

## **Legislative Council Panel on Constitutional Affairs**

### **2013 Policy Address**

#### **Policy initiatives of Constitutional and Mainland Affairs Bureau in relation to electoral arrangements, human rights and promotion of the Basic Law**

This paper briefs Members on the policy initiatives of the Constitutional and Mainland Affairs Bureau in relation to electoral arrangements, human rights and promotion of the Basic Law, some of which have been covered in the 2013 Policy Address.

#### **Our vision**

2. Our vision is to ensure that public elections will continue to be conducted in a fair, open and honest manner; promote constitutional development in accordance with the Basic Law and relevant decisions of the Standing Committee of the National People's Congress; safeguard the fundamental rights protected by the Basic Law; and promote the Basic Law to the wider community.
3. The new initiatives we will pursue and on-going initiatives we will continue to implement are highlighted as follows –

#### New initiatives

- (a) we will introduce an amendment bill into the Legislative Council (“LegCo”) in the first quarter of 2013 for the abolition of the District Council (“DC”) appointed seats effective from the fifth term of the DCs which will commence on 1 January 2016;
- (b) we will conduct a review on the number of elected seats for the fifth term of the DCs;
- (c) we will launch a comprehensive consultation on the election methods of the Chief Executive (“CE”) in 2017 and the LegCo in 2016 and initiate the constitutional procedures at an appropriate juncture;

### On-going initiatives

- (d) we will continue to work closely with the Electoral Affairs Commission (“EAC”) to follow up on its recommendations on the public elections held in 2011 and 2012 to ensure that public elections in future will continue to be conducted in a fair, open and honest manner, and in accordance with relevant legislation;
- (e) we will inject more resources to strengthen publicity and public education, to eliminate acts of discrimination against people of different sexual orientation; we will also continue to listen to different views from various sectors on ways to protect people of different sexual orientation from discrimination;
- (f) we have increased the provision for the Children’s Rights Education Funding Scheme and will continue to launch other public events to enhance understanding on children’s rights;
- (g) we will continue to monitor the implementation of the Administrative Guidelines on Promotion of Racial Equality;
- (h) we will continue to work closely with the Privacy Commissioner for Personal Data (“PCPD”) with a view to bringing the remaining provisions in the Personal Data (Privacy) (Amendment) Ordinance 2012 (“PDPAO”) into operation;
- (i) we will consider views received from the public consultation on the recommendations of the Law Reform Commission (“LRC”) on stalking and the way forward; and
- (j) we will continue our work on the promotion of the Basic Law.

### **New initiatives**

#### The DC appointment system

4. The Administration proposes to abolish all DC appointed seats over one term by legislation, such that there will be no appointed seats

starting from the fifth term of the DCs which will commence on 1 January 2016. Our aim is to introduce the amendment bill into the LegCo in the first quarter of 2013.

#### Review on the number of elected seats for the fifth term of DCs

5. Within the number of elected seats for each DC, the EAC is required under the Electoral Affairs Commission Ordinance (Cap. 541) to recommend the boundaries of corresponding DC constituency areas before each DC election. To facilitate the EAC to make recommendations on the constituency boundaries for the 2015 DC election, we will, in accordance with established practices, review the number of elected seats for the 2015 DC election taking into consideration relevant factors including the latest population projections.

#### Constitutional development

6. The Decision adopted by the Standing Committee of the National People's Congress in December 2007 has made clear the timetable for implementing universal suffrage in Hong Kong: universal suffrage may be implemented for electing the CE in 2017 and following that, all Members of the LegCo may be returned by universal suffrage.

7. We will, in accordance with the provisions of the Basic Law and the relevant decisions of the Standing Committee of the National People's Congress, promote the implementation of the ultimate aim of universal suffrage. Regarding the election methods of the CE in 2017 and the LegCo in 2016, the Government will launch a comprehensive consultation and initiate the constitutional procedures at an appropriate juncture.

### **On-going initiatives**

#### Public elections

8. The Administration worked closely with the EAC to ensure that the 2011 DC election, the 2011 Election Committee Subsector elections, the 2012 CE election and the 2012 LegCo election were concluded in a fair, open and honest manner, and in accordance with relevant legislation. We will continue to work closely with the EAC to follow up on the recommendations made by the EAC on the public elections held, including adjusting the Administration's publicity efforts on electoral arrangements in future elections; and exploring enhanced means to

disseminate counting information electronically in future elections. We will also enhance educational and publicity efforts to remind electors of their civic responsibility to provide accurate information for registration and updating their registration particulars in a timely manner. In following up on the recommendations, we will at the same time take into consideration the views of the community to ensure that public elections in future will continue to be conducted in a fair, open and honest manner, and in accordance with relevant legislation.

#### People of different sexual orientation

9. Last November, the LegCo discussed whether a law is needed to protect people of different sexual orientation from discrimination. The society is deeply divided over this issue. While some are in support from the perspective of equal opportunity, others worry that launching a consultation exercise may cause undesirable impact on family, religion and education. The Government understands that this is a highly controversial issue that must be tackled cautiously. We will continue to listen to different views from various sectors.

10. At the same time, we will continue to promote the message of equal opportunities for people of different sexual orientation through education and publicity, to eliminate acts of discrimination in the society and nurture a culture of tolerance and mutual respect. We will put in more resources in this regard and sponsor interested organisations and groups to organise relevant community projects which aim at promoting equal opportunities for sexual minorities or providing support services for them. The Government will also promote the message of equal opportunities for people of different sexual orientation through various channels, including Announcements of Public Interest on television and radio. The Government has already committed to following the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation. We will strengthen our publicity and promote the Code to public and private sector organisations, encouraging them to follow the practices in the Code so as to further eliminate discrimination against people of different sexual orientation in the workplace.

