

Information note for AJLS Panel

The Law Reform Commission

Background

1. The Law Reform Commission (LRC) was established by the Executive Council of Hong Kong in 1980 as an independent body which would consider areas of the law suitable for reform. Its creation reflected the widely-held view that there was a need for some permanent machinery dedicated to the task of law reform.

2. The Secretary for Justice chairs the LRC, and the Chief Justice and the Law Draftsman are *ex officio* members. Other members of the LRC are appointed by the Chief Executive of the Hong Kong Special Administrative Region, on the advice of the Secretary for Justice. They are not confined to members of the legal profession, but include non-lawyers and prominent members of the community.

3. The LRC considers for reform those aspects of the law which are referred to it by the Secretary for Justice or the Chief Justice. In practice, referrals are invariably made jointly by the Secretary for Justice and the Chief Justice.

Method of work

4. The majority of LRC projects are dealt with by a sub-committee of experts with expertise or an interest in the particular subject under review. Sub-committee members are appointed by the Chairman of the LRC and the sub-committee is often chaired by an LRC member. In a limited number of cases, the LRC may decide to dispense with a sub-committee and to consider the matter itself on the basis of the LRC Secretariat's research analysis and findings.

5. Whether or not a sub-committee is appointed to deal with a particular topic, the LRC always ensures that there is extensive public consultation on any of its projects before it reaches its conclusions. In almost every case, the public's views will be sought by way of a consultation paper, which sets out the sub-committee's preliminary conclusions and recommendations. The publication of each sub-committee's consultation paper is widely publicised, and the paper is made available both in hard copy and on the LRC's website.

Published reports

6. The three tables annexed provide information in relation to each of the LRC reports published since 1 January 1996. Table 1 contains a chronological list of the LRC reports published in the last 15 years, together with details of any implementing legislation or other relevant information. Table 2 provides the Administration's responses (where available) to each report not yet implemented while Table 3 provides an outline of the main issues addressed by those reports.

Alternative models for law reform agencies

7. Common law jurisdictions adopt a variety of different models for their law reform agencies. Within the United Kingdom, for instance, the separate Commissions for England & Wales, Scotland, Northern Ireland and Jersey each have their own structure and method of working: the Commissions in Jersey and Northern Ireland have no full-time Commissioners; three of Scotland's five Commissioners are part-time (including the Chairman); while only England's Commissioners are all full-time.

8. In some jurisdictions, law reform is subsumed within a unit of the Government's legal department. Other law reform agencies are independent but wholly part-time, while still others have a single full-time Commissioner. Some are creatures of statute, or even incorporated in the Constitution, while others are not. Some include non-lawyers in their membership; while others are exclusively the preserve of lawyers.

9. The LRC was established in 1980 as a result of a joint initiative by the then Attorney General and the Chief Justice. The model chosen was thought appropriate to Hong Kong. Unlike law reform agencies in many other jurisdictions, Hong Kong's LRC has no full-time Commissioners. Instead, the members of the LRC and its sub-committees volunteer their services, part-time and unpaid, to the work of law reform. While that may mean that LRC projects take longer than might be the case if there were full-time Commissioners, it has the considerable advantage that those projects benefit from the wide range of expertise represented by LRC and sub-committee members which might not otherwise be available to the LRC. Over 500 members of the community have served as members of the LRC or on one or more of the LRC's specialist sub-committees in the last 30 years. Their input to the law reform process is invaluable.

Implementation

10. The recommendations put forward in an LRC report are the result of detailed study by the LRC itself and, in most cases, a specialist sub-committee. It is in the interests of both the Administration and the LRC, and of the community, that the results of LRC's work are given full and fair

consideration within a reasonable timeframe. The validity and relevance of the LRC's recommendations and the supporting research and consultation responses are likely to be diminished the longer reports remain unimplemented. The longer the delay, the greater the risk that the LRC's efforts will have to be duplicated by a fresh review and round of consultations. In the meantime, the original shortcomings in the law remain unresolved. However, it must also be borne in mind that the complexity and scope of the subject-matter of LRC reports varies greatly and some reports are likely to require longer than others for bureaus to consider.

11. In some other jurisdictions, statutory or administrative guidelines for the consideration of law reform agency reports have been adopted. The advantage of such guidelines is that they encourage early consideration of law reform proposals and decisions on implementation while the law reform agency's original research and consultation remain valid, so avoiding later unnecessary duplication of effort to update the research and re-run the consultation. At the same time, it is important that any such scheme allows the government sufficient time for proper consideration of law reform proposals, especially when they raise complex and controversial issues.

12. The LRC has been advised by the Administration that, to improve the existing mechanism, for all new LRC reports published in future, relevant bureaus would provide a detailed public response (setting out which recommendations they accept, reject or intend to implement in modified form) to the Secretary for Justice (as the Chairman of the LRC) as soon as practicable. In any event, an interim response setting out the timetable for completion of the detailed response and the steps taken will be provided within six months following the publication of the LRC reports.

Law Reform Commission Secretariat
April 2011

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TABLE 1

Chronological list of LRC reports published since 1 January 1996

	<i>Report (month and year of publication)</i>	<i>Implementing legislation or other relevant information</i>
1	The hearsay rule in civil proceedings (July 1996)	Evidence (Amendment) Ordinance (2 of 1999) (January 1999)
2	Creation of a substantive offence of fraud (July 1996)	Theft (Amendment) Ordinance (45 of 1999) (July 1999)
3	Insolvency - Part 2: Corporate rescue and insolvent trading (October 1996)	[Legislative proposals introduced twice into LegCo (in 2000 and 2001) but lapsed on both occasions.]
4	Privacy - Part 2: Interception of communications (December 1996)	[See Administration's response to report at Table 2]
5	Extrinsic materials as an aid to statutory interpretation (March 1997)	[Bill introduced to LegCo in March 1999 but allowed to lapse in view of Bills Committee opposition.]
6	The year and a day rule in homicide (June 1997)	Statute Law (Miscellaneous Provisions) Ordinance (32 of 2000) (June 2000)
7	Description of flats on sale - Part 2: Overseas uncompleted residential property (September 1997)	-
8	Civil liability for unsafe products (February 1998)	[See Administration's response to report at Table 2]
9	Insolvency - Part 3: Winding-up provisions of the Companies Ordinance (July 1999)	Some technical aspects implemented by the Companies (Amendment) Ordinance (28 of 2003) (July 2003) [and see Administration's response to report at Table 2]
10	The age of criminal responsibility in Hong Kong (May 2000)	Juvenile Offenders (Amendment) Ordinance (6 of 2003) (March 2003)
11	The procedure governing the admissibility of confession statements in criminal proceedings (July 2000)	[Report recommended no change to the existing law]
12	Privacy – Part 3: Stalking (October 2000)	[See Administration's response to report at Table 2]
13	Guardianship & custody – Part 1: Guardianship of children (January 2002)	[See Administration's response to report at Table 2]
14	Contracts for the supply of goods (February 2002)	[See Administration's response to report at Table 2]

