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Panel on Welfare Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 13 September 2021**

Reporting and prevention of child abuse

Purpose

This paper provides background information and gives an account of past discussions of Members on the reporting and prevention of child abuse.

Background

Criminal laws in relation to child abuse

2. The protection of children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child is a fundamental right guaranteed by the United Nations Convention on the Rights of the Child.¹ In Hong Kong, criminal offences related to specific abusive acts against children are provided in different pieces of legislation. Under the Offences Against the Person Ordinance (Cap. 212), any person who wilfully assaults, ill-treats, neglects, abandons or exposes a child or young person under the age of 16 years under the person's custody, charge or care in a manner likely to cause such a child or young person unnecessary suffering or injury to his health shall be guilty of a criminal offence. There are a number of sexual offences in the Crimes Ordinance (Cap. 200) aimed at the protection of children, whereas the

¹ The United Kingdom Government extended the Convention on the Rights of the Child to Hong Kong in 1994. The People's Republic of China is a State Party to the Convention. The Government of the People's Republic of China notified the United Nations in June 1997 that the Convention with certain reservations would continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997.

Prevention of Child Pornography Ordinance (Cap. 579) prohibits child pornography, pornographic performances by children and child sex tourism, and criminalizes the printing, making, producing, reproducing, copying, importing, exporting, publishing, possessing and advertising of child pornography.

Reporting of child abuse cases

3. The United Nations Committee on the Rights of the Child recommended as early as 2011 that for all States parties, the reporting of instances, suspicion or risk of violence should, at a minimum, be required by professionals working directly with children. As set out in the consultation paper on "Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult" ("the Consultation Paper") released by a subcommittee under the Law Reform Commission of Hong Kong ("LRC") in May 2019,² a "mandatory reporting duty" requires a report to be made in every case where there are suspicions or knowledge of child abuse or neglect (i.e. there is limited professional discretion in whether or not to report). The action taken under the duty is limited to reporting, and the duty would be discharged once a report has been made. There are likely to be sanctions for a failure to report.

4. Globally, mandatory reporting of suspected child abuse is a statutory duty in at least 70 places.³ In Hong Kong, the reporting of child abuse is voluntary. Information on the latest number of newly registered child protection cases and the number of child abuse crime cases received by the Police from 2016 to 2021 (up to March 2021) with a breakdown by age, type of abuse and the perpetrator's relationship with the maltreated child is in **Appendix I**. There are, however, observations in the community that reported instances of abuse are likely to represent a serious underestimation.

5. While the study of LRC referred to in paragraph 3 above focuses on a new proposed offence of "Failure to protect a child or vulnerable person where the child's or vulnerable person's death or serious harm resulted from an unlawful act or neglect" without a recommendation on a mandatory reporting mechanism which is not strictly within the terms of reference of the subcommittee concerned, relevant research information on reporting obligations has been set out in Chapter 8 of the Consultation Paper for the

² The consultation paper released by the Causing or Allowing the Death of a Child or Vulnerable Adult Sub-committee of the Law Reform Commission of Hong Kong in May 2019 is available at: <https://www.hkreform.gov.hk/en/publications/cadcva.htm>.

³ According to a survey published in 2018 by the International Society for the Prevention of Child Abuse and Neglect, of the 86 countries participating in the global survey, 71 had already enacted laws to require mandatory reporting of suspected child abuse cases. They included the United States, Canada, Switzerland, Australia and Japan.

Administration to consider how to further develop policies in this area. Separately, the Ombudsman initiated a direct investigation on 30 January 2018 to examine the mechanism for identifying and reporting suspected child abuse cases. In the Direct Investigation Report on Mechanism for Identifying and Reporting Suspected Child Abuse Cases published on 22 October 2019, it was recommended that the Administration should explore the feasibility of mandatory reporting of suspected child abuse cases; include the information on how to identify child abuse cases and procedures for handling suspected child abuse cases in the Kindergarten Administration Guide for kindergartens' reference; ensure that schools have clear guidelines in handling suspected child abuse cases; and conduct statistical analysis on the length of and reasons for students' absence in kindergartens, primary and secondary schools to enable early identification of child abuse cases.⁴

