

SUBMISSIONS ON THE LAW REFORM COMMISSION'S REPORT

“Child Custody and Access”

The Law Society's Family Law Committee has the following comments on the Report *“Child Custody and Access”* published by the Law Reform Commission (“LRC”) in 2005:

Recommendation 1 (Applicable proceedings)

For the removal of doubt, we recommend that it should be made clear that the welfare or *“best interests”* principle guides all proceedings concerning children under the Guardianship of Minors Ordinance (Cap 13), the Matrimonial Causes Ordinance (Cap 179), the Matrimonial Proceedings and Property Ordinance (Cap 192) and the Separation and Maintenance Orders Ordinance (Cap 16), including questions of guardianship, maintenance or property.

Law Society: Agreed

Recommendation 2 (Best interests)

To reflect our view that the term *“best interests”* is more appropriate for modern conditions in Hong Kong than the term *“welfare,”* and is more in compliance with our international obligations under the United Nations Convention on the Rights of the Child, we recommend that section 3(1)(a)(i) of the Guardianship of Minors Ordinance (Cap 13) should be amended to read, *“shall regard the best interests of the minor as the paramount consideration”*

We also recommend that consequential amendments should be made to the other matrimonial Ordinances.

Law Society: Agreed

Recommendation 3 (Statutory checklist of factors)

We recommend the introduction of a statutory checklist of factors to assist the judge in exercising his discretion in determining the proceedings that will replace custody or guardianship proceedings under these reforms. This checklist should be broadly based on that set out in section 1(3) of the Children Act 1989 in England.

We also recommend the inclusion in the checklist of the following additional factors based on section 68F(2) of the Family Law Act 1975 in Australia:

- (i) section 68F(2)(b) (in part) in relation to the child's relationship with each of his parents and other persons;

- (ii) a broader formulation of section 68F(2)(d) of the Australian Act, in relation to the practical difficulty of maintaining contact with either parent;
- (iii) section 68F(2)(f) (in part), in relation to any characteristics of the child that the court considers relevant;
- (iv) section 68F(2)(h) in relation to the attitudes of each of the parents towards the child and towards the responsibilities of parenthood;
- (v) section 68F(2)(i) in relation to any family violence involving the child or a member of the child's family; and
- (vi) a catch-all factor along the lines of Section 68F(2)(l).

Law Society: The Law Society agrees with the recommendations above. In addition, the following sections should also be adopted:

- (a) **Section 68 F (c) “the likely effect of any changes in the child’s circumstances including the likely effect on the child of any separation from:**
 - (i) **either of his or her parents; or**
 - (ii) **any other child, or other person, with whom he or she has been living;”**
- (b) **Section 68F (e) “the capacity of each parent, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;”**

Use of gender sensitive language

The relevant provisions in the Australian checklist are gender sensitive and we recommend the standard use of "he/she" rather than the standard use of "he/his". By adopting this usage, the statutory provisions would be complying with the provisions in the Convention on the Rights of the Child ("CRC").

Recommendation 4 (Concept of parental responsibility)

We recommend that the concept of parental responsibility should replace that of guardianship, except that the concept of guardianship should be retained in relation to a third party's responsibilities for a child after the death of a parent.

Law Society: Agreed

Recommendation 5 (Parental rights)

We recommend the adoption of a provision based on sections 1 and 2 of the Children (Scotland) Act 1995, which specifies separately a list of parental responsibilities and a list of parental rights.

Law Society: Agreed

Recommendation 6 (Age at which parental responsibility ceases)

We recommend that all the parental rights and responsibilities referred to in sections 1 and 2 of the Children (Scotland) Act 1995 should apply in respect of a child until the child reaches the age of eighteen.

Law Society: Adopt

Recommendation 7 (Father as natural guardian)

We recommend that the common law right of the father to be natural guardian of his legitimate child should be abolished.

We also recommend the repeal of section 3(1)(b) of the Guardianship of Minors Ordinance (Cap 13).