	<i>Report (month and year of publication)</i>	<i>Implementing legislation or other relevant information</i>
15	Guardianship & custody – Part 2: International parental child abduction (April 2002)	[See Administration's response to report at Table 2]
16	The regulation of debt collection practices(July2002)	[Report's recommendations rejected by the Government in September 2005]
17	Description of flats on sale - Part 3: Local completed residential properties (September 2002)	-
18	Guardianship and custody – Part 3: The family dispute resolution process (March 2003)	[See Administration's response to report at Table 2]
19	Privacy – Part 4: Privacy and media intrusion (December 2004)	[See Administration's response to report at Table 2]
20	Privacy – Part 5: Civil liability for invasion of privacy (December 2004)	[See Administration's response to report at Table 2]
21	Guardianship and custody – Part 4: Child custody and access (March 2005)	-
22	Rules for determining domicile (April 2005)	Domicile Ordinance (4 of 2008) (February 2008)
23	Privity of contract (October 2005)	[See Administration's response to report at Table 2]
24	Privacy – Part 6: The regulation of covert surveillance (March 2006)	[See Administration's response to report at Table 2]
25	Substitute decision-making and advance directives in relation to medical treatment (August 2006)	[See Administration's response to report at Table 2]
26	Conditional fees (July 2007)	[Report's recommendations rejected by the Government in October 2010]
27	Enduring powers of attorney (March 2008)	[Draft Bill to implement report's recommendations circulated for comment by Department of Justice in September 2010]
28	Hearsay in criminal proceedings (August 2009)	[See Administration's response to report at Table 2]
29	Sexual offences records checks for child-related work: interim proposals (February 2010)	[Report recommended administrative measures rather than a legislative scheme but see Administration's response to report at Table 2]
30	Criteria for service as jurors	[See Administration's response to report

	<i>Report (month and year of publication)</i>	<i>Implementing legislation or other relevant information</i>
	(June 2010)	at Table 2]
31	The common law presumption that a boy under 14 is incapable of sexual intercourse (December 2010)	-

TABLE 2

Administration's responses to LRC reports not yet implemented

Note: the number assigned to each report in the first column corresponds to the numbering in Table 1. The date in brackets after each response in the third column refers to the date the response was provided.

	Report (month and year of publication)	Administration's public response to report (month and year of response)
4	Privacy - Part 2: Interception of communications (December 1996)	<p><i>"The Administration has considered the LRC reports on Regulating the Interception of Communications, Stalking, Civil Liability for Invasion of Privacy, Privacy and Media Intrusion and The Regulation of Covert Surveillance.</i></p> <p><i>The five reports touch on the sensitive and controversial issue of how to strike a balance between protection of individual privacy rights and freedom of the media. There were mixed responses and divergent views from different sectors of the community. The Administration has to reconcile the differences, with a view to reaching a general consensus within the community on the way forward having regard to the need to balance the legitimate interests of all parties concerned. Given the complexity and sensitivity of the issues involved, the Administration would handle the five reports in stages and map out the way forward in consultation with relevant parties.</i></p> <p><i>The Constitutional and Mainland Affairs Bureau (CMAB) will first take forward the LRC report on Stalking. CMAB has convened an inter-departmental working group to examine the recommendations in this report. The working group is also reviewing the latest developments in overseas anti-stalking legislation which may have an impact on any proposed regime to regulate stalking. In addition, CMAB will consider how relevant parties could be consulted on the recommendations of the LRC on stalking in due course. The Bureau will then map out the way forward in the light of feedback obtained."</i> (April 2009)</p>
8	Civil liability for unsafe products	<i>"The Commission recommends in this report that a 'strict liability' regime should be established to give an</i>

	Report (month and year of publication)	Administration's public response to report (month and year of response)
	(February 1998)	<p><i>additional basis for aggrieved parties to seek compensation for injuries and damages arising from unsafe products. This proposal involves very complex and controversial issues. The then Trade and Industry Panel of the Legislative Council were consulted in 1999. There has been strong objection to the proposal from trade representatives. Some members of the trade considered it unfair to hold a party such as an importer liable if that party did not have full control over the safety of the product he supplied, while others were concerned about the likely increase in litigation and compliance costs.</i></p> <p><i>As the community is unlikely to reach any consensus on this matter in the near future, the Administration does not intend to take forward the Commission's proposal at this juncture."</i> (November 2010)</p>
9	Insolvency - Part 3: Winding-up provisions of the Companies Ordinance (July 1999)	<p><i>"Having reviewed the key issues addressed in the report and taking into account the sector's latest developments, the Financial Services and the Treasury Bureau and the Official Receiver's Office (ORO) have concluded the following:</i></p> <ul style="list-style-type: none"> <i>• Not to pursue the recommendation to merge corporate insolvency legislation with personal bankruptcy legislation as there is no clear benefit or market demand for such a change;</i> <i>• To continue to rely on established professional sectors to deliver private sector insolvency services, rather than establishing and upkeeping a statutory licensing system at this time, as the latter is considered to be not cost-effective. Nonetheless, the Administration will revisit this recommendation later in the context of Phase II of the Companies Ordinance Rewrite (on winding-up provisions);</i> <i>• On remuneration (fees) of office-holders, the market has operated smoothly in determining the fee level of private sector insolvency services, with disputes settled by the Court's Taxing Masters;</i> <i>• The Administration considers there is no need to</i>

	Report (month and year of publication)	Administration's public response to report (month and year of response)
		<p><i>adopt the recommendation to establish an adjudication panel arrangement to determine fees;</i></p> <ul style="list-style-type: none"> • <i>LRC's concern that ORO should be adequately funded is noted. ORO's funding bids, including additional resources as and when necessary, will continue to be processed in accordance with the Administration's well-established policies and procedures; and</i> • <i>With respect to the other technical amendments recommended in the subject report, they will be reviewed as part of Phase II of the Companies Ordinance Rewrite exercise.</i> <p><i>In view of the high priority accorded to revisiting the issue of corporate rescue, Phase II of the Companies Ordinance Rewrite will be taken forward after Phase I of the same exercise as well as any consultations and legislative reforms, as appropriate, on corporate rescue have been substantially completed." (April 2009)</i></p>
12	Privacy – Part 3: Stalking (October 2000)	[see item 4]
13	Guardianship & custody – Part 1: Guardianship of children (January 2002)	<p><i>"The Law Reform Commission's report on Guardianship of Children made a total of nine law reform recommendations in relation to the law (mainly the Guardianship of Minors Ordinance (Cap 13)) which governs the appointment of guardians for children in the event of the death of one or both parents.</i></p> <p><i>In considering the recommendations, our primary concern is the well-being of the child. We have examined carefully how this objective can best be achieved in an effective and practicable manner, having regard to the advice of various stakeholders. The Administration agrees with the LRC that the legal procedures for parents to appoint guardians for their children should be simplified and that the relevant provisions can be improved to address the shortcomings of the existing regime, so as to encourage more parents to take the positive step of making guardianship arrangements for their children. We are prepared to take forward all the recommendations.</i></p>

	Report (month and year of publication)	Administration's public response to report (month and year of response)
		<i>The Labour and Welfare Bureau intends to consult the Legislative Council Panel on Welfare Services before issuing the drafting instructions in 2009-10 for a bill to implement the recommendations." (November 2009)</i>
14	Contracts for the supply of goods (February 2002)	<p><i>"The Commerce and Economic Development Bureau agrees that the implied undertakings for all types of contracts for the supply of goods should be standardised. We accept the Commission's recommendation that legislative amendments should be introduced to extend to contracts for the supply of goods the implied undertakings which currently apply in respect of contracts for the sale of goods.</i></p> <p><i>The Bureau's current priority in the area of consumer protection is to enhance legislative control over unfair trade practices and improve the operation of the Pyramid Selling Prohibition Ordinance. The Bureau will work on this subject in due course." (November 2010)</i></p>
15	Guardianship & custody – Part 2: International parental child abduction (April 2002)	<p><i>"The Law Reform Commission's report on International Parental Child Abduction recommends legislative amendments to prevent, and provide remedy for, international parental child abduction. The report also sets out for the Administration's consideration the LRC's observations on the need for reform in respect of a number of related issues.</i></p> <p><i>In considering the recommendations and observations, the Administration's primary concern is the well-being of the child who is the subject of international parental child abduction. We have examined carefully how this objective can best be achieved in an effective and practicable manner, having regard to the advice of various stakeholders. The Administration generally agrees with the principles advocated by the LRC, and is prepared to take forward all the recommendations, including Recommendation 4 which we plan to implement in a modified form. We have also taken note of the LRC's observations and intend to take follow-up action as appropriate.</i></p> <p><i>The Labour and Welfare Bureau intends to consult the Legislative Council Panel on Welfare Services before</i></p>