Procedural guidelines

6. Detailed guidelines for voluntary reporting of child abuse are contained in the Procedural Guide for Handling Child Abuse Cases ("Procedural Guide") drawn up by the Social Welfare Department ("SWD") to provide guidance on handling suspected abuse cases and the level of cooperation among relevant departments or units for reference of those groups of professionals most likely to be in situations to observe and report on child abuse. Following a comprehensive review by a task group set up by SWD⁵ on the recommendation of the Committee on Child Abuse,⁶ the revised Procedural Guide, which was

⁴ A summary of the Ombudsman's observations on the mechanism for identifying and reporting suspected child abuse cases and the Government Minute in response to the recommendations is available at <https://www.legco.gov.hk/yr20-21/english/counmtg/papers/cm20201216-sp060-e.pdf> (pages 242 to 246).

⁵ In November 2016, the Social Welfare Department set up a task group comprising representatives from the Labour and Welfare Bureau, Education Bureau ("EDB"), Department of Health, the Police, Hospital Authority, The Hong Kong Council of Social Services and non-governmental organizations ("NGOs") of relevant service natures to review the Procedural Guide. The objectives of the review include (a) facilitating professionals concerned to have a common understanding on the definition of child abuse and to adopt a consistent approach in handling various types of suspected child abuse or child abuse cases; (b) providing frontline professionals with more reference on the indicators for identification of cases with higher risk of child abuse; (c) providing frontline professionals with clearer guides in handling and following up different types of suspected child abuse/child abuse cases; (d) enhancing the cooperation between parents concerned and professionals as well as children's participation in the formulation and implementation of the welfare plan; and (e) delineating the roles and responsibilities of professionals concerned in handling various types of suspected child abuse/child abuse cases to facilitate better collaboration among various disciplines.

⁶ The Committee on Child Abuse is chaired by the Director of Social Welfare and comprises representatives from related bureaux, government departments and NGOs. It is responsible for examining the problem of child abuse and mapping out strategies to address the problem.

renamed to "Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020)" ("Revised Procedural Guide"), was endorsed by the Committee on Child Abuse on 20 December 2019 and was implemented on 1 April 2020.⁷

7. In addition to the guidance from SWD, the Education Bureau ("EDB") has put in place the "School Administration Guide", "Kindergarten Administration Guide" and "Operational Manual for Preprimary Institutions" to provide schools with specific and clear guidelines on the procedures for early identification and proper handling of child abuse cases.⁸ Separately, according to EDB's procedures in handling non-attendance cases, EDB will follow up every non-attendance case thoroughly, repeat the process of contacting the parents regularly and will not close any cases because it is unable to reach the school aged students or their parents. If EDB could not make contact with the students or parents after paying frequent home visits and making enquiries to other departments (such as SWD, the Immigration Department and the Housing Department), EDB will refer the cases to the Police or SWD for appropriate follow-up actions.

Deliberations of Members

8. Issues relating to the reporting and prevention of child abuse were discussed at a number of meetings of the Panel on Welfare Services ("the WS Panel"), the Subcommittee on Strategy and Measures to Tackle Domestic Violence formed under the WS Panel in the Fifth Legislative Council ("LegCo") and the Subcommittee on Children's Rights formed under the House Committee in the Sixth LegCo, and when the Panel on Administration of Justice and Legal Services ("the AJLS Panel") was briefed by LRC on the Consultation Paper. The major deliberations and concerns of Members are summarized in the ensuing paragraphs.

Reporting of suspected child abuse cases

9. There had long been calls from members for a mandatory reporting mechanism for people in certain professions, such as doctors, nurses, teachers

⁷ The Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) is available at [https://www.swd.gov.hk/storage/asset/section/1447/en/Procedural Guide Core Procedures \(Revised 2020\) Eng 12May2020.pdf](https://www.swd.gov.hk/storage/asset/section/1447/en/Procedural%20Guide%20Core%20Procedures%20(Revised%202020)%20Eng%2012May2020.pdf).

