For discussion
on 15 January 2021

Legislative Council Panel on Security

Proposed introduction of offences on voyeurism and non-consensual photography of intimate parts, and related offences

PURPOSE

This paper briefs Members on the outcome of the public consultation on the proposed introduction of offences on voyeurism and non-consensual photography of intimate parts, and related offences, and seeks Members' view on the final package of legislative proposals.

BACKGROUND

2. There is currently no specific offence against voyeurism or non-consensual photography of intimate parts (which covers upskirt photography). Depending on the circumstances of each case, such acts have been prosecuted under various existing legal provisions[1]. In the light of the Court of Final Appeal's ("CFA") judgment[2], it will no longer be appropriate for the prosecution to press charge under section 161 of the Crimes Ordinance (Cap. 200) against upskirt photography and the distribution of intimate images without consent, if the act involved only the

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[1] The acts have been prosecuted under the following legal provisions –
(a) "loitering" under section 160 of the Crimes Ordinance (Cap. 200) with a maximum penalty of imprisonment for two years;
(b) "disorder in public places" under section 17B of the Public Order Ordinance (Cap. 245) with a maximum penalty of a fine at level 2 (i.e. $5,000 at the current level) and imprisonment for 12 months;
(c) "outraging public decency" under common law with a maximum penalty of imprisonment for seven years; or
(d) "access to computer with criminal or dishonest intent" under section 161 of the Crimes Ordinance with a maximum penalty of imprisonment for five years.

[2] The CFA held in its judgment laid down in April 2019 that section 161(1)(c) of the Crimes Ordinance (obtaining access to a computer "with a view to dishonest gain for himself or another") does not extend to the use of the offender's own computer. In other words, section 161(1)(c) of the Crimes Ordinance does not apply to the use of a person's own computer only, while not involving access to another person's computer. CFA's judgment would equally apply to the construction of subsections (a) ("with intent to commit an offence"), (b) ("with a dishonest intent to deceive") and (d) ("with a dishonest intent to cause loss to another") of section 161(1) of the Crimes Ordinance.

use of the suspect's own computer. Depending on the circumstances, there may also be limitations in instituting prosecution against voyeurism or non-consensual photography of intimate parts under other offences.

3. In a related development, the Law Reform Commission ("LRC") appointed a Review of Sexual Offences Sub-committee in July 2006 to conduct an overall review of the substantive sexual offences in Hong Kong. In April 2019, LRC published the *Report on Voyeurism and Non-consensual Upskirt-Photography* ("the Report"), which is part of LRC's overall review of the law governing sexual offences. In the Report, LRC recommended the introduction of an offence of voyeurism. It also recommended the introduction of an offence of non-consensual upskirt photography committed for the purpose of obtaining sexual gratification, as well as a separate one committed irrespective of the purpose.

PUBLIC CONSULTATION

4. Having regard to LRC's aforesaid review and consultation, and taking into account the pressing need to address the concerned acts with criminal sanctions, the Government accepted LRC's recommendations and proposed, on the basis of LRC's recommendations, to introduce the following new offences –

(a) voyeurism (i.e. observing or recording of intimate acts for the purpose of obtaining sexual gratification) (**Proposal 1**);
(b) intimate prying (i.e. observing or recording of intimate acts irrespective of the purpose) (**Proposal 2**);
(c) non-consensual photography of intimate parts for the purpose of obtaining sexual gratification (**Proposal 3**);
(d) non-consensual photography of intimate parts irrespective of the purpose (**Proposal 4**);
(e) distribution of surreptitious images obtained from the acts in (a), (b), (c) or (d) above (**Proposal 5**); and
(f) non-consensual distribution of intimate images where consent was previously given for taking such images but not for subsequent distribution (**Proposal 6**).

5. Members were briefed on the above legislative proposals at the meeting of the Legislative Council ("LegCo") Panel on Security on 7 July 2020 (see LC Paper No. CB(2)1286/19-20(04)). Thereafter, the Government conducted a three-month public consultation from 8 July to 7 October 2020 to gauge the public's views on the legislative proposals.

The consultation paper was available on the website of the Security Bureau for public access.

6. During the three-month public consultation, the Government received a total of about 200 submissions, including submissions from major stakeholders such as the Law Society of Hong Kong ("the Law Society"), the Hong Kong Bar Association, the Equal Opportunities Commission, the Office of the Privacy Commissioner for Personal Data, other groups/organisations which are concerned with the subject matter, and individual members of the public. The majority of the submissions received expressed strong support to the legislative proposals and some of them have also offered constructive views on specific proposals. The full consultation report is at **Annex** and the major feedbacks received are summarised in the ensuing paragraphs.

(a) Proposals 1 and 2: Offences of "Voyeurism" and "Intimate Prying"

7. In sum, there is overwhelming support (over 90%) for the introduction of the two new criminal offences. While supporting the proposal to criminalise such acts, some opine that the proposed offence of "intimate prying" may not be less heinous than the offence of "voyeurism" committed for obtaining sexual gratification. Some are of the view that the harm inflicted on the victims is in fact not directly related to the purpose(s) of the perpetrator, and hence the maximum penalties for the two offences should be aligned (i.e. a maximum of 5 years of imprisonment).

8. Separately, a few submissions consider that there should only be one single offence of such criminal acts, especially on the consideration that it may be difficult to prove the element of obtaining sexual gratification under the offence of "voyeurism", and the offenders may likely be charged with the alternate offence of "intimate prying" and liable to the lesser penalty (i.e. 3 years of imprisonment). On the other hand, there is opinion that the proposed coverage of "intimate prying", which is "irrespective of the purpose", may be too wide, and may render the proposed offence prone to mistakes, false accusations or misuses.

9. When commenting on what constitutes an "intimate act" in a place that would "reasonably be expected to provide privacy", the Law Society has suggested that the term be further elaborated. Regarding the meaning of consent, the Law Society has made reference to a court case in the United Kingdom ("UK")[3], in which the court reportedly held that a

[3] Under *R vs Richards [2020]* EWCA Crim 95, the UK Court of Appeal considered an appeal by a man who was convicted of filming his sexual activity with two women with who he had had sexual

defendant can be guilty of the offence of voyeurism in relation to sexual activity even when the defendant is a participant, and the person can be guilty of the offence if he or she secretly recorded the act in which he or she has participated. It also underlines that consent to be present does not by itself amount to consent to be videoed.

(b) Proposals 3 and 4: Offences of Non-consensual Photography of Intimate Parts

10. There is also overwhelming support (over 90%) for the introduction of these two new criminal offences. Similar to the views on Proposals 1 and 2 above, some opine that the maximum penalties of these two offences should be aligned (i.e. a maximum of 5 years of imprisonment) as the harm inflicted on the victims is unlikely to be different in most cases.

