

《公共調查(2019年公共秩序)條例草案》

簡介

背景

政府在 2019 年 2 月提出《2019 年逃犯及刑事事宜相互法律協助法例（修訂）條例草案》然而，政府在提出這立法建議後，在社會引起極大爭議，並在 2019 年 6 月起引發連場大型及激烈的示威活動。儘管政府最終於 2019 年 10 月正式撤回草案，但社會衝突未有平息。有意見認為，是因政府未能回應社會各界人士對由 2019 年 6 月至今的社會衝突進行全面的調查和檢討。就此，梁繼昌議員提出《公共調查(2019 年公共秩序)條例草案》（《條例草案》），成立一個具法定權力的調查委員會，就 2019 年 6 至 10 月在香港發生的公共秩序事件進行全面調查和檢討。

目的

本《條例草案》的目的，是就以下事宜設立調查委員會：(a) 有關 2019 年 6 至 10 月在香港發生的公共秩序事件；(b) 導致或有關於 2019 年 7 月 1 日襲擊立法會大樓事件及其後的事宜；及(c) 與上述事宜相關的目的；以及就調查委員會的運作、程序及權力訂定條文。

調查委員會的構成

由行政長官會同行政會議委任一個由 5 名委員組成的調查委員會及委任其中一名委員為委員會的主席；並委任委員會秘書、助理秘書及其他職員和委任一名或以上的資深大律師和大律師為委員會的法律顧問。行政長官會同行政會議對委員會的委任，須在憲報公布。

調查委員會的工作範圍

- 一、 調查及查明導致公眾反對《2019 年逃犯及刑事事宜相互法律協助法例(修訂)條例草案》的事實，包括但不限於行政會議就該條例草案的處理，從向立法會提出該條例草案到行政長官於 2019 年 6 月 15 日宣布停止有關該條例草案的工作；
- 二、 調查及查明有關於 2019 年 6 至 10 月期間及前後，在公眾秩序事件及其他形式的示威或集會中，示威者、香港警察、記者及公眾人士

之間所發生的衝突的事實，包括但不限於確認任何人(無論是在香港或其他地方)是否試圖挑起衝突、針對衝突採用過度的武力或以其他方式促進或鼓勵衝突的負責；

- 三、 建議行政會議在考慮或提出相當可能被視為有爭論的法例時，應當採用的協商措施及其他步驟；
- 四、 建議應採取的適當措施以維持公共秩序及在和平情況或其他情況下，對大量人數時採取的警務工作；
- 五、 建議有利於在社會獲取共識及實現和解的措施，以及委員會認為合適的其他建議；
- 六、 按全權酌情決定權提出認為合適的其他建議。

調查委員會的工作限期

委員會須於條例生效日期後 1 個月內進行調查研訊，在不遲於本條例生效日期的 6 個月後向行政長官會同行政會議提交有關委員會的工作的中期報告，並在不遲於條例的生效日期後的 12 個月內向行政長官會同行政會議提交委員會的最終報告。

調查委員會的權力

一、委員會可以：

- (a) 收取及考慮以口頭證據、書面陳述、文件或以其他方式提供的任何資料，以及決定收取該等資料的方式；
- (b) 傳召任何人出席作證或出示任何物品或文件；
- (c) 發出逮捕令，以強迫任何不遵從傳票出席研訊的人出席；
- (d) 要求出席研訊的人回答由委員會提出或經委員會同意而提出的所有問題，和要求該人出示其管有或控制的任何物品或文件；
- (e) 判給任何到委員會席前的人一筆款項，該款項為委員會認為代表該人因到委員會席前所花時間而蒙受的損失；
- (f) 進入及視察任何處所，以及發出手令以搜查處所，並在其內檢取手令所指明的任何物品或文件或任何類別的物品或文件(就調查研訊而言，該等物品或文件相當可能具有可作為證據的價值)。

- 二、 如需要收取的證據關於屬法團或非屬法團的政府部門、公共機構或任何其他團體或個人的行為或管理時，委員會可按財政司司長批准的薪酬條款，委任一名或多於一名的審查員查閱該機構或團體的所有簿冊及文件或與該機構或團體事務有關的所有簿冊及文件。

調查研訊的進行

委員會可決定任何人——

- 一、 以口頭作證時須採用的方式，及指明該人無須經接受訊問即可用接受盤問方式作證；及
- 二、 向委員會陳詞、就何事陳詞及各人陳詞的次序。

由他人代表的權利

- 一、 任何人如其行為是調查標的，或受牽連或牽涉在調查標的內，則除《條例草案》第 5 條另有規定外，該人有權在調查研訊中由大律師或律師代表。
- 二、 委員會須決定某人的行為是否為《條例草案》第 5 條第(1)款的調查標的，或某人是否在任何方面受牽連或牽涉在調查標的內。
- 三、 除《條例草案》第 5 條另有規定外，行政長官、任何政府部門及任何公職人員均有權在調查研訊中由律政人員或由大律師或律師代表，該律政人員、大律師或律師可——
 - (a) 就政務司司長或律政司司長對其指示的任何事宜，向委員會陳詞；及
 - (b) 就任何事宜，以委員會允許的形式出示證據。
- 四、 委員會可委任律政司司長所提名的律政人員或委任一名大律師或律師作為委員會的代表律師。

在民事及刑事法律程序中使用證據

任何人在委員會席前提供的證據和委員會的任何裁斷或結論，不得在由該人提出或針對該人提出的任何民事或刑事法律程序中，被接納為針對該人或他人的證據，但如該人被控以《刑事罪行條例》(第 200 章)第 V 部(宣誓

下作假證供)所訂的任何罪行，或根據《條例草案》第 9 或 10 條被檢控，則屬例外。

向委員會的審查員出示文件及提供證據

- 一、 公共機構或其他團體的所有高級人員及代理人，均有責任向根據《條例草案》第 5(1)(n)條獲委查閱該機構或團體的簿冊及文件的審查員，出示所有在他們保管或權力管轄下的該機構或團體或任何其他團體事務的簿冊及文件，或與該機構或團體或任何其他團體事務有關的簿冊及文件。
- 二、 《條例草案》第 9 條中，凡提述公共機構或其他團體的高級人員或代理人之處，須包括過去及現在的高級人員或代理人。當中，代理人 (agents) 包括該機構或團體的銀行及律師，以及任何獲該機構或團體委聘為核數師的人，不論該人是否該機構或團體的高級人員。

