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Lawyers Weekly

Email: editor@lawyersweekly.com.au

Dear editor,

I refer to your article "Australia concerned about Hong Kong national security laws" (1 June) on views expressed by the Law Council of Australia on enactment of national security law for Hong Kong.

To any sovereign state, national security is of prime importance. Like any other sovereign state, China has the right, and indeed a duty, to protect its national security and sovereignty. Under the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("Basic Law"), national security is outside the limits of the autonomy of the Hong Kong Special Administrative Region ("HKSAR") but is a matter under the purview of the Central Authorities.

In view of the current situation in Hong Kong and the difficulty faced by the HKSAR to complete on their own legislation for safeguarding national security in the foreseeable future, the Central Authorities have the right and duty to introduce a national law to improve at the national level the legal framework and enforcement mechanisms for national security for the HKSAR.

Such national law is under the ambit of "defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region" as set out in Article 18(3) of the Basic Law regarding the scope of national laws that may be listed in Annex III to the Basic Law for application in the HKSAR. Under Article 23 of the Basic Law, HKSAR is authorised to legislate national security laws, however, it does not preclude the Central Authorities from legislating at a national level for national security.

When making the Decision on establishing and improving the legal system and enforcement mechanisms for the HKSAR, the National People's Congress has complied with the Basic Law, the "One country Two systems" principle and endeavoured to safeguard the lawful rights and interests of people in Hong Kong.

Fundamental rights and freedoms such as the right to freedom of expression are well protected in the HKSAR by the Basic Law. Article 39 of the Basic Law further provides, amongst others, that the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong ("ICCPR") shall remain in force and shall be implemented through the laws of the HKSAR. At the domestic legislation level, the provisions of the ICCPR as applied to Hong Kong have been implemented by way of the Hong Kong Bill of Rights under the Hong Kong Bill of Rights Ordinance (Cap. 383), which binds the Government. The right to freedom of expression, the right of peaceful assembly and the right to freedom of association are not absolute and are subject to restrictions as prescribed by law and necessary for the protection of, for example, national security.

While we appreciate that there are concerns over the national security law to be enacted, we consider it inappropriate for anyone to make unwarranted speculations on its content at this stage, given that the details of the same to be enacted by the Standing Committee of the National People's Congress and to be listed under Annex III of the Basic Law for application in the HKSAR by promulgation are not yet made public.

We are confident that the new national security law will not affect the lawful rights and freedoms enjoyed by Hong Kong people and foreign investors but will foster a stable and safe society. This will help better Hong Kong's development in future.

We have sought advice from the Department of Justice of the Hong Kong Special Administrative Region Government and would like to refer your readers to a statement by their spokesman on 25 May addressing concerns from the legal sector.

<https://www.info.gov.hk/gia/general/202005/25/P2020052500828.htm>

The Hong Kong Special Administrative Region Government will continue to provide explanation when necessary.

Yours sincerely,

Raymond Fan

Director

(Representative to Australia and New Zealand)