

立法會

Legislative Council

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LC Paper No. CB(2)1646/16-17
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting held on Wednesday, 19 April 2017, at 2:30 pm in Conference Room 1 of the Legislative Council Complex

Members present : Hon Holden CHOW Ho-ding (Deputy Chairman)
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 Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Alice MAK Mei-kuen, BBS, JP
Hon Dennis KWOK Wing-hang
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 CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Nathan LAW Kwun-chung

Members attending Hon WU Chi-wai, MH
Dr Hon KWOK Ka-ki
Dr Hon YIU Chung-yim

Members absent : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon CHUNG Kwok-pan
Hon HUI Chi-fung
Hon Kenneth LAU Ip-keung, MH, JP
Dr Hon LAU Siu-lai

Public Officers attending : Item IV

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

Mr Ryan CHIU Pit-ming
Principal Assistant Secretary for Constitutional and Mainland Affairs

Mr WONG See-man
Chief Electoral Officer
Registration and Electoral Office

Mr SHUM Nam-lung
Deputy Chief Electoral Officer
Registration and Electoral Office

Item V

Equal Opportunities Commission

Professor Alfred CHAN
Chairperson

Mr Michael CHAN
Chief Operations Officer

Mr Ivan LUK
Chief Legal Counsel

Dr Ferrick CHU
Director (Policy, Research and Training)

Ms Shana WONG
Head, Corporate Communications

The Administration

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

Mrs Fonny TSANG
Legislative Assistant (2) 3

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The Deputy Chairman said that the Chairman was unable to attend this meeting due to other urgent commitments and he would chair the meeting on his behalf.

I. Confirmation of minutes of meeting
[LC Paper No. CB(2)1210/16-17]

2. The minutes of the meeting held on 23 February 2017 were confirmed.

II. Information paper(s) issued since the last meeting
[LC Paper Nos. CB(2)1084/16-17(01) to (02), CB(2)1090/16-17(01) to (03), CB(2)1102/16-17(01), CB(2)1103/16-17(01), CB(2)1134/16-17(01) and CB(2)1177/16-17(01) to (02)]

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

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- (a) referral from the Public Complaints Office on issues relating to enactment of legislation to protect sexual minorities from discrimination;
- (b) letters dated 28 March 2017 from Mr LAM Cheuk-ting and Mr Charles Peter MOK respectively;
- (c) joint letter dated 28 March 2017 from Mr WONG Kwok-kin, Miss Alice MAK Mei-kuen and Mr LUK Chung-hung;
- (d) Administration's written response dated 29 March 2017 on "Suspected theft of notebook computers of the Registration and Electoral Office ("REO")";
- (e) joint letter dated 29 March 2017 from 13 Panel members;
- (f) the Clerk's reply letter dated 3 April 2017 to 16 Panel members; and
- (g) letter dated 28 March 2017 from Dr Hon Fernando CHEUNG Chiu-hung and the Clerk's reply letter to Dr CHEUNG.

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)1180/16-17(01) and (02)]

4. Members agreed to discuss the following items proposed by the Administration at the next meeting on 15 May 2017 at 2:30 pm:

- (a) review of the number of elected seats for the sixth-term District Councils ("DCs"); and
- (b) progress of work in tackling discrimination on the grounds of sexual orientation and gender identity.

(Post-meeting note: At the request of the Administration and with the concurrence of Panel Chairman, the item "Review of the number of elected seats for the sixth-term DCs" was subsequently replaced by "Section 33 of the Personal Data (Privacy) Ordinance".)

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Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests ("the Report")

5. Mr LAM Cheuk-ting said that at the previous meeting, he had expressed concern about the lack of progress in the implementation of the Report's recommendations on amending the Prevention of Bribery Ordinance (Cap. 201) and had requested to discuss the issue before the end of the current legislative session. He asked about the updated position. The Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") said that the issue fell within the purview of the Administration Wing. As such, Mr LAM's concern had been relayed to the Administration Wing. The Deputy Chairman said that the Panel would seek a reply from the Administration Wing directly.

Clerk

(Post-meeting note: The Administration Wing provided a reply to the Panel on 8 May 2017. The information provided by the Administration Wing has been incorporated in the Panel's list of outstanding items for discussion under the relevant item.)