就藐視調查委員會的行為訂立罪行

- 一、 任何人——
 - (a) 無合理辯解而沒有在根據《條例草案》第 5 條發出的傳票所指明的時間及地點出席；
 - (b) 拒絕應根據《條例草案》第 5 條提出的要求而作出宗教式或非宗教式宣誓；
 - (c) 拒絕回答由委員會提出或經委員會同意而提出的任何問題，或拒絕應根據《條例草案》第 5 條提出的要求，出示其管有或控制的任何物品或文件；
 - (d) 身為《條例草案》第 9 條所指的公共機構或其他團體的高級人員或代理人——
 - (i) 在有委員會委出後，意圖避免出示或阻止出示在有審查員根據《條例草案》第 5(1)(n)條獲委任時他或她會有責任向審查員出示的任何簿冊或文件，而將該等簿冊或文件銷毀、隱藏、污損或帶走；或
 - (ii) 無合法權限或合理辯解而拒絕向獲如此委任的審查員出示任何該等簿冊或文件；或

- (iii) 無合法權限或合理辯解而拒絕回答獲如此委任的審查員就該機構或團體或任何其他團體的事務而提出的問題，而該等其他團體須為審查員獲委查閱其簿冊及文件的團體；
- (e) 故意中斷委員會的調查程序的進行，或在委員會的任何聆訊中有其他不當行為；
- (f) 經被傳召出席而在未經委員會允許下離開委員會正進行研訊的地方，

即屬犯罪，一經循簡易程序定罪，可處罰款\$1,000 及監禁 3 個月。

二、 任何人 ——

- (a) 故意妨礙或阻嚇任何人出席、作證或出示任何物品或文件；
- (b) 因某人曾到委員會席前而對他或她加以威脅或侮辱，或導致他或她蒙受任何損失；
- (c) 因任何委員執行其作為委員的職責而在任何時間對他或她加以威脅或侮辱，或導致他或她蒙受損失；
- (d) 故意中斷委員會的調查程序的進行，或在委員會的任何聆訊中有其他不當行為；
- (e) 經被傳召出席而在未經委員會允許下離開委員會正進行研訊的地方；
- (f) 發表或以其他方式披露委員會禁止其發表或披露的資料；
- (g) 發表或以其他方式披露委員會在非公開研訊中收取的資料，

即屬犯罪，一經循公訴程序定罪，可處罰款\$10,000 及監禁 1 年。

- 三、 在根據《條例草案》第(2)(e)款提出的檢控中，如被控人能提出證明，令法院信納他或她不知道所發表或披露的資料是委員會在非公開研訊中收取的，而他或她亦無任何理由知道該事實，即為好的免責辯護。

由委員會處理的藐視罪

- 一、 委員會可將在其席前所犯的《條例草案》第 10 條所指明的任何罪行作為藐視罪而循簡易程序處理，並可施加該條訂明的刑罰。

- 二、 對於並非在委員會席前所犯的藐視罪，可傳召犯罪者於傳票上指明的時間及地點到委員會席前，當場提出其不應因該藐視罪而被判處刑罰的因由，委員會亦可施加《條例草案》第 10 條訂明的刑罰。
- 三、 委員會可發出逮捕令，以強迫任何不遵從根據《條例草案》第 10 條第(2)款發出的傳票的人出席。
- 四、 如委員會認為該藐視罪已予抵償，可減免監禁刑罰。
- 五、 任何人因委員會在行使《條例草案》第 10 條第(1)或(2)款所授予的權力時所作的任何決定、命令或判處而感到受屈，可按照終審法院首席法官訂立的規則，向原訟法庭法官提出上訴。

委員會具有法官的權力

為強制執行任何已施加的罰款的繳付，或為使任何逮捕令或監禁刑罰得以執行，或為其他類似目的，委員會具有法官的權力。在行使該等權力時及為發出手令、傳召任何人及行使其他類似權力，主席可以以委員會名義作出一切必要的作為。

調查研訊屬司法程序

- 一、 調查研訊須當作為司法程序。
- 二、 任何行為，假若對原訟法庭或法官作出會構成藐視原訟法庭罪或藐視法官罪，即屬藐視委員會罪，可由原訟法庭法官作為藐視原訟法庭罪處理及施加懲罰。

對委員會及證人的保障

- 一、 委員無須因其以委員身分真誠作出的任何作為或任何事情，而在任何訟案或其他法律程序中負上法律責任；除《條例草案》第 14(1)條外，不得當作限制原訟法庭就在委員會席前進行的調查程序而作出履行義務令、移審令或禁止令的權力。
- 二、 在委員會席前提供的所有證據均享有絕對特權，提供該等證據的證人無須因該等證據而在任何訟案或其他民事法律程序中負上法律責任。

三、 到委員會席前的律政人員、大律師或律師，不論是根據或憑藉《條例草案》第 7 條以委員會的代表律師身分或以其他身分出席，其所享有的豁免權。

警方及執達主任須協助委員會

在進行調查研訊時，警務人員及法院執達主任須協助委員會。

調查研訊費用

調查研訊的費用，包括根據《條例草案》第 5(1)(h)條判給的款項，須由香港政府一般收入支付。

對發表真實記載的人的保障

除《條例草案》第 10(2)(d)條另有規定外，任何人均無須因其就在委員會席前公開錄取的任何證據，或就由行政長官授權發表的委員會報告，所發表真實記載而負上民事或刑事法律責任。

梁繼昌立法會議員辦事處

2020 年 6 月

《公共調查(2019年公共秩序)條例草案》

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本條例草案

旨在

設立就有關 2019 年 6、7、8、9 及 10 月在香港發生的公共秩序事件，導致或有關於 2019 年 7 月 1 日襲擊立法會大樓事件及其後的事宜，以及相關目的的調查委員會。

