC had already advised that they could be divided into two parts, with 22 recommendations belonging to Part I and five belonging to Part II. According to EOC, the 22 recommendations in Part I were "generally easier to implement and less complex in application", whereas those in Part II would require "further consultation and research" by the Government. They further said that EOC had submitted the view that the issues in both Parts I and II were "of equal importance and should be promptly tackled by the Government". Dr CHEUNG expressed dissatisfaction with the lack of information on how the Administration would follow up on the rest of EOC's recommendations other than the nine proposals under discussion. He considered that should the Administration intend to ignore the 60-odd EOC's recommendations and implement only the nine recommendations, it would be a great setback to EOC's efforts in striving for equal opportunities and a great waste of EOC's time and resources.

17. Dr Helena WONG and Mr IP Kin-yuen requested the Administration to explain the criteria for selecting the nine prioritized recommendations. Dr Fernando CHEUNG, Mr Nathan LAW, Mr IP Kin-yuen and Dr CHENG Chung-tai queried why the Administration did not include in this round of discussion the following recommendations which, in their view, were not controversial or complex:

- (a) to amend DDO by introducing a distinct duty to make reasonable accommodation for persons with disabilities in all relevant fields (recommendation 1);
- (b) to amend section 10 of DDO by adding being accompanied by an assistance animal as a category of protection from discrimination (recommendation 2);
- (c) to amend RDO by providing that it is unlawful for the Government to discriminate in performing its functions or exercising its powers (recommendation 6);

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- (d) to repeal the provisions regarding vocational training and education in relation to modifying or making different arrangements for medium of instruction under sections 20(2) and 26(2) of RDO (recommendations 9 and 10); and
- (e) to amend the four anti-discrimination Ordinances to include a provision that they apply to all public authorities (recommendation 20).

18. Mr CHAN Chi-chuen further asked what actions the Administration would take to follow up on the recommendations in Part II, particularly the one that the Government should conduct comprehensive research and public consultation on the issues of discrimination and the related issue of possible legal recognition of heterosexual and homosexual cohabitation relationships in Hong Kong, including existing cohabitation relationships and same sex marriages from overseas (recommendation 26). Dr CHENG Chung-tai also enquired why the recommendations relating to protection from discrimination on grounds of nationality, citizenship and residency status (recommendations 24 and 25) were not covered in this round of discussion.

19. USCMA explained that among the recommendations that were of higher priority, the Administration intended to focus on those that were relatively less complex or controversial at this juncture, with a view to taking forward necessary legislative amendments in a step-by-step manner. The Administration noted that some of the recommendations, such as the ones mentioned by Dr CHENG Chung-tai, were relatively more complex and controversial, and the public had expressed strong and divergent views on them. The Administration needed more time to carefully consider those recommendations. The Administration also noted that for some recommendations, EOC had suggested that further consultation and research should be conducted. As regards the recommendations referred to in paragraph 17(a)-(e) above, USCMA explained that they would likely have impact across multiple domains and policy areas. For the present nine recommendations, the Administration considered that they were capable of driving consensus among stakeholders and society, and might be taken forward at the present juncture. The Deputy Chairman expressed support for this approach of taking forward the relatively less complex or controversial recommendations at first before dealing with the more complicated ones.

20. In response to Mr IP Kin-yuen's concerns, USCMA said that the exemption on medium of instruction under RDO was included when RDO

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was enacted having regard to the operational needs of vocational training bodies. Nevertheless, he noted that over the years, these bodies had enhanced support for the non-Chinese speaking community and strived to offer courses in suitable languages when the need arose.

21. Ms Claudia MO considered that the discrimination experienced by Mainlanders in Hong Kong did not constitute discriminatory acts on the ground of race under RDO. She further asked whether the Police were exempted from the coverage of RDO. USCMA explained that RDO was binding on the Government (which included the Police) and it prohibited discriminatory acts and practices in all the areas specified in RDO.

22. Referring to Annex B to the Administration's paper, Mr Paul TSE and Mr Nathan LAW enquired why the nine recommendations did not seem to be "less controversial" as they received quite a low rate of support (e.g. 99% of "individuals" indicated disagreement). USCMA explained that according to the EOC's submissions, a large proportion of responses from "individuals" was expressed through variations of a pro forma, and it should be noted that many of them did not provide any reasons for their views. He said that in addition to the responses received by EOC during the public consultation, the Administration also considered the actual situation of discrimination in Hong Kong as well as the likelihood that consensus could be reached. USCMA further explained that for the responses from "organizations", some of them had expressed opposition due to misunderstanding of the relevant recommendations. USCMA said that the Administration was confident that when it came up with concrete proposals, they would be able to dispel their worries and forge consensus. Dr Priscilla LEUNG stressed that the views expressed by "individuals" must not be neglected and they should be given the same importance as those expressed by "organizations".

Admin 23. Dr Helena WONG requested the Administration to provide in writing a timetable for taking forward the 27 recommendations considered by EOC to be of higher priority. Mr CHAN Chi-chuen requested that should the Administration decide not to take forward any of the 27 recommendations, the Admin Administration would have to give an explanation. Dr Helena WONG further requested that for the rest of the recommendations made by EOC, the Admin Administration should also provide in writing a timetable for their implementation. USCMA said that the Administration would conduct further study and would revert as early as practicable.

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V. Briefing by the Privacy Commissioner for Personal Data
[LC Paper Nos. CB(2)981/16-17(04) and (05)]

24. With the aid of PowerPoint, the Privacy Commissioner for Personal Data ("PCPD") briefed members on the salient points of the paper on the work of his Office in 2016 [LC Paper No. CB(2)981/16-17(04)].