	Report (month and year of publication)	Administration's public response to report (month and year of response)
		<i>issuing the drafting instructions in 2009-10 for a bill to implement the recommendations." (November 2009)</i>
18	Guardianship and custody – Part 3: The family dispute resolution process (March 2003)	<p><i>"The Administration welcomes and supports the recommendations in the LRC's report.</i></p> <p><i>As regards the report's detailed recommendations (for example, the provision of funding and resources support for the Non-Governmental Organisations conducting mediation services), as they touch upon various policy areas including funding support, child and family welfare and court powers and procedures which come under different bureaus and departments, their implementation is only feasible with the policy and resource support from the relevant bureaus and stakeholders from the integrated child and family welfare perspectives, and also support from the legal profession and the courts.</i></p> <p><i>The Home Affairs Bureau stands ready to continue to coordinate efforts and input from relevant bureaus and stakeholders in further pursuing the recommendations of the LRC report." (May 2009)</i></p>
19	Privacy – Part 4: Privacy and media intrusion (December 2004)	[See item 4]
20	Privacy – Part 5: Civil liability for invasion of privacy (December 2004)	[See item 4]
23	Privity of contract (October 2005)	<i>"The Department of Justice has carefully considered the recommendations in the Law Reform Commission's report on Privity of Contract and agrees with the Commission that the doctrine of privity of contract should be reformed by means of a comprehensive, systematic and coherent legislative scheme. The Department of Justice intends to prepare a Bill to implement this proposal and will consult relevant stakeholders on the draft legislation in due course." (November 2010)</i>

	Report (month and year of publication)	Administration's public response to report (month and year of response)
24	Privacy – Part 6: The regulation of covert surveillance (March 2006)	[See item 4]
25	Substitute decision-making and advance directives in relation to medical treatment (August 2006)	<p><i>"(i) <u>Advance Directives</u></i></p> <p><i>The Administration shares the view of the LRC that Hong Kong people are not yet familiar with the concept of advance directives. The Administration also concurs that, as pointed out by LRC, it would be premature to attempt to formulate a statutory framework and to embark on any legislative process for advance directives without greater public awareness of the issues involved. The Administration is aware that advance directives touch upon a wide range of issues beyond their legal and practical aspects (for instance, end-of-life care) which warrant very careful consideration and deliberation.</i></p> <p><i>The making of an advance directive is a personal decision. An individual is already free at present to make an advance directive if he so wishes. The Administration respects an individual's freedom to make such a decision, and has no intention at this stage to actively advocate or encourage the public to make advance directives. However, having considered the LRC's recommendations, the Administration recognises the need to enhance the public's understanding of advance directives, to provide information for those who wish to make such directives, and to strengthen the doctor-patient relationship in the handling of such directives through close communication. In this connection, the Food and Health Bureau (FHB) consulted parties concerned on these issues from 23 December 2009 to 22 March 2010, including hospitals (both public and private), the medical profession (including the Medical Council of Hong Kong), the legal profession, the healthcare sector, patient groups and non-governmental organisations (NGOs) providing healthcare-related services to patients.</i></p> <p><i>Based on the views received from the consultation, FHB will take necessary follow-up actions in consultation with parties concerned, including the Hospital Authority, the medical profession and the</i></p>

	Report (month and year of publication)	Administration's public response to report (month and year of response)
		<p>relevant NGOs. Among other developments, it is noted that a working group under the Ethics Committee of the Hong Kong Medical Council is working on a guideline on the handling of advance directives. FHB will also collaborate with concerned NGOs to raise the public's awareness of advance directives.</p> <p>(ii) <u>Definition of mentally incapacitated person</u></p> <p>On the LRC report's recommendations to amend the definition of 'mentally incapacitated person' for the purposes of the application of certain parts of the Mental Health Ordinance (Cap 136), the Administration noted that there are ongoing developments in the knowledge and concepts in the field of mental health, as well as corresponding changes in recent years to the terminology adopted in legislation in other jurisdictions. The Administration will examine the definition of 'mentally incapacitated person' in the overall context of the law in the light of these developments and explore the scope for improving the clarity and consistency of the existing definition in its application to various parts of the law. The relevant parties (including mental health experts) will be consulted and the Administration will seek to pursue any necessary legislative changes under a composite proposal in the long term." (November 2010)</p>
26	Conditional fees (July 2007)	<p>The Administration's response was set out in papers presented to the Legislative Council's Panel on Administration of Justice & Legal Services (AJLS Panel) in June and October 2010.</p> <p>The Administration's June 2010 AJLS Panel paper (at http://www.legco.gov.hk/yr09-10/english/panels/ajls/papers/aj0628cb2-1889-1-e.pdf) considered and rejected the LRC's proposal that a privately-run Conditional Legal Aid Fund (CLAF) be established, together with a new body to administer the CLAF and to screen applications for the use of conditional fees, to brief-out cases to private lawyers, to finance the litigation and to pay the opponents' legal costs should the litigation prove unsuccessful. The Administration referred to the concerns about the proposal expressed by the Bar and the Law Society and concluded:</p>

	Report (month and year of publication)	Administration's public response to report (month and year of response)
		<p><i>"Since a privately-run CLAF could only operate with the support of the legal profession, there appears no prospect of establishing a CLAF in Hong Kong for the time being. In the circumstances, the Administration does not propose to take the recommendation of the Report that a CLAF be established any further."</i></p> <p>On the proposed expansion of the scope of the Supplementary Legal Aid Scheme (SLAS), the Home Affairs Bureau's October 2010 AJLS Panel paper (at http://www.legco.gov.hk/yr10-11/english/panels/ajls/papers/aj1022cb2-36-2-e.pdf) advised as follows:</p> <p><i>"To complement the SLAS review soon to be completed by the Legal Aid Services Council (LASC), and to benefit more people from the middle class, the Government will earmark \$100 million for injection into the SLAS fund when necessary to expand the scheme to cover more types of cases, such as claims for damages for professional negligence in a wider range of professions, and claims to recover outstanding wages and other employee benefits.</i></p> <p><i>HAB will carefully study LASC's report on SLAS review, and report to the Panel on Government's specific proposals on the expansion of SLAS in the first half of next year."</i> (October 2010)</p>
27	Enduring powers of attorney (March 2008)	<p><i>"The Department of Justice has carefully considered the recommendations contained in the Law Reform Commission's report on Enduring Powers of Attorney, published in March 2008, and has decided to put forward legislation to implement those recommendations in full.</i></p> <p><i>The department will now prepare a bill to implement the recommendations for the consideration of the Executive Council. Subject to the Executive Council's approval, it is the department's intention to introduce the bill into the Legislative Council in 2010."</i> (April 2009)</p>
28	Hearsay in criminal proceedings (August 2009)	<p><i>"The Department of Justice is studying the complex issues raised in the Law Reform Commission's report on Hearsay in Criminal Proceedings. The department has asked the Law Society and the Bar Association for their views and will consider their responses carefully</i></p>

	Report (month and year of publication)	Administration's public response to report (month and year of response)
		<i>before reaching a conclusion on the report's recommendations." (December 2010)</i>
29	Sexual offences records checks for child-related work: interim proposals (February 2010)	<p><i>"The Law Reform Commission (LRC), after detailed discussion and public consultation, published a report on Sexual Offences Records Checks for Child-related Work: Interim Proposals in February 2010. To reduce the risk of children and mentally incapacitated persons (MIPs) being sexually abused, the report proposes the early establishment of an administrative scheme as an interim measure to enable employers of and parents hiring persons undertaking child-related work and work relating to MIPs to check the criminal conviction records for sexual offences of employees. The LRC also makes some specific recommendations relating to the implementation of the proposed scheme, while trying to strike a balance between child protection and the rights of rehabilitated offenders.</i></p> <p><i>We are highly concerned about sexual offences against children. The Police also accord high priority to combating such offences. We are aware of the physical and psychological trauma experienced by children as victims of sexual abuse and we must do our best to minimise the risk of children being sexually abused. We also note the strong social aspiration for the early implementation of the proposed check mechanism. To implement the LRC's recommendations as quickly as possible, the Police will establish a sexual conviction record check mechanism to allow employers and parents to check such information and enhance the protection for children and MIPs. We hope to complete the relevant preparatory work for the administrative mechanism next year and implement it in the form of a pilot scheme." (November 2010)</i></p>
30	Criteria for service as jurors (June 2010)	<p><i>"The Department of Justice has carefully considered the recommendations contained in the Law Reform Commission's report on Criteria for Service as Jurors, published in June 2010, and has decided to put forward legislation to implement those recommendations.</i></p> <p><i>Subject to the approval of the Executive Council, the department will introduce a Bill into the Legislative Council in due course to implement the recommendations." (December 2010)</i></p>

TABLE 3

Key points in LRC reports not yet implemented

Note: the number assigned to each report in the first column corresponds to the numbering in Table 1.