11. Noting that the LRC's recommendation on non-consensual photography of intimate parts does not cover "down-blousing", and having considered that there are much stronger call for criminalising "upskirt photography" and that the definition of "down-blousing" is not as clear and straight-forward, the Government in the consultation paper has suggested that the proposed offence will not cover "down-blousing". In this regard, about 86% of the submissions received are of the view that "down-blousing" should not be excluded from the proposed legislation, mainly on the consideration that its seriousness is no less than "up-skirting". A few submissions, however, held the contrary view. For instance, the Law Society shares the view that while the act of "down-blousing" is not lesser evil than "upskirting", the issues involved in the former are less straight-forward and should require more deliberation, whereas the discussion on the problem of upskirt photography seems to be more mature and readily available. The Law Society therefore has suggested that "down-blousing" could be reserved for the time being to allow more time for deliberation.

(c) Proposals 5 and 6: Offences on the Distribution of Intimate Images

12. Most of the submissions (over 90%) agree with the two new criminal offences on the distribution of intimate images. As regards the

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intercourse in their bedrooms in return for payment. The appellant accepted that the complainants had an expectation of privacy, but contented that section 67(3) and s.68 of the UK Sexual Offences Act 2003 would only provide protection if the filming occurred in a place which could reasonably be expected to provide privacy, and that his presence and participation with the complainants' consent precluded that. His above arguments failed. The court reportedly held that "A defendant can be guilty of an offence of voyeurism in relation [to having sex] even when he is a participant… section 67 of the [2003 Sexual Offences Act] which protects individuals against the recording of any person involved in a private act is not limited to protecting the complainant from someone not present during the act.

formulation of Proposal 6, i.e. distribution of intimate images where consent was previously given for taking such images but not for subsequent distribution, most submissions (about 89%) support that the offence is constituted if the distributor "knows" the victim did not give any consent for distribution, or is reckless as to whether the victim gave such consent. A few submissions pointed out that "recklessness" should be properly construed, given the likelihood of "unintentional" forwarding in social media.

13. In addition, a majority of the submissions (about 86%) further support that the construct of the offence under Proposal 6 should include the element that "the distributor intends to cause the victim distress, or knows or has reason to believe that the distribution will or is likely to cause the victim's humiliation, alarm or distress", which is similar to the legal provisions in other jurisdictions such as England and Wales and Singapore.

(d) Proposal 7: Statutory Defence

14. Most of the submissions (about 90%) support that proper statutory defence should be provided.

(e) Proposal 8: Sexual Conviction Record Check ("SCRC") Scheme

15. While many submissions (about 90%) agree that all of the six proposed offences should be included in the specified list of sexual offences under the SCRC Scheme, some have expressed doubt or reservation on whether these offences are strictly sexual offences (e.g. revenge porn and distribution of intimate images alone) and appropriate to be included in the list.

FINAL LEGISLATIVE PROPOSALS

16. After careful examination of the views received during the public consultation as summarised above and by reference to the experience in handling such offences in other jurisdictions, the Government has refined the legislative proposals and the final package is set out below.

(a) Voyeurism

17. Taking into account the views received, we agree that the crime of observing or recording a subject individual engaged in an intimate act is equally heinous whether it is for a sexual purpose or other purposes, and

should be punishable at the same penalty level. We therefore propose introducing one single offence of "voyeurism", contravention of which will attract a maximum penalty of 5 years of imprisonment. Details of the proposed offence are discussed below.

18. Taking into careful consideration of the issues raised and having revisited the similar offences adopted in other jurisdictions, we consider that section 162(1) of the Criminal Code of Canada[4] is of useful reference to us and the key elements of that offence provision are broadly in line with what we intend to include in the proposed offence.

19. Under section 162(1) of the Criminal Code of Canada ("the Canadian model"), the offence is limited by the chapeau of the section. First, the person who is observing or making the recording must act "surreptitiously". Second, the person observed or recorded must be in circumstances that give rise to "a reasonable expectation of privacy". We consider that these two limbs could effectively ring-fence the offence against situations of inadvertence.

20. We further propose three modifications/additions to the Canadian model. Firstly, we suggest including the element of consent. Observation or recording would only be caught by the offence if the subject does not consent to being observed or recorded. Secondly, in line with the principle of gender neutrality, breasts of both genders (as opposed to "female breasts" in the Canadian model) should be covered. Furthermore, to provide more protection to potential victims, we propose expanding the scope of the Canadian model to cover the scenario in which the person's genitals, buttocks or breasts are covered only with underwear.

(b) Non-consensual Photography of Intimate Parts

21. Along the same line of considerations for the proposed offence of "voyeurism", we also propose introducing one single offence of "non-

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[4] Section 162(1) of the Criminal Code of Canada provides that :

"Every one commits an offence who, surreptitiously, observes — including by mechanical or electronic means — or makes a visual recording of a person who is in circumstances that give rise to a reasonable expectation of privacy, if –

(a) the person is in a place in which a person can reasonably be expected to be nude, to expose his or her genital organs or anal region or her breasts, or to be engaged in explicit sexual activity;

(b) the person is nude, is exposing his or her genital organs or anal region or her breasts, or is engaged in explicit sexual activity, and the observation or recording is done for the purpose of observing or recording a person in such a state or engaged in such an activity; or

(c) the observation or recording is done for a sexual purpose."

consensual photography of intimate parts". Under the proposal, it is an offence for a person to operate an equipment beneath the clothing of a subject individual to enable the person, or any other person, to observe or to record images (including still images and videos) of the individual's intimate parts, or to have access to such recorded images, in circumstances where the intimate parts would not otherwise be visible. The offence will consist of two limbs, namely the observation or recording of the image of the intimate parts (i) for a sexual purpose, or (ii) with a view to dishonest gain for the person himself or any other person[5], with a maximum penalty of 5 years of imprisonment given the equal severity of such acts done for a sexual purpose or dishonest gain. The latter limb is proposed with reference to the existing section 161(1)(c) of the Crimes Ordinance (Cap. 200) which had been used for the prosecution against upskirt photography. It replaces the original proposal of non-consensual photography irrespective of the purpose and aims at confining the offence to avoid casting too wide a net. It is worth noting that whether the act is done in a public place or a private place is immaterial.