IV. Review of penalties and introduction of address proof requirement in relation to voter registration system

[LC Paper Nos. CB(2)1180/16-17(03) and (04)]

6. At the invitation of the Chairman, DSCMA briefed members on the salient points of the Administration's paper.

Discussion

Proposal of increasing penalties in relation to the voter registration system

7. DSCMA said that the Administration proposed to increase the maximum penalties for the offence of making false statements in voter registration ("VR") from a fine at level 2 (\$5,000) and imprisonment for six months to a fine of \$10,000 and imprisonment for two years, taking into account the penalties for comparable offences (e.g. the offence of making false statements under section 33 of the Crimes Ordinance (Cap. 200) and section 45 of the Rating Ordinance (Cap. 116)). Members in general expressed support for the proposal so as to reflect the severity of the offence concerned and to achieve sufficient deterrent effect. Ms Claudia MO suggested that the proposed maximum penalties should be heavier on repeat offenders in order to enhance the deterrent effect.

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8. In response to Mr POON Siu-ping's enquiry on the prosecution figures, DSCMA said that subsequent to the 2011 DC Election, seven cases on VR-related offences were prosecuted by the Police and all were convicted with a suspended sentence. She highlighted that the penalties imposed in all these cases included imprisonment in order to enhance the deterrent effect.

Proposed requirement of submitting address proofs

9. DSCMA advised that having considered the views collected during the public consultation in 2015 and assessed the impact of introducing the requirement of submitting address proofs, the Administration proposed that the address proof requirement would only be applicable to existing registered electors who applied for change of registered addresses. She explained that the Administration had to consider the public's response to the requirement of submitting address proofs and whether it would take time for members of the public to adapt to the new measure, in particular whether the requirement of producing acceptable address proofs when submitting VR application might affect the desire of members of the public to register as electors, thereby affecting the exercise of their voting right. DSCMA stressed that the Administration's position was that the requirement for address proofs would also be extended to applications for new registration in the long run. She explained that the proposed progressive approach aimed to ensure the smooth implementation of the new measure and to allow the public to gradually adapt to the new address proof requirement when applying for VR and avoid severely affecting the desire of eligible persons to register as electors.

10. Mr Paul TSE expressed support for the proposed progressive approach to facilitate smooth implementation of the new requirement. The Deputy Chairman, Mr CHEUNG Kwok-kwan, and Mr LUK Chung-hung shared the Administration's concern that introducing the requirement for address proofs to new VR registration might dampen the desire of members of the public to apply for VR.

11. Ms Claudia MO, Mr LAM Cheuk-ting, Dr KWOK Ka-ki and Dr YIU Chung-yim, however, considered that the requirement for address proofs should be introduced to both applications for new registration and change of registration particulars in one go. They considered it self-contradictory for the Administration to require only registered electors to submit address proofs upon moving home but not to impose the same requirement on applicants for new registration. Mr LAM Cheuk-ting and

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Dr KWOK Ka-ki considered that as most of the suspected vote-rigging cases in the past were related to applications for new registration, they urged the Administration to introduce the requirement for address proofs to applications for new registration as well.

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12. DSCMA reiterated that the address proof requirement would also be introduced to applicants for new registration after smooth implementation of the new measure. She further said that the Administration believed that after the introduction of the address proof requirement in relation to change of registration particulars, the desire of a third party to impersonate an elector to submit application for change of registration particulars would be significantly reduced. Mr Alvin YEUNG requested REO to conduct more random checks as he noted that the random checks conducted by REO covered only 1% of existing registered electors. The Chief Electoral Officer ("CEO") said that Mr YEUNG's suggestion would be considered having regard to the availability of resources. He further said that REO would also conduct follow-up checks on undelivered poll cards returned to REO by sending inquiry letters to the electors concerned, and would contact the electors concerned by phone, email or fax according to the contact details they had provided.

13. Mr CHEUNG Kwok-kwan enquired about the documents that would be accepted as address proofs. DSCMA said that REO would review and prepare a list of documents that were acceptable as address proofs for electors' reference. As regards the documents currently accepted by REO when conducting VR checking measures, CEO said that they included rates/water/electricity/gas bills bearing the elector's name, or a letter bearing the elector's name issued by banks, government departments, public authorities, schools or institutions, etc.

