

Legislative Council Panel on Constitutional Affairs

**The Chief Executive's 2018 Policy Address
Policy initiatives of Constitutional and Mainland Affairs Bureau
in relation to electoral arrangements,
promotion of the Constitution and the Basic Law,
promotion of equal opportunities and elimination of discrimination**

This paper briefs Members on the policy initiatives of the Constitutional and Mainland Affairs Bureau (“CMAB”) in relation to electoral arrangements, promotion of the Constitution and the Basic Law, promotion of equal opportunities and elimination of discrimination. Panel paper on policy initiatives relating to Mainland co-operation and Taiwan affairs has been submitted to the Panel on Commerce and Industry for discussion.

Our vision

2. Our vision is to ensure that public elections will continue to be conducted in a fair, open and honest manner; safeguard the fundamental rights protected by the Basic Law; and actively promote the Constitution and the Basic Law to the public.
3. The new initiatives we will pursue and on-going initiatives we will continue to implement are highlighted as follows -

New Initiatives

- a) review the arrangements for voter registration (“VR”), as well as polling arrangements and counting procedures in public elections, including studying advance polling, electronic counting, streamlining of counting procedures, and eligibility of VR for permanent residents residing outside Hong Kong;
- b) introduce legislative amendments into the Legislative Council (“LegCo”) to make necessary amendments to the detailed arrangements for the 2020 LegCo Election;

- c) work closely with the Electoral Affairs Commission (“EAC”) to make practical arrangements to ensure that the 2019 District Council (“DC”) Election will be conducted in a fair, open and honest manner in accordance with the relevant legislation;
- d) follow up with legislative amendments in light of EAC’s recommendations on the boundaries of DC constituency areas for the 2019 DC Election;
- e) enact local legislation to implement the Law of the People’s Republic of China on the National Anthem (“National Anthem Law”); and
- f) improve the Administrative Guidelines on Promotion of Racial Equality for application to all government bureaux and departments as well as related organisations providing services to ethnic minorities (“EMs”).

On-going Initiatives

- a) do the best to create a social climate conducive to taking forward political reform;
- b) facilitate the LegCo’s scrutiny of the Electoral Legislative (Miscellaneous Amendments) Bill 2018, submitted by the Government in July 2018, with a view to implementing the proposals to improve the objection mechanism and raise the penalties for the offence of making false statements in VR as recommended in the Consultation Report on Enhancement of Voter Registration System published in January 2016;
- c) promote the Constitution and the Basic Law through the working groups under the Basic Law Promotion Steering Committee and relevant bureau to enable the public to have a more comprehensive and accurate understanding of the Constitution, the Basic Law, and the “one country, two systems” principle;
- d) on the basis of safeguarding the current institution of

heterosexual and monogamous marriage, promote equal opportunities for people of different sexual orientation and transgender persons, with a view to fostering in the community the culture and values of inclusiveness, mutual respect and non-discrimination. Efforts will include following up on the strategies and measures recommended by the Advisory Group on Eliminating Discrimination against Sexual Minorities;

- e) submit the legislative amendment proposals for implementing eight prioritised recommendations under the Discrimination Law Review as proposed by the Equal Opportunities Commission in the form of a composite bill to the LegCo by end 2018; and
- f) continue to promote children's rights through the Children's Rights Education Funding Scheme and the Children's Rights Forum, etc.

Detailed measures

Public Elections

4. To prepare for the next election cycle, we have reviewed the electoral legislation in the light of the experience gained from previous elections, in order to rationalise the electoral procedures and improve the clarity and consistency of certain electoral legislation. In this regard, we submitted to the LegCo in July 2018 the Electoral Legislation (Miscellaneous Amendments) Bill 2018 to improve the VR arrangements, and the electoral procedures for the Chief Executive ("CE"), Election Committee Subsector ("ECSS"), LegCo, DC and Rural Representative ("RR") elections.