22. As discussed in paragraph 11 above, there have been different views as to whether the proposed offence should cover "down-blousing". As noted above, the LRC's recommendation on non-consensual photography of intimate parts does not cover "down-blousing". Based on our studies so far, among the common law jurisdictions that have legislated against non-consensual photography of intimate parts, we note that mainly New Zealand has offence provisions covering both "upskirt photography" and "down-blousing", but the scope of coverage of the latter is confined to female breasts[6]. On the one hand, we are mindful of gender neutrality as one of the guiding principles laid down by LRC that any person should be rendered same legal protection from any offensive acts irrespective of the person's gender. On the other hand, there are several thorny issues to be addressed if the legislation is to cover "down-blousing". Most importantly,

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[5] Section 161(2)(a) of the Crimes Ordinance (Cap. 200) elaborates that "gain" in section 161(1)(c) includes a gain by keeping what one has, as well as a gain by getting what one has not. In *HKSAR v Tsun Shiu Lun* [1999] 3 HKLRD 215, [1999] 2 HKC 547; applied in *Secretary for Justice v Li Man Wai* [2003] 2 HKC 1, the Court of First Instance held that "gain" included **obtaining information** which the defendant did not have prior to the access to a computer. Thus, before the ruling of *Secretary for Justice v Cheng Ka Yee & Others* [2019] HKCFA 9, section 161(1)(c) was often used for prosecution of cases of upskirt photography (i.e. non-consensual photography of intimate parts). In this type of cases, albeit being taking a photo or recording a video clip showing a victim's intimate part, the Court accepted that the offender committed the offence under section 161(1)(c) with a view to dishonest gain (*Secretary for Justice v. Wong Ka Yip, Ken* [2013] 4 HKLRD 604; *Secretary for Justice v Chong Yao Long Kevin* [2013] 1 HKLRD 794).

[6] In the New Zealand legislation, the relevant act is described as *"a visual recording of a person's naked or undergarment-clad genitals, pubic area, buttocks, or **female breasts** which is made through a person's outer clothing in circumstances where it is unreasonable to do so"*.

the scope of the offence must be defined in clear terms to avoid inadvertent contravention of the law by innocent people, and to prevent the offence provision from being prone to abuse, difference in interpretation or false accusations. We appreciate that the society generally differentiates the exposure of male breasts from female breasts and the level of concerns is very different in general. We also note the suggestion from the Law Society of reserving "down-blousing" for the time being to allow more time for deliberation having regard to the complexity of the issue.

23. Given the above considerations and the complexity of the issues to be considered and resolved, we propose to proceed with the legislative amendments to deal with "upskirt photography" first. We will take into account the enforcement experience of the new offence and keep in view the evolvement of relevant legislation in other jurisdictions, and revisit the way forward in tackling the issue of "down-blousing" as appropriate.

24. Accordingly, the term "intimate parts", in relation to a subject individual, will be defined to mean the individual's genitals or buttocks (whether exposed or covered with underwear) or the individual's underwear covering his or her genitals or buttocks.

(c) Distribution of Intimate Images

25. As noted above, there has been strong public support for the two proposed offences concerning distribution of intimate images, i.e. the distribution of surreptitious images obtained from committing the offence of voyeurism or non-consensual photography of intimate parts, and the distribution of intimate images where consent might have been given or was given for the taking of such intimate images (including still images and videos), but not for the subsequent distribution. We will proceed with the introduction of these two offences, both of which carry a maximum penalty of 5 years of imprisonment.

26. For the latter, the proposed offence will be constituted if the distributor knows the subject individual did not give any consent for the distribution, or the distributor is reckless as to whether the individual gave such consent, drawing reference from similar legislation in overseas jurisdictions (e.g. Canada)[7]. Besides, similar to the legislation in

[7] Section 162.1 of the Criminal Code of Canada provides that:

" *Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty of an indictable offence … or of an offence punishable on summary conviction."*

Singapore[8], the construct of the offence will also include the element that "the distributor intends to cause the victim distress, or knows or has reason to believe that the distribution will or is likely to cause the victim's humiliation, alarm or distress" will be included for proper scoping. The proposed formulation of the offence will render effective legal remedy to subject individuals involved in cases such as revenge porn, while it will exclude the mere forwarding or sharing of such images in the absence of the requisite *mens rea* from the scope of the offence.

(d) Statutory Defences

27. In view of the wide support received during the public consultation, we propose providing in the legislation that it is a defence for a person charged for any one of the proposed new offences to establish that the person had lawful authority or reasonable excuse for the contravention. The provision of a statutory defence on the ground of "reasonable excuse" will allow flexibility to cater for any justifiable scenarios, having regard to the circumstantial evidences and facts of individual cases.

(e) SCRC Scheme

28. The SCRC Scheme is an administrative scheme established in 2011 to enable employers of persons undertaking child-related work and work relating to mentally incapacitated persons to check whether eligible applicants have any criminal conviction records against a specified list of sexual offences. Taking into account the nature of the proposed offences of "voyeurism" and "non-consensual photography of intimate parts", which amount to a serious infringement to the sexual autonomy of the victims concerned, we see it appropriate to include the two offences in the list of specified sexual offences under the SCRC Scheme for better protection of children and mentally incapacitated persons from the risk of sexual abuse.

29. As for the two proposed offences on the distribution of intimate images, the motives may relate to revenge (as in revenge porn), blackmail, monetary gains, humiliation, or not out of sexual inclination. As such, it may not fit the purpose of the SCRC Scheme which is more a reflection on

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[8] Section 377BE(1) of the Penal Code in Singapore provides that:

"Any person (A) shall be guilty of an offence who (a) intentionally or knowingly distributes an intimate image or recording of another person (B); (b) without B's consent to the distribution; and (c) knows or has reason to believe that the distribution will or is likely to cause B humiliation, alarm or distress."

unlawful sexual inclination or tendency. It is also noted that offences related to the distribution of obscene and indecent articles under the Control of Obscene and Indecent Articles Ordinance (Cap. 390) are currently not included in the list of sexual offences under the SCRC Scheme. Considering the similar nature of the offences concerned and the purpose of the Scheme, we propose that the two proposed offences on the distribution of intimate images should not be covered under the Scheme.

30. In a related development, it is noted that the LRC Subcommittee on the Review of Sexual Offences is currently conducting a three-month public consultation on sentencing and related matters in the review of sexual offences. Among other things, the LRC Subcommittee has recommended that the SCRC Scheme should be extended to cover all existing employees, self-employed persons, and volunteers. The public consultation is underway and will end in February 2021. The Government will keep in view the outcome of the public consultation and the final recommendations of LRC in respect of the SCRC Scheme, and consider the way forward.

ADVICE SOUGHT

31. Members are invited to comment on the final package of legislative proposals as discussed above. The Government is in parallel working on the drafting of the proposed amendment bill, and subject to drafting progress, it is the target to introduce the amendment bill into LegCo in current legislative session.

