

Legislative Council Panel on Constitutional Affairs

The Chief Executive's 2021 Policy Address

Policy initiatives of the 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, etc.

This paper briefs Members on the policy initiatives of the Constitutional and Mainland Affairs Bureau in relation to improving the electoral system and implementing the principle of “patriots administering Hong Kong”; promotion of the Constitution of the People’s Republic of China (the Constitution) and the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (the Basic Law); promotion of equal opportunities; and elimination of discrimination, etc. Some of the policy initiatives announced by the Chief Executive in her Policy Address on 6 October 2021 have already been implemented and this paper reports to Members on the implementation situation. A paper on policy initiatives relating to Mainland co-operation will be separately submitted to the Panel on Commerce and Industry for discussion.

2. In addition, at the meeting of the Legislative Council on 12 January 2022, the Chief Executive announced the proposal of re-organising the government structure for consideration by the next-term Government. This paper also briefs Members on the adjustment of the work portfolios of the Constitutional and Mainland Affairs Bureau under the proposed new government structure.

Our vision

3. Earlier, Hong Kong has encountered unprecedented political challenges. The Central Authorities have made two major moves, comprising the promulgation and implementation of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (the National Security Law) and improving the electoral system of the Hong Kong Special Administrative Region (HKSAR), to put the implementation of “One Country, Two Systems” in the HKSAR back on the right track. To ensure the robustness of “One Country, Two Systems”, the HKSAR must continually improve the governance system under “One Country, Two Systems”, resolve the problems at root and restore order from chaos. We need to uphold the HKSAR’s constitutional order as enshrined in the Constitution and the

Basic Law, as well as fully implement the new electoral system and the principle of “patriots administering Hong Kong”.

4. In respect of constitutional affairs, the HKSAR Government will strive to ensure that public elections under the improved electoral system will be conducted in a fair, open and honest manner. We will fully implement “patriots administering Hong Kong” in order to achieve good governance for the public good as well as long-term stability and safety. At the same time, we will strive to actively promote the Constitution and the Basic Law to members of the public, safeguard the fundamental rights protected by the Basic Law, as well as promote equal opportunities and eliminate discrimination.

5. The new initiatives we will pursue and on-going initiatives we will continue to implement in this year are highlighted as follows –

New initiatives

- (a) Work closely with the Electoral Affairs Commission (EAC) to ensure that the 2022 Chief Executive Election will be conducted in a fair, open and honest manner in accordance with the improved electoral system and relevant legislation;
- (b) Introduce amendments to the Regional Flag and Regional Emblem Ordinance for better alignment with the newly amended National Flag and National Emblem Ordinance as well as with the National Anthem Ordinance; and
- (c) Promote the Constitution and the Basic Law to various targeted groups, including the general public, students and civil servants, etc., through different channels, activities and approaches.

On-going initiatives

- (a) Strengthen the protection of personal data privacy, including combatting doxxing acts, and continue to study other concrete amendment proposals for the Personal Data (Privacy) Ordinance (Cap 486) (PDPO) together with the Office of the Privacy Commissioner for Personal Data (PCPD);

- (b) Take forward the implementation following passage of the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 and Sex Discrimination (Amendment) Ordinance 2021 in co-operation with the Equal Opportunities Commission (EOC), and continue to support the EOC in stepping up its sexual harassment prevention efforts;
- (c) Continue to maintain an overview on the overall implementation of the revised Administrative Guidelines on Promotion of Racial Equality in government bureaux and departments as well as related organisations;
- (d) 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 include following up on the strategies and measures recommended by the Advisory Group on Eliminating Discrimination against Sexual Minorities; and
- (e) Promote public awareness and understanding of children's rights through the Children's Rights Education Funding Scheme.