5. To further improve various electoral arrangements, we will review the arrangements for VR, as well as polling arrangements and counting procedures in public elections, including examining the feasibility of making advance polling arrangements for civil servants who serve as polling staff and who are on shift, exploring the feasibility of introducing electronic counting in the 2020 LegCo Election, streamlining of counting procedures, and studying the eligibility of VR for permanent residents residing outside Hong Kong. We will critically examine the various operational details and legal issues involved, with an aim to

ensuring that elections are conducted in a fair, open and honest manner.

2019 District Council Election

6. We will work closely with the EAC to make practical arrangements to ensure that the 2019 DC Election will be conducted in a fair, open and honest manner in accordance with the relevant legislation. The EAC will work on the practical arrangements in the first half of 2019 and will consult this Panel.

7. Under the Electoral Affairs Commission Ordinance (Cap 541), one of the functions of the EAC is to consider or review the boundaries of DC constituencies for the purpose of making recommendations on the delineation and the names of DCCAs for DC election. In respect of the 2019 DC Election, the EAC is required to submit a report to the CE on its recommendations in late this year, and the CE in Council shall consider EAC's report as soon as practicable afterwards. The Government will follow up with legislative amendments to effect the CE in Council's decision on the boundaries of DCCAs for the 2019 DC Election accordingly.

Legislative Council Election

8. On the other hand, we will consult this Panel on the necessary technical legislative amendments required for the detailed arrangements for the 2020 LegCo Election, with a view to introducing the legislative amendments into the LegCo next year.

Voter registration

9. In response to the concerns expressed by members of the public on matters relating to VR, the Government conducted a public consultation on enhancement of VR system at the end of 2015. After considering the views received, the Government published the Consultation Report in January 2016 and proposed measures to enhance the VR system. Among others, the proposals include increasing maximum penalties for offences relating to VR to strengthen the deterrent effect, and improving the VR claim and objection mechanism so as to process relevant cases more effectively and minimise the chance of any possible abuse. The Government has already incorporated the above-mentioned proposals in the Electoral Legislation (Miscellaneous Amendments) Bill 2018 which has been introduced to the LegCo in July 2018. In addition, the Bill has proposed to broaden the pool of eligible

candidates for appointment as Revising Officer to include former and retired magistrates, in order to allow more flexibility for the Judiciary to make suitable appointment of Revising Officers. We will facilitate the LegCo's scrutiny of the Bill with a view to implementing the relevant arrangements as soon as possible.

10. Besides, in line with past practice, the Government would strengthen publicity efforts on VR to tie in with the 2019 DC Election. We would encourage eligible persons to register as electors, remind the public / registered electors of the importance of providing true and accurate information for registration, and to fulfil their civic responsibility to update their registration particulars. The Registration and Electoral Office will continue to implement checking measures and the inquiry process to maintain the accuracy and completeness of the VR records.

Constitutional development

11. The Government will do the best to create a social climate conducive to taking forward political reform. However, we cannot ignore the reality and rashly embark on political reform again as this will divert the attention of our society from development. The Government will act prudently in this respect.

National Anthem Law

12. The National Anthem Law was adopted at the 29th session of the Standing Committee of the 12th National People's Congress ("NPCSC") on 1 September 2017, and has come into force nationwide since 1 October 2017. On 4th November 2017, the NPCSC adopted the decision to add the National Anthem Law to Annex III to the Basic Law. According to Article 18(2) of the Basic Law, the national laws listed in Annex III to the Basic Law shall be applied locally by way of promulgation or legislation by the Hong Kong Special Administrative Region ("HKSAR"). It is thus the responsibility of the HKSAR Government to implement the National Anthem Law locally.

13. The HKSAR will implement the National Anthem Law by local legislation. This approach is consistent with the "one country, two systems" principle, and is also consistent with the implementation of the Law of the People's Republic of China on the National Flag and the Law of the People's Republic of China on the National Emblem, both of which have been adapted and implemented in Hong Kong by the National

Flag and National Emblem Ordinance.