⁸ EDB issued in May 2020 Circular No. 1/2020 "Handling Suspected Cases of Child Maltreatment and Domestic Violence" to all schools urging them to pay paramount concern to the safety and best interests of children and pay close attention to students' physical, behavioural, emotional indicators of child maltreatment. The circular is available at <https://applications.edb.gov.hk/circular/upload/EDBC/EDBC20001E.pdf>.

and social workers, to report suspected child abuse cases to enable immediate intervention to protect the children concerned. When LRC briefed the AJLS Panel on the Consultation Paper in May 2019, members sought clarification as to whether, under the proposed new offence of "Failure to protect", failure of a teacher in identifying suspected child abuse cases involving his or her students and taking appropriate actions, such as reporting to the Police, would make the teacher being liable for the proposed new offence.

10. LRC advised that designated professionals including teachers, social workers and healthcare professionals, who had only infrequent or limited ongoing contact with the victims, were not intended to be targeted by the proposed new offence. It was hoped that the proposed new offence would deter those living with and/or caring for children and vulnerable persons from failing to protect them from risks of harm. Some members remarked that there was a need to introduce mandatory reporting system to better protect children and vulnerable persons.

11. Dr Fernando CHEUNG consulted the WS Panel in December 2019 on a Member's bill ("the proposed Bill") which he intended to present to LegCo. The proposed Bill sought to amend the Protection of Children and Juveniles Ordinance (Cap. 213) and the Juvenile Offenders Ordinance (Cap. 226) to, among others, impose a new statutory duty on those responsible for the care and welfare of children to report child abuse to the Police or SWD ("the proposed reporting requirement"). Members in general supported the proposed reporting requirement.

12. In July 2020, the President ruled that the proposed Bill related to the operation of the Government and might not be introduced into LegCo. In respect of the proposed reporting requirement, the President stated in his ruling that he took the view that it would bring about significant changes to the existing work procedures of SWD as explained by the Administration, and such effect would not be temporary. According to the Administration, the proposed reporting requirement would result in a significant increase in the number of reported suspected child abuse cases and affect the operation of the Family and Child Protective Services Units ("FCPSUs") operated by SWD.⁹ FCPSUs would have to assess each and every of those cases by taking necessary steps, from outreaching, investigation, statutory protection and care plans to group work services for victims, abusers and other vulnerable family members involved in child abuse. To cope with the upsurge of workload, SWD

⁹ SWD had set up 11 FCPSUs across the territories as specialized units to handle cases involving child protection and spouse or cohabitant battering. Upon receipt of referral, the social worker of FCPSU would assess the situation and service needs of the case and provide a coordinated package of one-stop service for the victims of domestic violence, the family and the perpetrator.

estimated that it would have to restructure FCPSUs and set up four additional investigation units, involving 78 new permanent posts and an annual recurrent expenditure of about \$60 million.

13. When the WS Panel discussed issues relating to reporting and prevention of child abuse in May 2021, members in general reiterated that reporting of child abuse cases should be a statutory requirement and urged the Administration to speed up the legislative process. Some members however expressed concern that parents and frontline staff such as social workers, teachers and school workers might incline to report all suspected abuse cases to the Police in order not to be held criminally liable. It might be counterproductive as the Police's premature intervention in some of the reported cases, particularly cases involving sexual abuse of children, could result in loss of trust of the victims in the case workers. They suggested that express provision should be made on who had the statutory duty to report child abuse cases and the reasonable steps these persons should take in order to prevent the abuse from happening. There should also be sufficient protection for the persons who reported child abuse cases.

14. The Administration advised that law on child protection should achieve the objectives of enhancing protection of children, minimizing the occurrence of abuse and providing timely assistance to children who were at risk of abuse. To this end, the seriousness of the abuse and the potential danger posed to children should be taken into account in exploring the feasibility of mandatory reporting of suspected child abuse cases. Otherwise, a large number of minor maltreatment cases reported might thin out the resources required for attending to serious abuse cases, rendering serious abuse cases not being dealt with in a timely manner. The Administration was exploring the possibilities of legislation on the mandatory reporting of suspected child abuse cases as well as relevant mechanism and arrangements. Suitable education and training would be provided for the parties concerned to facilitate them to comply with the mandatory reporting requirement, if implemented.