由立法會制定。

1. 簡稱

本條例可引稱為《公共調查(2019年公共秩序)條例》。

2. 釋義

在本條例中 ——

委員會 (Commission)指根據第 3 條成立的委員會；

調查 (Inquiry)指委員會為調查及查明第 3(1)(a)及(b)條所述的事宜而作出的調查。

3. 調查委員會的委任

(1) 行政長官會同行政會議須於本條例生效之日期，委任一個由 5 名委員組成的委員會以調查及查明以下(a)及(b)段所述的事宜，以及就以下(c)至(f)段所述的事宜提出建議 ——

(a) 調查及查明導致公眾反對《2019 年逃犯及刑事事宜相互法律協助法例(修訂)條例草案》(條例草案)的事實，包括但不限於行政會議就該條例草案的處理，從向立法會提出該條例草案到行政長官於 2019 年 6 月 15 日宣布停止有關該條例草案的工作；

(b) 調查及查明有關於 2019 年 6、7、8、9 及 10 月期間及前後在公眾秩序事件及其他形式的示威或集會中

示威者、香港警察、記者及公眾人士之間發生的衝突的事實，包括但不限於確認任何人(無論是在香港或其他地方)是否試圖挑起衝突、針對衝突採用過度的武力或為以其他方式促進或鼓勵衝突負責；

(c) 建議行政會議在考慮或提出相當可能被視為有爭論的法例時應當採用的協商措施及其他步驟；

(d) 建議應採取的適當措施以維持公共秩序及在和平情況或其他情況下對大量人數時採取的警務工作；

(e) 建議有利於在社會獲取共識及實現和解的措施；

(f) 提出委員會按其全權酌情決定權認為合適的其他建議。

(2) 行政長官會同行政會議須 ——

(a) 委任其中一名委員為委員會的主席；

(b) 要求所有委員出席委員會的會議；

(c) 委任委員會秘書、助理秘書及其他職員；

(d) 委任一名或以上的資深大律師和大律師為委員會的法律顧問；

(e) 委任額外的委員或人士，以替代去世、辭職、拒絕行事或無能力行事的委員。

(3) 凡有新委員根據第(2)款獲委任，於該項委任前已在委員會席前錄取的證據，無須再次錄取。

(4) 委員會的委任，須在憲報公布。

4. 對委員會的指示

行政長官會同行政會議須 ——

(a) 指令委員會於本條例生效日期後一個月內進行調查研訊，在不遲於本條例生效日期的 6 個月後向行政長官會同行政會議提交有關委員會的工作的中期報告，並在不遲於本條例的生效日期後的 7 個月內表示

其將在不遲於本條例生效日期的 12 個月內向行政長官會同行政會議提交委員會的最終報告；

- (b) 根據委員會的要求，延展委員會完成其任何部分工作的期限；
- (c) 在不損害委員會收取及考慮其認為適當的其他證據的權力的原則下，指令委員會應收取及考慮何等資料；
- (d) 指令委員會不針對廉政公署所調查的任何事宜進行調查研訊或以其他方式關注；
- (e) 指令某些人士或某些類別人士的證據以口頭或書面方式錄取，以及某些文件或某些類別文件由委員會查閱；
- (f) 在不損害第 5(1)(i)條授予委員會的權力的原則下，指令調查研訊或部分調查研訊以非公開形式進行；
- (g) 指令委員在接受委任之前以附表所列表格的格式作出宗教式或非宗教式宣誓；
- (h) 指令委員會行使第 11 條授予的權力，可以就第 10 條指明的所有或任何一項藐視罪施加懲罰。

5. 委員會的權力

- (1) 為遵從根據第 4 條發出的指示及為在一般情況下進行調查研訊，委員會可 ——
 - (a) 收取及考慮以口頭證據、書面陳述、文件或其他方式提供的任何資料，即使該等資料不會在民事或刑事法律程序中被接納為證據；
 - (b) 決定收取該等資料的方式，以及何人或何等類別人士須獲允許或必須作證，以及任何呈交委員會的文件的內容(除文件性質屬粗鄙或令人反感者外)，委員會須予以考慮，即使呈交該文件的人除呈交文件外亦獲允許或必須作證；

- (c) 要求任何意欲在委員會席前作證的人呈交有關擬提供的證據的書面摘要；
- (d) 以附表所列表格的格式傳召任何人出席作證或出示任何物品或文件；
- (e) 發出逮捕令，以強迫任何不遵從根據(d)段發出的傳票的人出席；
- (f) 監誓；
- (g) 對到委員會席前的任何人，進行經宗教式或非宗教式宣誓後或不經宣誓的訊問並要求該人回答由委員會提出或經委員會同意而提出的所有問題，和要求該人出示其管有或控制的任何物品或文件；
- (h) 判給任何到委員會席前的人一筆款項，該款項為委員會認為代表該人因到委員會席前所花時間而蒙受的損失；
- (i) 以非公開形式進行全部或部分調查研訊，或拒絕任何人(包括任何受牽連或牽涉在內的人及其法律代表)出席全部或部分調查研訊；除憑藉第 7 條的條文有權出席的任何法律代表外 ——
 - (i) 只可被拒出席調查研訊以非公開形式進行的部分；
 - (ii) 在任何情況下，不得在其當事人作證時被拒出席；
- (j) 禁止任何到委員會席前的人發表或披露委員會所收取的全部或部分資料；
- (k) 進入及視察任何處所；
- (l) 發出手令以搜查處所，並在其內檢取手令所指明的任何物品或文件或任何類別的物品或文件(就調查研訊而言，該等物品或文件相當可能具有可作為證據的價值)；

- (m) 決定進行調查研訊時須依循的程序，及委員會作出或發出的任何傳票、手令或其他文件的格式；
 - (n) 在委員會需要收取的證據關於屬法團或非屬法團的政府部門、公共機構或任何其他團體或個人的行為或管理時，委員會可按財政司司長批准的薪酬條款，委任一名或多於一名的審查員——
 - (i) 查閱該機構或團體的所有簿冊及文件或與該機構或團體事務有關的所有簿冊及文件；及
 - (ii) 如委員會信納該機構或團體與或曾與任何其他屬法團或非屬法團的公共機構或團體有聯繫，而該聯繫與委員會調查標的有關連或可能有關連，則查閱該另一機構或團體的所有簿冊及文件，並以委員會指示的方式及在委員會指示的期間或延展期間內，就簿冊及文件向委員會作出報告；及
 - (o) 行使為調查研訊目的所需的其他權力。
- (2) 在不損害第(1)(n)款授予委員會的權力的原則下，一名或多於一名的委員，可查閱第(1)(n)款所提述的簿冊及文件；就本條例而言，如此進行查閱的該委員或該等委員，須當作為已根據第(1)(n)款妥為委任的審查員。