Security Bureau
January 2021

Annex

Report on the Consultation on Proposed Introduction of Offences of Voyeurism, Intimate Prying, Non-consensual Photography of Intimate Parts, and Related Offences

Security Bureau

January 2021

Contents

* The abovementioned Appendices have been uploaded onto the website at www.sb.gov.hk for public information.

Chapter 1: Background

1.01 There is currently no specific offence against voyeurism or non-consensual photography of intimate parts (such as upskirt photography). Depending on the circumstances of each case, such acts have been prosecuted with the following charges:

(a) "loitering" under section 160 of the Crimes Ordinance (Cap. 200) with a maximum penalty of imprisonment for 2 years;

(b) "disorder in public places" under section 17B of the Public Order Ordinance (Cap. 245) with a maximum penalty of a fine at level 2 (or $5,000 at the current level) and imprisonment for 12 months;

(c) "outraging public decency" under common law with a maximum penalty of imprisonment for 7 years; or

(d) "access to computer with criminal or dishonest intent" under section 161 of the Crimes Ordinance with a maximum penalty of imprisonment for 5 years.

1.02 Between 2015 and 2018, out of 275 convicted cases under section 161 of the Crimes Ordinance (item (d) of paragraph 1.01 above), 73% of the convicted cases (around 200 cases) were related to upskirt photography (including still and video recordings) using mobile phones in both public and private places, as well as uploading of intimate images without consent. The Court of Final Appeal ("CFA") held in a judgment laid down in April 2019 that section 161(1)(c) of the Crimes Ordinance (obtaining access to a computer "with a view to dishonest gain for himself or another") does not extend to the use of the offender's own computer. In other words, section 161(1)(c) of the Crimes Ordinance does not apply to the use of a person's own computer only, while not involving access to another person's computer. CFA's judgment would equally apply to the construction of subsections (a) ("with intent to commit an offence"), (b) ("with a dishonest intent to deceive") and (d) ("with a dishonest intent to cause loss to another") of section 161(1) of the Crimes Ordinance.

1.03 In the light of CFA's judgment, it will no longer be appropriate for the prosecution to press charge under section 161 of the Crimes Ordinance against upskirt photography and the distribution of intimate images without consent, if

the act involved only the use of the suspect's own computer.

1.04 There are also limitations in the other offences as set out in paragraphs 1.01(a) to (c) above. Generally speaking, those offences are applicable only to acts that occur in a public place or a place where what is done is capable of public view, and thus may not be applicable to acts that occur in a private place. Furthermore, both "loitering" and "disorder in public place" are summary offences with relatively low levels of penalty. This is not commensurate with the severity of surreptitious intimate photography, which often violates the victim's right to privacy and sexual autonomy, and causes long-term distress, humiliation, harassment, and stress to the victim. There are strong sentiments in the community and a pressing need to address voyeurism and non-consensual photography of intimate parts with criminal sanctions.

1.05 The Law Reform Commission ("LRC") appointed a Review of Sexual Offences Sub-committee in July 2006 to conduct an overall review of the substantive sexual offences in Hong Kong. On 30 April 2019, LRC published the *Report on Voyeurism and Non-consensual Upskirt-Photography* ("the Report"). This is part of LRC's overall review of the law governing sexual offences, and has been prepared expeditiously in the light of the strong sentiments received during the consultation process and the imminent need for the introduction of new offences. In the Report, LRC recommended the introduction of an offence of voyeurism[1]. It also recommended the introduction of a specific offence in respect of non-consensual upskirt-photography[2].

1.06 In drawing up the legislative proposals, the Government is conscious of the guiding principles laid down by the LRC Sub-committee, namely:

(a) clarity of the law;

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[1] According to LRC, voyeurism refers to "an act of non-consensual observation or visual recording (for example, of a photograph, videotape, or digital image) of another person for a sexual purpose".

[2] LRC also recommended taking into account the following for the offence of non-consensual upskirt photography:
(a) an offence committed for the purpose of obtaining sexual gratification should be introduced;
(b) a separate offence irrespective of the purpose of the conduct should be introduced;
(c) the offence (b) above should be a statutory alternative to (a) and also a "stand-alone" offence; and
(d) the offences in (a) and (b) should cover any place where the offence took place.

(b) respect for sexual autonomy;

(c) the protective principle;

(d) gender neutrality;

(e) avoidance of distinctions based on sexual orientation; and

(f) adherence to the human rights laws and practices guaranteed under the Basic Law.

1.07 Having regard to LRC's aforesaid review and consultation, and taking into account the pressing need to address the concerned acts with criminal sanctions, the Government accepted LRC's recommendations as set out in paragraph 1.05 above in full. In short, the Government proposed to introduce new criminal offences of:

(a) voyeurism (i.e. observing or recording of intimate acts for the purpose of obtaining sexual gratification); and

(b) non-consensual photography of intimate parts, both for the purpose of obtaining sexual gratification and irrespective of the purpose (the latter being a statutory alternative to the former).

1.08 In addition to taking on board LRC's recommendations, the Government also proposed to introduce new criminal offences on the following:

(a) in relation to paragraph 1.07(a) above, a corresponding offence for intimate prying, i.e. observing or recording of intimate acts irrespective of the purpose, as a statutory alternative to the offence of voyeurism;

(b) distribution of photos or videos originated from acts in paragraph 1.07(a), 1.07(b) and 1.08(a) above; and

(c) non-consensual distribution of intimate photos or videos, where consent was previously given for the taking of such photos or videos.

Chapter 2: Public Consultation on Proposed Introduction of Offences of Voyeurism, Intimate Prying, Non-consensual Photography of Intimate Parts, and Related Offences

2.01 At the meeting of the Panel on Security of the Legislative Council ("LegCo") on 7 July 2020, the Government sought the views of LegCo members on the consultation paper on the "Proposed Introduction of Offences of Voyeurism, Intimate Prying, Non-consensual Photography of Intimate Parts, and Related Offences" ("Consultation Paper"). The Consultation Paper was then published by the Government on 8 July 2020, followed by a three-month public consultation period, during which public's views on the legislative proposals therein were invited.

2.02 The Consultation Paper was available for download at the website of the Security Bureau ("SB"). Members of the public were invited to send their views to SB by mail, facsimile or email.

2.03 During the public consultation, which ended on 7 October 2020, a total of 201 written submissions were received by SB via mail, facsimile and email. These written submissions, including those from organisations, academics and individuals, are at **Appendices** (excluding those who have requested keeping confidentiality of their submissions). Given the space constraint, the views are summarised in the main body of this report. Please refer to **Appendices** for details of relevant submissions.

2.04 The Government will finalise the legislative proposals after careful consideration of the public views received during consultation and examination of related matters. It is planned that an amendment bill will be submitted to LegCo in the 2020-2021 legislative session.