	Report (month and year of publication)	Outline of key points in report
3	Insolvency - Part 2: Corporate rescue and insolvent trading (October 1996)	<p>The report recommended the introduction of a new corporate rescue procedure known as provisional supervision with the aim of rescuing viable companies as an alternative to winding-up.</p> <p>Under the scheme, a company could initiate provisional supervision by obtaining the protection of the court against any proceedings for an initial period of 30 days. During that time a qualified professional, the provisional supervisor, would attempt to put together a proposal for a voluntary arrangement to be entered into by the company and its creditors. The provisional supervisor could apply to the court for extensions to the moratorium for up to six months from the start of the provisional supervision.</p> <p>The report also proposed the introduction of a new concept of insolvent trading. The liquidator could take proceedings against those directors of the company who had allowed the company to trade while it was insolvent. Directors found to have failed in their duty to prevent a company trading while insolvent could be personally liable to pay compensation to the company.</p>
4	Privacy - Part 2: Interception of communications (December 1996)	<p>The report recommended that interception of communications should be prohibited unless carried out pursuant to a warrant granted by the court. The Commission considered that the existing law did not provide sufficient protection against unlawful or arbitrary interference with the individual's right to privacy and that a statutory framework was necessary.</p> <p>The report recommended that it be an offence intentionally to intercept or interfere with a telecommunication, a sealed postal packet or a transmission by radio. Only the Administration and its law enforcement agencies should be able to apply for a warrant authorising the interception of</p>

	Report (month and year of publication)	Outline of key points in report
		communications. In order to keep the warrant system under review, the Commission recommended that a judge of the Court of Appeal should be appointed to be the supervisory authority. To increase public accountability, the supervisory authority should be required to furnish an annual public report to the Legislative Council and a confidential report to the Chief Executive.
5	Extrinsic materials as an aid to statutory interpretation (March 1997)	<p>The report deals with the way in which disputes as to the meaning of ambiguous legislative provisions can be resolved by the use of material outside the statute itself. The report recommends that the criteria for the use of these "extrinsic aids" should be incorporated in legislation by amendment to the Interpretation and General Clauses Ordinance (Cap 1).</p> <p>Legislation is interpreted every day and disputes can arise over the meaning of a statutory provision which have to be resolved by the courts. Providing a statutory list of available extrinsic aids and the criteria for their use would give the courts more assistance in tracing the source or purpose of a disputed statutory provision. The Commission recommends that the list of extrinsic aids should include the explanatory memoranda of a Bill, the second reading speech of the policy Secretary, the official record of debates in the Legislative Council, relevant international treaties and relevant official reports, such as Law Reform Commission reports.</p>
7	Description of flats on sale - Part 2: Overseas uncompleted residential property (September 1997)	<p>The report addresses the problem of inadequate and misleading sales information provided in respect of the sale of overseas uncompleted residential property advertised or offered for sale in Hong Kong.</p> <p>The report recommends that any vendor of overseas uncompleted residential properties must engage a licensed estate agent in Hong Kong if he wishes to advertise those properties for sale in Hong Kong. Any advertisement published in Hong Kong must specify the estate agent and provide his licence number. The agent would be under a duty to make available the sales brochure to the purchaser and to ensure that any information it contains is accurate. The agent would be liable for any false or misleading information in the advertisement or in the sales brochure.</p>

	Report (month and year of publication)	Outline of key points in report
8	Civil liability for unsafe products (February 1998)	<p>The report proposed reforms to the law governing compensation for injury and damages caused by defective or unsafe goods. Under the existing law, a person who suffered injury caused by an unsafe product can only sue under contract or negligence. If there is no contractual relationship between the two parties, the injured person is denied a contractual claim. A claim on the basis of negligence might also present difficulties for the claimant, with the likelihood that expert evidence would be required.</p> <p>The Commission considered the shortcomings of the existing law and developments which had taken place overseas and recommended that the law governing compensation for injury and damage caused by defective or unsafe goods should be expanded beyond the existing spheres of contract law and negligence law. This new form of liability should be based on the defect approach. A product would be regarded as defective if it did not meet the standard of safety that persons generally are entitled to expect. The standard of safety required should be judged at the time the product was put into circulation. Any injured person should be covered by the proposed new form of liability, whether or not he is a party to the contract, a user of the product or a mere bystander.</p>
9	Insolvency - Part 3: Winding-up provisions of the Companies Ordinance (July 1999)	<p>The report makes over 250 recommendations, addressing both policy considerations and procedural aspects of winding-up.</p> <p>In terms of policy issues, the report recommends that a new Ordinance should be created to bring together all insolvency and insolvency related matters in a single Ordinance. The report also recommends the establishment of a two-tier system for the licensing of insolvency practitioners with the introduction of 'Licensed Insolvency Practitioners' and 'Registered Insolvency Practitioners'. A Panel under the auspices of the Official Receiver should also be established to adjudicate on the remuneration of insolvency practitioners.</p> <p>As regards the procedural aspects, a number of recommendations would have an effect on company directors, including an obligation to obtain compensation insurance. The report proposes that preference payments to certain categories of creditors should be abolished and</p>

	Report (month and year of publication)	Outline of key points in report
		that, in relation to some insolvency offences, the burden of proving certain matters would shift from the prosecution to the accused person
12	Privacy – Part 3: Stalking (October 2000)	<p>The major recommendations are:</p> <ol style="list-style-type: none"> 1. The Administration should give consideration to reforming the law relating to domestic violence. 2. <ol style="list-style-type: none"> (a) A person who pursues a course of conduct which amounts to harassment of another, and which he knows or ought to know amounts to harassment of the other, should be guilty of a criminal offence. (b) For the purposes of this offence, the harassment should be serious enough to cause that person alarm or distress. (c) A person ought to know that his course of conduct amounts to harassment of another if a reasonable person in possession of the same information would think that the course of conduct amounted to harassment of the other. 3. It is a defence for a defendant who is charged with the offence of harassment to show that (a) the conduct was pursued for the purpose of preventing or detecting crime; (b) the conduct was pursued under lawful authority; or (c) the pursuit of the course of conduct was reasonable in the particular circumstances. 4. The courts should take into account the rights and freedoms provided in Article 17 (privacy, family, home and correspondence), Article 19 (freedom of expression) and Article 21 (peaceful assembly) of the International Covenant on Civil and Political Rights when determining whether the pursuit in question was reasonable in the particular circumstances. 5. <ol style="list-style-type: none"> (a) A person who is guilty of the proposed offence of pursuing a course of conduct which amounted to harassment of another, and which he knew amounted to harassment of the other, should be liable to a fine and to imprisonment for two years. (b) A person who is guilty of the proposed offence of pursuing a course of conduct which amounted to harassment of another, and which he ought to

