

LRC releases consultation paper on sexual offences involving children and persons with mental impairment

The Review of Sexual Offences Sub-committee of the Law Reform Commission today (November 1) released a consultation paper making preliminary proposals for the reform of the law concerning sexual offences involving children and persons with mental impairment. These proposals include a uniform age of consent of 16 years in Hong Kong and the creation of a range of new sexual offences involving children and persons with mental impairment which are gender-neutral and provide improved protection to these vulnerable people.

The Chairman of the Review of Sexual Offences Sub-committee, Mr Peter Duncan, SC, said, "This paper is the second of a series of four consultation papers intended to cover the overall review of the substantive sexual offences. It covers sexual offences involving children and persons with mental impairment and sexual offences involving abuse of a position of trust. These sexual offences are largely concerned with the protective principle, that is to say, the protection of certain categories of vulnerable persons from sexual abuse or exploitation."

The main recommendations contained in the paper are:

- (i) there should be a uniform age of consent in Hong Kong of 16 years of age, which should be applicable irrespective of gender and sexual orientation;
- (ii) offences involving children and young persons should be gender-neutral with two separate types of offences, one involving children under 13 and the other involving children under 16, and capable of being committed by either an adult or a child;
- (iii) the question of whether offences involving children aged between 13 and 16 should be of absolute liability should be a matter for consideration by the Hong Kong community;

- (iv) consensual sexual activity between persons who are aged between 13 and 16 should remain to be criminalised while recognising the existence of prosecutorial discretion;
- (v) the creation of a range of new offences involving children which are gender-neutral, and which provide wider protection to children;
- (vi) the creation of a new offence of sexual grooming to protect children against paedophiles who might groom them by communicating with them on a mobile phone or on the internet to gain their trust and confidence with the intention of sexually abusing them;
- (vii) the creation of a range of new offences involving persons with mental impairment which would be gender-neutral and provide improved protection; and
- (viii) the question of whether there be legislation to deal with conduct involving abuse of a position of trust in respect of young persons aged 16 or above but under 18 should be a matter for consideration by the Hong Kong community.

Mr Duncan said that the recommendations in the consultation paper are intended to facilitate discussion and do not necessarily represent the sub-committee's final conclusions. He added that the sub-committee would welcome views, comments and suggestions on any issues discussed in the consultation paper.

The Review of Sexual Offences Sub-committee was formed in 2006 and has since completed a consultation paper and a report on the issue of a register of sex offenders. It has also completed another report recommending the abolition of the common law presumption that a boy under 14 is incapable of sexual intercourse. The Statute Law (Miscellaneous Provisions) Ordinance 2012 was enacted in July 2012 to implement the relevant recommendation. In September 2012, the sub-committee issued a consultation paper on rape and other non-consensual sexual offences which represents

the first of the four consultation papers intended to be issued by the sub-committee on the overall review of the substantive sexual offences.

Copies of the consultation paper are available on request from the Secretariat of the Law Reform Commission at 4/F East Wing, Justice Place, 18 Lower Albert Road, Central, Hong Kong. The consultation paper can also be accessed on the Commission's website at www.hkreform.gov.hk.

All the views should be addressed to The Secretary, Review of Sexual Offences Sub-committee, Law Reform Commission (4/F East Wing, Justice Place, 18 Lower Albert Road, Central) by mail, by fax (3918 4096) or by e-mail (hklrc@hkreform.gov.hk) on or before 10 February 2017.

Ends/Tuesday, November 1, 2016