14. Dr CHIANG Lai-wan expressed concern that some electors might have difficulties to produce address proofs. In response to Dr CHIANG's enquiry on relevant overseas practices, DSCMA said that proof of address was required for voting in Canada, whereas there was no such requirement in the United Kingdom. In response to members' concern on people who were homeless and unable to provide address proofs, CEO said that the VR arrangement for street sleepers had been made through non-governmental organizations. REO would consider applications for registration by street sleepers if supporting information could be provided by a trustworthy third party like a registered social worker to ascertain their usual place of residence or if a correspondence address could be provided.

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15. Dr YIU Chung-yim requested the Administration to step up its efforts to enhance the accuracy of the VR particulars in order to minimize the risk of vote-rigging. DSCMA said that REO had been reminding electors of their civic responsibilities to notify REO promptly after moving homes, so as to enhance the accuracy of the VR particulars, and the electors would be able to vote in the constituencies they currently resided. CEO added that if an elector did not update his/her address upon moving home, he/she might not be able to receive the poll card sent by REO in election year or subsequent VR cycles. Mr CHU Hoi-dick said that electors residing in remote places had difficulties in using their residential address to receive mails. CEO said that for such cases, the use of correspondence address might be accepted by REO depending on the actual circumstances of each case. Mr Alvin YEUNG suggested that upon receipt of an application for update of registered address from a registered elector, REO should send an acknowledgement letter enclosing a reply slip to the elector concerned requiring him/her to complete and return the reply slip to REO. The reply slip returned by that elector could be used as the address proof. Mr YEUNG believed that this might resolve the difficulties of some people (e.g. youngsters) in producing address proofs.

16. With regard to the proposal in paragraph 17(a) of the Administration's paper, Dr YIU Chung-yim suggested that in addition to registered tenants of a public housing estate under the Housing Department or Hong Kong Housing Society, residents of Home Ownership Scheme ("HOS") flats should also be exempted from the address proof requirement in order to reduce the impact of the new measure on existing electors. DSCMA explained that the residents' records of HOS flats were not as detailed as that for public rental housing ("PRH") tenants. She added that under the proposal in paragraph 17(a) of the Administration's paper, electors who were PRH tenants (i.e. about 30% of existing registered electors) would be exempted from the address proof requirement.

Admin 17. Referring to paragraph 17(c) of the Administration's paper, Mr Paul TSE asked what other government departments were involved in REO's collaborative arrangements to cross-match the registered addresses of electors, and how such arrangements were conducted. CEO agreed to provide supplementary information after the meeting.

18. Mr LUK Chung-hung expressed concern that some electors such as the elderly might have difficulties in acknowledging receipt of REO's letters. He suggested that home visits should be conducted by REO in conducting the

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VR checking process. In response to Mr POON Siu-ping's enquiry, CEO said that in the 2016 VR cycle, REO had issued inquiry letters to 47 000 electors related to cases of undelivered poll cards to request confirmation or updating of the registered addresses. Only about 10 000 of them had responded and some 37 000 electors had been removed from the final register due to failure to respond to REO's inquiry letters.

19. Dr CHENG Chung-tai asked about the timeframe for implementation of the above proposals. DSCMA said that subject to members' views, the Administration intended to implement the proposals around end of 2017 or early 2018. Legislative proposals to amend the relevant subsidiary legislation would be introduced into the Legislative Council for negative vetting in due course.

V. Briefing by the Chairperson of the Equal Opportunities Commission

[LC Paper Nos. CB(2)1180/16-17(05) and (06)]

20. At the invitation of the Chairman, the Chairperson of the Equal Opportunities Commission ("EOC") briefed members on the salient points of the paper submitted by EOC. The Deputy Chairman declared that he was a member of EOC.

Discussion

Legal assistance

21. Dr Helena WONG enquired whether the granting of legal assistance by EOC was subject to any quota or capped by a ceiling. The Chairperson of EOC replied in the negative. EOC was obliged under the existing anti-discrimination Ordinances to consider an application for legal assistance and might grant it if it considered fit to do so. He said that the number of legally assisted cases varied each year, as the decision on granting legal assistance depended on a number of factors and would be considered based on established principles. He added that EOC incurred an average of about \$1 million per year in legal fees, and EOC would seek additional provision if necessary.