6. 調查研訊的進行

在不減損第 5(1)(m)條授予的權力的概括性的原則下，委員會可——

- (a) 就任何人以口頭作證時須採用的方式作出命令，並可指明該人無須經接受訊問即可用接受盤問方式作證；及
- (b) 決定何人可向委員會陳詞、就何事陳詞及各人陳詞的次序。

7. 由他人代表的權利

- (1) 任何人如其行為是調查標的，或受牽連或牽涉在調查標的內，則除第 5 條另有規定外，該人有權在調查研訊中由大律師或律師代表。
- (2) 就第(1)款而言，委員會須決定某人的行為是否調查標的，或某人是否在任何方面受牽連或牽涉在調查標的內。
- (3) 儘管有第(1)及(2)款的規定，但除第 5 條另有規定外，行政長官、任何政府部門及任何公職人員均有權在調查研訊中由律政人員或由大律師或律師代表，該律政人員、大律師或律師並可——
 - (a) 就政務司司長或律政司司長對其有所指示的任何事宜，向委員會陳詞；及
 - (b) 就任何事宜，以委員會允許的形式出示證據。
- (4) 委員會可委任律政司司長所提名的律政人員或委任一名大律師或律師作為委員會的代表律師。

8. 在民事及刑事法律程序中使用證據

任何人在委員會席前提供的證據和委員會的任何裁斷或結論，不得在由該人提出或針對該人提出的任何民事或刑事法律程序中，被接納為針對該人或他人的證據，但如該人被控以《刑事罪行條例》(第 200 章)第 V 部(宣誓下作假證供)所訂的任何罪行，或根據第 9 或 10 條被檢控，則屬例外。

9. 向委員會的審查員出示文件及提供證據

- (1) 公共機構或其他團體的所有高級人員及代理人，均有責任向根據第 5(1)(n)條獲委查閱該機構或團體的簿冊及文件的審查員，出示所有在他們保管或權力管轄下的該機構或團體或任何其他團體事務的簿冊及文件，或與該機構或團體或任何其他團體事務有關的簿冊及文件，而該等其他團體須為審查員根據第 5(1)(n)條獲委查閱其簿冊及文件的團體；該等人員及代理人並有責任在其他方面向審查員提供其能合理提供的一切協助。

- (2) 在本條中，凡提述公共機構或其他團體的高級人員或代理人之處，須包括過去及現在的高級人員或代理人(視屬何情況而定)，而為本條的施行，*代理人* (agents)包括該機構或團體的銀行及律師，以及任何獲該機構或團體委聘為核數師的人，不論該人是否該機構或團體的高級人員。

10. 藐視屬罪行

- (1) 任何人 ——
- 無合理辯解而沒有在根據第 5 條發出的傳票所指明的時間及地點出席；
 - 拒絕應根據第 5 條提出的要求而作出宗教式或非宗教式宣誓；
 - 拒絕回答由委員會提出或經委員會同意而提出的任何問題，或拒絕應根據第 5 條提出的要求，出示其管有或控制的任何物品或文件；
 - 身為第 9 條所指的公共機構或其他團體的高級人員或代理人 ——
 - 在有委員會委出後，意圖避免出示或阻止出示在有審查員根據第 5(1)(n)條獲委任時他或她會有責任向審查員出示的任何簿冊或文件，而將該等簿冊或文件銷毀、隱藏、污損或帶走；或
 - 無合法權限或合理辯解而拒絕向獲如此委任的審查員出示任何該等簿冊或文件；或
 - 無合法權限或合理辯解而拒絕回答獲如此委任的審查員就該機構或團體或任何其他團體的事務而提出的問題，而該等其他團體須為審查員獲委查閱其簿冊及文件的團體；
 - 故意中斷委員會的調查程序的進行，或在委員會的任何聆訊中有其他不當行為；
 - 經被傳召出席而在未經委員會允許下離開委員會正進行研訊的地方，

即屬犯罪，一經循簡易程序定罪，可處罰款\$1,000 及監禁 3 個月。

- (2) 任何人 ——
- 故意妨礙或阻嚇任何人出席、作證或出示任何物品或文件；
 - 因某人曾到委員會席前而對他或她加以威脅或侮辱，或導致他或她蒙受任何損失；
 - 因任何委員執行其作為委員的職責而在任何時間對他或她加以威脅或侮辱，或導致他或她蒙受損失；
 - 故意中斷委員會的調查程序的進行，或在委員會的任何聆訊中有其他不當行為；
 - 經被傳召出席而在未經委員會允許下離開委員會正進行研訊的地方；
 - 發表或以其他方式披露委員會禁止其發表或披露的資料；
 - 發表或以其他方式披露委員會在非公開研訊中收取的資料，

即屬犯罪，一經循公訴程序定罪，可處罰款\$10,000 及監禁 1 年。

- (3) 在根據第(2)(e)款提出的檢控中，如被控人能提出證明，令法院信納他或她不知道所發表或披露的資料是委員會在非公開研訊中收取的，而他或她亦無任何理由知道該事實，即為好的免責辯護。

11. 由委員會處理的藐視罪

- 委員會可將在其席前所犯的第 10 條所指明的任何罪行作為藐視罪而循簡易程序處理，並可施加該條訂明的刑罰。
- 對於並非在委員會席前所犯的藐視罪，可傳召犯罪者於傳票上指明的時間及地點到委員會席前，當場提出其不應因

該藐視罪而被判處刑罰的因由，委員會亦可施加第 10 條訂明的刑罰。

- (3) 委員會可發出逮捕令，以強迫任何不遵從根據第(2)款發出的傳票的人出席。
- (4) 凡委員會認為該藐視罪已予抵償，可減免根據本條所處的監禁刑罰。
- (5) 任何人因委員會在行使第(1)或(2)款所授予的權力時所作的任何決定、命令或判處而感到受屈，可按照終審法院首席法官訂立的規則，向原訟法庭法官提出上訴，猶如該決定、命令或判處是根據《裁判官條例》(第 227 章)第 113 條可提出上訴的裁判官命令一樣。

