

LRC releases interim proposals on sexual offences records checks for child-related work

The Law Reform Commission (LRC) today (February 2) released a report recommending, as an interim measure, the establishment of an administrative scheme which would enable employers of persons undertaking child-related work and work relating to mentally incapacitated persons to check their employees' criminal conviction records for sexual offences.

An earlier consultation paper on this subject elicited some 200 responses from schools, organisations and individuals and the conclusions in the report reflect the views expressed.

In presenting the proposals, the chairman of the LRC's Review of Sexual Offences Sub-committee, Mr Peter Duncan, SC, explained that the scheme was intended as an interim measure which could be implemented quickly by administrative means without the need for legislation in order to respond to concerns which had been expressed by the public, the courts and the media.

In the absence of legislation, employers will not be compelled to carry out such checks, and the application for a record check will have to be submitted by the job applicant. The recommendation is that the proposed scheme should apply to both existing and prospective employees but should be implemented in stages, with only prospective employees covered in the initial phase.

The check would reveal only convictions for a specified list of sexual offences.

The report makes clear that the LRC does not favour the introduction of a register of sex offenders to which the general public has access, along the lines of those found in US jurisdictions.

Instead, the LRC recommends that criminal records held by the police should be utilised for the purposes of screening job applicants for positions that give them access to children and mentally incapacitated persons.

The scheme now operated by the police for providing Certificates of No Criminal Conviction would be modified and adapted to enable the proposed checks to be conducted. Any check would have to be initiated by the job applicant, and his consent would be necessary to allow the result to be revealed to the prospective employer. A "clean" check result would not be recorded in writing, but would be communicated verbally to the job applicant or his employer.

Mr Duncan said that with some limited exceptions, there was no system in place in Hong Kong which allowed employers to check relevant past convictions of an employee, even with his consent.

A check may be conducted in relation to certain professions or areas of work where there are specific statutory provisions such that the existence of a previous conviction is a ground for refusing registration or approval of persons working in a particular profession.

For instance, the provisions relating to school managers and teachers registered under the Education Ordinance, child-minders under the Child Care Services Ordinance, and social workers registered under the Social Workers Registration Ordinance.

But Mr Duncan pointed out that there remained a wide range of persons who have close contact with children during their work in respect of whom criminal record checks were currently not available. Examples include laboratory/computer technicians, support staff in schools, tutors, music teachers, sports coaches, staff in children's wards, and volunteer workers at youth centres and religious and other organisations.

The report stresses that in formulating its proposals, the LRC considered the human rights and privacy aspects of the use of criminal conviction records to vet certain types of job applications.

It points out that the scheme proposed is modest compared with those adopted in many other jurisdictions. Convictions that are regarded as "spent" under the Rehabilitation of Offenders Ordinance would not be disclosed.

Mr Duncan said that the Sub-committee would continue to consider whether a comprehensive legislative scheme should be introduced to enhance the regulation of sexual offences records checks for child-related work, without unjustifiably infringing the privacy and other rights of the offenders (or their family members).

"That will take some time to complete and the LRC is therefore putting forward these interim proposals for consideration and implementation in the meantime," he added.

Copies of the report are available on request from the Secretariat of the Law Reform Commission at 20/F Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong. The report can also be accessed on the Commission's website at www.hkreform.gov.hk.

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