22. With reference to the submission from Hong Kong Confederation of Trade Unions [LC Paper No. CB(2)1230/16-17(01)], Dr Fernando CHEUNG

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said that in 2016, about 600 complaints were handled by EOC, of which 39 applied for legal assistance. Out of these 39 applications, legal assistance was granted only in 16 applications. He said that the figures could hardly justify the provision of six in-house lawyers posts in the EOC's establishment. He further said that, from July 2009 to June 2015, only three applicants were granted legal assistance by EOC in relation to Race Discrimination Ordinance (Cap. 602) ("RDO"), and there was only one court case concerning race discrimination since RDO had come into effect. He considered that it was undesirable for EOC to dispose of such discrimination complaints mainly through conciliation for both parties. Dr CHEUNG suggested that the Panel should discuss the operation of EOC and invite members of the public to give views.

23. The Chairperson of EOC explained that the EOC's approach in handling complaints was primarily conciliatory, though it was empowered to take legal action should conciliation efforts fail. About 70% to 80% of the complaints received by EOC could be settled by conciliation, and the number of applications which had been granted legal assistance by EOC stood at around 10 to 20 each year. In response to Dr Fernando CHEUNG's further enquiry, the Chairperson of EOC said that EOC had commenced a review of its complaint-handling and legal assistance functions, taking into account the views and interests of stakeholders, to assess whether the current processes were the most efficient and effective in meeting the EOC's objectives and mission within the statutory parameters, and to propose any changes to improve in this area. As regards the work of the in-house lawyers of EOC, he said that apart from providing legal assistance to the complainants, in-house lawyers of EOC also had to provide legal support for internal operation as well as legal support for organizations in the public/private sectors in drawing up their anti-discrimination guidelines.

Sexual harassment

24. Referring to paragraph 30 of the EOC's paper, Dr Helena WONG expressed concern that among the various discrimination issues, sexual harassment remained rife in various sectors. Referring to the recent spate of sexual harassment incidents in the health, social welfare and education sectors as reported by the media, Dr WONG asked whether EOC would provide concrete suggestions to schools/universities, hospitals, subvented hostels to eliminate sexual harassment, and what action had been taken by EOC in following up the abovementioned incidents.

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25. The Chairperson of EOC said that in 2016, EOC training team conducted over 250 training sessions for over 10 500 staff members of government departments, public bodies, non-government organizations, airlines, banks and schools, etc. As for hostels for mentally handicapped persons and care homes for disabled persons, etc, EOC training team had been formulating guidelines and providing education courses to their staff, residents and resident's parents on prevention of sexual harassment.

Handling enquiries and complaints

26. Noting that in 2016, EOC had received 15 629 enquiries, of which 9 719 were general enquiries and 5 910 were potential complaints, Mr CHEUNG Kwok-kwan sought information about the nature of the enquiries. The Chairperson of EOC responded that most of these enquiries were related to the Disability Discrimination Ordinance (Cap. 487) and the Sex Discrimination Ordinance (Cap. 480). The Chief Operations Officer of EOC said that the general enquiries were related to the work, promotional activities or public education of EOC, whereas the specific enquiries were related to the four anti-discrimination ordinances. He added that there were a few enquiries in each quarter related to situations which were outside the remit of the four anti-discrimination ordinances (such as those related to discrimination on grounds of age or sexual orientation).

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

27. Mr Nathan LAW expressed disappointment that despite the strong call among the public for legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status, the Administration still had no plan to introduce legislation in this area. He asked whether EOC would conduct research to explore expanding EOC to a human rights institution. The Chairperson of EOC responded that any proposal to expand the functions of EOC would require further discussion by the EOC Board.

28. Referring to paragraph 32 of EOC's paper, Dr Priscilla LEUNG expressed strong disagreement with the view that a wide range of sectors supported legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. She said that she together with a number of organizations and groups had expressed their strong opposition against enacting such a law. She stressed that it was the recommendation of the Advisory Group on Eliminating Discrimination

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against Sexual Minorities ("the Advisory Group") that an in-depth study on the experience of legislative and non-legislative measures in other jurisdictions should be conducted. The Advisory Group had also recommended taking other non-legislative measures (such as drawing up a charter on non-discrimination by the Government for voluntary adoption by employers) to tackle the problem.

