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30 April 2021

Clerk to Panel on Constitutional Affairs
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road,
Central, Hong Kong
(Attn: Ms Joanne MAK)

Dear Ms MAK,

Panel on Constitutional Affairs

The relevant policy bureaux/departments had provided oral responses to the key issues in the written submissions made by deputations/individuals for the Panel on Constitutional Affairs meeting on 15 March 2021 under agenda item (III) on “An outline of the topics for the Third Report of the Hong Kong Special Administrative Region under the Convention on the Rights of the Child”. The Panel has requested response in writing which
—— is now prepared at Annex, please.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Cathy LI'.

(Miss Cathy LI)

for Secretary for Constitutional and Mainland Affairs

Encl.

**Panel on Constitutional Affairs
Meeting on 15 March 2021**

III. An outline of the topics for the Third Report of the Hong Kong Special Administrative Region under the Convention on the Rights of the Child

Follow-up Action

After consulting the relevant bureaux and departments, the consolidated response to the key issues raised in the written submissions of deputations/individuals is as follows –

(1) Review of current anti-discrimination legislation

2. Some deputations remarked that the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 (“the Amendment Ordinance”) passed in June 2020 had strengthened the legal protection for children. In fact, the Amendment Ordinance provides protection from sexual, racial and disability harassment to volunteers and interns (including those under the age of 18) in a common workplace, and expressly prohibits discrimination against a woman on the ground of breastfeeding. To provide protection from harassment of breastfeeding women, the Hong Kong Special Administrative Region (“HKSAR”) Government introduced the Sex Discrimination (Amendment) Bill 2020 to the Legislative Council (“LegCo”) for the first and second reading at the Council meeting in December 2020. The Bill was passed by the LegCo on 17 March 2021. The relevant provisions outlawing discrimination and harassment of breastfeeding women will come into effect in June 2021. This would naturally be beneficial to breastfed children.

(2) Application of Race Discrimination Ordinance (Cap. 602) (“RDO”) to the Government and public authorities

3. There is concern from the deputations about the legal protection for ethnic minority children against racial discrimination committed by public authorities. In fact, under the HKSAR’s legal framework, the HKSAR Government and public authorities have always been prohibited from practising racial discrimination. The Hong Kong Bill of Rights Ordinance (Cap. 383) prohibits discrimination by the HKSAR Government and public authorities on the grounds of, amongst

others, race, colour, descent and national or ethnic origin. Furthermore, the RDO binds the Government and expressly renders it unlawful to discriminate against a person on the ground of race in the prescribed areas of, amongst others, employment, education, provision of goods, facilities and services, and disposal or management of premises. It is also unlawful to racially harass another person in the prescribed areas.

(3) Protection for personal data privacy

4. Some deputations expressed concern over doxxing activities that harm the privacy of children. The HKSAR Government understands that children may not be able to protect themselves and are therefore particularly vulnerable to the privacy risk and psychological harm brought about by doxxing activities.

5. The HKSAR Government will tackle the problem through law enforcement and introducing legislative amendment. On law enforcement, currently section 64 of the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”) provides that any person who discloses any personal data of a data subject obtained from a data user without the data user’s consent and the disclosure causes psychological harm to the data subject commits an offence and is liable on conviction to a maximum fine of \$1 million and imprisonment for five years. Since June 2019, the Office of the Privacy Commissioner for Personal Data (“PCPD”) has referred over 1 460 cases of suspected contravention of section 64 of the PDPO to the Police for criminal investigation and consideration of prosecution. In terms of legislative amendment, the HKSAR Government is studying with the PCPD on concrete legislative amendment proposal to combat doxxing activities. The Government aims to complete the drafting of the legislative amendment proposals related to doxxing and introduce the relevant bill into the LegCo for scrutiny within the current legislative year.

