立法會 Legislative Council

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Paper for the House Committee Meeting on 16 June 2023

Legal Service Division Report on Mandatory Reporting of Child Abuse Bill

I. SUMMARY

1. The Bill

The Bill seeks to:

- (a) require certain professionals to report suspected serious child abuse cases;
- (b) provide for protection for the professionals for making the reports; and
- (c) provide for related matters.

2. Public Consultation

The Administration has conducted two rounds of stakeholder engagement for the social welfare, education and healthcare sectors, and consulted the Commission on Children, the Social Welfare Advisory Committee, the Family Council, and the Women's Commission in 2021 and 2022. The advisory committees and stakeholders generally agreed on the need to introduce a mandatory reporting regime ("MRR") in Hong Kong.

3. Consultation with LegCo Panel

The Administration has briefed the Panel on Welfare Services on the legislative proposals at its meetings on 13 September 2021 and 14 November 2022. While Panel members generally supported the legislative proposals, various concerns were raised.

4. Conclusion

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to introduce a new MRR for suspected serious child abuse cases, Members may consider forming a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 14 June 2023. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: LWB CR CoC/8-3/1) issued by the Labour and Welfare Bureau ("LWB"), the Education Bureau ("EB"), the Health Bureau and the Security Bureau ("SB") on 31 May 2023 for further details.

Object of the Bill

- 2. The Bill seeks to:
 - (a) require certain professionals to report suspected serious child abuse cases;
 - (b) provide for protection for the professionals for making the reports; and
 - (c) provide for related matters.

Background

3. At present, the reporting of suspected child abuse cases is not mandatory in According to paragraph 29 of the LegCo Brief, the procedures for the Hong Kong. identification and reporting mechanism, etc. for making a voluntary report are set out in "Protecting Children from Maltreatment - Procedural Guide for Multi-disciplinary Co-operation" promulgated by the Social Welfare Department in 2020. According to paragraph 3 of the LegCo Brief, the Government set up a working group comprising LWB, EB, the then Food and Health Bureau and SB ("Working Group") in July 2021 to explore the feasibility of introducing a mandatory reporting regime ("MRR") for suspected child Having regard to overseas experience and local practice, the Working Group proposes, inter alia, to mandate certain professionals who have frequent contacts with children to report abuse cases as soon as practicable, if they suspect that a child has been suffering serious harm or is at real risk of suffering serious harm. The Bill is introduced to implement the proposals of the Working Group as announced by the Chief Executive in his 2022 Policy Address.¹ The key provisions of the Bill (containing four Parts and two Schedules) are summarized in the ensuing paragraphs.

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¹ See paragraph 105 of the 2022 Policy Address.

Provisions of the Bill

Mandatory reporting of suspected serious child abuse cases by specified professionals (Part 2 of the Bill)

4. The Bill seeks to provide for an MRR to require certain specified professionals to report suspected serious child abuse cases in certain circumstances.

Definition of "specified professional"

- 5. Clause 2 of the Bill proposes that "specified professional" means a person specified in Part 1 of the proposed Schedule 1 to the Bill. Twenty-five categories of professionals are proposed in Part 1 of Schedule 1 to the Bill, including professionals in the medical sector (e.g. registered dentists, registered medical practitioners, registered midwives, registered nurses), professionals in the social welfare sector (e.g. child care workers, registered social workers), and professionals in the education sector (e.g. registered teachers, wardens of boarding schools, teachers or principals of Government schools).
- 6. Clause 15 of the Bill seeks to empower the Secretary for Labour and Welfare to amend the proposed Schedule 1 to the Bill by notice published in the Gazette. Such notice would be subsidiary legislation subject to LegCo's scrutiny pursuant to the negative vetting procedure under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) ("negative vetting procedure").

Application to public officers

7. Clause 3 of the Bill seeks to provide that the Bill would apply to public officers in the same way as it would apply to persons who are not public officers.

Offence and penalty

- 8. Clause 4(1) of the Bill proposes that if a reasonable ground to suspect that a child (i.e. a person below the age of 18 years) has been suffering serious harm, or is at real risk of suffering serious harm, comes to the notice of a specified professional during the course of his or her work as a specified professional, the specified professional would be required to make a report in respect of the child to the Director of Social Welfare ("Director") or the Commissioner of Police ("CoP") as soon as practicable in the form specified by the Director. Under clause 4(5) of the Bill, a specified professional who contravenes clause 4(1) of the Bill would commit an offence punishable by a fine at level 5 (\$50,000) and imprisonment for three months.
- 9. It is proposed under clause 4(2) of the Bill that a specified professional would not be required to make a report if he or she honestly and reasonably believes that the harm was, or would be, caused solely by (a) an accident not caused by the neglect of a person who has the custody, charge or care of the child ("responsible person"); (b) the child himself

or herself; or (c) any other child who is not a responsible person of the child (otherwise than caused by any act of a sexual nature).

