



香港法律改革委員會
THE LAW REFORM COMMISSION OF HONG KONG

31 March 2010

Mr Raymond Lam
Clerk to the Legislative Council Panel on Security
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr Lam,

Panel on Security

**LRC report on
*Sexual Offences Records Checks for Child-related Work:
Interim Proposals***

Thank you for your letter of 3 March 2010, requesting information for members of the Security Panel in relation to the Law Reform Commission's (LRC) report on *Sexual Offences Records Checks for Child-related Work: Interim Proposals*. In particular, some members have asked whether the LRC has in the past recommended administrative measures in the course of reviewing the need for changes in the law and whether the recommendation of administrative measures falls within the LRC's terms of reference.

The general terms of reference of the Commission itself (which are not statutory) are:

“To consider such reforms of the laws of Hong Kong as may be referred to it by the Chief Justice or the Secretary for Justice and to report to the Chief Justice and the Secretary for Justice thereon.”

There is nothing to suggest in relation to the *Sexual Offences Records Checks* report that the LRC has acted outside these terms of reference: (a) the LRC has considered reform of the law; (b) it has concluded that, as an interim measure, an administrative scheme should be introduced, pending recommendations for a comprehensive legislative scheme which

would take considerable time to implement; and (c) the LRC has reported to the Chief Justice and Secretary for Justice.

The terms of reference for the specific sexual offences project are much wider than just the consideration of a scheme to check sexual offences records. They are:

“To review the common and statute law governing sexual and related offences under Part XII of the Crimes Ordinance (Cap 200) and the common and statute law governing incest under Part VI of the Ordinance, including the sentences applicable to those offences, to consider whether a scheme for the registration of offenders convicted of such offences should be established, and to recommend such changes in the law as may be appropriate.”

Early in the process, it became clear to the LRC sub-committee appointed to undertake this project that it would take many months to complete the entire review. In the light of public concern at the pressing need to enhance protection for children, the sub-committee therefore decided to deal first with this issue, and to deal with it in a way which offered a solution which could be implemented swiftly by administrative rather than legislative means.

Neither the LRC’s general terms of reference nor the specific terms of reference for the sexual offences project preclude the LRC from recommending non-legislative measures and it has done so frequently in the past. Recent examples include the following:

- (a) In its 2006 report on *Substitute Decision-Making and Advance Directives in Relation to Medical Treatment*, the LRC recommended that:

“... the concept of advance directives should be promoted initially by non-legislative means. We recommend that the Government should review the position in due course once the community has become more widely familiar with the concept and should consider the appropriateness of legislation at that stage. That review should take into consideration three factors, namely, how widely the use of advance directives had been taken up; how many disputes had arisen; and the extent to which people had accepted the model form of advance directive.”

Instead of a statutory form, the LRC incorporated a model form of advance directive in its report. The LRC recommended that this model form should be widely disseminated and its use encouraged.

- (b) In addition to recommending that the Supplementary Legal Aid Scheme should be expanded by raising the financial eligibility limits and increasing the types of cases covered by the scheme, the 2007 report on *Conditional Fees* also recommended that the government should carry out a feasibility study into establishing a Conditional Legal Aid Fund.
- (c) The 2005 report on *Child Custody and Access* included non-legislative recommendations in relation to, *inter alia*, training, long-term research and collection and evaluation of information, the preparation and issuing of guidelines, legal representation and mutual legal assistance.
- (d) The 2004 report on *Privacy and Media Intrusion* recommended amendments to the Victims of Crime Charter and the Broadcasting Authority's Code of Practice on Television Programme Standards, and recommended that the Privacy Commissioner issue a code of practice. It also included non-legislative recommendations in relation to training and enforcement.
- (e) The 2003 report on *The Family Dispute Resolution Process* put forward numerous non-legislative proposals, including increasing the availability of mediation, the encouragement of "parenting plans", the issue of Practice Directions, the drawing up of guidelines and codes of conduct and the creation of a post of "Support Services Co-ordinator".

It would clearly be a waste of time and effort if the LRC were to conclude at the end of a detailed study that it could make no recommendations for change as the defects it had identified could only be rectified by non-legislative means. In the present case, the LRC has concluded that administrative measures would enable a scheme to be implemented much more speedily than legislation and, in response to public and judicial concern, has accordingly recommended that course as an interim measure.

Members may wish to note that a copy of the consultation paper (*Interim Proposals on a Sex Offender Register*) which preceded the report was sent to every Legislative Council member in October 2008. That paper explained why the LRC's Review of Sexual Offences Sub-committee had decided to put forward interim proposals for an administrative scheme. It evinced no comment, adverse or otherwise, from members.

Yours sincerely,

Stuart M I Stoker
Secretary
Law Reform Commission