(4) Education policy

School curriculum

6. On curriculum, the Education Bureau (“EDB”) facilitates children’s whole-person development through a comprehensive and balanced curriculum. The updated Kindergarten Education Curriculum Guide (2017) states that “child-centredness” is the core value of the curriculum. According to the observation from the Quality Reviews conducted since the 2018/19 school year, most kindergartens have strengthened the element of free exploration in play and placed emphasis

on children's autonomy and free participation to provide quality play experience.

7. To foster students' information literacy, the EDB provides a framework on "Information Literacy for Hong Kong Students" for schools to nurture their students' ability and attitude to use information and communication technology effectively and ethically, including healthy use of the Internet. We also provide teachers with relevant professional development programmes and resource kits, and collaborate with different government departments and non-governmental organisations to organise related student activities. Moreover, we also organise seminars to help parents cultivate good habits of their children in using information technology in daily life and study, refraining from Internet addiction and avoiding indecent contents, etc. A telephone hotline has also been set up to provide individual support for parents, teachers and students in need.

8. To enhance students' awareness of self-protection, the learning elements related to sex education and safety awareness are included in the curricula of the Key Learning Areas/subjects and moral and civic education of primary and secondary schools. The content of personal growth education of primary schools also includes the topics of understanding the body, differentiating good and bad body touches, refusal skills and seeking help, etc. Through different learning activities, students are taught how to protect their bodies, refuse when they feel offended and seek help from others whenever necessary.

Support for students with special educational needs

9. Owing to the epidemic, face-to-face classes in schools have been suspended. In order to support students with special educational needs, we have been maintaining communication with schools all along. Schools are advised to review support measures and strategies and make adjustments, as appropriate, thereby devising and implementing support plans tailored to students' needs. To provide students with suitable learning materials and make adjustments to their assignments, schools also need to contact parents regularly and understand students' learning and emotional needs and changes. Simultaneously, Special Educational Needs Coordinators of schools have to work in collaboration with professionals such as school-based educational psychologists, school-based speech therapists and school social workers to render targeted support for individual students with special difficulties and their parents.

Non-Chinese speaking students

10. The EDB is committed to encouraging and supporting the early adaptation of the Non-Chinese speaking (“NCS”) students to the local education system and mastery of the Chinese language. Starting from the 2014/15 school year, the EDB has implemented the “Chinese Language Curriculum Second Language Learning Framework” (“Learning Framework”) in primary and secondary schools. The Learning Framework is not another Chinese Language curriculum. Designed on the basis of the mainstream Chinese Language curriculum, it provides steps and methods for learning and teaching, and assessment for teachers’ reference in teaching and making flexible adaptations according to the learning progress of NCS students. Teachers can develop school-based curriculum and teaching materials for NCS students with different starting points and abilities, so as to help them use a “small-step” learning approach to learn Chinese progressively. In tandem, the EDB has provided diversified support for schools admitting NCS students, including professional development programmes for teachers, learning and teaching resources, school-based professional support services, etc.

11. With the implementation of a series of enhanced measures to support NCS students starting from the 2014/15 school year, the number of schools admitting NCS students has gradually increased from about 590 in the 2013/14 school year to about 650 (excluding special schools) in the 2020/21 school year, which covers about 70% of the schools in the territory.

Teacher conduct

12. Regulation 58 of the Education Regulations (Cap. 279A) stipulates that “No teacher shall administer corporal punishment to a pupil”. The EDB has reminded schools from time to time to observe the requirements of the Regulations. Moreover, training for teachers has been conducted regularly to raise their awareness of child protection. As to our understanding, teachers fully understand the relevant requirements. In fact, no teacher has been charged with the offence of corporal punishment in the past five years (2016 to 2020).

(5) Healthcare services for children

13. The Government has been committed to providing major healthcare services for children from the perspective of public health, in

order to ensure the healthy development of every child and protect their well-being.

