

Release of LRC consultation paper with interim proposals on a sex offender register

A Law Reform Commission (LRC) sub-committee today (July 29) released a consultation paper containing interim proposals on a sex offender register.

The sub-committee recommends, as an interim measure, the establishment of an administrative scheme to enable employers of persons undertaking child-related work and work relating to mentally incapacitated persons to check the criminal conviction records for sexual offences of prospective employees.

The check would reveal only convictions for a specified list of sexual offences. Convictions that are regarded as "spent" under the Rehabilitation of Offenders Ordinance (Cap 297) would not be disclosed.

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 himself. The public's views are sought on the proposals and whether they should additionally apply to existing employees.

In presenting the proposals, Mr Peter Duncan, SC, the chairman of the LRC's Review of Sexual Offences Sub-committee 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.

Mr Duncan said that the sub-committee's eventual aim is to devise a comprehensive scheme for the treatment, rehabilitation, risk assessment and management of sex offenders which will provide better protection to the community, particularly children, without unjustifiably infringing the privacy and other rights of the offenders (or their family members).

"That will take some time to complete and the sub-committee is therefore putting forward this interim proposal for consultation and implementation in the meantime," he said.

The paper makes clear that the sub-committee 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 sub-committee 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 will have to be initiated by the job applicant himself, and his consent will 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 and his prospective employer.

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

A check can be conducted in relation to certain professions or areas of work where there are specific statutory provisions. For instance, there are provisions allowing criminal record checks of school managers and teachers registered under the Education Ordinance (Cap 279), child-minders under the Child Care Services Ordinance (Cap 243), and social workers registered under the Social Workers Registration Ordinance (Cap 505).

But Mr Duncan pointed out that there remains a wide range of persons who have close contact with children during their work in respect of whom criminal record checks are 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 consultation paper stresses that, in formulating its proposals, the sub-committee 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.

The consultation paper states that the recommendations are put forward for discussion and do not represent the sub-committee's final conclusions. The sub-committee invites and would welcome views, comments and suggestions on any issues raised in the consultation paper. The consultation period runs until 31 October 2008.

Copies of the consultation paper are available on request from the Secretariat of the Law Reform Commission at 20/F Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong. The consultation

paper can also be accessed on the Commission's website at <www.hkreform.gov.hk>.

Ends/Tuesday, July 29, 2008