25. Dr Helena WONG enquired what actions PCPD would take to follow up the incident as reported by the media that a taxi driver had posted a photo of a passenger breastfeeding her baby on social media. PCPD said that he had met with The Association of Taxi Industry Development to discuss the use of CCTV inside taxi compartments and advised them on the relevant requirements, and PCPD would initiate investigation if needed. Dr WONG requested PCPD to follow up this matter to ensure the taxi industry's compliance with the requirements.

26. In response to Dr Helena WONG's concern about the large decrease in the number of self-initiated investigations from 76 in 2015 to 13 in 2016, PCPD explained that this was due to better awareness of the general public of personal data privacy protection. He said that his Office had endeavoured to promote the culture of "Protect, Respect Personal Data" through promotion and education to raise the awareness of personal data privacy protection of organizational data users and the public. Furthermore, his Office released media statements and responses to address public concerns about privacy related issues in a timely manner, so that the public could have an early understanding of those issues.

27. Dr Priscilla LEUNG expressed grave concern as to whether or not the collection of a large amount of personal data through the online "PopVote Systems" might amount to excessive collection of personal data and involve security risks. She asked whether PCPD's Office would issue clear guidelines in this area to enhance the protection of personal data. Mr LEUNG Kwok-hung, however, disagreed that the "PopVote Systems" had contravened in any way the Personal Data (Privacy) Ordinance (Cap. 486) ("the Ordinance"). PCPD said he noted the concerns that such activities might contravene the principle of fair collection under the Ordinance, and he had at the time issued six press releases in response to such concerns. He undertook to consider issuing guidelines in this regard.

28. Mr Paul TSE expressed concern that the number of complaints related to property management had increased by 69% as compared with that in 2015, despite that the total number of complaints received by the Office of PCPD

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had dropped by 7% in the same period. PCPD explained that the large increase was mainly due to the occurrence of an incident involving the use of property owners' personal data to pursue outstanding management fees, which had affected about 100 households. His Office had communicated with the relevant industry bodies and advised them to enhance the transparency of the records and documents kept by property management companies to avoid disputes with property owners.

29. Mr Paul TSE noted with concern that while 112 cases had been referred to the Police for criminal investigation and prosecution in 2016, of which 109 related to contraventions involving the use of personal data in direct marketing ("DM"), only three were substantiated and resulted in a fine or a Community Service Order of 80 hours. He enquired whether the penalty was too light to have sufficient deterrent effect. PCPD said that it was only until last year when relevant cases first went to court after the new DM regulatory regime took effect on 1 April 2013, and it was the first time the court had imposed a Community Service Order of 80 hours. He considered this penalty of Community Service Order to be a deterring penalty to a certain degree, and his Office would keep in view of the penalties imposed in the future.

30. Mr CHAN Chi-chuen enquired about the progress in bringing section 33 of the Ordinance into operation. He was concerned that the provision, which was enacted in 1995, might not keep pace with the technological developments and the circumstances today. He further enquired whether PCPD had considered relevant developments of the European Union ("EU") and the United States with a view to bringing the local regulatory regime in line with overseas practices. PCPD said that a comparative study was already underway, in view of the implementation of the new EU General Data Protection Regulations in 2018. PCPD undertook to complete the comparative study within this year. With respect to the operation of section 33, PCPD said that his Office had submitted recommendations to the Government in 2014 and remained in close communication with them in this regard. Due to the time constraint, the Chairman requested the Administration to provide supplementary information in writing on the follow-up actions taken.

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31. Miss Alice MAK commended the efforts made by the Office of PCPD in following up a large number of cases involving abusive use of personal data by money lenders and financial intermediaries. Regarding the publication of the Survey of Public Registers Maintained by Government and Public Bodies

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by the Office of PCPD, Miss MAK requested the Administration to explain the safeguard measures taken to enhance the protection of personal data in the records of the Land Registry ("LR"). Deputy Secretary for Constitutional and Mainland Affairs said that the purposes of keeping the Land Register and providing land records for public search were to prevent secret and fraudulent conveyances, and to provide means whereby the title to real and immovable property might be easily traced and ascertained. To enhance the awareness of users of the LR's search services about the proper use of its records and compliance with the Ordinance, LR had put in place numerous administrative measures including requiring users to indicate their agreement to accept the "Terms and Conditions" of using the services, which included a restriction that the information obtained from the searches should not be used for any activities in violation of any provisions of the Ordinance. Due to the time constraint, the Chairman requested the Administration to provide supplementary information in writing on protection of personal data in the records of LR.

32. Mr CHAN Chun-ying expressed concern that the numbers of participants of the Student Ambassador for Privacy Protection Programme and the Industry-specific Campaign had reduced significantly from about 16 000 in 2015 to about 5 000 in 2016 and from about 2 400 in 2015 to about 200 in 2016 respectively. He enquired whether or not the large decrease in the number of participants of the Industry-specific Campaign had resulted in a general lack of awareness of the practitioners of the financial sector, which had received the most complaints among the private sector organizations. PCPD said that the updated and enhanced PCPD website and thematic websites had enabled information on personal data privacy protection to be more easily accessible to the young people. For the business sector, his Office had also enhanced the information provided on its main website for small-and-medium enterprises to raise their awareness of privacy issues.

VI. Any other business

33. There being no other business, the meeting ended at 4:30 pm.