Child mental health

14. The Government recognises mental health as an important issue in the health agenda, and pays particular attention to the mental health problems of children and adolescents. The Food and Health Bureau (“FHB”) set up the Advisory Committee on Mental Health in 2017 to give advice to the Government on mental health related services and policies.

15. The Government has launched a number of programmes in recent years to enhance the child and adolescent (“C&A”) mental health services, including the launch of the “Student Mental Health Support Scheme” since the 2016/17 school year and the “Pilot Scheme on New Service Protocol for Child and Adolescent with Attention Deficit Hyperactivity Disorder with Comorbidity” in March 2021, which enable children and adolescents with mental health needs to receive timely and appropriate support services at schools or in the community.

16. To enhance the support for children and adolescents with mental health needs, the Hospital Authority (“HA”) has strengthened the multi-disciplinary teams in the past years, including psychiatric doctors, for C&A psychiatric specialist outpatient services in all five service clusters providing C&A psychiatric services. HA has also piloted the collaborative care model between paediatrics and C&A psychiatry departments, as well as strengthened the allied health support services to C&A psychiatric patients. In 2020-21, HA has been establishing the C&A psychiatric services in the Hong Kong East Cluster by phases.

Breastfeeding

17. The Government has been endeavoured to promote, safeguard and support breastfeeding. FHB has set up the Committee on Promotion of Breastfeeding in 2014 with a view to enhancing the sustainability of breastfeeding and promoting breastfeeding as a norm for baby care widely accepted by the general public.

18. The Department of Health (“DH”) has also been promoting breastfeeding through a multi-pronged approach, including encouraging the adoption of “Breastfeeding Friendly Workplace” policy; encouraging public places to become “Breastfeeding Friendly Premises”; and imposing

mandatory requirement for the provision of baby care rooms and lactation rooms in the sale conditions of government land sale sites for new commercial premises (including offices and restaurants etc.). According to statistics, the percentage of discharged babies who had been breastfed in the territory has significantly increased from 10% in 1981 to 87.5% in 2019.

Hong Kong Children's Hospital

19. On the other hand, the Hong Kong Children's Hospital ("HKCH") has commenced services by phases since December 2018 for complex, serious and uncommon paediatric cases requiring multidisciplinary management, providing diagnosis, treatment and rehabilitation services for patients with relevant clinical needs, from birth to 18 years of age territory-wide.

20. While providing medical services, HKCH adopts a children-centred and family-friendly design to create a home-like environment to relieve the fear and stress of child patients. There are various facilities to support the care, leisure, social and learning needs of patients and their families to enhance patient experience and treatment outcome.

Arrangement involving children under the COVID-19 epidemic

21. Hong Kong has comprehensive and robust measures to combat COVID-19, which include quarantine and isolation where necessary, and these measures are of paramount importance in safeguarding public health and the well-being of our community as a whole. Yet, for cases where children are involved, the Government would make each and every decision in the interests of the children and their families. For example, if a child under age 18 has to be quarantined in a quarantine centre ("QC"), DH would generally allow one of the parents to accompany their children to the QC to take care of them upon request. In such cases, the parent and the child would remain the same room until the quarantine period ends.

22. In addition, HA fully understands the special needs of children, and has been striking a balance between infection control measures and the needs of patients. If parents or family members of a paediatric COVID-19 patient are also diagnosed with COVID-19, public hospitals will consider placing the patients in the same Airborne Infection Isolation Room, subject to assessment of the patients' clinical condition. In cases where the parents test negative, public hospitals will also

accommodate their request to accompany the paediatric patient, subject to the agreement of the Centre for Health Protection (“CHP”) of DH and the availability of isolation capacities. The hospital will explain the risk of contracting the infection to the parents. Essential infection control precautions and personal protective equipment will be provided. Due to infection control consideration, the parents will be required to undergo an additional quarantine period under CHP after the paediatric patient is discharged. In the scenario where both parents are confirmed with COVID-19 and there is no other better arrangement for providing care for their children, public hospitals will, upon the agreement of CHP, provide suitable arrangement to facilitate proper parental care.