12. 委員會具有法官的權力

為強制執行任何已施加的罰款的繳付，或為使任何逮捕令或監禁刑罰得以執行，或為其他類似目的，委員會具有法官的權力。在行使該等權力時及為發出手令、傳召任何人及行使其他類似權力，主席可以委員會名義作出一切必要的作為。

13. 調查研訊屬司法程序

- (1) 根據本條例進行的調查研訊，須當作為司法程序。
- (2) 任何行為，假若對原訟法庭或法官作出會構成藐視原訟法庭罪或藐視法官罪(視屬何情況而定)，即屬藐視委員會罪，可由原訟法庭法官作為藐視原訟法庭罪處理及施加懲罰。

14. 對委員會及證人的保障

- (1) 委員無須因其以委員身分真誠作出的任何作為或任何事情，而在任何訟案或其他法律程序中負上法律責任；除本款外，不得當作限制原訟法庭就在委員會席前進行的調查程序而作出履行義務令、移審令或禁止令的權力。

- (2) 在委員會席前提供的所有證據均享有絕對特權，提供該等證據的證人，無須因該等證據而在任何訟案或其他民事法律程序中負上法律責任。
- (3) 到委員會席前的律政人員、大律師或律師，不論是根據或憑藉第 7 條以委員會的代表律師身分或以其他身分出席，其所享有的豁免權，均猶如其在原訟法庭席前進行的法律程序中代表其中一方出庭一樣。

15. 警方及執達主任須協助委員會

任何委員會根據本條例進行調查研訊時，警務人員及法院執達主任須在該委員會所要求的各方面協助委員會，並可為提供該等協助而作出一切需要的事情。

16. 調查研訊費用

根據本條例進行調查研訊的費用，包括根據第 5(1)(h)條判給的款項，須由香港政府一般收入支付。

17. 對發表真實記載的人的保障

除第 10(2)(d)條另有規定外，任何人均無須因其就在委員會席前公開錄取的任何證據，或就由行政長官授權發表的委員會報告，發表真實記載，而在任何民事或刑事法律程序中負上法律責任。

附表

[第4及5條]

表格1

委員作出的宗教式或非宗教式宣誓的格式

本人.....，謹對全能上帝(天主)宣誓(謹鄭重承諾及聲明)，本人將盡力調查委任本委員會的文書中所訂明的事宜，並盡本人所知及所判斷，忠實執行《公共調查(2019年公共秩序)條例》(2020年第 號)歸於本人的權力及信託。

表格2

傳召證人的傳票

致....A.B.[被傳召的人的姓名及其地址]。

現傳召你於.....年.....月.....日.....午.....時到[地點].....在按《公共調查(2019年公共秩序)條例》(2020年第 號)委任調查[述明調查標的].....的調查委員會席前，並就該項調查作證。你必須攜同[指明文件等].....出席。

由委員.....於 20.....年.....月.....日簽署發出。

簽署.....

摘要說明

本條例草案的目的，是就以下事宜設立調查委員會——

- (a) 有關 2019 年 6 至 10 月在香港發生的公共秩序事件；
- (b) 導致或有關於 2019 年 7 月 1 日襲擊立法會大樓事件及其後的事宜；及
- (c) 與上述事宜相關的目的。

2. 草案第 1 條列出簡稱。
3. 草案第 2 條提供本條例草案中使用的字句的定義。
4. 草案第 3 條就委任 5 名委員的委員會及委員會的調查範圍，訂定條文。該條進一步就委任協助委員會的職員和法律顧問、及額外或代替的委員，訂定條文。
5. 草案第 4 條載有對委員會的指示。
6. 草案第 5 條就委員會的權力訂定條文。
7. 草案第 6 條訂明委員會可以就任何人作證的方式作出指令，並就向委員會陳詞的相關事宜作決定。
8. 草案第 7 條就行為是調查目標的人士，或受牽連或牽涉在調查目標內的人士由他人代表的權力，訂定條文。該條進一步訂明委員會可委任一名律政人員、大律師或律師作為委員會的代表律師。
9. 草案第 8 條訂明在委員會席前提供的證據及委員會的任何裁斷或結論，不得在任何民事或刑事法律程序中被接納，在有限的情況下例外。
10. 草案第 9 條規定公共機構或其他團體的高級人員及代理人必須出示該機構或團體的所有簿冊及文件，並向委員會提供協助。
11. 草案第 10 條列出藐視委員會的相關罪名。
12. 草案第 11 條訂明委員會可處理第 10 條所指明的藐視罪。

13. 草案第 12 條訂明為強制執行任何已施加的罰款的繳付，或為使任何逮捕令或監禁刑罰得以執行，或為其他類似目的，委員會具有法官的權力。
14. 草案第 13 條規定調查研訊須當作為司法程序。該條進一步規定，任何行為，假若對原訟法庭或法官作出會構成藐視原訟法庭罪或藐視法官罪，即屬藐視委員會罪。
15. 草案第 14 條就對委員會的委員、在委員會席前提供的證據，到委員會席前的證人和律政人員、大律師及律師所有的保障，訂定條文。
16. 草案第 15 條指明警務人員及法院執達主任須協助委員會。
17. 草案第 16 條規定調查研訊的費用由香港政府一般收入支付。
18. 草案第 17 條規定任何人均無須因其就在委員會席前公開錄取的任何證據，或就委員會的任何報告，發表真實記載，而負上法律責任，除非委員會禁止該證據的發布或披露或該證據是委員會以非公開方式錄取。
19. 附表列出委員作出的宗教式或非宗教式宣誓和傳召證人的傳票的格式。

Public Inquiry (2019 Public Order) Bill

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A BILL

To

Establish a commission of inquiry concerning the public order events in Hong Kong of June, July, August, September and October 2019, events leading up to, concerning and following the assault on the Legislative Council Complex on 1 July 2019, and for purposes connected with those events.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Public Inquiry (2019 Public Order) Ordinance.