Law Society: Agreed

Recommendation 8 (Married parents)

We recommend the adoption of a provision on the lines of section 2(1) of the Children Act 1989 in England, but amended, for the removal of doubt, to include reference to parents married subsequent to the birth of the child.

Law Society: Agreed

Recommendation 9 (Acquisition of parental responsibility by unmarried fathers – language of the current law)

We recommend that the language of section 3(1)(c)(ii) and (d) of the Guardianship of Minors Ordinance (Cap 13), which relates to the "*rights and authority*" of an unmarried father, should be changed to reflect the new language of responsibilities rather than rights.

Law Society: Agreed

Recommendation 10 (Acquisition of parental responsibility by signing the birth register)

We recommend that an unmarried father should be capable of acquiring parental responsibilities and rights by signing the birth register. The proposed legislation should include this in a list of the ways in which parental responsibility can be acquired. We do not recommend the automatic acquisition of parental responsibility or rights by unmarried fathers.

Law Society: Agreed

Recommendation 11 (Parental responsibility agreements)

We recommend that unmarried parents should be encouraged to sign parental responsibility agreements to ensure the best interests of their child.

We also recommend that unmarried mothers should be encouraged to appoint a testamentary guardian for their children.

Law Society: Agreed

Recommendation 12 (Parents acting independently)

We recommend the adoption of a provision on the lines of section 2(7) of the Children Act 1989 enabling persons with parental responsibility to act independently, but restricted to the day-to-day care and best interests of the child.

Law Society: Agreed

Recommendation 13 (Scope of parental responsibility – when consent or notification is required)

We recommend that the proposed legislation should specify those decisions relating to the child where the other parent’s express consent is required, and those decisions where only notification to the other parent is required.

We further recommend that the court should be given express power to vary or dispense with any of the consent or notification requirements where this is considered necessary.

Law Society: The Recommendation is agreed save for the following:

- (a) Paragraph 3 in 9.95 should be amended to read as follows: “*consent to removal of the child out of the jurisdiction*” with the time limit “*for more than one month*” to be deleted.
- (b) Sub paragraph 6 in 9.96: “*Notification removing the child from the jurisdiction temporarily but for less than one month*”, should be deleted entirely.

Recommendation 14 (Enforcement of maintenance orders)

We recommend that the Administration should review the existing law and procedures relating to the enforcement of maintenance orders to see how they could be made more effective.

Law Society: The Recommendation is agreed. However, we note the lack of progress by the Department of Justice in relation to enforcement of cross-border judgments in family related cases and the ineffectual piece of legislation sponsored by the Home Affairs Bureau “*Interest and Surcharge on Arrears of Maintenance Ordinance 2003*” which fails to address the problems of enforcement of maintenance orders.

Recommendation 15 (Acting incompatibly)

We recommend that a provision on the lines of section 2(8) of the Children Act 1989 should be adopted.

Law Society: Agreed

Recommendation 16 (Delegation of parental responsibility)

We recommend the enactment of a provision based on section 2(9) to (11) of the Children Act 1989 in England, with the addition of words to the effect that no arrangement of a type referred to in that provision shall be enforced by the court if the court is of the opinion that it would not be for the benefit of the child to give effect to that arrangement.

We further recommend that section 4 of the Guardianship of Minors Ordinance (Cap 13) be repealed.

Law Society: Agreed

Recommendation 17 (Continuing parental responsibility)

We recommend a provision on the lines of section 11(11) of the Children (Scotland) Act 1995, in relation to the effect on the retention of parental responsibility and rights by one person when another person also acquires such rights.

Law Society: Agreed

Recommendation 18 (Removal of surviving parent as guardian)

We recommend that the right to remove the surviving parent as guardian under section 6(3) of the Guardianship of Minors Ordinance (Cap 13) should be repealed.