(6) Commission on Children

23. There are views that a statutory Commission on Children should be set up. The work of the Commission aims to ensure that the society can respect and safeguard children’s rights, interests and well-being, listen to their voices, and let them enjoy healthy and happy growth and optimal development so as to achieve their fullest potential. The Commission is chaired by the Chief Secretary for Administration, with wide participation of senior officials from various bureaux and heads of departments, as well as representatives from different sectors of the community. Various bureaux and departments have been dealing with investigations, complaints and enforcement of children-related cases in accordance with their established mechanisms or legislation. The Commission also deliberates on and co-ordinates children-related issues which straddle different policy areas. At present, this high-level committee, with inter-departmental and cross-sectoral collaboration, is effective. The Government is of the view that the Commission should follow the existing mechanism to perform its functions.

24. In addition, there are questions about the development of a central databank on children. The Commission on Children has commenced the Consultancy Study in the fourth quarter of 2019. The Study would provide analysis and recommendations on the feasibility, implementation framework and other related issues. Specific work in the future would draw reference from the findings and recommendations arising from the Study.

(7) The review of laws relating to child guardianship and custody by the Law Reform Commission

25. The Law Reform Commission (“LRC”) published the report on Child Custody and Access in March 2005. It recommended the introduction of a new “parental responsibility model” into Hong Kong’s family law. In this connection, the HKSAR Government has prepared the draft Children Proceedings (Parental Responsibility) Bill, and launched a public consultation exercise during the period between November 2015 and March 2016. The percentage of views in support of the implementation of the proposed legislation at that time was about the same as that opposing it (each accounted for more than 30%). Those who objected the proposed legislation considered that it could not solve conflicts between divorced parents, particularly those high-risk families with history of domestic violence, but may lead to more family problems, thus adversely affect the well-being of the child. The society’s consensus at that time was that the Government should enhance the support services for separated/divorced families. Therefore, we reported to the LegCo Panel on Welfare Services in March 2018 our decision of not to introduce the proposed legislation, but would strengthen measures to support separated/divorced families.

26. The HKSAR Government will continue to keep in view stakeholders’ receptiveness to the legislative proposal, especially whether we could address the worries of those who objected the proposal, and then consider the appropriate timing to embark on the legislation.

(8) Interest of the adopted child

27. A Matching Panel comprising representatives from the Social Welfare Department (“SWD”) and three accredited bodies is formed and to meet on regular basis to identify the most suitable adoptive parent(s) for a particular child or sibling group awaiting adoption. The well-being, rights and best interests of the child are of paramount importance in the matching process. Due regard is paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background. The conclusion and recommendations, including the factors that have been considered by the panel, are recorded to ensure fair and consistent adoption arrangements.

(9) Support for pre-school children with special needs

28. To provide early support for pre-school children with special needs, the Government has regularised the On-site Pre-school Rehabilitation Services from October 2018. The number of services places has been increased from 3 000 under the pilot scheme to 8 000 in the current school year, and is expected to further increase to 10 000 in the 2022/23 school year. The Government will keep in view the demand and supply of subvented pre-school rehabilitation services as well as the manpower supply of professionals concerned, with a view to achieving “zero-waiting time”.

(10) Protecting children and young persons from harm

29. The HKSAR Government has been very concerned about sexual offences involving children as victims, and has adopted an inter-departmental and multi-disciplinary approach in handling child abuses for the purpose of protecting the interests of the children. In 2020, there were 386 cases of sexual assaults involving children, representing a decrease of 8.5% from that of 2019. The Government will continue to monitor the situation of sexual offences involving children, as well as review the appropriateness and effectiveness of strategies preventing and combating such offences from time to time.

30. At present, the Prevention of Child Pornography Ordinance (Cap.579) criminalises the act of publishing or possessing child pornography. In 2020, 45 persons were arrested for contravening relevant offences including making or producing, publishing and possessing child pornography, and publishing or causing to be published any advertisement promoting child pornography etc.