Handling of suspected child abuse cases

15. Members noted that when a suspected child abuse case came to the attention of a school, the first person in contact of the child should inform the school supervisor or principal, and the school social worker or the guidance or professional staff should handle and follow up the case. The school might consult FCPSU of SWD for further professional advice and refer the case to the unit as appropriate, and report cases suspected to involve criminal offence to the Police. Expressing concern that SWD had regarded some reported suspected child abuse cases as enquiries, members called on the Administration to improve the existing mechanism of handling suspected cases.

The Administration advised that clear classification of cases as enquiries or referrals as well as guidelines on how enquiries and referrals should be handled would be provided in the revised Procedural Guide.¹⁰

16. Taking the view that students' continuous absence from schools might be a sign of problems, some members considered that a mechanism should be put in place to follow up students' non-attendance. The Administration advised that primary and secondary schools were required to report students' non-attendance to EDB on the seventh day of student's continuous absence regardless of the reasons. If the students or their families were found to have problems or needs other than non-attendance, the cases would be referred to SWD, relevant social services agencies or the Police so that suitable follow-up action could be taken. As for kindergartens, EDB had issued a circular in February 2018 requesting all kindergartens to report to EDB students' absence from schools for seven consecutive school days without reasons or under doubtful circumstances. For suspected child abuse cases, even if students concerned had been absent for less than seven school days, schools should take action as early as possible according to EDB circulars/guidelines and report to EDB as appropriate.

17. Holding the view that schools should play a more active role in identifying the symptoms of child abuse and following up the cases, members considered that sufficient social work support should be provided for primary schools and kindergartens, such as through the implementation of a policy of "one school, one social worker" for each kindergarten. According to the Administration, a three-year pilot scheme had been launched in the 2018-2019 school year to provide social work service in phases for pre-primary children and their families in subsidized or aided pre-primary institutions (including aided child care centres, kindergartens and kindergartens-cum-child care centres). To help chart the way forward, SWD had commissioned the City University of Hong Kong in December 2019 to conduct an evaluation study on the mode of operation and performance of the pilot scheme. For primary schools, EDB had, starting from the 2018-2019 school year, provided public sector primary schools with additional resources under a new funding mode to enable them to implement the policy of "one school social worker for each school" according to school-based circumstances. Starting from the 2019-2020 school year, additional resources had been allocated to strengthen the manpower of social work in secondary schools, by providing two school social workers for each secondary school, and at the same time increasing supervisory support.

18. Members noted that the Maternal and Child Health Centres ("MCHCs") of the Department of Health ("DH") had made 2 335, 2 358 and 1 659 referrals

¹⁰ See paragraph 6 above.

to the Integrated Family Service Centres ("IFSCs") or Integrated Services Centres ("ISCs") operated by SWD or subvented non-governmental organizations for follow-up services in 2015-2016, 2016-2017 and 2017-2018 (up to December 2017) respectively. There was a concern about how SWD would follow up the suspected child abuse case referrals made by MCHCs if the parents concerned were not cooperative. The Administration advised that case social workers would follow up with and pay home visits to the families concerned to better understand their needs. In case a high-risk family refused to receive the services, SWD would attempt to intervene in the family via other channels, such as through other services provided for the family. The social worker would keep in view whether there were signs of domestic violence in the families and enlist the Police's assistance if necessary.

Prevention of child abuse

19. Members were advised that SWD and subvented organizations had been promoting the message of prevention of domestic violence as well as encouraging those in need of help to seek assistance through various media and platforms. The Facebook Fanpage/Instagram named "Heart and Hut" was launched by SWD in November 2020 to encourage family members cherish each other and avoid using violence to solve problems. Public education activities of "Strengthening Families and Combating Violence" were also organized from time to time by the District Social Welfare Offices. There were suggestions that SWD should proactively reach out to families with potential risk of domestic violence, conduct home visits on a regular basis, and arrange social workers to station at MCHCs for the provision of timely support so as to prevent the occurrence of domestic violence (including child abuse).