Detailed measures

Improving the electoral system

6. The National People's Congress (NPC) made the Decision on Improving the Electoral System of the HKSAR on 11 March 2021. On 30 March 2021, the Standing Committee of the National People's Congress (NPCSC) adopted the amended Annex I to the Basic Law on Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region and Annex II to the Basic Law on Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and its Voting Procedures. To implement the amended Annexes I and II to the Basic Law, the Improving Electoral System (Consolidated Amendments) Ordinance 2021 was passed by the Legislative Council (LegCo) and the HKSAR Government published the Ordinance in gazette on 31 May last year, which came into effect on the same day. Subsequently, the HKSAR Government has also completed the relevant voter registration exercise.

7. Through establishing a democratic system that reflects the actual situation of Hong Kong, corresponds to the requirements of implementing “One Country, Two Systems” and manifests Hong Kong’s characteristics, improving the electoral system of the HKSAR puts in place solid institutional safeguards to ensure full implementation of the principle of “patriots administering Hong Kong”. This is also conducive to enhancing the effective governance of the HKSAR, thereby achieving good governance for the public good and long-term stability and safety.

8. The first two elections after improving the electoral system, namely the 2021 Election Committee Subsector Ordinary Elections (ECSSOEs) and the 2021 Legislation Council General Election (LCGE), were held smoothly on 19 September and 19 December last year respectively. At the ECSSOEs, about 4 380 voters voted which returned 364 members of the Election Committee. The voter turnout was around 90%. At the LCGE, about 1.35 million electors cast their votes on the polling day to return 90 LegCo Members from 153 candidates of different background and different political spectrum.

9. The successful implementation of the two elections is of great significance to Hong Kong and all members of the public. The two elections expounded the characteristics of broad representation, fair competition, political inclusiveness and balanced participation, opening a new chapter of good governance. The elections also laid down a sound foundation for the 2022 Chief Executive Election to be held on 27 March this year.

10. Although the overall arrangements of the ECSSOEs in September last year conformed to the principles of openness, fairness, honesty and safety, and a number of new enhancement measures including the electronic poll register system and special queue arrangements were also launched smoothly, there were still rooms for improvement in the polling and counting arrangements. In this relation, the EAC published the Investigation Report on the Long Queues at the Polling Stations and the Prolonged Time Taken in Counting Votes in the 2021 ECSSOEs in late October last year to conclude the experience with a view to making improvements.

11. To ensure that the LCGE would be conducted smoothly, the Chief Executive instructed the EAC to make improvements on multiple fronts, and that the Constitutional and Mainland Affairs Bureau as the policy bureau overseeing electoral policies should fully co-operate with the EAC.

In this connection, the Constitutional and Mainland Affairs Bureau, the EAC as well as the Registration and Electoral Office (REO) reviewed various electoral arrangements and procedures, with a view to introducing highly efficient and humanised arrangements as well as providing electors and candidates with the greatest convenience, in addition to ensuring that the LCGE was fair and just. Specifically, the REO implemented the following major improvement measures in the LCGE –

- (a) To shorten the queuing time of electors, the REO set up 630 ordinary polling stations¹ and over 6 200 ballot paper issuing desks, representing a 10% and 122% increase as compared to the same number in the 2016 LegCo General Election respectively. The numbers are the highest amongst those of all the previous elections;
- (b) The REO arranged many training and practice sessions with simulated scenarios for electoral staff to get them familiarised with detailed workflow and arrangements so as to ensure that the election could be conducted smoothly;
- (c) To avoid undue delay of the counting procedures, the number of counting tables in the Central Counting Stations was substantially increased, and designated counting zones and counting tables were set up for each functional constituency for sorting and counting ballot papers of individual functional constituencies; and
- (d) Separating the process of opening ballot boxes and checking electoral documents so as to streamline the procedures and ensure that the counting process could be completed as soon as possible and election results could be announced as early as possible.

12. In addition, since the outbreak of the COVID-19 epidemic, cross-boundary people flow between the Mainland and Hong Kong has not yet resumed normal. At the same time, registered electors who are in the Mainland still hope to exercise their right to vote to perform their civic duty. In this regard, the HKSAR Government set up polling stations on the Hong Kong side of Hong Kong/ Shenzhen boundary control points

¹ In addition to the 630 ordinary polling stations, the REO set up polling stations at 3 boundary control points, 24 dedicated polling stations, 35 reserve polling stations, 18 emergency depots, 1 polling station for the Election Committee constituency, as well as 3 polling stations at Penny's Bay Quarantine Centre.