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		<p>have known amounted to harassment of the other, should be liable to a fine and to imprisonment for 12 months.</p> <p>6.</p> <p>(a) A court sentencing a person convicted of the offence of harassment may make an order prohibiting him from doing anything which causes alarm or distress to the victim of the offence or any other person, as the court thinks fit.</p> <p>(b) A person who, without reasonable excuse, does anything which he is prohibited from doing by a restraining order should be guilty of an offence, which is punishable by imprisonment for 12 months.</p> <p>7. The courts may require any person convicted of the offence of harassment to receive counselling, undergo medical, psychiatric or psychological evaluation, and receive such treatment as is appropriate in the circumstances.</p> <p>8.</p> <p>(a) A person who pursues a course of conduct which would have constituted the offence of harassment should be liable in tort to the object of the pursuit.</p> <p>(b) The plaintiff in an action for harassment should be able to claim damages for any distress, anxiety and financial loss resulting from the pursuit and to apply for an injunction to prohibit the defendant from doing anything which causes the plaintiff alarm or distress.</p>
13	Guardianship & custody – Part 1: Guardianship of children (January 2002)	<p>The report deals with the law relating to the appointment of guardians for children in the event of the death of one or both parents. The Commission's focus in reviewing the law of guardianship of children was on recommending ways to simplify the law and procedures in this area, so that more parents will be encouraged to take the positive step of making guardianship arrangements for their children.</p> <p>The Commission recommends in the report:</p> <ul style="list-style-type: none"> • the introduction of a more simple, standardised procedure for the appointment of guardians for children; • widening the court's power to appoint guardians for

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		<p>children, so that any person may apply to be made a guardian of a child, not only in cases where the child has no parent with parental responsibility for him, but also in cases where a custody order for the child has been made in favour of the parent who has now died;</p> <ul style="list-style-type: none"> • removing the current right of the surviving parent to veto a testamentary guardian from acting, so that either the surviving parent or the guardian may apply to the court if there is a dispute between them on the best interests of the child; • that a testamentary guardian appointed by the parent who has custody of the child should be able to act automatically as guardian for the child on the death of that parent; • that, as far as practicable, the views of the child on the appointment of the guardian should be taken into account; • that a child's guardian should be able to appoint a guardian for the child in the event of the guardian's death; • that there should be a system for withdrawing from acting as guardian similar to the system for appointing a guardian; • that the High Court's power to remove or replace a guardian in the best interests of the child should be extended to the District Court.
14	Contracts for the supply of goods (February 2002)	<p>The report contains proposals to reform the law governing contracts for the supply of goods and, in particular, the implied undertakings which should be imposed on suppliers of goods.</p> <p>Where goods are supplied under a contract of sale, the law imposes a number of statutory undertakings on the supplier. These include, for instance, an undertaking that the goods are of good quality and fit for the buyer's particular purposes, and that the goods correspond with any description which has been provided. These statutory undertakings only apply in contracts of sale and not where goods have been supplied in some other ways, such as by hire or hire purchase. In those cases, the supply of goods is governed by case law and it is unclear whether similar implied undertakings apply.</p> <p>The report follows an examination of the position in a</p>

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		<p>number of other jurisdictions, and recommends that the law should be clarified and made more certain by setting out in new legislation suppliers' implied undertakings to customers in contracts for the supply of goods. These undertakings should be consistent with those which apply at present in contracts for the sale of goods. In addition, this report also makes a number of recommendations in relation to contracts for the sale of goods.</p>
15	<p>Guardianship & custody – Part 2: International parental child abduction (April 2002)</p>	<p>The report deals with the law relating to the abduction of children across international borders by parents in contested custody cases.</p> <p>The Commission's focus in reviewing the law in this area was on recommending ways to strengthen Hong Kong's current legal protections against child abduction, so as to better support the operation here of the Hague Convention on the Civil Aspects of International Child Abduction. This important international convention, which has been in force in Hong Kong since September 1997, provides that children abducted from one Convention-member state to another should be located and returned to their home jurisdictions as quickly as possible.</p> <p>The Commission's recommendations include:</p> <ul style="list-style-type: none"> • the introduction of legislative restrictions on removing a child from the jurisdiction without the required consents; • a specific power to the court to order the disclosure of the whereabouts of a child; • a specific power to the court to order the recovery of a child; • a specific power to the authorities to hold a child suspected of being abducted so that he can be returned to the custodial parent or taken to a place of safety. <p>The Commission also proposes:</p> <ul style="list-style-type: none"> • an expansion of legal aid availability and a speeding up of the processing of legal aid applications for Hague Convention cases; • a review of the adequacy of the current provisions in Hong Kong regarding stay of custody proceedings pending the outcome of related Hague applications; • a review of the provisions regarding the confidentiality of

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		information relating to Hague proceedings.
17	Description of flats on sale - Part 3: Local completed residential properties (September 2002)	<p>The report makes separate recommendations in respect of completed properties sold in the second-hand market, and in respect of such properties sold first-hand by the original developer.</p> <p>The law currently imposes few positive duties, if any, on a vendor of a second-hand completed property to disclose particulars of the property for sale. The report recommends the introduction of a Vendor's Information Form (VIF) for the sale of completed residential properties, which should be encouraged by the relevant professional bodies in Hong Kong. Only if the VIF cannot be introduced voluntarily in this way should the Government consider introducing legislation to make the VIF compulsory. The VIF should be filled in by the vendor and contain various particulars of the unit offered for sale. A vendor is required to make the VIF available when his unit is put on the market for sale, whether or not this is done through an estate agent.</p> <p>The report also recommends a cooling-off period of three working days for sale of completed units in the second-hand market.</p> <p>So far as completed units sold in the first-hand market are concerned, the report recommends that for "left-over" units (meaning those flats which were first marketed when uncompleted but are still left unsold by the time they are completed), developers should be required to make available the most recent sales brochures and a VIF. However, up-to-date sales brochures should always be made available for flats marketed for the first time after completion. All information in a sales brochure must be accurate at the time the completed property is offered for sale.</p> <p>In contrast to the voluntary approach advocated in respect of the second-hand market, the report recommends that the recommendations made in respect of the first-hand market should be implemented by legislation.</p>
18	Guardianship and custody – Part 3: The	The report looks at the various approaches which may be adopted in resolving family disputes, and focuses particularly on the use of mediation. The report makes recommendations to strengthen family mediation services

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family dispute resolution process (March 2003)	<p>and to enhance the family litigation process.</p> <p>The Commission's focus in reviewing this area was on recommending ways to minimise the adversarial nature of family proceedings so as to promote the best interests of the child. The Commission has formed the view that the emotional harm experienced by parties involved in family proceedings, especially children, can be greatly reduced if mediation is used to resolve the matters in dispute between the parties. The Commission therefore proposes that the use of family mediation should be strongly supported and encouraged by the courts and the Administration.</p> <p>In relation to support services for family mediation, the Commission endorses the Pilot Scheme on Family Mediation which is currently operating at the Family Court, and recommends that providing access to, and promoting, mediation services should be an integral part of the Family Court system. In line with current arrangements under the Pilot Scheme, the report recommends that free, court-based information sessions should be provided to parties contemplating divorce, to inform them about family support services and alternatives to litigation which are available such as mediation. Counselling conferences should also be introduced. Their purpose would be to assist divorcing parties to resolve emotional conflicts which may be preventing them from reaching agreement on practical issues, particularly the future custody and access arrangements for their children. The report also recommends that solicitors should be under an obligation to advise their clients about the availability of information sessions, counselling and mediation services.</p> <p>On the general role of mediators, the report's recommendations aim at ensuring that mediation in Hong Kong operates in accordance with clear guidelines and with adequate resources, so that the integrity of the process and the quality of mediation services will be maintained. The report makes recommendations relating to the training of mediators, their system of accreditation, guidelines on separation of roles for mediators who are also lawyers and social welfare officers, and mechanisms to allow the views of the child to be considered in the mediation process. The Commission also recommends that legal aid should be available for mediation.</p>