20. The Administration advised that the territory-wide IFSCs provided a spectrum of preventive, supportive and remedial services for needy families to, among others, enhance parenting capacity and assist those parents who had care and child discipline problems. To try to contact those families in need which were reluctant to actively seek help, IFSCs, ISCs, FCPSUs and the Psychiatric Medical Social Service Units of SWD had jointly implemented the Family Support Programme. Through telephone calls, home visits and other outreaching services, social workers contact the families with members at risk of domestic violence (including child abuse) and refer them to a host of support services. Separately, the Comprehensive Child Development Service jointly implemented by EDB, DH, the Hospital Authority and SWD would identify and meet various health and social needs of children aged between zero to five and their families at an early stage through MCHCs, public hospitals and other service units (e.g. IFSCs).

21. Question was raised as to whether the Administration would require all school-based social workers, school principals and teachers (especially members of School Crisis Management Teams) to receive more comprehensive training (e.g. a course of a duration of not less than three days) on child protection and identification of child abuse cases, so as to help them identify and intervene in child abuse cases at an early stage. According to the Administration, SWD had organized on regular basis talks and skills training courses to strengthen the capability of frontline professionals (including social workers, educators, police officers, government counsels, medical professionals and health care personnel) in various aspects, such as identifying suspected child abuse cases at an earlier stage, conducting risk assessment, taking child protection actions and providing post-trauma counselling. EDB had since 2018 organized annual briefings and seminars jointly with SWD and the Police on early identification, intervention and support of student victims of child abuse cases. From the 2017-2018 to 2019-2020 school years, 26 relevant seminars were conducted with a total of about 5 600 participating school personnel. In addition, EDB had commissioned tertiary institutions to provide Certificate Courses on Student Guidance and Discipline for Teachers of Primary/Secondary Schools which covered modules relating to child abuse, domestic violence, etc.

22. There were views that a holistic review of the relevant legislation on child protection should be conducted with a view to updating and consolidating them into a comprehensive piece of legislation, and a central databank for children covering, among others, data about children suffering from abuse should be set up to provide the Administration with an informed basis for formulation of children policies and providing necessary support for the children in need. Members were advised that the consultant engaged by the Commission on Children ("the Commission") to examine the feasibility of developing a central databank on children in Hong Kong had already completed the review of overseas experiences and local databases. The consultant had identified the options of collecting children's data, including for the purposes of "trend monitoring", "policy appraisal" and "prevention and early intervention".

Latest developments

23. According to the Administration, in the light of the suggestion of some sectors of the community to establish a mandatory reporting mechanism to ensure the early and effective detection of suspected child abuse and neglect cases, it has completed a preliminary study on the suggestion and consulted members of the Commission on the key parameters of the proposed mechanism in August 2021. At the Commission's meeting on 6 August 2021, members

of the Commission expressed views on, among others, whether it was appropriate to establish the mandatory reporting system through legislation and whether early detection and effective intervention in suspected child abuse cases could be achieved through other administrative measures. Apart from consulting the Commission, the Administration will organize consultation sessions for the social welfare sector, school sector and health sector. Upon completion of the consultation, the Administration will proceed to consider the next step forward having taken into account the views received.

24. On the study of LRC referred to in paragraphs 3 and 5 above, LRC released a report on Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult ("the Report") on 10 September 2021. According to LRC, while the issue of reporting of abuse is outside the study's terms of reference and no recommendation in this regard has been made in the Consultation Paper, views on the subject have been received during the consultation exercise and are set out in paragraphs 9.16 to 9.22 of Chapter 9 of the Report for the information of the Administration and other relevant parties in considering how to further enhance the protection of children and vulnerable persons. Relevant extract of Chapter 9 of the Report is in **Appendix II**.

25. As regards the consultancy study for developing a central databank on children referred to in paragraph 22 above, the consultant had conducted a series of engagement sessions to collect the views, possible concerns and expectations from stakeholders and would submit a final report on the guiding principles and an implementation framework for setting up the databank to the Commission in due course.

26. The Administration will brief the WS Panel on 13 September 2021 on the key parameters essential for considering a mandatory reporting requirement for suspected child abuse and neglected cases in Hong Kong.