Law Society: It is noted the Guardianship of Minors Ordinance currently restricts parental responsibility of parents therefore we agree with Recommendation 18 as the concept of parental responsibility is an enduring one.

This Recommendation must be considered together with Recommendations 4 and 17. The Law Society does not consider Recommendation 18 to be controversial as it will be the Court's responsibility to resolve disputes between the surviving parent and the testamentary guardian.

Recommendation 19 (Unmarried father as surviving parent)

We recommend that a provision be inserted in the Guardianship of Minors Ordinance (Cap 13) to the effect that once an unmarried father is granted parental rights or responsibilities, he can be treated on the death of the mother as the surviving parent for the purposes of that Ordinance.

Law Society: Agreed

Recommendation 20 (Custody orders)

We recommend the repeal of the provisions in the matrimonial Ordinances (including the Guardianship of Minors Ordinance (Cap 13) and the Matrimonial Proceedings and Property Ordinance (Cap 192)) dealing with custody orders and their replacement with provisions introducing the new range of orders outlined later in this Chapter.

Law Society: Agreed

Recommendation 21 (Definition of a residence order)

We recommend that there should be statutory provision for a "*residence order*."

We recommend that the definition of a residence order should incorporate a reference to the parent in whose favour the order is made having responsibility for "*the day-to-day care and best interests of the child*."

We recommend that the definition should be: "*a residence order is an order settling the arrangements as to the person with whom a child is to live and who has responsibility for the day-to-day care and best interests of the child*."

Law Society: Agreed

Recommendation 22 (Change of surname)

We recommend the enactment of a provision similar to section 13(1)(a) of the Children Act 1989 in England, governing the changing of a child's surname.

Law Society: Agreed

Recommendation 23 (Non-parents)

We recommend the enactment of a provision on the lines of section 12(2) of the Children Act 1989 in England regarding the granting of parental responsibility to non-parents who are awarded residence orders.

Law Society: Agreed

Recommendation 24 (Contact order)

We recommend that there should be statutory provision for a "*contact order*," on the lines of section 11(2)(d) of the Children (Scotland) Act 1995.

We also recommend that this section should provide that the contact parent would have the right to act independently in respect of the day-to-day care of the child while contact with the child is being exercised.

Law Society: Agreed

Recommendation 25 (Specific issues order)

We recommend that there should be statutory provision for a "*specific issues order*," similar to section 8(1) of the Children Act 1989 in England.

Law Society: Agreed

Recommendation 26 (Prohibited steps order)

We recommend that there should be statutory provision for a "*prohibited steps order*," similar to section 8(1) of the Children Act 1989 in England.

Law Society: Agreed

Recommendation 27 (Supplementary requirements)

We recommend the adoption of a provision similar to section 11(7) of the Children Act 1989 in England which gives the court the power to include directions or conditions in a court order.

Law Society: Agreed

Recommendation 28 (Right of a third party to apply)

We recommend the removal of the limitation in section 10 of the Guardianship of Minors Ordinance (Cap 13) on the right of third parties to apply to court for orders concerning children.

We recommend the introduction of a provision on the lines of section 10 of the Children Act 1989 in England, with the amendment of subsections (5)(b) and (10) to provide that leave of the court would not be required if the child has lived with the applicant for a total of one year out of the previous three years.

We further recommend that the one year period need not necessarily be a continuous period, but must not have ended more than three months before the application.

Law Society: Agreed

Recommendation 29 (Arrangements for the children)

We recommend that section 18 of the Matrimonial Proceedings and Property Ordinance (Cap 192) should be amended to provide that the court should have regard to the views of the child and the desirability of a child's retaining contact with both parents, as is set out in section 11(4) of the English Family Law Act 1996.

We also recommend that parents should have to satisfy the court that arrangements for the children are the best that can be arranged. The court should examine the future plans as to the child's place and country of residence and the proposed contact with both parents, especially if one parent proposes to emigrate from Hong Kong.