Chapter 3: Offences of Voyeurism and Intimate Prying (Proposals 1 and 2)

Proposals in the Consultation Paper

3.01 The Government accepted LRC's recommendations, and proposed to introduce an offence of voyeurism (i.e. observing or recording of intimate acts for the purpose of obtaining sexual gratification) (Proposal 1). However, the scope of voyeurism offence proposed by LRC does not cover intimate prying (i.e. observing or recording of intimate acts irrespective of the purpose, which would include earning money, blackmailing or revenge, etc.) As such, the Government proposed to introduce a corresponding offence of intimate prying (Proposal 2), which will be a statutory alternative to the offence of voyeurism, in addition to being a standalone offence, i.e. in the course of a prosecution of voyeurism, if the only element of offence that cannot be proved is the purpose of obtaining sexual gratification, then the accused may still be convicted of the alternative offence of intimate prying.

3.02 The above offences were proposed to be applicable to any person who, without the consent of the victim, with or without the aid of equipment, observes the victim doing an intimate act or records images (including stills and videos) of the intimate act, or operates equipment to enable the intimate act to be observed, or images (including stills and videos) of the intimate act to be recorded, to obtain sexual gratification (i.e. voyeurism) or irrespective of the purpose (i.e. intimate prying). It would also be an offence against a person who installs equipment, or constructs or adapts a structure or part of a structure with the purpose of enabling the person or another person to commit the offence of voyeurism or intimate prying.

3.03 The maximum penalty for the proposed offences of voyeurism and intimate prying is imprisonment for 5 years and 3 years respectively.

Written Submissions Received

Proposal 1 – Offence of Voyeurism

3.04 The majority of the written submissions received (about 93%[3]) agreed with **the introduction of a specific offence of voyeurism**. There are views that the existing law of Hong Kong is excessively conservative and does not cover certain sex crimes. Hence, the introduction of the offence of voyeurism could effectively prevent non-consensual photography of intimate acts. There are also views that by introducing the offence of voyeurism, non-consensual photography of female passengers on public transport could be effectively deterred. Some others in support of the proposal are of the views that the suspect may argue that the offence of voyeurism was committed for other purposes, thus rendering it difficult to a certain extent to prove the purpose being for obtaining sexual gratification. Besides, there are views in support of the legislation, but on the premise that the victim should have done his/her part to protect his/her intimate acts from being observed easily, e.g. the person should have locked the door, adjusted the position of the windows, closed the curtain when engaging in such intimate acts.

3.05 On the other hand, there are views that the new offence provisions should not be defined by the purpose, as the offender's act would inflict equal harm to the victim regardless of the purpose. Some others considered that under the proposed new legislation, members of the public may have hesitation in taking photographs as evidence against suspects, such as exhibitionists, who deliberately expose their intimate parts. This may lead to difficulties in adducing evidence, and may also inadvertently encourage such sex crimes to occur.

Proposal 2 – Offence of Intimate Prying

3.06 The majority of the written submissions received (about 93%[4]) agreed with **the introduction of a separate offence of intimate prying, as a statutory alternative to the proposed offence of voyeurism, in addition to being a standalone offence**. There are views that since the intention of legislating for the proposed new offences is to tackle sexual offences, new offences intended for

[3] About 4% of the written submissions received opposed the proposal while about another 3% did not offer any comment.

[4] About 3% of the written submissions received opposed to the proposal while about another 4% did not offer any comment.

sexual gratification should be imposed with heavier penalty. However, there are other views that intimate prying, regardless of whether the purpose of the suspect is for obtaining sexual gratification or for other purposes (such as obtaining gains), would equally violate the victim's right to sexual autonomy and inflict equal harm on the victim, bearing the same level of severity. It is therefore suggested that the offence of intimate prying should be subject to the same level of penalty as that of the offence of voyeurism, i.e. imprisonment for 5 years, so as to achieve deterrent effect.

3.07 Some others supported the intention of introducing the offence of intimate prying, but considered that it is the act of prying itself which inflicts harm on the victim but not the motive behind. It is thus suggested that intimate prying be considered as a main offence instead of an alternative offence to voyeurism. On the other hand, there are views that intimate prying should not be made an offence as it is difficult for law enforcement to prove whether the accused has pried into the victim's intimate act.

3.08 There are opposing views against the proposed offence of intimate prying "irrespective of the purpose" on concerns that the scope may cast too wide. It is quoted as an example that if the offence is crafted as proposed, a wife watching her husband's intimate act as evidence for adultery, or a security guard in performance of his/her duty in monitoring the closed circuit television who happens to observe someone engaged in intimate act, might have caught by the relevant legislation. This might lead to inadvertent breach of the law by innocent people.

Chapter 4: Offences of Non-consensual Photography of Intimate Parts (Proposals 3 and 4)

Proposals in the Consultation Paper

4.01 The Government accepted LRC's recommendation, and proposed to introduce an offence of non-consensual photography of intimate parts for sexual gratification (Proposal 3), as well as a separate offence of non-consensual photography of intimate parts irrespective of the purpose (Proposal 4). As recommended by LRC, the latter will be a statutory alternative to the former, in addition to being a standalone offence. This is similar to the handling of Proposals 1 and 2. These two proposed offences will cover acts commonly understood as "upskirt photography".

4.02 The offence of non-consensual photography of intimate parts is proposed to be applicable to any person who, without the consent of the victim, operates equipment beneath the clothing of the victim to enable the person or another person to observe the victim's intimate parts or record images (including still images and videos) of the victim's intimate parts or to have access to such recorded images, in circumstances where the intimate parts would not otherwise be visible. It does not matter whether the offending act took place in a public or private place.

4.03 The maximum penalty for the proposed offences of non-consensual photography of intimate parts for sexual gratification and non-consensual photography of intimate parts irrespective of the purpose is imprisonment for 5 years and 3 years respectively.

4.04 LRC's recommendation on non-consensual photography of intimate parts does not cover "down-blousing". Considering that there are much stronger calls for criminalising "upskirt photography", and that the definition of "down-blousing" is not as clear and may indeed cover a very wide range of scenarios (e.g. the taking of selfies), the Government suggested in the Consultation Paper that the proposed offences against non-consensual photography of intimate parts should not cover "down-blousing".