2. Interpretation

In this Ordinance—

Commission (委員會) means the commission established under section 3;

Inquiry (調查) means the inquiry conducted by the Commission for the purposes of inquiring into and ascertaining the facts and matters at section 3(1)(a) and (b).

3. Appointment of Commission

- (1) The Chief Executive in Council must on the commencement of this Ordinance appoint a commission consisting of 5 Commissioners for the purposes of inquiring into and ascertaining the facts and matters at paragraphs (a) and (b) of this subsection and making recommendations in respect of the matters at paragraphs (c) to (f) of this subsection—

- (a) inquiring into and ascertaining the facts leading to public opposition to the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 (*Bill*), including but not limited to the Executive Council's handling of the Bill from presentation to the Legislative Council to the announcement of the Chief Executive's decision of 15 June 2019 to halt work in relation to the Bill;
- (b) inquiring into and ascertaining the facts concerning clashes among protesters, the Hong Kong Police, journalists and the public generally during and around public order events and other forms of demonstration or gathering in the months of June, July, August, September and October 2019, including but not limited to establishing whether any person (whether in Hong Kong or elsewhere) sought to provoke clashes, applied excessive force in relation to clashes or was otherwise responsible for the promotion or encouragement of clashes;
- (c) recommending consultative measures and other steps to be taken by the Executive Council when contemplating and presenting legislation reasonably likely to be regarded as controversial;
- (d) recommending appropriate measures to be adopted for the purposes of ensuring public order and in the policing of large numbers of persons in peaceful situations and otherwise;
- (e) recommending measures conducive towards securing consensus and reconciliation in society generally;
- (f) making such other recommendations as the Commission in its sole discretion thinks fit.
- (2) The Chief Executive in Council must—

- (a) appoint one of the Commissioners to be chairperson of the Commission;
 - (b) require all Commissioners to be present at meetings of the Commission;
 - (c) appoint a secretary to the Commission, assistant secretaries and other staff;
 - (d) appoint one or more senior counsel and junior counsel as legal adviser to the Commission;
 - (e) appoint additional Commissioners or persons in substitution for Commissioners who may die, resign, refuse to act, or become incapable of acting.
- (3) Where a new Commissioner has been appointed under subsection (2), it is not necessary for any evidence which may have been taken before the Commission prior to such appointment to be retaken.
- (4) The appointment of the Commission must be published in the Gazette.

4. Directions to Commission

The Chief Executive in Council must—

- (a) direct the Commission to commence the Inquiry no later than one month after the commencement of this Ordinance, present an interim report to the Chief Executive in Council in relation to its work no later than 6 months after the commencement of this Ordinance and indicate no later than 7 months after the commencement of this Ordinance that it must present a final report to the Chief Executive in Council no later than twelve months after the commencement of this Ordinance;

- (b) on the Commission so requesting, extend the date by which any part of the Commission's work is to be completed;
- (c) without prejudice to the powers of the Commission to receive and consider such other evidence as it may think fit, direct what material should be received and considered by the Commission;
- (d) direct that the Commission must not inquire into or otherwise be concerned with any matters under investigation by the Independent Commission Against Corruption;
- (e) direct that the evidence of certain persons or classes of persons be taken, either orally or in writing, and that certain documents or classes of documents be inspected by the Commission;
- (f) direct that without prejudice to the powers conferred on the Commission by section 5(1)(i), that the holding of the Inquiry or parts of the Inquiry be in camera;
- (g) direct that the Commissioners take the oath or affirmation in the form set out in the Schedule prior to taking up their appointment; and
- (h) direct that the Commission must have and may exercise the power conferred by section 11 to punish all or any of the contempts specified in section 10.

5. Powers of Commission

- (1) The Commission may, for the purpose of complying with directions issued under section 4 and for conducting its work generally—
- (a) receive and consider any material whether by way of oral evidence, written statements, documents or otherwise,

- despite that such material would not be admissible as evidence in civil or criminal proceedings;
- (b) determine the manner in which such material is to be received and what persons or classes of persons are to be permitted or required to give evidence and the contents of any document submitted to the Commission (not being any document of a scurrilous or offensive nature) must be considered by the Commission, despite the fact that the person submitting such document is, in addition, permitted or required to give evidence;
 - (c) require any person who wishes to give evidence before the Commission to submit a summary in writing of the evidence proposed to be given;
 - (d) summon any person in the form set out in the Schedule to attend to give evidence or to produce any article or document;
 - (e) issue warrants of arrest to compel the attendance of any person not complying with a summons issued under paragraph (d);
 - (f) administer oaths and affirmations;
 - (g) examine on oath, affirmation or otherwise any person attending before the Commission and require such person to answer all questions put by or with the consent of the Commission and produce any article or document in his or her possession or under his or her control;
 - (h) award any person attending before the Commission such sum as in the opinion of the Commission represents the loss to that person occasioned by the time spent in such attendance;
 - (i) hold in camera, or exclude any person (including any person implicated or concerned in it and his or her legal

- representatives) from, the whole or any part of the Inquiry except that any legal representative entitled to appear by virtue of the provisions of section 7—
- (i) may only be excluded from such part of the Inquiry as is held in camera;
 - (ii) must not in any event be so excluded while his or her client is giving evidence;
- (j) prohibit the publication to or disclosure by any person attending before the Commission of all or part of the material received by the Commission;
 - (k) enter and inspect any premises;
 - (l) issue warrants for the searching of premises and the seizure in the premises of any article or document or any class of articles or documents specified in the warrant (as being likely to be of evidential value for the purposes of the Inquiry);
 - (m) determine the procedure to be followed at the Inquiry and the form of any summons, warrant, or other document made or issued by the Commission;
 - (n) where the Commission requires to receive evidence concerning the conduct or management of any agency of Government, public body or any other body of persons, corporate or unincorporate, then the Commission may appoint, on such terms as to remuneration as the Financial Secretary may approve, one or more inspectors—
 - (i) to inspect all the books and documents of or relating to the affairs of such body; and
 - (ii) if the Commission is satisfied that such body has, or has had, an association with any other public body or body of persons, corporate or unincorporate, which is or may be relevant to the subject of the

Inquiry, to inspect all the books and documents of or relating to the affairs of such other body, and to make a report to the Commission in respect of the books and documents in such manner and within such period or further period as the Commission may direct; and

- (o) exercise such other powers as may be necessary for the purposes of the Inquiry.
- (2) Without prejudice to the powers conferred on a Commission by subsection (1)(n), any one or more Commissioners may inspect the books and documents referred to in subsection (1)(n), and in so doing he, she or they is or are, for the purposes of this Ordinance, deemed to have been duly appointed an inspector or inspectors, as the case may be, under subsection (1)(n).