We further recommend that, for consistency with the other provisions in matrimonial legislation, section 18(5)(a)(i) should be amended to refer to the age of eighteen.

Law Society: Agreed

We also recommend:

- (a) The court should have regard to the “views of the child and desirability for a child’s retaining contact with both parents”;**
- (b) All matrimonial legislation should be amended to refer to the age of 18 in order to unify the provisions.**

Recommendation 30 (No order principle)

We recommend that the option of “*no order*” should be available for those cases where both parties consent to no order being made by the court and where the making of no order would be in the best interests of the child.

Law Society: Agreed

Recommendation 31 (Family proceedings)

We recommend the enactment of a provision similar to section 10(1) of the Children Act 1989 in England, which gives the court a specific power to make section 8 orders in any family proceedings.

We also recommend the introduction of a definition of “*family proceedings*.”

Law Society: Agree with both recommendations.

Recommendation 32 (Age at which parental responsibility ceases for the purposes of court orders)

For the sake of consistency, we recommend that parental responsibility for children, and provisions on the lines of section 8 orders (such as orders for residence, contact or specific issues), should cease when the child reaches 18 years.

We also observe that:

- (a) section 10 of the Matrimonial Proceedings and Property Ordinance (Cap 192) (“MPPO”) should continue to apply to orders for financial provision and maintenance of children 18 years and over falling within its scope; and**

- (b) there may be a lacuna in the law with regard to children over 18 years of age who, though not sufficiently ill or incapacitated as to fall within the scope of the current mental health provisions, may nonetheless require some form of statutory protections beyond the financial provisions afforded by the MPPO.

Law Society: Agreed

[Recommendations 33 to 41 inclusive deal with the law on domestic violence. The Domestic Violence Ordinance was amended by the Domestic Violence (Amendment) Ordinance in June 2008.]

Recommendation 42 (The views of the child)

We recommend that each of the matrimonial Ordinances should specifically refer to the need to hear the views of the child.

We also recommend that the language of the United Nations Convention on the Rights of the Child should be adopted, so that the term "views" rather than "wishes" of the child is enacted in matrimonial legislation.

Law Society: Agreed

Recommendation 43 (How and when child's views taken into account)

In line with our earlier recommendation that a statutory checklist of factors should be established, we recommend that the child's views should be one element in the checklist of factors, rather than a free-standing section. The child's views should be balanced with the other factors when the judge is making a decision in the child's best interests.

With the adoption of this provision, we recommend the repeal of section 3(1)(a)(i)(A) of the Guardianship of Minors Ordinance (Cap 13).

Law Society: Agreed

Recommendation 44 (How the views of a child are expressed)

We recommend that a child should be given the facility to express his views if he wishes, whether directly or indirectly. Once the child has indicated a desire to express views, then the court must hear those views, although the weight to be given to the child's views will be a matter for the court to determine.

We recommend that the mechanisms for ascertaining and expressing the child's views should be set out in the legislation. We therefore recommend the adoption of a provision on the lines of the Australian section 68G (2), but adapted to insert "*views*" rather than "*wishes*."

With the adoption of this provision, we recommend the repeal of section 3(1)(a)(i)(B) of the Guardianship of Minors Ordinance (Cap 13).

We also recommend that any views that the child expresses to the judge should be treated in confidence by the judge and not revealed to the child's parents.

We further recommend that where social welfare officers are assigned to ascertain children's views, only those officers with adequate training and experience in this area should deal with these sensitive cases.

Law Society: Agreed

Recommendation 45 (Children not required to express views)

We recommend that children should not be required to express their views.

To make the position clear, we recommend the introduction of a statutory provision to that effect on the lines of section 68H of the Australian Family Law Act 1975.

Law Society: Agreed

Recommendation 46 (Age of maturity for the purpose of obtaining views)

We recommend that there should be no age limit and the court should be empowered to consider a child's views irrespective of his age.