Written Submissions Received

Proposal 3 – Offence of Non-consensual Photography of Intimate Parts for Sexual Gratification

4.05 The vast majority of the written submissions received (about 95%) agreed with **the introduction of the offence of non-consensual photography of intimate parts for sexual gratification**. There are views that non-consensual photography of intimate parts for sexual gratification should be made an offence as it violates the victim's right to privacy and sexual autonomy. Separately, there are views supporting the introduction of the offence, while raising concerns on the likely difficulty to prove that the suspect had committed the offence for sexual gratification as he/she might argue otherwise. Those in support of the proposal have suggested that consideration be given to not defining the offence by the purpose, as photography of intimate parts would inflict equal harm to the victim regardless of the purpose. The opposing views received (about 1%) did not elaborate their underlying considerations, while about another 4% of the written submissions did not offer any comment.

Proposal 4 – Offence of Non-consensual Photography of Intimate Parts Irrespective of the Purpose

4.06 The majority of the written submissions received (about 92%) agreed with **the introduction of a separate offence of non-consensual photography of intimate parts irrespective of the purpose, as a statutory alternative to the proposed offence of non-consensual photography of intimate parts for sexual gratification, in addition to being a standalone offence**. There are views that by introducing an alternative offence, the accused would not be acquitted because of the inability to prove that the purpose of committing the offence was for obtaining sexual gratification, thereby rendering better protection to the victim. There are other views that photography of intimate parts, regardless of whether the purpose of the accused is for obtaining sexual gratification or for other purpose (such as obtaining gains), would violate the victim's right to sexual autonomy and bear the same level of severity. It is therefore suggested that the offence of non-consensual photography of intimate parts irrespective of the purpose should be subject to the same level of penalty as that of the offence of non-consensual photography of intimate parts for sexual gratification, i.e. imprisonment for 5 years. Besides, some others supported the intention of introducing the proposed offence under Proposal 4, but considered that such offence should not be an

alternative to the proposed offence under Proposal 3, and that both offences should be subject to the same level of penalty. The opposing views received (about 3%) did not elaborate their underlying considerations, while about another 5% of the written submissions did not offer any comment.

"Down-blousing"

4.07 It is generally agreed in the written submissions received that the scopes of Proposals 3 and 4 are too narrow. About 86%[5] of the views received considered that "down-blousing" should be included. There are views that the seriousness of the possible recording of one's breasts being an intimate part through "down-blousing" is no less than that by "upskirt photography". It is therefore suggested that the relevant act should be included in the scopes of both Proposals 3 and 4. There are other views that the accused seeks to record the image of a part of the victim's body through "down-blousing", and his/her motive is obvious. In addition, taking into account the widespread presence of photographs of female breasts taken from above their clothes being circulated on the Internet, and those committing such acts seek to obtain sexual gratification by doing so, it is considered that "down-blousing" should be included in the proposed offences under Proposals 3 and 4.

4.08 On the other hand, those in support of the scopes of Proposals 3 and 4 are of the view that there is a need to look at the intention of the person committing "down-blousing" when deciding whether an offence has been committed so as to avoid inadvertent breaching of the law by innocent people. As pointed out by many, taking selfies is a popular culture nowadays, and there is concern that selfie-takers may be caught by the law inadvertently if the new offences cover "down-blousing". Besides, there are further views that the issues with "down-blousing" are not straight-forward, requiring further studies and deliberation which may take time, and hence should be deferred for further consideration later. There is a suggestion that the current amendment exercise should focus on the proposed offences which have been more fully deliberated (such as "upskirt photography"), such that the legislative process will face less resistance.

[5] About 10% of the views in the written submissions received supported excluding "down-blousing" while about another 4% did not offer any comment.

Chapter 5: Offences of Distribution of Surreptitious Intimate Images and Non-consensual Distribution of Intimate Images (Proposals 5 and 6)

Proposals in the Consultation Paper

5.01 At present, there is no specific legislation dealing with the act of publishing, circulating, selling, or in any other way distributing the photos or videos generated by acts of the proposed offences as mentioned above. The Control of Obscene and Indecent Articles Ordinance (Cap. 390) only regulates the publication of obscene and/or indecent articles[6], and as such, it may not be applicable to, for instance, the transmission of upskirt images among several individuals privately using mobile phones. While there is no available information on the extent of the circulation or distribution of such images on the Internet or other means, the Police do from time to time receive reports from victims complaining that their nude images, whether taken with or without consent, were distributed on the Internet by a former partner in an intimate relationship.

5.02 In a case concerning upskirt photography[7], the Court of Appeal noted that *"the indecent photos taken by the defendant could be kept permanently, exchanged, circulated, sold as commodities, or even used to threaten the victim, and that therefore the victim could be subjected to harassment over a long period of time. Such conduct is an affront to the dignity of the female victim."* The act of distributing such images is a serious violation of the victim's right to privacy and sexual autonomy, and should be subject to criminal sanctions.

5.03 Whilst LRC in the Report did not address this issue and make any recommendation on the criminalisation of such acts, the Government, after making reference to practices adopted by some overseas jurisdictions (e.g. Canada, New Zealand and Singapore), proposed in the Consultation Paper the introduction of a specific offence to prohibit the distribution of surreptitious sexual images (Proposal 5) for better protection of the victims. The proposed offence will be applicable to any person who distributes images (including still images and videos)

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6 Under the Control of Obscene and Indecent Articles Ordinance:
(a) a person "publishes" an article if he, whether or not for gain, distributes, circulates, sells, hires, gives or lends the article to the public or a section of the public;
(b) a thing is obscene if by reason of obscenity it is not suitable to be published to any person; and
(c) a thing is indecent if by reason of indecency it is not suitable to be published to a juvenile.

7 *Secretary for Justice v Chong Yao Long Kevin* [2013] 1 HKLRD 794.

that they know to have been obtained from voyeurism, intimate prying or non-consensual photography of intimate parts (for sexual gratification or irrespective of the purpose).

5.04 Having made reference to the practices adopted by some overseas jurisdictions (e.g. Canada and New South Wales), the Government also proposed to introduce a specific offence to prohibit the non-consensual distribution of images of intimate acts (Proposal 6) in cases where consent might have been given or was given for the taking of such intimate images (including stills and videos), but not for the subsequent distribution (e.g. revenge porn).

5.05 The proposed offences of distribution of surreptitious intimate images and non-consensual distribution of intimate images are subject to the same maximum penalty of 5 years of imprisonment.

Written Submissions Received

Proposal 5 – Offence of Distribution of Surreptitious Intimate Images

5.06 The vast majority of the written submissions received (about 96%) agreed with **the introduction of the offence against the distribution of surreptitious intimate images**. There are views that given the advanced Internet technology nowadays, images could be forwarded by others once they are published online, hence causing serious physical and emotional distress to the victims. It is pointed out in some views that the introduction of the above offence could provide an effective remedy for women from the risk of being threatened, blackmailed or intimidated after breakups, thereby rendering protection of their interest. There are other views that intimate images could be circulated via numerous persons in a split second, leading to practical difficulties in law enforcement. It is therefore suggested that the person who first distributed the victim's image(s) should be liable to prosecution to achieve deterrence. The opposing views received (about 1%) did not elaborate their underlying considerations, while about another 3% of the written submissions did not offer any comment.