11. In addition, to better understand the discrimination now faced by people of different sexual orientation, we will arrange to undertake relevant study and research to provide an updated, comprehensive and objective basis on which to plan our future anti-discrimination work. We will also strengthen liaison with stakeholders to understand the problems faced by them and listen to their views as regards the

Government's future work in this area, so as to map out related measures.

### Children's rights

12. To assist and encourage more community organisations to conduct education programmes for enhancing different stakeholders' understanding on the children's rights as provided by the Convention on the Rights of the Child ("the Convention"), we have increased the provision for the Children's Rights Education Funding Scheme ("the CREFS") in 2012-13. We have been accepting applications from organisations since the launch of the 2013 CREFS in December 2012. We hope that activities supported by the CREFS can encourage children to take a more active role in community affairs. Together with the eTVonline Internet Portal of the Radio Television Hong Kong, we will also implement an outreach programme which includes the organisation of workshops, mock reporting, filming competition, etc in some 70 to 90 schools ("the Outreach Programme"). We hope that students could learn and take part in promoting children's rights through participating in these activities. We will, at the same time, produce a smart-phone mobile application ("the Application") this year for providing smart-phone and tablet computer users a more relaxing and interactive way in accessing to the Convention and other information relating to children's rights. We will synchronise the two programmes mentioned above with a view to introducing the new Application to students through the Outreach Programme. In addition, we will produce a new Announcement of Public Interest in 2013 to further enhance public awareness of the Convention.

### Promotion of racial equality

13. The Race Discrimination Ordinance, which prohibits discrimination, harassment and vilification on ground of race, has been operating smoothly since its implementation in 2009. We will continue to keep in view its implementation. On the other hand, we have received positive feedback from relevant Government bureaux, departments and public authorities on the implementation of the Administrative Guidelines on Promotion of Racial Equality ("the Guidelines")<sup>1</sup>. In 2013, the Guidelines will be extended to eight

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<sup>1</sup> Currently, 13 bureaux and departments and public authorities are covered by the Guidelines. They include Labour and Welfare Bureau, Education Bureau, Social Welfare Department, Labour Department, Home Affairs Department, Employees Retraining Board, Vocational Training Council, Department of Health, Hospital Authority, Construction Industry Council, Office of the Government Chief Information Officer, Innovation and Technology Commission, and Office of the Communications Authority.

additional Government departments<sup>2</sup>.

### Protection of personal data privacy

14. With a view to further strengthening the protection of personal data privacy, the PDPAO, which was passed by the LegCo in June 2012, has introduced amendments to the Personal Data (Privacy) Ordinance (“PDPO”) to, inter alia, regulate the use of personal data in direct marketing and provision of personal data for use in direct marketing, create a new offence for disclosure of personal data obtained without consent, impose a heavier penalty for repeated contravention of enforcement notices, create a new offence for repeated contravention of the requirements under the PDPO for which enforcement notices have been served, and empower the PCPD to assist data subjects in bringing proceedings to seek compensation from data users under the PDPO.

15. Most of the provisions of the PDPAO have come into operation on 1 October 2012. We will work closely with the PCPD with a view to bringing the remaining provisions relating to direct marketing and legal assistance into operation on 1 April 2013. We will also continue to work with the PCPD to facilitate effective implementation of the PDPO.

### Proposed way forward on the recommendations of the LRC on stalking

16. The LRC Report on Stalking proposed that any person who pursues a course of conduct that causes another person alarm or distress should be guilty of a criminal offence and liable in tort to the object of the pursuit. Defences and various related matters were also proposed. On the basis of LRC’s proposal, we issued a Consultation Paper on Stalking (“Consultation Paper”) in December 2011. The consultation period lasted till end of March 2012.

17. A key focus of the public discussion during the consultation period was the impact the proposed offence might have on press freedom and freedom of expression/demonstration. All the media organisations that sent in submissions objected to the introduction of the anti-stalking legislation as proposed in the Consultation Paper and considered the proposed “reasonable pursuit” defence insufficient in protecting press freedom. The Hong Kong Bar Association was opposed to any separate defence for the press. The Law Society of Hong Kong suggested that

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<sup>2</sup> The eight departments include the Housing Department, the Hong Kong Observatory, the Hong Kong Post, the Legal Aid Department, the Police Force, the Correctional Services Department, the Customs and Excise Department, and the Immigration Department.

the “reasonable pursuit” defence should be amended. A number of women’s groups, while supporting the need for anti-stalking legislation, considered that concerns in relation to press freedom should be properly addressed.

18. The above issues touch on fundamental rights of privacy and press freedom, and the matters involved are complex and sensitive. We are conducting further research, in particular on overseas experience, and will listen to the views of the LegCo and stakeholders with a view to formulating an appropriate way forward.

### Promotion of the Basic Law

19. We have set aside resources for organising promotional activities to facilitate the public’s awareness and understanding of the Basic Law. We will use both traditional electronic media (e.g. TV and radio programmes) and new electronic media (e.g. internet and smart-phone applications) as the main promotional channels, and also enhance public awareness of the Basic Law by staging promotional activities at the district level and strengthening co-operation with community organisations.

### **Conclusion**

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

Constitutional and Mainland Affairs Bureau  
16 January 2013