6. **Conduct of Inquiry**

Without derogating from the generality of the power conferred under section 5(1)(m) the Commission may—

- (a) order the manner in which any person is to give his or her oral evidence and may specify that this must be by way of cross-examination without any examination-in-chief; and
- (b) determine who may address the Commission, on what matters and in what order.

7. **Right to representation**

- (1) Any person whose conduct is the subject of the Inquiry, or who is implicated or concerned in the subject matter of the Inquiry, is, subject to the provisions of section 5, entitled to be represented by a barrister or solicitor at the Inquiry.
- (2) For the purpose of subsection (1), the Commission alone must determine whether the conduct of any person is the subject of

the Inquiry or whether a person is in any way implicated or concerned in the subject matter of the Inquiry.

- (3) The Chief Executive, any Government department and any public officer must, despite the provisions of subsections (1) and (2) but subject to the provisions of section 5, be entitled to be represented at the Inquiry by a legal officer, or by a barrister or solicitor who may—
 - (a) address the Commission on any matter on which he or she is so instructed by the Chief Secretary for Administration or by the Secretary for Justice; and
 - (b) produce evidence in such form as the Commission may permit on any matter.
- (4) The Commission may appoint a legal officer nominated by the Secretary for Justice, a barrister or a solicitor to act as counsel for the Commission.

8. **Use of evidence received by, findings of, Commission**

Neither evidence given by any person before the Commission, nor any finding of or conclusion drawn by the Commission, is admissible against him or her or any other person in any civil or criminal proceedings by or against him or her or any other person, except where he or she is charged with any offence under Part V (Perjury) of the Crimes Ordinance (Cap. 200) or is proceeded against under section 9 or 10.

9. **Production of documents, and evidence, to Commission's inspectors**

- (1) It must be the duty of all officers and agents of a public body or other body of persons to produce to an inspector appointed under section 5(1)(n) to inspect its books and documents, all books and documents in their custody or power of or relating to such body's affairs or the affairs of any other body of persons

the books and documents of which the inspector is appointed under section 5(1)(n) to inspect, and otherwise to give to the inspector all assistance that they are reasonably able to give.

- (2) In this section, any reference to officers or to agents of a public body or other body of persons includes past, as well as present, officers or agents, as the case may be, and for the purposes of this section *agents* (代理人) includes the bankers and solicitors of such body and any person employed by such body as auditor, whether such person is or is not an officer of such body.

10. Contempts to be offences

- (1) Any person who—
- (a) fails without reasonable excuse to attend at the time and place specified in a summons issued under section 5;
 - (b) refuses to take an oath or make an affirmation on being required to do so under section 5;
 - (c) refuses to answer any question put by or with the consent of the Commission or to produce any article or document in his or her possession or under his or her control on being required to do so under section 5;
 - (d) being an officer or agent of a public body or other body of persons within the meaning of section 9—
 - (i) with intent to avoid or prevent production, destroys, suppresses, defaces or makes away with any book or document that it would be his or her duty to produce for the purposes of the Inquiry to an inspector in the event of an inspector being appointed under section 5(1)(n); or
 - (ii) refuses, without lawful authority or reasonable excuse, to produce any such book or document to an inspector so appointed; or

- (iii) refuses, without lawful authority or reasonable excuse, to answer any question put to him or her by an inspector so appointed with respect to the affairs of such body or any other body the books and documents of which the inspector has been appointed to inspect;
 - (e) wilfully interrupts the proceedings of the Commission or otherwise misbehaves during any hearing of the Commission;
 - (f) having been summoned to attend, leaves the place in which the Commission is being held without permission of the Commission,
- is guilty of an offence and liable on summary conviction to a fine of \$1,000 and to imprisonment for 3 months.
- (2) Any person who—
- (a) wilfully hinders or deters any person from attending, giving evidence or producing any article or document;
 - (b) threatens, insults or causes any loss to be suffered by any person who has attended before the Commission, on account of such attendance;
 - (c) threatens, insults or causes a loss to be suffered by any Commissioner at any time on account of the performance of his or her duties as a Commissioner;
 - (d) wilfully interrupts the proceedings of the Commission or otherwise misbehaves during any hearing of the Commission;
 - (e) having been summoned to attend, leaves the place in which a Commission is being held without the permission of the Commission;

- (f) publishes or otherwise discloses any material which the Commission had prohibited him or her from publishing or disclosing;
- (g) publishes or otherwise discloses any material received by the Commission in camera,

is guilty of an offence and liable on conviction on indictment to a fine of \$10,000 and to imprisonment for 1 year.

- (3) It is a good defence in the case of a prosecution under subsection (2)(e) for the person charged to prove to the satisfaction of the court that he or she did not know nor had any reason for knowing that the material published or disclosed had been received by the Commission in camera.

11. Contempts dealt with by Commission

- (1) The Commission may deal summarily as a contempt with any offence specified in section 10 which is committed in its presence, and may impose the sentence prescribed by that section.
- (2) In the case of contempts not committed in the presence of the Commission, it may summon the offender to appear before it at the time and place specified in the summons, there to show cause why the offender should not be sentenced for the contempt, and may impose the sentence prescribed by section 10.
- (3) The Commission may issue warrants of arrest to compel the attendance of any person not complying with a summons issued under subsection (2).
- (4) Any sentence of imprisonment imposed under this section may be remitted where the Commission is of the opinion that the contempt has been purged.

- (5) Any person aggrieved by any decision, order or sentence of the Commission in exercise of the powers conferred by subsection (1) or (2) may appeal to a judge of the Court of First Instance, in the same manner as if it were an order of a magistrate in respect of which an appeal lies under section 113 of the Magistrates Ordinance (Cap. 227), in accordance with rules made by the Chief Justice.