31. In 2011, the HKSAR Government implemented the Sexual Conviction Record Check Scheme as an administrative scheme to enable employers of organisations or enterprises to check whether their prospective employees or contract renewal staff have any criminal conviction records against a specified list of sexual offences when engaging persons to undertake work relating to children or mentally incapacitated persons (“MIPs”). The purposes of the scheme are to reduce the risk of sexual abuse to children or MIPs and give them better protection.

32. The Review of Sexual Offences Sub-committee of the LRC published in November 2020 a consultation paper in relation to sentencing and related matters in the review of sexual offences. The consultation paper includes recommendations for the scheme. The Government will closely monitor LRC's final recommendations.

33. The Police have all along been striving to combat domestic violence. Through an inter-departmental and multi-disciplinary approach, the Police handle domestic violence cases with joint efforts, with a view to achieving the dual objectives of protecting the personal safety of the victims and their families as well as bringing the offenders to justice.

(11) Arrested children and young persons

34. In 2020, a total of 2 352 young persons aged under 18 were arrested, representing an increase of 3.7% when compared to that of 2019. In particular, 434 of them were arrested for offences against public order; 370 of them were arrested for wounding and serious assault; 278 of them were arrested for shop theft.

35. The Police have put in place clear guidelines on handling child or juvenile arrestees to ensure their rights and welfare. When arresting children or young persons, in accordance with the Police General Orders, the Police shall make all reasonable efforts to inform the parent or guardian of the child or young person concerned. Under reasonable and practicable circumstances, the Police will request an "appropriate adult" to accompany the child or young person at the police station before carrying out investigation on the child or young person. The Police strives to protect the dignity, privacy and rights of detained persons. The fundamental rights of children and juveniles under detention are the same as other detainees. The rights of a detainee are clearly stated in the Notice to Persons in Police Custody or Involved in Police Enquiries.

36. As stipulated under the Juvenile Offenders Ordinance (Cap. 226), the minimum age of criminal responsibility is 10 years old. For young persons aged under 14, the presumption of doli incapax continues to apply. The prosecution must prove beyond reasonable doubt that not only was there actus reus with mens rea, but also that the child knew that the particular act was not merely naughty or mischievous, but seriously wrong. The standard of proof in such cases is very high. Therefore, the common law presumption of doli incapax provides adequate protection for young persons under 14 years old. The HKSAR

Government does not have plan to further raise the minimum age of criminal responsibility for the time being.

(12) Young people and students who were arrested in social incidents

37. Some organisations expressed concerns in their submissions about the Police's handling of young people and students who were arrested in recent social incidents.

38. We often saw young people in scenes of conflict and the situation was worrying. Parents, schools and teachers have the responsibility to protect the personal safety and well-being of children and students, to remind them to stay away from scenes of violent clashes, and not to break the law and put their future at stake.

39. In the series of violent and illegal incidents since June 2019, about 4 000 students have been arrested so far, accounting for 40% of the total number of arrestees. For arrestees under the age of 18 who are not involved in serious offences, if they admit their wrongdoings, the Police are prepared to consider adopting measures conducive to their rehabilitation. So far, 19 persons were released after being issued with superintendent's cautions and around 130 students being bound over. The Police will also continue to facilitate the rehabilitation of juveniles to reduce recidivism through measures on various fronts, for example considering to refer them to the SWD, EDB and/or non-governmental organisations.

40. To cultivate right values and law-abiding awareness among young people, the Police established in March 2020 the Force Working Group on Community Engagement. The Working Group is chaired by the Deputy Commissioner of Police (Operations). Through strengthening liaison and communication with various sectors of the community (including principals, teachers and parents), the Police seek to create a safe environment for young people to grow and learn with the joint efforts of different sectors.