Relevant papers

27. A list of the relevant papers on the LegCo website is in **Appendix III**.

**Number of newly registered child protection cases
broken down by age group of abused children in the past five years**

Year Age	2016	2017	2018	2019	2020	2021 (Jan - Mar)
0-2	158	222	185	170	173	51
3-5	104	91	99	98	96	27
6-8	153	157	177	180	143	40
9-11	172	127	227	181	138	42
12-14	194	212	237	239	245	69
15-17	111	138	139	138	145	50
Total	892	947	1 064	1 006	940	279

**Number of newly registered child protection cases
broken down by type of abuse in the past five years**

Year Type	2016	2017	2018	2019	2020	2021 (Jan - Mar)
Physical harm/abuse	378	374	493	430	389	113
Neglect	182	229	237	237	201	67
Sexual abuse	294	315	297	305	313	86
Psychological harm/ abuse	10	5	11	8	10	3
Multiple harm/abuse	28	24	26	26	27	10
Total	892	947	1 064	1 006	940	279

Number of newly registered child protection cases
broken down by perpetrators' relationship with abused children
in the past five years

Relationship with abused children	Number of perpetrators					
	2016	2017	2018	2019	2020	2021 (Jan-Mar)
Parent/sibling/step-parent/ grandparent/relative	629	655	776	739	685	204
Family friend/parent of peer/ schoolmate/friend/peer	94	89	94	120	99	32
Carer/school teacher/personnel/ staff of boarding section of school/ tutor/coach/religious personnel	58	54	60	56	51	14
Co-tenant/neighbour/inmate of residential service/boarding section of school	14	21	11	10	12	4
Unrelated person/stranger	79	107	79	75	104	27
Unidentified person/others	37	31	40	25	26	10
Total ¹	911	957	1 060	1 025	977	291

¹ The total number of perpetrators was not equal to the total number of children in newly registered child protection cases as one perpetrator might have abused more than one child whereas one child could be abused by more than one perpetrator.

Number of child abuse crime cases received by the Police in the past five years¹

	2016	2017	2018	2019	2020	2021 (Jan - Mar)
Physical abuse against children ²	408 (296)	380 (286)	437 (323)	391 (280)	383 (315)	102 (81)
Sexual abuse against children ³	477 (65)	478 (54)	456 (46)	422 (55)	386 (56)	88 (17)
Total	885 (361)	858 (340)	893 (369)	813 (335)	769 (371)	190 (98)

Number of child abuse crime cases received by the Police broken down by age group of abused children in the past five years

	2016		2017		2018		2019		2020		2021 (Jan - Mar)	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
0-5 years old	74	88	69	65	64	61	60	64	69	56	19	17
6-11 years old	138	138	125	134	160	165	137	140	111	132	25	42
12-16 years old	88	359	114	351	101	342	87	325	87	314	25	62
Total	300	585	308	550	325	568	284	529	267	502	69	121
	885		858		893		813		769		190	

¹ Inside the brackets are cases with the offenders being family members, relatives or domestic helpers of the victims.

² “Physical abuse against children” refers to crimes involving a victim who is below 14 years old, such as murder, manslaughter, wounding and serious assault, irrespective of the nature of relationship between the victim and the offender, as well as crimes involving an offender who has the care or charge of the victim as specified under other legislation, such as ill-treatment or neglect by those in charge of child or young person below 16 years old according to section 27 of the Offences against the Person Ordinance (Cap. 212).

³ “Sexual abuse against children” refers to sexual crimes involving a victim who is below 17 years old, such as rape, indecent assault and unlawful sexual intercourse, irrespective of the nature of relationship between the victim and the offender, as well as crimes involving an offender who has blood relationship with the victim as specified under other legislation, such as incest.

**Extract from the report entitled "Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult"
released by The Law Reform Commission of Hong Kong**

~~their programmes, we trust that the relevant authorities would have regard to the suggestions made by the Respondents on the training targets and content.~~

9.13 As to the suggestion on practical guidelines for handling abuse cases, the SWD and the Education Bureau have reviewed and updated various guidelines/guides/circulars on the handling of abuse cases.⁹ In addition, the Police has also issued guidelines to frontline officers setting out the circumstances under which a child abuse victim should be referred to medical and social services.¹⁰ We trust that with these guidelines/guides/circulars, frontline care personnel and professionals should have a clearer idea of what steps should be taken to protect children and vulnerable persons.