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		<p>Recommendations for improvements to the family litigation process include more powers to judges to manage the course of family proceedings and to control costs, the introduction of target times for the disposal of civil cases concerning children, the holding of issues and settlement conferences to further promote agreement between the parties, and the introduction of target times for the production of social welfare reports. The Commission also recommends that more statistics on child-related cases should be maintained by the Family Court, but that children's privacy should be protected by a practice direction to control the release of unreported judgments concerning children. The report endorses the adoption of codes of practice for lawyers dealing with family cases, especially those involving children.</p>
19	<p>Privacy – Part 4: Privacy and media intrusion (December 2004)</p>	<p>The report examines whether it is necessary to introduce additional measures to protect individuals from unwarranted invasion of privacy by the news media.</p> <p>The report concludes that the voluntary self-regulatory measures introduced by the press industry and the journalistic profession have not been effective in protecting individuals from unwarranted invasion of privacy by newspapers and magazines.</p> <p>The Commission therefore recommends that:</p> <ul style="list-style-type: none"> • an independent and self-regulating Commission should be established by statute to deal with complaints of unjustifiable infringements of privacy by newspapers and magazines ("the Commission"); • the Commission should consist of: <ul style="list-style-type: none"> a. Press Members representing the press industry and the journalistic profession, including: (i) newspaper members; (ii) at least one magazine member; (iii) journalist members; and (iv) at least one academic member; and b. Public Members representing the public and victims of press intrusion, including at least one retired judge; • the number of Press Members must not exceed that of Public Members;

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		<ul style="list-style-type: none"> • the Press Members should be nominated by representatives of the newspaper industry, the magazine industry, the journalistic profession and the journalism teaching profession; • each of the newspapers having the highest readership in Hong Kong should be entitled to nominate one newspaper member, though other newspapers should also be represented; • journalist members should be nominated by journalists' associations, while academic members should be nominated by the academic community in the discipline of journalism; • the Public Members (other than the retired judge who should be nominated by the judiciary) should be nominated by professional bodies and non-governmental organisations specified in the legislation; • the Chief Executive must appoint those nominated to be members of the Commission unless there is any procedural impropriety in the nomination process; • the Commission must draw up a Press Privacy Code, which must make allowances for investigative journalism and publications that can be justified in the public interest. The Code may be drafted by the Press Members or by a Code Committee appointed by the Commission; • the Press Privacy Code must require newspapers and magazines (a) to take care not to publish inaccurate (including fabricated) information about an individual, and (b) where a significant inaccuracy (including fabrication) about an individual has been published, to publish a correction when requested to do so; • the Commission may deal with complaints about breaches of the Press Privacy Code by newspapers and magazines; • the Commission may initiate an investigation without complaint (or investigate a complaint made by a third party) only if the investigation can be justified on the grounds of public interest; • all complaints alleging breaches of the Press Privacy Code should be treated as directed against the publishers in question, not the journalists or editors concerned; • the Commission should not have a power to compel a journalist to give evidence and to disclosure his source

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		<p>of information;</p> <ul style="list-style-type: none"> • the Commission should not have the power to: <ul style="list-style-type: none"> a. award compensation to a victim; b. impose a fine on an offending publisher; or c. order an offending publisher to make an apology; • the Commission may: <ul style="list-style-type: none"> a. advise, warn or reprimand an offending publisher; and b. require it to publish a correction or the Commission's findings and decision; • where an offending publisher fails to publish a correction or the findings and decision, the Commission may apply to the Court for an order requiring the publisher to take any specified action; • a publisher (but not the complainant) aggrieved by an adverse decision of the Commission should have the right to appeal to the Court of Appeal; • members of the Commission should not be personally liable for any act done by them in good faith in the exercise of the powers conferred on the Commission. However, the protection accorded to the members should not affect the liability of the Commission itself for that act; • the defence of qualified privilege under section 14 of the Defamation Ordinance should be extended to the publication of a fair and accurate report of the findings and decision of the Commission; • the Commission should be funded partially by a levy on newspapers and magazines and partially by moneys appropriated by the Legislative Council.
20	Privacy – Part 5: Civil liability for invasion of privacy (December 2004)	<p>The report examines whether an individual should be entitled to seek civil remedies for invasion of privacy that is unwarranted in the circumstances.</p> <p>The Commission concludes that one or more specific torts of invasion of privacy which clearly define the act, conduct and/or publication which frustrates the reasonable expectation of privacy of an individual without justification should be created by statute.</p>

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		<p>The Commission recommends that:</p> <ul style="list-style-type: none"> • any person who, without justification, intrudes upon the solitude or seclusion of another or into his private affairs or concerns in circumstances where the latter has a reasonable expectation of privacy should be liable under the law of tort if the intrusion is seriously offensive or objectionable to a reasonable person; • it should be a defence to an action for the intrusion tort to show that the act in question was necessary for: <ul style="list-style-type: none"> a. the protection of the person or property of the defendant or another; b. the prevention, detection or investigation of crime; c. the prevention, preclusion or redress of unlawful or seriously improper conduct; or d. the protection of national security or security in respect of Hong Kong; • any person who, without justification, gives publicity to a matter concerning the private life of another should be liable under the law of tort if (a) the publicity is of a kind that would be seriously offensive or objectionable to a reasonable person and (b) he knows or ought to know that the publicity would be seriously offensive or objectionable to such a person; • it should be a defence to an action for unwarranted publicity to show that the publicity was in the public interest. Guidance as to what kinds of publicity would be presumed to be in the public interest should be given in the legislation; • serious consideration should be given to according legal protection to individuals against the unauthorised use of their name, likeness or other indicia of identity for a purpose other than for the legitimate information of the public; • unless the recommendations in the Report on Privacy and Media Intrusion in relation to inaccurate reports in the print media about an individual have been implemented in full, the legislation should create a right to correct factual inaccuracies about an individual published in the press.
21	Guardianship and	The main focus of the report's 72 recommendations is the introduction of a new "joint parental responsibility model"

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<p>custody – Part 4: Child custody and access (March 2005)</p>	<p>into Hong Kong's family law. This new approach aims to make it easier for both parents to maintain an active involvement in the lives of their children after they divorce.</p> <p>Under the existing law, the parent-child relationship is defined in terms of the "rights" and "authority" of each parent towards their child. When parents divorce, the role of the court is seen as being to divide up this bundle of rights and authority between them. In the past, the courts would often award one parent sole custody of the child, with all the decision-making power that that implied, while the other parent's involvement was limited to a right of access. This often resulted in the contact between the child and the non-custodial parent dwindling as time went by. The courts in Hong Kong are now making more orders for "joint custody," recognising the importance of maintaining the direct involvement of both parents in the lives of their children as far as possible.</p> <p>In a number of overseas jurisdictions, including England, Scotland and Australia, former child custody laws similar to Hong Kong's have been replaced with laws reflecting the joint parental responsibility model. These reforms include the introduction of a range of new court orders, to sweep away the old "custody" and "access" terminology in family proceedings. The Commission considers that this change in terminology and new range of court orders should be introduced in Hong Kong.</p> <p>The report also recommends the removal of the current limitation on the rights of interested third parties, such as close relatives, to apply for court orders affecting children.</p> <p>Other important recommendations in the report include:</p> <ul style="list-style-type: none"> • providing increased powers and new guidelines to the courts to deal with custody and access cases which involve domestic violence • providing better mechanisms for the views of children to be taken into account in family proceedings which affect them • amending the legislation governing care and protection proceedings so that children's rights can be better protected