(BCP) to enable electors who were in the Mainland to return to Hong Kong to vote on the polling day of the LCGE. The HKSAR Government is very grateful to the relevant Mainland authorities for making the corresponding support measures, including temporarily opening Liantang, Luohu and Futian checkpoints, which respectively correspond to the Heung Yuen Wai, Lo Wu and Lok Ma Chau Spur Line BCPs, and exempting electors who returned to the Mainland immediately after voting from the centralised quarantine or medical surveillance requirement of the Mainland. To ensure that the arrangement would be implemented in an orderly manner, a prior registration system with a quota was put in place. A total of 22 130 successful registrations were received by the REO during the registration period, and 17 568 electors cast their votes at the BCP polling stations on the polling day eventually.

13. Overall speaking, the process of the poll during the LCGE on 19 December last year was conducted very smoothly. Various electoral arrangements expounded the principles of openness, fairness and honesty. Counting also commenced immediately after the close of poll. A total of 1 350 680 geographical constituency ballot papers, 70 490 functional constituency ballot papers and 1 426 Election Committee constituency ballot papers were counted. The Election Committee constituency was the first one to announce counting results, with the Returning Officer announcing the initial results at around 2am and the final results immediately after. The entire counting process completed smoothly at 9:56am on the following day (i.e. 20 December 2021) of the polling date and took around 11 hours, which is the earliest completion time in elections in recent years.

14. In accordance with the relevant statutory requirement, the EAC needs to submit a report to the Chief Executive within three months after the completion of the election. After the EAC has submitted the report, we shall report the details of the review of the LCGE to this Panel.

15. The Constitutional and Mainland Affairs Bureau will continue to follow up with the EAC and the REO to seriously take stock of the experience of the two elections and make enhancements and improvements, with a view to ensuring that the upcoming Chief Executive Election would continue to be conducted smoothly in a fair, open and honest manner, thereby fully implementing the principle of “patriots administering Hong Kong”. The Candidate Eligibility Review Committee published a notice in the gazette on 26 January this year to

declare the names of 57 Election Committee ex-officio members² who were determined to be validly registered. After receiving the written oaths from these members, the REO will correspondingly update the final register of members of the Election Committee. By then, the Election Committee would comprise a total of 1 463 members³, including 359 ex-officio members, 155 nominated members and 949 members returned by election. They will elect the new-term Chief Executive in the 2022 Chief Executive Election to be held on 27 March this year.

Oath-taking by public officers

16. Upholding the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swearing allegiance to the Hong Kong Special Administrative Region of the People's Republic of China are basic requirements for people administering Hong Kong and public officers as well as their fundamental obligation and responsibility. This is also an important foundation for ensuring the principle of "patriots administering Hong Kong".

17. To accurately implement the legislative intent of oath-taking requirements for public officers as stipulated in Article 104 of the Basic Law, the Interpretation of Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China adopted by the NPCSC in November 2016 and the National Security Law, and to fulfil the constitutional responsibility of the HKSAR, the Public Offices (Candidacy and Taking Up Offices) (Miscellaneous Amendments) Ordinance 2021 (the Ordinance) was passed by the LegCo and the HKSAR Government published the Ordinance in gazette on 21 May last year, which came into effect on the same day. At the same time, the Improving Electoral System (Consolidated Amendments) Ordinance 2021 which was gazetted and took effect on 31 May last year has provided for oath-taking requirements for members of the Election Committee. Arising from the requirement therein, members of the new term of the Election Committee need to submit a written oath to uphold the Basic Law and swear allegiance

² This number includes 51 LegCo Members (the Sixth LegCo Members who are re-elected would not need to register again if they are already registered Election Committee ex-officio members) and 6 persons who register to be ex-officio members of the Election Committee in relation to other specified offices.

