



PROPOSAL FOR AMENDMENT TO THE COMMISSION FOR EQUALITY & HUMAN RIGHTS ORDINANCE 2015

Introduction

The Equality & Human Rights Commission (EHRC) are requesting an amendment to the COMMISSION FOR EQUALITY AND HUMAN RIGHTS ORDINANCE 2015 (the Ordinance) in order to allow the Judicial Services Committee (JSC) to review and recommend Commissioners and other statutory appointees to His Excellency The Governor for appointment.

The EHRC would like to thank Judge Ekins for allowing the JSC to perform this service to the EHRC and Governor Rushbrook for his support.

Background

Currently the EHRC is without a substantive Chair or Deputy Chair and two of our Commissioners are still working despite the fact their warrants have expired.

Schedule 1 of the Ordinance states that

1. (a) The Governor must appoint not less than 3 individuals (excluding the Chief Executive) as members of the Commission (to be known as Commissioners).
3. (e) The Governor may dismiss a Commissioner who is, in the opinion of the Governor, unable, unfit or unwilling to perform his or her functions. And
4. (a) The Governor must appoint—
 - (i) a Commissioner as Chair; and
 - (ii) a Commissioner as Deputy Chair.
- (d) The Chief Executive may not be appointed Chair or Deputy Chair.

However what the Ordinance does not do is say how the Commissioners, Chair and Deputy Chair should be selected. The requested amendment addresses that lacuna.

Proposal

National Human Rights Institutions (NHRIs) such as the Equality & Human Rights Commission have to achieve standards).

The **Paris Principles**¹ are the international minimum standards set by the United Nations (UN) that all NHRIs, including the EHRC, regardless of size or structure, must meet if they are to be legitimate, credible and effective in promoting and protecting human rights. The first and most essential requirement for an NHRI is independence.² The Principles state under the heading Composition and guarantees of independence and pluralism:

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
 - a. Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
 - b. Trends in philosophical or religious thought;
 - c. Universities and qualified experts;
 - d. Parliament;
 - e. Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

While the EHRC appreciates that it is not possible on island to have Commissioners which represent all of the above the key requirements are:

1. That we have a mix of Commissioners that represent to the fullest extent possible all the sections, groups and demographics in our society.
2. That they are selected in an open, transparent way that cannot be seen to lack independence and objectivity, despite the limitations of our Constitution.

The adoption of this amendment (see attached) will meet these criteria.

Conclusion

The EHRC seeks the SCDC's support of this amendment and its early passage through to LegCo.

¹Paris Principles defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993

² <https://www.asiapacificforum.net/support/what-are-nhris/paris-principles/>