14. We have already commenced work on the local legislation to implement the National Anthem Law, and are now drafting the National Anthem Bill. We will submit the bill to the LegCo for scrutiny as soon as possible once the Bill is ready. Our legislative principle is to maintain the purpose and intent of the National Anthem Law to fully reflect its spirit and to preserve the dignity of the national anthem, so that our citizens would respect the national anthem, whilst taking into account our common law system and the actual circumstances in Hong Kong.

Promotion of the Constitution and the Basic Law

15. The Government attaches great importance to the promotion and education on the Constitution and the Basic Law. The Constitution and the Basic Law form the constitutional basis of the HKSAR and provide strong safeguard for the long-term prosperity and stability of Hong Kong. The HKSAR Government has the responsibility to let the general public have a comprehensive understanding of the Constitution and the Basic Law.

16. The Government has been actively promoting the Constitution and the Basic Law via different channels in order to enable the public to have a comprehensive and thorough understanding of the Constitution, the Basic Law, and the “one country, two systems” principle. Our activities include organising large-scale thematic seminars; promotion through the electronic media; organising regular roving exhibitions at the district level; arranging the Basic Law mobile resource centres to pay visits to different districts and schools; and co-organising with relevant organisations or subsidising community organisations to organise activities, including talks, quizzes and debate competitions, for the public.

17. The Basic Law Promotion Steering Committee chaired by the Chief Secretary for Administration co-ordinates and steers the work of its five working groups, namely Working Group on Local Community; Working Group on Teachers and Students; Working Group on Civil Servants; Working Group on Industrial, Commercial and Professional Sectors; and Working Group on Community Outside Hong Kong. The Home Affairs Bureau, the Education Bureau, the Civil Service Bureau, the Trade and Industry Department and the Information Services Department provide secretariat services to the five working groups respectively and assist the working groups in planning and organising activities to promote the Basic Law to the respective sectors.

Eliminating discrimination on grounds of sexual orientation and gender identity

18. The Government, on the basis of safeguarding the current institution of heterosexual and monogamous marriage, has always been committed to promoting equal opportunities for people of different sexual orientation and transgender persons, with a view to fostering in the community the culture and values of inclusiveness, mutual respect and non-discrimination. Efforts will include following up on the strategies and measures listed below.

19. On public education and publicity, we are committed to promoting the culture and values of inclusiveness, mutual respect and non-discrimination, including actively introducing to employers the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation. As of now, over 300 organisations employing a total of more than 500 000 employees have adopted the Code. We will continue our efforts in promotion and education with the use of various channels such as online platforms, television, radio, newspapers, seminars, briefings and roving exhibitions.

20. On support services provided to the sexual minorities, we subsidise the 24-hour hotline for supporting sexual minorities operated by the Tung Wah Group of Hospitals (TWGHs) to provide timely support, counselling and referral services to sexual minorities and their families, as well as relieving their stress and difficulties in everyday life. Since its establishment in January this year, the hotline has provided service to over 1 600 users. TWGHs has been organising regular support groups and programmes for sexual minorities. As at September, around 21 relevant programmes have been organised.

21. Later this year, we will launch training resources targeting medical and healthcare professionals to enhance their knowledge of and sensitivity towards sexual minorities as well as encouraging the concerned professional organisations to include the training resources as part of their regular pre-service or in-service training. We are also drawing up a charter on non-discrimination of sexual minorities covering various domains for voluntary adoption by service providers with a view to enhancing the acceptance towards sexual minorities.

22. We are conducting a further study on the experience of other jurisdictions' legislative and administrative measures to eliminate discrimination. The study is expected to be completed in the first half of next year. The findings will provide more information to facilitate a more in-depth and rational discussion in the community on the issue of whether legislation should be introduced to protect people of different sexual orientations and transgenders against discrimination.