(13) Children with non-refoulement claims

41. According to the Immigration Ordinance (Cap. 115), non-Hong Kong residents who are illegal immigrants, overstayers or persons refused entry upon arrival in Hong Kong by the Immigration Department ("ImmD") should be removed from Hong Kong. The HKSAR Government maintains a firm policy of not granting asylum and not

determining or recognising refugee status of anyone.

42. The HKSAR Government implemented the Unified Screening Mechanism in March 2014 to screen claims by non-refoulement claimants resisting removal to another country on all applicable grounds. Claimants aggrieved by the decision of ImmD may appeal to the independent statutory Torture Claims Appeal Board. As at the end of 2020, there were 563 non-refoulement claims pending screening by ImmD, in which 42 persons were minors. In addition, 950 minors were pending appeal or relevant judicial review relating to their claims, or removal from Hong Kong.

43. Apart from providing publicly-funded legal assistance and simultaneous interpretation service to all claimants in need during the screening procedures so as to meet the high standards of fairness as required by the Court, the HKSAR Government, based on humanitarian grounds, has since 2006 been providing humanitarian assistance to claimants pending result of their claims, which covers accommodation, food, other basic necessities and transportation allowance, etc. For unaccompanied minors aged below 18 without parental guidance, the SWD has commissioned the International Social Service Hong Kong Branch to assist in arranging them to stay in a shelter with 24-hour supervision by caretaker in order to ensure their personal safety and to provide them with appropriate counselling. If arrangement of school placement for the minors concerned is needed, applications could be made to the EDB. EDB would arrange placement of the minors at suitable schools, having regard to the districts that they live in and their learning level.

(14) Combatting trafficking in children

44. The HKSAR Government has always attached great importance to combatting trafficking in persons (“TIP”), responding to this evolving international issue through targeted and multi-pronged measures in areas including victim identification, law enforcement, prosecution, victim protection, enhancement in staff training, and forming partnership with local and overseas stakeholders, etc. Between 2016 and 2020, nearly 30 000 initial TIP victim screenings were conducted by the law enforcement agencies and the Labour Department. Despite such proactive and intensified screening efforts, only 39 victims of TIP were identified (none of them were under the age of 18). The small number and percentage of victims identified reinforces our observation all along that TIP has never been a prevalent problem in Hong Kong.

(15) Detention arrangement for children/young persons

45. Apart from ensuring a secure, safe, humane, decent and healthy custodial environment, the Correctional Services Department (“CSD”) is committed to providing appropriate rehabilitation programmes for persons in custody to facilitate their reintegration into society after release. CSD protects the rights of persons in custody in accordance with relevant legislation and ensures equal treatment of all persons in custody, including the prohibition of corporal punishment or torture on persons in custody. Young persons in custody may express their views on any matters related to their treatment during detention through various channels within or outside CSD.

46. At present, persons in custody under the age of 21 can receive education and are encouraged to take part in both local and overseas accredited public examinations. To help persons in custody under the age of 21 reintegrate into society as law-abiding citizens, CSD also provides half-day vocational training programmes for them to acquire job skills, obtain recognised qualifications and develop good work habits.

(16) Training for legal professionals

47. There is concern from the deputations about the content and figures of training in relation to the promotion of children’s rights received by legal professionals who engage with child or child-related affairs.

48. The Prosecutions Division of the Department of Justice (“DoJ”) regularly organises criminal advocacy courses for prosecutors and during which prosecutors are acquainted with the Juvenile Offenders Ordinance, the Protection of Children and Juveniles Ordinance, relevant international standards, and the court procedures in relation to the juvenile justice system. In addition, five legal professionals within the DoJ participated in two seminars on child witnesses and the juvenile criminal justice system during the period from 2010 to 2020. Further, the DoJ provided sharing sessions introducing the juvenile criminal justice system to more than 5 000 students in 26 secondary schools during the period from 2010 to 2020.

~ END ~