³ As of end-January 2022, it is estimated that there would be 37 vacancies in the Election Committee, which is mainly caused by dual membership of certain members and each member is only allowed to take up one seat.

to the Hong Kong Special Administrative Region of the People's Republic of China before they could become a member of the Election Committee.

18. The Ordinance stipulates very clearly the legal requirements for oath-taking of public officers, marking an important step for safeguarding the principle of "patriots administering Hong Kong". At the same time, the Ordinance further improves the oath-taking arrangements as required by the Basic Law, and sets out the legal consequences a public officer has to face if he or she engages in conduct in breach of the oath after taking the oath and assuming the office. This is conducive to the full, accurate and faithful implementation of "One Country, Two Systems".

National Flag, National Emblem, National Anthem, Regional Flag, Regional Emblem

19. The national flag, national emblem and national anthem are the symbols and signs of our Country and must be protected by the law and respected by the people. The LegCo has completed scrutiny and passed the National Flag and National Emblem (Amendment) Ordinance 2021 on 29 September last year. The amended National Flag and National Emblem Ordinance came into effect on 8 October last year following gazettal on the same day, while the National Anthem Ordinance was already gazetted and took effect on 12 June 2020. The HKSAR has fulfilled the constitutional responsibility in respect of relevant ordinances.

20. The regional flag and regional emblem are the symbols and signs of the HKSAR. The HKSAR Government agrees with the views of the LegCo that suitable amendments should be made to the Regional Flag and Regional Emblem Ordinance for better alignment with the amended National Flag and National Emblem Ordinance as well as with the National Anthem Ordinance. The HKSAR Government plans to introduce an amendment bill on the Regional Flag and Regional Emblem Ordinance to the LegCo in this legislative year.

Promotion of the Constitution and the Basic Law

21. The Constitution and the Basic Law together form the constitutional basis of the HKSAR and provide the strongest safeguard for the long-term prosperity and stability of Hong Kong. To ensure that the "One Country, Two Systems" principle is fully and accurately implemented, we must strictly adhere to the Constitution and the Basic Law. To ensure the steadfast and successful implementation of "One Country, Two Systems", we have to continue to enhance publicity and

education on the Constitution and the Basic Law towards the public so as to let the general public have an accurate understanding of the Constitution, the Basic Law and “One Country, Two Systems”.

22. The Basic Law Promotion Steering Committee and its five working groups will continue to take forward publicity and education on the Constitution and the Basic Law through diversified approaches, including making full use of electronic media and online platforms (e.g. thematic webinars, and online workshops to be rolled out), continuing to organise physical mobile promotion activities at district and school levels, sponsoring non-governmental organisations or community organisations for staging various promotional activities on the Constitution and the Basic Law or conducting research on the promotion of the Basic Law, etc., with a view to promoting and strengthening the atmosphere of studying and learning the Constitution and the Basic Law in the community.

23. At the same time, the Secretary for Justice is planning to host a Basic Law conference and publish the Basic Law: Selected Drafting Materials and Significant Cases in April this year. On education at the school level, the Citizenship and Social Development subject has been introduced to replace the Liberal Studies subject starting from Secondary Four in the current school year, with “Hong Kong under ‘One Country, Two Systems’ ” as one of the three themes of the subject. To enable teachers of the Citizenship and Social Development subject to have a better understanding of the constitutional status, powers and functions of the Chief Executive under “One Country, Two Systems”, the Chief Executive has given a class to representatives of the education sector, sponsoring body of schools and teachers in November last year.

24. Furthermore, Radio Television Hong Kong would play an active role in promoting the Constitution and the Basic Law, so as to enhance public understanding of the implementation of “One Country, Two Systems” in Hong Kong as well as engender a sense of citizenship and national identity amongst members of the public.

Protection of personal data

25. To combat doxxing acts which intrude into personal data privacy, the HKSAR Government introduced the Personal Data (Privacy) (Amendment) Bill 2021, which criminalises doxxing acts, to the LegCo in July last year. After being passed by the LegCo, the Personal Data (Privacy) (Amendment) Ordinance 2021 took effect on 8 October last year following gazettal. On the same day, the PCPD also published in gazette

the implementation guidelines for criminal investigation and prosecution of doxxing-related offences and issue of cessation notices, as well as the ranks of officers authorised with the above powers. Pursuant to the Ordinance's enactment, the PCPD made the first arrest on 13 December last year under the powers of the Ordinance. The PCPD will exercise the enforcement powers according to the Ordinance to combat doxxing acts by various means, so as to protect personal data privacy.