Our remarks

9.14 We in general share the above concerns and suggestions raised by the Respondents, albeit outside this project's terms of reference. To complement the enactment of the proposed offence, we thus encourage the Government to provide further training to carers, care services sectors, relevant stakeholders and professionals; and educate the public to promote awareness and understanding of the proposed offence.

Respondents' other observations

9.15 Apart from responding to the Recommendations on the proposed offence, some Respondents have also commented and put forward suggestions on other broader issues about more comprehensively protecting children and vulnerable persons. While these issues are outside this project's terms of reference, we set out their comments and suggestions in this chapter for the information of the Government and other relevant organisations in ~~considering how to further enhance the protection.~~

Reporting of abuse

9.16 The Sub-committee explored this issue in the Consultation Paper both from the angles of voluntary reporting and mandatory reporting.¹¹

⁹ Under the heading of "*What amounts to reasonable steps*" in paras 2.20 to 2.21 of Chapter 2 (Final Recommendation 1). Education Bureau Circular No. 1/2020: *Handling Suspected Cases of Child Maltreatment and Domestic Violence*. Available at: <https://applications.edb.gov.hk/circular/upload/EDBC/EDBC20001E.pdf> (accessed on 3 April 2021).

¹⁰ *Second Report of the Hong Kong Special Administrative Region under the Convention on the Rights of the Child*, at para 201. Available at: https://www.cmab.gov.hk/en/issues/child_report2.htm (accessed on 16 February 2021).

¹¹ See paras 8.25 to 8.79 of the Consultation Paper for the discussion on "*Reporting of abuse*".

Although there is no recommendation on this issue in the Consultation Paper, some Respondents have indicated their stance on whether they support mandatory reporting or not.

Respondents supporting mandatory reporting

9.17 Twenty Respondents have expressed their views on this issue. Among them, 11 Respondents (55%, 11/20) support mandatory reporting of abuse. In particular, a social service organisation comments that this is particularly important for young children from age 0 to 3 who have yet to enter school and are largely “invisible” except where they receive vaccinations in Government or private clinics.

Respondents suggesting studying mandatory reporting further

9.18 Eight Respondents (40%, 8/20) consider that the Government should study further to explore whether to put in place a mandatory reporting mechanism after fully consulting stakeholders for the following reasons:

- (a) Mandatory reporting mechanism by legislative means, a highly complex and controversial issue, requires thorough consideration of its wide ranging implications (including different options on how to handle the related issues, liabilities and rights of different parties, public interest, social inclination and whether such legislation may effectively solve the problems and achieve the desired results).
- (b) There should be wide consultation and in-depth discussion to collect the opinions of relevant sectors and stakeholders, including views of the children.

9.19 The SWD should enhance the general understanding of existing reporting channels and procedures, and the Government should consider undertaking a full review of the existing guidelines. In addition, we note that the Ombudsman recommended in its 2019 report that the Government should explore the feasibility of mandatory reporting of suspected child abuse.¹²

Respondent not supporting mandatory reporting

9.20 A social service organisation (5%, 1/20) comments that it is not prudent to impose a mandatory reporting duty on professionals to report suspected abuse, “*but ... child abuse issue should be a compulsory subject in the induction training for the relevant professions*”.

¹² Office of The Ombudsman, Hong Kong *Direct Investigation Report on Mechanism for Identifying and Reporting Suspected Child Abuse Cases* (October 2019). Available at: https://ofomb.ombudsman.hk/abc/en-us/direct_investigations (accessed on 11 April 2021).

Features of mandatory reporting mechanism

9.21 *Imposing duty to report abuses* - Some Respondents¹³ suggest imposing a duty to report abuses on a broad spectrum of persons/institutions/sectors as “*the range of duty bearers involved in providing care to a child is broad*”, ie:

- (a) health-care, social welfare and educational sectors;
- (b) professionals including teachers, social workers, medical practitioners and persons who provide professional services to children;
- (c) persons responsible for the care and welfare of children, including persons with parental responsibility, childminders and private tutors, owners and operators of child care centres, domestic helpers, casual babysitters and one-off volunteers; and
- (d) care institutions

Placing the responsibility to report child abuse on institutions would make it easier for the employees to bring up child safeguarding concerns more openly within the institutions and report the abuses when necessary. However, it could be particularly challenging for professionals to report abuses within the institutions they work in, as reporting institutional abuses externally may potentially affect the institutions’ reputation and funding. Therefore, there should be detailed reporting guidelines to clarify the lines of accountability on reporting within institutions.