Proposal 6 – Offence of Non-consensual Distribution of Intimate Images

5.07 The vast majority of the written submissions received (about 94%) agreed with **the introduction of the offence against the non-consensual distribution of intimate images in cases where consent may have been given or was given for the taking of such intimate images (including still images and videos), but not for the subsequent distribution**. There are views that if a party to the intimate act consents to taking the intimate images but not to their distribution, such intimate images should be deemed as not appropriate for distribution.

5.08 In addition, some suggested that the term "non-consensual" should be clearly defined such that distribution of intimate images should be interpreted as "non-consensual" as long as the victim had not given express consent to such distribution, and that using such distribution as means of coercion or blackmail should be covered by the proposed offence. The opposing views received (about 2%) did not elaborate their underlying considerations. There are also views that the offence should not apply to circulation among friends, but should target the person who creates or generates the intimate images and/or the one who obtains or provides such images for distribution. About another 4% of the written submissions did not offer any comment.

5.09 Furthermore, the majority of the views (about 89%[8]) agreed that for Proposal 6, the offence should be constituted only if the distributor knows the victim did not give any consent for the distribution, or is reckless as to whether the victim gave such consent. According to some views, people nowadays are more liberal-minded, and therefore the act of distribution should not constitute an offence if the person concerned is genuinely willing to be photographed and to share such intimate images. It is considered in other views in support of Proposal 6 that the meaning of "reckless" should be expounded to avoid any dispute in future.

5.10 On the other hand, there are views that the holder of intimate images has the responsibility to ensure that such images would not be distributed. If such images are distributed, the distributor should be regarded as committing the offence under all circumstances. There are also views that if the distributor

[8] About 7% of the written submissions received opposed the proposal while about another 4% did not offer any comment.

intentionally caused the victim to give consent to the distribution of intimate images without appreciation of the consequence of the distribution, the distributor should be regarded as committing the offence even if the victim had given consent. Some others are of the view that a victim generally would not consent to the distribution of intimate images and the distributor would not seek the consent of the victim for the distribution. This may leave room for the distributor to argue that there is no evidence of the victim's disagreeing with the distribution, thereby rendering difficulties in adducing evidence required for conviction.

5.11 Meanwhile, the majority of views (about 86%[9]) agreed that for Proposal 6, the offence should be constituted only if the distributor intends to cause the victim distress, or knows or has reason to believe that the distribution will or is likely to cause the victim's humiliation, alarm or distress. Nevertheless, the written submissions received in general do not elaborate their considerations for supporting the proposal. On the other hand, there are opposing views that if professional assessment is required for proving whether a victim's humiliation, alarm or distress is caused by the distribution of intimate images, it may cause some victims to remain silent out of fear. This may inadvertently encourage such criminal acts and silence the victims. There are further views that the act of the distributor should already constitute an offence, regardless of whether the victim's humiliation, alarm or distress is caused by the distribution of intimate images. As such, it is suggested that a specific intent should not be required to constitute the proposed offence, but those with a criminal intent for the act should be subject to higher penalty.

[9] About 9% of the written submissions received opposed the proposal while about another 5% did not offer any comment.

Chapter 6: Intimate Acts and Intimate Parts

Proposals in the Consultation Paper

6.01 For the purpose of the proposed offences under Proposals 1 to 6, a person is doing an "intimate act" if the person is in a place which would reasonably be expected to provide privacy, and:

(a) the person's genitals, buttocks, or breasts are exposed or covered only with underwear;

(b) the person is using the toilet; or

(c) the person is doing a sexual act that is not a kind ordinarily done in public.

6.02 Besides, for the purpose of the proposed offences, a person's "intimate parts" mean the person's genitals, buttocks, or breasts, whether exposed or covered only with underwear.

6.03 Regarding the term "breasts", the Government notes that some overseas jurisdictions (e.g. Canada and New Zealand) have specified "female breasts" in the corresponding legislation, while other jurisdictions like England and Wales do not specify a gender in its definition relating to breasts, but the case law there has interpreted the term as meaning female breasts only. One of LRC's guiding principles mentioned in paragraph 1.06 above is gender neutrality. The law on sexual offences should, as far as possible, not to make distinctions based on gender. The Government therefore proposed in the Consultation Paper that the definitions of "intimate acts" and "intimate parts" should cover both female and male breasts irrespective of gender.

Written Submissions Received

6.04 The majority of the written submissions received (91%[10]) agreed that **"intimate acts" should mean acts, in a place which would reasonably be expected to provide privacy, by a person when the person's intimate parts**

[10] About 5% of the written submissions received opposed the proposal while about another 4% did not offer any comment.

are exposed or covered only with underwear, or the person is using the toilet, or the person is doing a sexual act not ordinarily done in public. Some have pointed out that the proposed offences should be based on the premise that the victim should have done his/her part to protect his/her intimate acts from being observed easily. For example, the victim should have locked the door, adjusted the position of the windows or closed the curtain when engaging in such intimate acts. Some with supporting views and some with opposing views both commented that the definition of "a place which would reasonably be expected to provide privacy" lacks clarity. They suggested that the legal provision should be clearly stated as to whether the term cover places such as changing rooms, premises where sex workers work, party rooms. There are opposing views that the proposed scope of "intimate acts" is too narrow, suggesting that acts like taking shower, dressing and undressing , as well as breast-feeding be included as "intimate acts".

6.05 The majority of the written submissions received (91%[11]) agreed that **"intimate parts" should be taken to mean a person's genitals, buttocks, or breasts, whether exposed or covered only with underwear.** In general, the written submissions received did not elaborate their underlying considerations for the supporting view. Nevertheless, there are views that the "intimate parts" for the purpose of the proposed offences should include the "intimate parts" of people of all genders (e.g. transgender persons, bisexual persons, etc.) in line with the principle of gender neutrality and for the protection of people of any gender. On the other hand, there are opposing views that body parts (e.g. legs) not intended to be exposed by the subject but arousing sexual fantasy of other person should be regarded as "intimate parts". Some have suggested that the term "intimate parts" should apply to situations where the parts are exposed, but not where they are covered by underwear. There are other views that persons committing the offences may have different intentions and preferences, and as such, the term "intimate parts" as applicable to the proposed offences should cover more elements.

[11] About 5% of the written submissions received opposed the proposal while about another 4% did not offer any comment.