26. Besides, the HKSAR Government has earlier consulted this Panel on the directions of amendments related to the PDPO apart from doxxing, including establishing a mandatory data breach notification mechanism, instituting a data retention period, empowering the Privacy Commissioner for Personal Data to introduce an administrative fine, and regulating data processors, etc. Together with the PCPD, we will study in detail and furnish concrete legislative amendment proposals and consult this Panel at an appropriate time. In the process, we will make reference to relevant privacy protection laws in other jurisdictions and Hong Kong's actual situation, so as to put forward practicable legislative amendment proposals that could improve the protection of personal data privacy.

Review of anti-discrimination legislation

27. The Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 and the Sex Discrimination (Amendment) Ordinance 2021 were passed by the LegCo in June 2020 and March 2021 respectively to enhance protection from discrimination and harassment under the four anti-discrimination ordinances (i.e. Sex Discrimination Ordinance (Cap 480) (SDO), Disability Discrimination Ordinance (Cap 487), Family Status Discrimination Ordinance (Cap 527) and Race Discrimination Ordinance (Cap 602)). Amongst others, the SDO has been amended to strengthen legal protection for breastfeeding women, whereby discrimination and harassment on the ground of breastfeeding in various prescribed areas, such as employment; education; provision of goods, facilities or services, etc., are prohibited with effect from 19 June 2021. The EOC has already embarked on publicity and public education, including distribution of guidance and booklet containing relevant information as well as launch of MTR advertising campaign, TV and radio Announcements on Public Interests, etc., in order to strengthen promotion.

28. We will continue to examine the EOC's priority recommendations from its Discrimination Law Review. Amongst others, we are working with the EOC to study how the anti-discrimination legislation may be enhanced to tackle discrimination or vilification that may be encountered

by persons arriving in Hong Kong from the Mainland. We will also study in detail other suggestions raised by LegCo Members on elimination of discrimination, including whether existing protection from sexual harassment under the SDO is sufficient. Our goal is to strive for determination of the way forward for these recommendations within this term of the Government.

29. Alongside our efforts to enhance legal protection, we will also continue to support the EOC in stepping up its sexual harassment prevention efforts. With additional resources allocated by the HKSAR Government, the EOC has established a designated Anti-Sexual Harassment Unit, which is tasked with conducting a holistic review of the related legal protection, raising public awareness and acting as the first port of call for victims of sexual harassment.

Promotion of racial equality

30. The HKSAR Government strives to eliminate racial discrimination and safeguard the equal rights of people of different races. In April 2020, we have refined the Administrative Guidelines on Promotion of Racial Equality (the Guidelines) for application to all government bureaux/ departments and related organisations (collectively referred to as public authorities) providing services to people of diverse race, making a total of over 100, thereby promoting effectively equal access to public services for people of Hong Kong regardless of their race.

31. Under the revised Guidelines, public authorities are required to proactively offer appropriate translation and interpretation services so that service users who are not able to communicate effectively in spoken or written Chinese or English can have access to public services. Public authorities are also required to collect data from service users of diverse race, and to provide training on racial inclusiveness to frontline staff and new recruits to enhance their sensitivity and understanding of race-related issues. We will closely monitor the implementation of the Guidelines to ensure that the expected effect would be achieved.