10. In determining whether the harm suffered by a child is serious, clause 4(3) of the Bill seeks to provide that regard must be had to the degree and extent of the harm and all other circumstances of the case, and the following circumstances could add to the seriousness of the harm: (a) the harm persists for a substantial period or occurs frequently; or (b) the act or omission that causes the harm appears to be premeditated or appears to involve threat, coercion, sadism or any other unusual element.

Defences

- 11. It is proposed under clause 5(1) of the Bill that it would be a defence for a specified professional prosecuted for an offence under clause 4(5) to establish that:
 - (a) the specified professional had made a report before the time of the alleged contravention in respect of the same, or substantially the same, serious harm suffered by the child or real risk of the child suffering serious harm; or
 - (b) the specified professional honestly and reasonably believed that another specified professional had made a report before the time of the alleged contravention in respect of the same, or substantially the same, serious harm suffered by the child or real risk of the child suffering serious harm.
- 12. It is further proposed under clause 5(2) of the Bill that it would be a defence for a specified professional prosecuted for an offence under clause 4(5) for failing to make a report as soon as practicable to establish that he or she honestly and reasonably believed that the delay was in the best interests of the child; and that he or she has taken reasonably necessary actions to protect the interests of the child during the delay.

Guidelines

13. Clause 7 of the Bill seeks to empower the Director to issue, amend or revoke guidelines that provide practical guidance for the purposes of mandatory reporting under Part 2 of the Bill ("Guidelines"). The Guidelines would not be subsidiary legislation and therefore not subject to LegCo's negative vetting procedure. It is proposed under clause 8 of the Bill that contravention of the Guidelines alone would not incur any civil or criminal liability, but the Guidelines would be admissible in evidence in legal proceedings if a court is satisfied that a provision of the Guidelines would be relevant to the determination of a matter that is in issue in the proceedings.

Protection for specified professionals (Part 3 of the Bill)

14. Clause 9(1) of the Bill proposes that a person must not wilfully inhibit or obstruct a specified professional from making a report, or impose any guideline or

requirement that has such an effect. Under clause 9(2) of the Bill, a person who contravenes clause 9(1) would commit an offence punishable by a fine at level 5 (\$50.000) and imprisonment for three months.

- It is proposed under the Bill that the following protection would apply to a 15. specified professional, if at the time of making a report under clause 4(1) of the Bill, the specified professional honestly believed that he or she was required to make the report:
 - it would be an offence (punishable by a fine at level 5 (\$50,000) and (a) imprisonment for three months) for a person to disclose the identity of the specified professional who made a report, or information from which such identity could be deduced (except under certain circumstances such as the disclosure was made with the written consent of the specified professional or the disclosure was made to prevent or mitigate a real risk of injury to a person) (clause 11); and
 - the specified professional would not incur any civil or criminal liability, and (b) would not be held to have breached any code of professional conduct or ethics, only by making the report (clause 12).

Prosecution deadline

Clause 13 of the Bill seeks to provide that a prosecution for an offence under 16. the Bill could only be started before the end of 12 months after the date on which the offence is discovered by the Authority (i.e. the Director or CoP) that first discovers the offence.²

Related amendments

17. Schedule 2 to the Bill contains related amendments to Part IIIA (Special Procedures for Vulnerable Witnesses) of the Criminal Procedure Ordinance (Cap. 221).

Commencement

necessary.

The Bill, if passed, would come into operation on the expiry of 18 months after 18. the day on which it is published in the Gazette as an Ordinance. According to paragraph 17 of the LegCo Brief, this would allow sufficient lead time for the specified professionals to complete training on their statutory obligation under the proposed MRR and for the relevant professional bodies to review and amend their professional codes of practice/guidelines as

This would replace the time limit for prosecution (i.e. six months from the date on which the relevant offence is committed) under section 26 of the Magistrates Ordinance (Cap. 227).

Public Consultation

19. According to paragraph 27 of the LegCo Brief, the Administration has conducted two rounds of stakeholder engagement for the social welfare, education and healthcare sectors, and consulted the Commission on Children, the Social Welfare Advisory Committee, the Family Council, and the Women's Commission in 2021 and 2022. The advisory committees and stakeholders generally agreed on the need to introduce an MRR in Hong Kong, and urged the Government to ensure that adequate resources and supportive measures would be put in place before the commencement of the Bill.

Consultation with LegCo Panel

20. As advised by the Clerk to the Panel on Welfare Services, the Administration briefed the Panel on the key parameters for considering an MRR for suspected child abuse and neglect cases at its meeting on 13 September 2021, and further consulted the Panel on the details of the legislative proposals at the meeting on 14 November 2022. While supporting the proposals in general, members expressed concerns on certain issues including the specific age range of children to be protected; the types of cases subject to mandatory reporting and the timeframe for reporting; the scope of professions covered by MRR; the need to provide training and professional guidance for mandated reporters on identification and handling of suspected cases; and the level of penalty for non-compliance with the proposed statutory reporting requirement.

Conclusion

21. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to introduce a new MRR for suspected serious child abuse cases, Members may consider forming a Bills Committee to study the Bill in detail.

Prepared by

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