9.22 *Reporting mechanism and its objective* - The objective of setting up a mandatory reporting mechanism should be to handle high-risk cases rather than all suspected cases. Therefore, there should be a well-defined case triage system and clear assessment tools/protocol, so that abuse cases may be referred to various units according to their different risk levels. Respondents have the following suggestions:

- (a) Mandatory reporting in stages:
 - (i) The first stage is to report cases of children from 0 - 5 years old who suffer from physical abuse and sexual abuse.
 - (ii) The second stage is to report cases of children under 18 years old who suffer from all types of abuses.

¹³ A social service organisation notes that many jurisdictions have mandatory reporting systems in place for child abuse, and have clearly defined those required to report the case. For example, “*health practitioners, teachers, social workers, police officers and employees of an organisation formed for religious purposes, etc.*” are incorporated into the mandatory reporting system under section 30 of the Children and Young People (Safety) Act 2017 (South Australia).

- (iii) The reporting mechanism should initially apply to professionals who have frequent contact with children, and can be reviewed to consider requiring the public to report abuses.
- (b) Legislative and administrative processes should be put in place to prevent abuse of the mandatory reporting mechanism.
- (c) The criteria for mandatory reporting of child abuse cases should be clearly laid down.
- (d) Complementary support to protect the safety of children and vulnerable persons after the abuse is reported should be enhanced:
 - (i) Better residential care services for the children and elderly are required.
 - (ii) The care plans of abused children should be subject to mandatory judicial review so that the court could regularly monitor the long-term welfare of children receiving residential child care services.
- (e) Protection of privacy of victims is important.
- (f) Protection for whistleblowers

Whistleblowers of abuses could be victimised by their institutions and the abusers, eg dismissal from work. In particular, domestic helpers may not incline to report abuses if they work for the abusers and are possible victims of the abusers. To protect whistleblowers, it should be an offence to discriminate or victimise persons who report abuses in good faith.¹⁴

- (g) Abusers should be required to receive counselling and parenting education by law, and be supervised by social workers so as to prevent the recurrence of child abuse.
- (h) It is not always necessary to report abuses to the Police, and it should be sufficient to report to relevant Government departments (eg schools notifying the SWD to follow up).
- (i) Save for cases of malicious intent, imposing criminal liability on a person who fails to report abuse may be counterproductive and unnecessary. Rather, it should be clearly set out in law as a civil duty. (In contrast, a social service organisation comments that criminal sanction should be imposed if professionals fail to fulfil the mandatory duty to report.)

¹⁴ For example, provisions to protect whistleblowers similar to section 156 (anonymity of complainants) and section 157 (offences under section 156) of the Crimes Ordinance (Cap 200), and protection against victimisation of reporters of sexual assault under the Sex Discrimination Ordinance (Cap.480).

Relevant papers on reporting and prevention of child abuse

Committee	Date of meeting	Paper
Subcommittee on Strategy and Measures to Tackle Domestic Violence and Sexual Violence	8 March 2016*	Report of the Subcommittee to the Panel on Welfare Services
Subcommittee on Children's Rights	May 2018*	Report of the Subcommittee to the House Committee
Panel on Welfare Services	19 January 2018 (Item I)	Agenda Minutes CB(2)820/17-18(01)
	9 April 2018 (Item IV)	Agenda Minutes CB(2)1541/17-18(01)
	9 December 2019 (Item III)	Agenda Minutes
	8 March 2021 (Item IV)	Agenda
	10 May 2021 (Item IV)	Agenda CB(2)1141/20-21(01)
Panel on Administration of Justice and Legal Services	27 May 2019 (Item IV)	Agenda Minutes

* Issue date