

**Extract from minutes of meeting on Panel on  
Administration of Justice and Legal Services on 28 February 2011**

X X X X X X X X X X

**IV. Law Reform Commission Report on "The Common Law Presumption that a Boy under 14 is Incapable of Sexual Intercourse"**  
[LC Paper Nos. CB(2)574/10-11(01) to (02) and CB(2)1136/10-11(04)]

7. Members noted the submission from the Hong Kong Human Rights Monitor ("HKHRM") which was tabled at the meeting and subsequently issued to members vide LC Paper No. CB(2)1196/10-11 (01) on 1 March 2011.

8. Under Secretary for Security ("US for S") briefed members on the Administration's paper [LC Paper No. CB(2)1136/10-11(04)] setting out its response to the Law Reform Commission Report on "The Common Law Presumption that a Boy under 14 is Incapable of Sexual Intercourse" ("LRC report") recommending the abolition of the common law presumption. US for S said that the Administration's preliminary view was that the recommendation in the LRC report was justifiable, had not aroused much controversy, and was worth supporting. If the response received by LRC indicated general support from the community and the legal profession, the Administration would take forward the relevant legislative amendments to implement the LRC proposal.

9. Ms Michelle Ainsworth, Deputy Secretary to LRC, said that LRC had considered that the issue in the LRC report straightforward and was not expected to be controversial. Therefore, it had proceeded straight to the publication of a final report in this case. Since the report's release, LRC had received a number of responses which had generally indicated support for the proposal. The only objection it had received expressed concern that the abolition of the common law presumption would increase the criminal liability of children. This concern was raised by the Hong Kong Committee on Children's Rights and Against Child Abuse, but was in fact related to the separate issue of the minimum age of criminal responsibility, which was last reviewed by LRC in a report issued in 2000. The minimum age of criminal responsibility was raised from seven years to 10 years in 2003 as a result of proposals made by LRC in the 2000 report. LRC did not wish to see the proposal arising from the present review being held up by the separate issue of the minimum age of criminal responsibility on which another review was unlikely to be conducted in the short term.

Action

10. US for S concurred that the age of criminal responsibility was a separate issue. He elaborated that even if the presumption that a boy under the age of 14 was incapable of sexual intercourse was to be abolished as proposed by LRC, the separate rebuttable presumption of *doli incapax* would continue to apply to a boy between the ages of 10 and 14 years. That presumption meant that the prosecution must prove beyond reasonable doubt that the boy knew his actions were seriously wrong rather than merely naughty or mischievous before he could be found guilty of an offence such as rape. This would afford sufficient protection to children between the ages of 10 and 14 years.

11. In response to the Chairman's enquiry on the views of the legal profession on the proposed reform, Ms Michelle Ainsworth said that both the Bar and the Law Society were in favour of the proposed reform, which was considered to be logical and straightforward. She reiterated that the Hong Kong Committee on Children's Rights and Against Child Abuse were the only two bodies which had indicated some objection to the proposal, and this was on the ground that it might in some circumstances increase the chance of children being subjected to criminal liability at an early age because of the minimum age of criminal responsibility. She further said that the submission from HKHRM tabled at the meeting raised similar concerns. HKHRM had expressed support in principle for the proposed reform, but was concerned about the age of criminal responsibility in Hong Kong and requested that a review be conducted on the issue.

12. Mr TAM Yiu-chung indicated support for the LRC proposal. He considered that the Administration should also review and take forward proposals to prevent sex offenders from undertaking child-related work. US for S responded that the area of review raised by Mr TAM Yiu-chung was wider in scope than the LRC proposal under discussion. In the current legislative exercise, the Administration aimed at focusing on the implementation of the specific LRC proposal of abolishing the common law presumption that a boy under 14 was incapable of sexual intercourse.

13. At the request of the Chairman, US for S agreed to provide a written response to the relevant views and concerns expressed by the Hong Kong Committee on Children's Rights, Against Child Abuse and HKHRM, in particular on the issue of age of criminal responsibility.

Security  
Bureau

X X X X X X X X X X