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		The report also recommends that the minimum age for marriage without parental consent should be reduced from 21 to 18 years.
23	Privity of contract (October 2005)	<p>The privity doctrine has two aspects. As a general rule, a person cannot acquire and enforce rights under a contract to which he is not a party; and a person who is not party to a contract cannot be made liable under it.</p> <p>While the second aspect is generally regarded as just and sensible, the first aspect has been subject to widespread criticism by judges, academics and law reform bodies in a number of common law jurisdictions. The main concern of the report is therefore with this first aspect of the doctrine. The Commission believes that the doctrine frustrates contracting parties intention to benefit third parties, and could lead to unfairness.</p> <p>The report recommends that the doctrine should be reformed (but not completely abolished), by means of a detailed legislative scheme which would provide a comprehensive, systematic and coherent solution. It also recommends that all the major issues arising from their proposed statutory exception should be dealt with in the new legislation. In a nutshell, the proposed reform should be regarded as a general and wide-ranging statutory exception to the privity doctrine.</p> <p>The underlying principle of the reform is to respect contracting parties' freedom of contract and, where appropriate, to give effect to their intention to benefit a third party. If the parties prefer, they will be able to make it clear in their contract that the proposed legislation is not to apply to their contract.</p>
24	Privacy – Part 6: The regulation of covert surveillance (March 2006)	<p>The report's recommendations are intended to provide adequate and effective protection and remedies against arbitrary or unlawful intrusion into an individual's privacy, as guaranteed under the Basic Law and the International Covenant on Civil and Political Rights. The report recommends that a legislative framework should be set up to regulate covert surveillance and the obtaining of personal information through intrusion into private premises.</p> <p>The report recommends the creation of two new criminal offences:</p>

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		<ul style="list-style-type: none"> • it should be an offence to enter or remain on private premises as a trespasser with intent to observe, overhear or obtain personal information. • it should be an offence to place, use, service or remove a sense-enhancing, transmitting or recording device (whether inside or outside private premises) with the intention of obtaining personal information relating to individuals inside the private premises in circumstances where those individuals would be considered to have a reasonable expectation of privacy. <p>These offences will apply to all persons, though a law enforcement agency will not be liable where it has obtained a warrant or internal authorisation for the surveillance in question. It would be a defence to either of the offences that the accused had an honest belief, and there were reasonable grounds for believing, that:</p> <ul style="list-style-type: none"> • a serious offence had been, or was being committed; • the law enforcement agencies would not investigate or prosecute that offence; • evidence of the commission of that serious offence would be obtained through surveillance, and could not be obtained by less intrusive means; and • the purpose of the surveillance was the prevention or detection of a serious offence. <p>The Commission proposes that law enforcement agencies would have to obtain a judicial warrant before undertaking covert surveillance where the surveillance would otherwise constitute one of the proposed criminal offences: where it is to be carried out on certain specified premises from which the public are excluded: or where the surveillance is likely to lead to the acquisition of matters subject to legal privilege, confidential journalistic material or highly sensitive personal information. In less intrusive cases, an internal authorisation from a senior officer of the law enforcement agency will be required where covert surveillance is to be carried out in circumstances where the target would have a reasonable expectation of privacy.</p> <p>A warrant will only be granted where the covert surveillance is for the purpose of preventing or detecting serious crime (or crime, in the case of an internal authorisation), or to</p>

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		<p>protect public security in respect of Hong Kong. Before granting a warrant or internal authorisation, the court or authorising officer must be satisfied that the information cannot reasonably be obtained through less intrusive means.</p> <p>The report proposes that a new supervisory authority should be created to keep the proposed warrant and authorisation system under review. The supervisory authority should be a serving or retired judge of the Court of First Instance, or a higher court, or a person eligible for appointment to the Court of First Instance. The supervisory authority would review cases on a sample audit basis. It would also consider complaints from the public, and award compensation in appropriate cases. The supervisory authority would be required to submit a public annual report to the Legislative Council, and a confidential report to the Chief Executive.</p>
25	Substitute decision-making and advance directives in relation to medical treatment (August 2006)	<p>The report is concerned with how decisions as to medical treatment can be made for patients who are unable to make those decisions themselves because they are comatose or in a vegetative condition. The report deals with the situation where decisions as to medical treatment are made on behalf of a patient by someone else, such as a doctor, when the patient is comatose or in a vegetative conditions (what is termed "substitute decision-making"). It also deals with the situation where the patient himself, while competent, gives instructions as to the medical treatment he wishes if he later becomes incompetent to make such a decision (referred to as an "advance directive").</p> <p>In relation to substitute decision-making for those in a coma or vegetative condition, the Commission proposes that the definition of "mentally incapacitated persons" in the Mental Health Ordinance should be amended to make it clear that those parts of the Ordinance which deal with the giving of consent for medical treatment, guardianship and the management of a mentally incapacitated person's property and affairs should apply to persons who are comatose or in a vegetative state.</p> <p>In relation to advance directives, the Commission notes that the lack of an agreed form of advance directive leads to difficulties and uncertainty for both the individual and the</p>

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		<p>doctors treating him or her. One solution would be to provide a statutory form of advance directive. However, the Commission has rejected this option at this stage because it believes it would be premature to legislate on advance directives when the concept is still new to the community and is one on which most people have little knowledge.</p> <p>Instead, the Commission has put forward a model form of advance directive which could be used by those wishing to make decisions as to their future health care. The Commission believes that the advantage of a model form of advance directive is that, if correctly completed, an individual can be reasonably assured that his wishes will be carried out. The model form will also assist medical practitioners in their consideration of consent to medical treatment and make it easier for them to be confident as to the patient's prior wishes.</p> <p>The model form would require two witnesses, one of whom must be a medical practitioner. Neither witness should have an interest in the estate of the person making the advance directive.</p> <p>The advance directive would be triggered only where the individual is terminally ill, in a persistent vegetative state or in an irreversible coma.</p> <p>An advance directive can be revoked at any time by the person who has made it. Those wishing to revoke an advance directive should be encouraged to do so in writing, but it may also be revoked orally.</p> <p>The Commission considers that the Government should play a role in promoting public awareness and understanding of the concept of advance directives, and should endeavour to enlist the support of relevant bodies such as the Medical Council and the Hospital Authority in this information campaign. The Commission also proposes that the Government should review the situation in due course once the community has become familiar with the concept of advance directives and consider whether legislation should be introduced.</p>
28	Hearsay in criminal	The report proposes that the existing rule which prohibits the admission of hearsay evidence in criminal proceedings

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proceedings (August 2009)	<p>should be reformed and that the court should be given a discretion to admit hearsay evidence where satisfied that the admission of that evidence is "necessary", and that that evidence is "reliable".</p> <p>The report says that a simple explanation of the term hearsay would be that "when A tells a court what B has told him, that evidence is called 'hearsay' ". Under the existing law, hearsay evidence is inadmissible in criminal proceedings unless it falls within one of a number of common law or statutory exceptions. The principal justification for the exclusion of hearsay is that, since the evidence is presented to the court second-hand by someone other than the original statement-maker, there is no opportunity for the other side to test the reliability of the evidence by cross-examining the original statement-maker as to what was actually said.</p> <p>A major criticism of the hearsay rule, however, is that it is too strict and inflexible, and sometimes results in the exclusion of evidence which, by the standards of ordinary life, would be regarded as accurate and reliable. In addition, some of the present exceptions to the rule are complex and uncertain.</p> <p>The report points out that these problems are not unique to Hong Kong. A number of other common law jurisdictions have already reviewed the law and recommended or enacted changes. The report stresses that, while the Commission is satisfied that reform is needed, the Commission is equally clear that any reform of the hearsay rules must incorporate adequate safeguards.</p> <p>The Commission proposes that, while irrelevant and unreliable hearsay evidence should be excluded, relevant and reliable hearsay evidence should be admitted (where the need exists for such evidence) under a comprehensible and principled approach to that admissibility.</p> <p>The Commission recommends that, as a general rule, the present rule against the admission of hearsay evidence should be retained but there should be greater scope to admit hearsay evidence in specific circumstances. Hearsay evidence should be admissible:</p>