Law Society: Agreed

Recommendation 47 (Anomalies in relation to separate representation under the Matrimonial Causes Rules (Cap 179))

We recommend that the anomalies in rule 72 and rule 108 of the Matrimonial Causes Rules (Cap 179) as to the appointment of a separate representative or guardian *ad litem* should be addressed.

Law Society: Agreed

Recommendation 48 (Types of proceedings where a separate representative may be appointed)

For the removal of doubt it should be made clear that a separate representative can be appointed in any dispute relating to the parental responsibility for, or guardianship of, a child.

Law Society: Agreed

Recommendation 49 (Who can apply for a separate representative to be appointed)

We recommend that rule 108 of the Matrimonial Causes Rules (Cap 179) be repealed and that a provision on the lines of section 68L(3) of the Australian Family Law Act 1975 be enacted.

We also recommend that the restrictions on who can make application for an order, contained in section 10 of the English Children Act 1989, should also apply to this provision.

Law Society: Agreed

Recommendation 50 (Criteria for appointment of separate representative)

Except in the case of a child who may be subject to care or supervision orders, we recommend the adoption of a list of criteria based on those adopted in Australia to determine when it is appropriate to appoint a separate representative.

We recommend that this list of criteria be incorporated in legislation.

Law Society: Agreed

Recommendation 51 (Guidelines for duties of separate representative)

We recommend the adoption of the Australian guidelines for setting out the duties of the Official Solicitor or separate representative or other person acting as guardian *ad litem* in Hong Kong.

We recommend that this appear not in statute, but in booklet form.

Law Society: Agreed

Recommendation 52 (Child as a party)

We recommend that, in principle, provided the leave of the court has been sought, the child should be allowed to become a party to proceedings which concern him and where he has sufficient understanding to instruct a solicitor and counsel to represent him.

We recommend the introduction of a provision on the lines of section 10(8) of the English Children Act 1989 and rule 9(2A) of the English Family Proceedings Rules 1991.

Law Society: Agreed

Recommendation 53 (Costs)

For those cases where the person representing the child is not the Official Solicitor, we recommend that the court be given power to order the parties to bear the costs of the separate representative or guardian *ad litem*.

Law Society: Agreed

Recommendation 54 (Separation and Maintenance Orders Ordinance (Cap 16))

We recommend the retention of the provisions of the Separation and Maintenance Orders Ordinance (Cap 16) to cover exceptional cases, such as those involving customary marriages or concubinage, which are not covered by other matrimonial proceedings legislation.

Law Society: Agreed

Recommendation 55 (Power to order care and supervision orders)

We recommend the retention of the power to order care and supervision orders in guardianship disputes and any disputes concerning the best interests of a child.

We also recommend that the anomalies between the Director of Social Welfare's powers in relation to care and supervision orders under the Guardianship of Minors Ordinance (Cap 13) and the Matrimonial Causes Ordinance (Cap 179), and his powers under the Protection of Children and Juveniles Ordinance (Cap 213), should be resolved.

Law Society: The Protection of Children and Juveniles Ordinance should be reviewed and provisions protecting children should be separated from those in relation to juvenile offenders. We have noted in past submissions that *vulnerable children are punished twice as they are not only subject to abuse but also institutional indifference*. Magistrates, in a majority of cases, deal with juvenile offenders and have a different mindset in relation to how they should deal with vulnerable children who require the protection of the court. We repeat the observations made in the Law Society's report on the Domestic Violence Ordinance dated December 2005:

“The recommendation to transfer the Juvenile Court to a Family Court has merit as the physical environment for these hearings should be considered. The Magistracy is not an appropriate place to deal with children in the 21st. Century. The administration of Care and Protection Orders is a hangover from colonial times and changes could and should be introduced as soon as possible. Despite past complaints, there is evidence of a lack of empathy for the trauma these children are enduring and there is considerable room for improvement.