12. Commission to have powers of judge

For the purposes of enforcing the payment of any fine imposed or giving effect to any warrant of arrest or sentence of imprisonment or for other like purposes, the Commission must have the powers of a judge. In the exercise of such powers and for the purpose of issuing warrants, summoning persons and the exercise of other like powers the Chairperson may do all necessary acts in the name of the Commission.

13. Inquiry to be a judicial proceeding

- (1) The Inquiry conducted by the Commission pursuant to this Ordinance is deemed to be a judicial proceeding.
- (2) Any conduct which would constitute contempt of the Court of First Instance or of a judge, if it were committed towards the Court of First Instance or a judge as the case may be, is a contempt of a Commission and may be dealt with and punished by a judge of the Court of First Instance as a contempt of the Court of First Instance.

14. Protection of Commission and witnesses

- (1) No Commissioner is liable to any suit or other proceeding for any act or thing done by him or her in good faith as such Commissioner and nothing in this subsection is deemed to limit the power of the Court of First Instance to make an order of

mandamus, certiorari or prohibition in relation to proceedings before a Commission.

- (2) All evidence given before a Commission is absolutely privileged, and no witness giving such evidence is liable to any suit or other civil proceeding in respect such evidence.
- (3) A legal officer, barrister or solicitor appearing before a Commission, whether as counsel for the Commission or otherwise under or by virtue of section 7, is entitled to the same immunities as if he or she were appearing for a party in proceedings before the Court of First Instance.

15. Police and bailiffs to assist Commission

Police officers and bailiffs of the court must assist the Commission conducting the Inquiry for such purposes as the Commission may require and may do all such things as are necessary for the purpose of rendering such assistance.

16. Cost of Inquiry

The cost of the Inquiry and all incidental matters to it conducted under this Ordinance, including any sums awarded under section 5(1)(h), is a charge on the general revenue of Hong Kong.

17. Protection of person publishing true account

Subject to section 10(2)(d) no person is liable to any civil or criminal proceedings by reason of his or her publishing a true account of any evidence taken in public before the Commission or of any report of the Commission.

Schedule

[ss. 4 & 5]

Form 1

Form of oath or affirmation to be taken by a Commissioner

I, _____, swear by Almighty God (solemnly promise and declare) that I will diligently inquire into the matters prescribed in the instrument appointing this Commission and will truly and faithfully execute the powers and trusts vested in me by the Public Inquiry (2019 Public Order) Ordinance (of 2020) according to the best of my knowledge and judgment.

Form 2

Summons to a witness

To A.B. [name of person summoned and his or her address].

By this Summons, you are summoned to appear before the Commission constituted by the Public Inquiry (2019 Public Order) Ordinance (of 2020) at [place] on the day of at o'clock in the noon and to give evidence respecting such inquiry, and you are required to bring with you [specify documents, etc.]

Given under the hand of, Commissioner,
this day of 20

Signature

Explanatory Memorandum

The object of this Bill is to establish a commission of inquiry concerning—

- (a) public order events in Hong Kong between June and October 2019;
- (b) events leading up to, concerning and following the assault on the Legislative Council Complex on 1 July 2019; and
- (c) matters connected with the above.

- 2. Clause 1 sets out the short title.
- 3. Clause 2 provides definitions of terms used in this Bill.
- 4. Clause 3 provides for the appointment of a five-member Commission and the scope of the Commission’s work. This clause further provides for the appointment of staff and legal advisers to assist the Commission, and for the appointment of additional and substitute commissioners where necessary.
- 5. Clause 4 includes a list of directions to the Commission.
- 6. Clause 5 provides for the powers of the Commission.
- 7. Clause 6 provides that the Commission may order how any person is to give evidence and determine matters relating to the address of the Commission.
- 8. Clause 7 sets out the right to representation for persons whose conduct is the subject of the Inquiry, or who are implicated or concerned in the subject matter of the Inquiry. This clause also provides that the Commission may appoint a legal officer, barrister or a solicitor to act as counsel for the Commission.
- 9. Clause 8 provides that evidence given before the Commission and findings or conclusions drawn by the Commission is not to be

admissible in any civil or criminal proceedings except in limited circumstances.

10. Clause 9 requires the officers and agents of a public body or other body to produce all books and documents relating to such body and to provide assistance if required by the Commission.
11. Clause 10 contains a list of offences relating to contempt of the Commission.
12. Clause 11 provides that the Commission may deal with contempt offences in clause 10.
13. Clause 12 provides that the Commission has the powers of a judge for the purposes of enforcing the payment of any fine imposed or giving effect to any warrant of arrest or sentence of imprisonment or for other similar purposes.
14. Clause 13 provides that the Inquiry is deemed to be a judicial proceeding. The clause further provides that any conduct which would constitute contempt if committed towards the Court of First Instance or a judge is deemed to be contempt of the Commission.
15. Clause 14 contains various protections for Commissioners, evidence given before the Commission, witnesses and legal officers, barristers or solicitors appearing before the Commission.
16. Clause 15 requires police officers and bailiffs to assist the Commission.
17. Clause 16 provides that the cost of the Inquiry is to be a charge on the general revenue of Hong Kong.
18. Clause 17 provides that persons publishing a true account of any evidence taken in public before the Commission or of any report of the Commission are not deemed liable, except where such evidence was prohibited by the Commission to be published or disclosed or received by the Commission in private.

19. The Schedule sets out the form of oath or affirmation to be administered by a Commissioner and the form for a summons to a witness.

《公共調查(2019年公共秩序)條例草案》

根據《香港特別行政區立法會議事規則》
第 51(2)條簽發的證明書

本人認為《公共調查(2019年公共秩序)條例草案》符合議事規則第 50 條的規定及香港法例的一般格式。



署理法律草擬專員
葉鳳瓊

2020年2月12日

Public Inquiry (2019 Public Order) Bill

**Certificate under Rule 51(2) of the Rules of Procedure
of the Legislative Council of the Hong Kong
Special Administrative Region**

I am of the opinion that the Public Inquiry (2019 Public Order) Bill conforms to the requirements of Rule 50 and the general form of Hong Kong legislation.



(Ms Fanny Ip)
Acting Law Draftsman

12 February 2020