29. The Chairperson of EOC responded that based on the findings of the specific study launched by EOC in this area, EOC had recommended the Government to embark on public consultation on the introduction of legislation to protect the sexual minorities. The consultation focus should be on the scope and content of the legislation, and this was also the general position of the EOC Board though individual Board members might have different views on the matter. DSCMA said that the Administration was conducting a study on the experience of other jurisdictions in tackling discrimination in this area through legislative and non-legislative measures. The Administration would brief the Panel on the progress of its work at the next meeting.

30. Mr CHAN Chi-chuen considered that the Administration should embark on a public consultation as soon as possible to gauge public opinions on legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. He asked what action had been taken by EOC/the Administration to follow up on the findings of the relevant Study Report published by EOC in January 2016. The Chairperson of EOC responded that EOC had been in liaison with the Administration to follow up on the recommendations. The Deputy Chairman said that public views on the issue were diverse, and a number of religious groups and educational organizations had expressed worry that there might be reverse discrimination and whether freedom of religion would be undermined upon enactment of such legislation. He expressed reservations about taking legislative means to deal with the matter.

Funding provision

31. Ms Claudia MO considered that the Government should provide financial provision on a recurrent basis for the Ethnic Minorities Unit ("EM Unit") of EOC. The Deputy Chairman considered that EOC's work was commendable and requested the Administration to provide the necessary funding support to ensure smooth operation of EOC. The Chairperson of EOC said that while the staff cost of the EM Unit had been included in the

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recurrent provision for EOC, he hoped that the Government would provide additional subvention of about \$5 million per year to cover the project/programme expenses of the EM Unit for promoting equal opportunities for ethnic minorities.

32. Mr Nathan LAW pointed out that the market rental had been soaring and noted that the EOC's reserve would be depleted by 2018-2019. He urged the Administration to provide additional provision to EOC to cover its rental and operating expenditure arising from inflation. DSCMA said that there had been an increase in the annual subvention to EOC after deducting the one-off provision. Starting from 2014-2015, the Administration had been providing a funding of \$4.69 million each year to EOC for setting up the EM Unit within EOC. In 2017-2018, the Administration had included a one-off funding support of \$9.5 million in the proposed subvention for the EOC's proposed office relocation and fitting-out work. Mr CHAN Chi-chuen asked whether the Administration planned to provide a permanent office for EOC. DSCMA said that the Administration would carefully consider and support the relevant proposals from EOC. She added that the Administration believed that EOC's financial position would improve after office relocation.

(The Deputy Chairman proposed and members agreed to extend the meeting for another 15 minutes to allow more time for discussion.)

Education for non-Chinese speaking students

33. The Deputy Chairman expressed concern about the inadequate support for Chinese Language teachers in the implementation of the "Chinese Language Curriculum Second Language Learning Framework" ("Learning Framework") for non-Chinese speaking ("NCS") students and the lack of standardized curriculum for learning and teaching of Chinese Language. In response, the Chairperson of EOC said that EOC had maintained close liaison with the Education Bureau ("EDB") on the Learning Framework which had been implemented by EDB starting from the 2014-2015 school year. EOC would monitor the developments through the EM Unit. He pointed out that for NCS students with special educational needs ("SEN"), their drop-out rates before Form 5 was 57% which far exceeded that of the whole SEN population (5%). In a recent discussion between EOC and EDB, EOC had recommended that the Administration should set up a dedicated unit to look into the education issues facing NCS SEN students in a comprehensive and holistic manner.

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Motion

34. Ms Claudia MO moved the following motion:

(Translation)

"This Panel urges the Constitutional and Mainland Affairs Bureau to strengthen the provision of support for the work of the Equal Opportunities Commission ("EOC"), and requests that adequate financial resources be expeditiously provided for EOC's Ethnic Minority Unit so as to rectify the unfair situation currently faced by ethnic minorities."

35. The Deputy Chairman put the motion to vote. All members present voted for the motion. The Deputy Chairman declared that the motion was passed.

(Post-meeting note: The Administration's response to the motion passed at the meeting was issued to members vide LC Paper No. CB(2)1495/16-17(01) on 25 May 2017.)

36. Dr Helena WONG requested to put on record her dissatisfaction with the fact that no politically appointed officials attended this meeting. DSCMA said that she was authorized to represent the Government to attend this meeting and to answer members' questions.

VI. Any other business

37. There being no other business, the meeting ended at 4:56 pm.

Council Business Division 2
Legislative Council Secretariat
16 June 2017