6.06 **On whether, for the purpose of the proposed offences, the definition of "intimate parts" should include both female and male breasts, irrespective of gender, or should the definition include breasts of female only**, the majority of the written submissions received (90%[12]) agreed that the definition should include both female and male breasts irrespective of gender. There are views that "intimate parts" should include breasts of people of all genders (e.g. transgender persons, bisexual persons, etc.) for the protection of people of all genders and in line with the principle of gender neutrality. There are other views that as many transgender persons have sex characteristics of both genders, and if the "intimate parts" for the purpose of the proposed offences only include female breasts, the legislation would be unable to keep pace with the times. Likewise, there are views that transgender persons, bisexual persons, etc. may be more vulnerable to sexual harassment involving image-based sexual violence. As such, efforts should be made as far as possible to avoid defining the scope of sexual offence based on gender or sexual orientation such that all people in society can enjoy equal protection. On the other hand, there are opposing views that the definition should only include female breasts because it is not uncommon for males to expose their breasts. For example, males usually have their upper bodies naked when running or swimming and their chests can be seen by others.

[12] About 5% of the written submissions received opposed the proposal while about another 5% did not offer any comment.

Chapter 7: Defence(s) (Proposal 7)

Proposals in the Consultation Paper

7.01 The Government proposed in the Consultation Paper that suitable defence(s) should be made available for the offence of intimate prying (i.e. Proposal 2), non-consensual photography of intimate parts irrespective of the purpose (i.e. Proposal 4), as well as the offences related to the distribution of intimate images (i.e. Proposals 5 and 6). The defence(s) could cover acts done with lawful authority or reasonable excuse.

7.02 It is observed that statutory defences have been provided for similar offences in some overseas jurisdictions. For example, Canada provides a more generic defence of "public good". In Western Australia, more specific defences are provided, such as the distribution of the intimate image was for a genuine scientific, educational or medical purpose; was reasonably necessary for the purpose of legal proceedings; or was for media activity purposes, which did not intend to cause harm to the depicted person and was reasonably believed to be in the public interest, etc.

Written Submissions Received

7.03 The majority of the written submissions (90%[13]) agreed that **a defence of lawful authority or reasonable excuse should be provided for the proposed offences under Proposals 2, 4, 5 and 6.** There are views that the proposal to provide the relevant defence(s) can protect people of specific professions, such as police officers or medical practitioners, etc. from bearing relevant legal liability when performing duties. Some views supported the proposal of providing defence(s), but considered that it would be more practicable to adopting a narrow coverage for the offences than providing a large number of exemptions under statutory provisions the scope of which will be too wide. There are other views that the defences should only apply to acts for scientific, educational or medical purpose. There is suggestion that consideration be given to providing defences for private detectives who investigate family-related cases (especially when adultery is suspected).

[13] About 4% of the written submissions received opposed the proposal while about another 6% did not offer any comment.

7.04 Moreover, there are views supporting the provision of defences for journalists engaging in news coverage, yet those covering entertainment news should be excluded. There are other views that before providing defences for media activities, the justifications behind and actual uses of the defences have to be carefully considered. This is because in most circumstances, making public images of intimate acts or intimate parts can hardly be regarded as being related to public interest. On the contrary, distribution of intimate images by the media in the name of public interest in the past had expedited the spread of the images concerned and, more often than not, it had different degrees of negative impacts on the victims.

Chapter 8: Sexual Conviction Record Check Scheme (Proposal 8)

Proposals in the Consultation Paper

8.01 If the proposed offences of voyeurism, intimate prying, non-consensual photography of intimate parts, and the distribution of related images mentioned above are to be introduced, the Government proposed in the Consultation Paper that all of these offences should be included in the Specified List of Sexual Offences under the Sexual Conviction Record Check ("SCRC") Scheme. While the proposed offences under Proposals 2, 4, 5 and 6 do not require the proof that the offences were committed for the purpose of obtaining sexual gratification, it is justifiable for the inclusion of the offences under the SCRC Scheme for the sake of protecting vulnerable persons.

Written Submissions Received

8.02 The majority of the written submissions received (about 90%[14]) agreed that **the proposed offences under Proposals 1 to 6 should be included in the Specified List of Sexual Offences under the SCRC Scheme.** There are views that by including all the proposed offences above in the Specified List of Sexual Offences under the SCRC Scheme, employers of all trades (especially those specialised in services for children and women) can use this as a reference indicator for staff employment, which would be effective in further increasing the deterrent effect against sexual offences. There are other views that while fulfilling the responsibility of protecting children and vulnerable groups, the Government also has to safeguard the right of re-integration into society of ex-offenders of sexual offences. Therefore, the Government should strike a balance when considering the inclusion of the proposed offences under Proposals 1 to 6 in the Specified List of Sexual Offences under the SCRC Scheme.

8.03 There are views that while the inclusion of the proposed offences under Proposals 1 to 6 in the Specified List of Sexual Offences under the SCRC Scheme is agreed in principle, the offence of non-consensual distribution of intimate images would require further examination and deliberation. This is because in certain circumstances where intimate images are distributed for revenge (including first commission of the offence at a young age), the offence committed

[14] About 6% of the written submissions received opposed the proposal while about another 4% did not offer any comment.

may have nothing to do with children, mentally incapacitated persons or other vulnerable groups.

8.04 There are opposing views that the present SCRC Scheme was established to protect children and mentally incapacitated persons, but the vast majority of victims of the proposed offences in the Consultation Paper do not fall within such categories. It is therefore considered that the inclusion of relevant offences in the Specified List of Sexual Offences under the SCRC Scheme would not be very meaningful.

Chapter 9: Other Written Comments Received

9.01 During the three-month consultation, the Government received a total of 201 written submissions, with the majority in support of the introduction of the proposed offences. Major views other than those in response to the questions set out in the Consultation Paper are summarised below:

(a) As regards the penalties, there are views that any sexual offence would cause psychological trauma to the victim and hence the minimum penalty of Proposals 1 to 6 should be 10 years of imprisonment. There are views that if the victim is below the age of 16, heavier penalty should be imposed, and that relatively heavier penalty should be imposed if the victim is below the age of 13, so as to comprehensively protect children against sexual assault. There are other views that the proposed offences should not have retrospective effect.

(b) As regards other offences, there are views that legislation against the act of "threatening to distribute intimate images" should be made modelling on that in overseas jurisdictions (e.g. Scotland). There are also views that with reference to the legislation in overseas jurisdictions (e.g. Queensland of Australia), the court should be allowed to require a person convicted of the proposed offence(s) under Proposals 1 to 6 to take reasonable steps to delete the image(s) and impose heavier penalty should the person fail to do so. In addition to the above, there are views suggesting that a separate offence of "using distribution of intimate images as a threat" be introduced.