Discrimination Law Review

23. In respect of the submissions from the Equal Opportunities Commission (EOC) on the Discrimination Law Review (DLR), the Government considers that there is a need to focus on those recommendations that are relatively less complex or controversial at this juncture, with a view to taking forward necessary legislative amendments in a progressive manner. In this connection, we will endeavour to introduce the Discrimination Legislation (Miscellaneous Amendments) Bill to the LegCo by end-2018, so as to implement the eight recommendations of priority in the DLR submitted by the EOC (and amongst which, six are related to the Race Discrimination Ordinance (RDO)), including –

- a) to introduce express provisions in the Sex Discrimination Ordinance (SDO) prohibiting direct and indirect discrimination on the ground of breastfeeding, and to include expression of milk in the definition of breastfeeding;
- b) to replace the references to “near relative ” in the RDO with references to “associate”;
- c) to provide protection from direct and indirect racial discrimination and racial harassment by imputation in the RDO;
- d) to expand the scope of protection from sexual, racial and disability harassment between persons working in a common workplace (e.g. consignment workers) under the SDO, the RDO and the Disability Discrimination Ordinance (DDO) ;
- e) to protect service providers from racial and disability harassment by customers under the RDO and DDO;

- f) to provide protection from racial and disability harassment between service providers and customers where the acts of harassment take place outside Hong Kong but on board Hong Kong registered aircraft or ships in the RDO and DDO;
- g) to protect members and prospective members of a club from sexual and disability harassment by the management of the club under the SDO and DDO; and
- h) to repeal provisions in the SDO, FSDO and RDO which disallow the award of damages if the respondent in an indirect discrimination case can prove that the requirement or condition was not applied with intention to discriminate.

24. Furthermore, in view of members' suggestion that the Government should take forward the recommendation on protection of "persons being accompanied by an assistance animal (i.e. a guide dog)" from discrimination under the DDO, we are working on the details actively with Labour and Welfare Bureau, Department of Justice, Food and Health Bureau and the two existing local guide dog associations. We will carefully study relevant details, with a view to pursuing the recommendation in a separate legislative amendment exercise. The Government will continue to study in detail and consider the other recommendations proposed by EOC.

Promotion of Racial Equality

25. The Government has been fully committed to eliminating racial discrimination and promoting equal opportunities for EMs. On legislation, we will, as mentioned above, endeavour to introduce the Discrimination Legislation (Miscellaneous Amendments) Bill into the LegCo by end-2018 to take forward eight recommendations of priority (of which six are related to the RDO) in the EOC's DLR with a view to enhancing legal protection for EMs.

26. In 2010, we have issued the Administrative Guidelines on Promotion of Racial Equality (the Guidelines) to provide general guidance to relevant Government bureaux and departments and public authorities (hereafter referred to as "relevant authorities") to promote

racial equality and ensure equal access by EMs to key public services, and to take the Guidelines into account in their formulation, implementation and review of relevant policies and measures. The relevant authorities have drawn up, updated and issued checklist of measures according to their respective policy and programme areas. To enhance transparency of their work, the checklists have also been uploaded onto the CMAB website. Since the promulgation of the Guidelines in 2010, the Government has kept its operation under review; and the scope of application of the Guidelines has been extended from 14 to 23 relevant authorities. To further promote racial equality and enhance cultural sensitivity in public services, and to put in place a mechanism to monitor the provision of public services for EMs, we will improve the Guidelines for application to all government bureaux and departments as well as related organisations providing services to EMs.

Children's Rights

27. Since its establishment in 2006, the Children's Rights Education Funding Scheme ("CREFS") has supported over 300 projects implemented by non-government bodies, to enhance different stakeholders' understanding of children's rights as provided under the Convention on the Rights of the Child. In June 2018, the Government has set up a Commission on Children, with the Chief Secretary for Administration as the Chairperson and the Secretary for Labour and Welfare as the Vice-chairperson, to amalgamate the efforts made by relevant bureaux and departments and children concern groups to focus on addressing children's issues as they grow. In the meantime, we will continue to promote children's rights through implementing the CREFS and the Children's Rights Forum. The 2019 CREFS is themed "Growing Up in a Fulfilling Childhood with Care and Inclusion". The approved projects are expected to be launched in the first quarter of 2019.

Conclusion

28. Members are invited to note the content of this paper.