32. In mid-2018, the HKSAR Government established the Steering Committee on Ethnic Minority Affairs (the Steering Committee), under the chairmanship of the Chief Secretary for Administration, to co-ordinate, review and explore policies and measures with the objective of facilitating equal access to public services by ethnic minorities so that they can better integrate into the community, become self-reliant and move upwards along the social ladder. The Secretary for Constitutional and Mainland Affairs

is a member of the Steering Committee. At present, the Human Resources Planning and Poverty Co-ordination Unit of the Chief Secretary for Administration's Private Office provides secretarial support to the Steering Committee. The proposal of re-organising the government structure suggests transferring the secretarial work of the Steering Committee to the Constitutional and Mainland Affairs Bureau. The Steering Committee, chaired by the Chief Secretary for Administration, will continue to provide high-level direction and steer on cross-bureaux collaboration. Transferring the secretarial work of the Steering Committee to the Constitutional and Mainland Affairs Bureau, which is responsible for the policies of promoting equal opportunities and eliminating discrimination (including promotion of racial equality), will help make its responsibility and role for relevant policies clearer.

Eliminating discrimination on grounds of sexual orientation and gender identity

33. The HKSAR Government has all along been striving to promote equal opportunities for people of different sexual orientations and transgenders, with a view to fostering in the community the culture and values of inclusiveness, mutual respect and non-discrimination.

34. 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 (the Code). As of now, over 370 organisations employing nearly 560 000 employees have adopted the Code. We will continue with our efforts in promotion and education via various channels, such as online platforms and seminars.

35. On support services provided to sexual minorities, we subsidise the 24-hour hotline for supporting sexual minorities (i.e. Pride Line) which is operated by the Tung Wah Group of Hospitals (TWGHs) to provide prompt support, counselling and referral services to sexual minorities and their families. Since its establishment in January 2018, the hotline has received over 10 000 calls as at December last year. The TWGHs has also been regularly organising different support group programmes, including emotional management and peer sharing, for sexual minorities. Since 2021-22, we have increased our subvention to the TWGHs for Pride Line to provide face-to-face counselling service to sexual minorities and their families in need, in addition to the hotline.

36. After launching training materials to enhance sensitivity of medical and healthcare professionals towards sexual minorities earlier, we have also introduced training materials for government disciplined services and organised briefing session for representatives of the disciplined services to introduce the content of the training materials. We have also arranged a train-the-trainer session for the trainers of disciplined services. We have now finalised the training materials for social workers and are planning to launch these this year, with a view to enhancing their knowledge of and sensitivity towards sexual minorities.

Children's rights

37. The HKSAR Government has been committed to co-operating with different sectors of the community to promote children's rights. Through the Children's Rights Education Funding Scheme (the Scheme), we encourage and support more organisations to take up educational projects to enhance public (including children's) awareness and understanding of children's rights enshrined in the United Nations Convention on the Rights of the Child. Since its establishment in 2006, the Scheme has funded over 400 projects implemented by various organisations which strengthen understanding and respect for children's rights in the community.

38. The proposal of re-organising the government structure announced by the Chief Executive suggests transferring the portfolio on children's rights under the Constitutional and Mainland Affairs Bureau to the Labour and Welfare Bureau which is responsible for child policy in order to consolidate and rationalise the division of work and establish a dedicated policy desk. Child policy involves the portfolios of various bureaux and cross-sectoral issues. At present, the Constitutional and Mainland Affairs Bureau is responsible for the Children's Rights Education Funding Scheme, the Children's Rights Forum and the co-ordination of HKSAR's report under the United Nations Convention on the Rights of the Child, while the Labour and Welfare Bureau is responsible for supporting the work of the Commission on Children. The terms of reference of the Commission on Children include promoting and promulgating children's rights as articulated in the United Nations Convention on the Rights of the Child, and engaging with children on matters that affect them. In order to unify policy authority and reduce the dispersion of functions, the proposal of re-organising the government structure suggests transferring the portfolio on children's rights to the Labour and Welfare Bureau. The Committee on Children will continue to be chaired by the Chief Secretary for Administration, providing a

platform for cross-bureaux and cross-sector discussion on child policy.

Conclusion

39. Members are invited to note the content of this paper and comment on the proposed adjustment of the work portfolios of the Constitutional and Mainland Affairs Bureau under the proposal of re-organising the government structure mentioned in paragraph 32 and 38 above.

Constitutional and Mainland Affairs Bureau
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