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		<p>(a) if it falls within an existing statutory exception;</p> <p>(b) if it falls within one of several common law exceptions to be preserved;</p> <p>(c) if the parties agree; or</p> <p>(d) if the court is satisfied that it is "necessary" to admit the hearsay evidence and that it is "reliable".</p> <p>The admission of hearsay will be "necessary" only in certain specified circumstances, such as where the declarant is dead, or cannot be found, or refuses to testify on the ground of self-incrimination. The party applying to admit hearsay evidence under the discretionary power must prove the condition of necessity to the required standard of proof, which will be "beyond reasonable doubt" if the party applying is the prosecution, and "on a balance of probabilities" if the party applying is the defence.</p> <p>In determining whether the evidence is "reliable" for the purposes of admission, the court must have regard to all circumstances relevant to the apparent reliability of the statement, including the nature and contents of the statement, the circumstances in which it was made, and factors that relate to the truthfulness of the declarant. Hearsay evidence will not be admitted unless its probative value exceeds its prejudicial effect.</p> <p>In order to give greater protection to an accused person where hearsay evidence has been admitted under the new discretionary power, the Commission recommends that the trial judge should have the power to direct a verdict of acquittal of the accused at any time after the conclusion of the prosecution's case if the judge considers that, taking account of a number of factors, including the nature of the hearsay evidence and the importance of that evidence to the case against the accused, it would be unsafe to convict.</p> <p>The Commission also makes recommendations in relation to other specific aspects of hearsay, including the admissibility of banking, business and computer records, and prior statements of witnesses.</p>
29	Sexual offences records checks for	The report proposes 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

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child-related work: interim proposals (February 2010)	<p>records for sexual offences of employees.</p> <p>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.</p> <p>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 scheme should apply to both existing and prospective employees, but should be implemented in stages, with only prospective employees covered in the initial phase.</p> <p>The report explains that the scheme is 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.</p> <p>The LRC would further 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). As that will take some time to complete, the LRC is therefore putting forward the interim proposals for consideration and implementation in the meantime.</p> <p>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.</p> <p>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</p>

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		<p>"clean" check result would not be recorded in writing, but would be communicated verbally to the job applicant or his employer.</p> <p>The report explains 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 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.</p> <p>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.</p>
30	Criteria for service as jurors (June 2010)	<p>The existing legislation that applies to the appointment of jurors requires that a juror must be a resident of Hong Kong, between 21 and 65 years of age, not afflicted by blindness, deafness or other disability preventing him from serving as a juror, be of good character, and have "<i>a sufficient knowledge of the language in which the proceedings are to be conducted to be able to understand the proceedings.</i>"</p> <p>The legislation does not prescribe how that linguistic competence is to be measured, but the administrative practice has been to exclude from the jury pool those with an educational attainment below Form 7, or its equivalent. The legislation also does not define what constitutes "good character" or "residence" for jury purposes.</p>

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		<p>The Commission was asked to consider whether the existing criteria for jury service are appropriate, and whether they should be set out with greater clarity and precision.</p> <p>The report recommends that the minimum age for jury service should be maintained at 21, but that the upper age limit should be raised from 65 to 70. An individual who has attained 65 years of age should, however, be entitled as of right to exemption from jury service if he makes such an application.</p> <p>The report proposes that, to be eligible for jury service, a person must have been issued with a Hong Kong identity card three years or more prior to his being issued with a notice of jury service and be resident in Hong Kong at the time the notice is issued.</p> <p>As regards "good character", the report recommends that no person should be eligible for jury service if he or she:</p> <ul style="list-style-type: none"> (a) has been convicted at any time in Hong Kong or elsewhere of a criminal offence for which he or she has been sentenced to imprisonment (whether suspended or not) exceeding three months, without the option of a fine (b) has been convicted within the previous five years of a criminal offence for which he or she has been sentenced to imprisonment (whether suspended or not) for three months or less (c) is awaiting trial for an indictable offence; or (d) is remanded in custody pending trial for any offence. <p>A "spent" conviction under the Rehabilitation of Offenders Ordinance (Cap 297) would not be regarded as a criminal conviction for these purposes.</p> <p>The report rejects the idea of excluding undischarged bankrupts from jury service and considers it would be wrong to automatically characterise undischarged bankrupts as not of "good character."</p> <p>The LRC does not think it desirable that the existing educational standards required for jury service should be</p>

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		<p>lowered. The LRC proposes that the existing administrative practice of requiring jurors to have attained an education standard of at least Form 7 or its equivalent should be maintained, but that this should be stipulated in legislation. This is to ensure that jurors have the ability to understand and comprehend the evidence and to discharge their duties as jurors properly. However, as a new secondary education structure will be fully implemented by 2012, with a single public examination leading to the Hong Kong Diploma of Secondary Education to be taken at the end of Secondary Six (what is now Form Six), the report proposes that the education standard required of jurors should be completion of (a) Form 7; (b) Secondary Six; (c) the IB Diploma; or (d) such other secondary education as the Registrar of the High Court considers equivalent.</p> <p>The report recommends that the guiding principles for granting excusals from, or deferrals of, jury service should be set out in the Jury Ordinance and that the justifications should include the fact that:</p> <ul style="list-style-type: none"> (a) substantial inconvenience to the public may result; (b) undue hardship or undue inconvenience may be caused to the person or any person under his or her care or supervision; (c) the person is involved in the administration of justice so that bias may result or may be perceived to result; (d) jury service is incompatible with the person's tenets or beliefs; or (e) it is in the interests of justice to do so. <p>The Commission has reviewed the categories of persons who are currently exempt from jury service and has concluded that a number should no longer be exempt, but should instead be able to apply to be excused from jury service in a particular case, or to have their jury service deferred.</p> <p>Those who should no longer be exempt from jury service include: public officers serving in a training or apprentice rank; editors of daily newspaper in Hong Kong; registered pharmacists; clergymen and those holding similar positions in any congregation or those who are full-time members of any monastery, etc; full-time students; pilots, navigators and</p>

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		wireless operators and other aircraft crew-members; justices of the peace; and the spouses of certain members of the Judiciary. The report proposes that the Registrar of the High Court or trial judge may defer jury service by any persons in these categories, or excuse them from jury service, if satisfied with the merits of their applications.
31	The common law presumption that a boy under 14 is incapable of sexual intercourse (December 2010)	<p>The report recommends abolition of the common law presumption that a boy under 14 is incapable of sexual intercourse. The existing presumption cannot be rebutted, even where there is clear evidence that the boy was physically capable of, and had had, sexual intercourse. The result is that, regardless of the circumstances, a boy under 14 years of age cannot be convicted of rape, even though he had unlawful sexual intercourse with a non-consenting victim.</p> <p>This common law presumption has ancient origins but it has either never applied or has been abolished in a number of jurisdictions, including England & Wales, New Zealand and a number of Australian jurisdictions.</p> <p>The report argues that whatever the historical rationale for the presumption may have been, it is difficult to see what purpose the rule now serves. It is contrary to common sense that the law in Hong Kong should refuse to accept that a boy under 14 may be capable of sexual intercourse, regardless of the evidence to the contrary. The application of the presumption is at odds with reality and means that on occasion the true criminality of the defendant's conduct cannot be reflected in the charge.</p> <p>The problems of the presumption were highlighted in Hong Kong in a recent case in September 2010 where a 13 year old boy was arrested for allegedly having sexual intercourse with a five-year-old girl in the Pamela Youde Nethersole Eastern Hospital in Chai Wan. He was charged with indecent assault as the presumption prevented his being charged with rape.</p> <p>If the presumption were to be abolished, the separate rebuttable presumption of <i>doli incapax</i> would continue to apply to a boy between the ages of 10 and 14. That presumption means that the prosecution must prove beyond reasonable doubt that the boy knew his actions were</p>

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		seriously wrong, rather than merely naughty or mischievous.