There is evidence of an inconsistent approach by the different Magistracies when dealing with CPOs. On the whole, the Fanling and Kowloon Magistracies have improved their procedures. The children have been separated from the juvenile delinquents and adults facing criminal charges, and hearings are conducted in a room other than the courtroom. However, some of these children can still wait up to 2 hours before a Magistrate hears the application.

It is clear that some Magistrates lack awareness and the ability to distinguish the different needs of children involved in CPO applications with those required for juvenile offenders. The following is a description of an advocate’s recent experience when conducting a CPO hearing in Eastern Magistracy:

- “1. The hearings were conducted in the Juvenile Court which is otherwise used as an adult court.***
- 2. The solicitor appearing was required to stand when addressing the Bench which is a reversal of the practice introduced to make the hearings more informal and representatives were permitted to remain seated in order to maintain an air of informality.***
- 3. The child was required to stand. Even though this is “normal” it adds the formality and can be intimidating for the child concerned.***
- 4. New instructions were also posted on the advocate's desk for legal representatives not to say “good morning” to the magistrate. It is noted the directive does not engender an atmosphere in which juveniles, let alone vulnerable children, should be dealt with.***
- 5. Prior to the hearing the child was kept in a witness waiting room on the same floor as the juvenile court and escorted past adult and juvenile defendants waiting to go into the court for the hearing.”***

It should be recognised that many of these children require protection *because* of incidents of domestic violence and have suffered unnecessary anxiety as a result of institutional indifference. CPO cases should be dealt with by the Family Court and the Administration should take urgent steps to remedy this unsatisfactory situation.”

Recommendation 56 (Definitions of care and supervision orders)

We recommend that there should be a definition of a care order and a supervision order in each of the matrimonial Ordinances.

Law Society: Agreed

Recommendation 57 (Grounds)

We recommend that the Director of Social Welfare should only be entitled to apply for a care order or supervision order in private law proceedings on the same grounds as those in section 34(2) of the Protection of Children and Juveniles Ordinance (Cap 213).

Law Society: Agreed

Recommendation 58 (Application of the welfare or best interests principle)

We recommend that the welfare or best interests principle should guide all proceedings under the Protection of Children and Juveniles Ordinance (Cap 213).

Law Society: Agreed

Recommendation 59 (Ex parte applications by the Director of Social Welfare)

We recommend that rule 93 of the Matrimonial Causes Rules (Cap 179) and order 90, rule 4 of the Rules of the District Court (Cap 336) should be amended to allow for an *ex parte* application in case of emergency, but that an *inter partes* hearing should proceed if the Director's application was opposed.

Law Society: Agreed

Recommendation 60 (Third parties)

We recommend that section 34 of the Protection of Children and Juveniles Ordinance (Cap 213) should be amended to allow an application for a care order or supervision order to be made by third parties.

We also recommend that the same criteria for applications by third parties, already adopted for private law proceedings, should be adopted for such public law proceedings.

Law Society: Agreed

Recommendation 61 (The court environment for the hearing of care and protection proceedings)

We recommend that research should be conducted into how the court environment could be improved for children appearing in care and protection proceedings.

Law Society: Agreed

Recommendation 62 (Separate representation for public law proceedings – criteria for appointment)

We recommend that separate representation by the Official Solicitor should be available for children as of right in care or supervision proceedings, whether brought under Protection of Children and Juveniles Ordinance (Cap 213) or the matrimonial Ordinances.

Law Society: We repeat our recommendation in Recommendation 55 above that proceedings brought under the Protection of Children and Juveniles Ordinance in relation to CPOs should be transferred to the Family Court.

Legal Representation as a Right by the Official Solicitor or by the Duty Lawyer Scheme:

There is currently an anomaly in the legislation which requires parents to consent to representation by the Official Solicitor or the DLS in proceedings involving their child. In appropriate cases, the court should have the power to dispense with such consent.

Recommendation 63 (Representation and legal aid for parents)

We recommend that, where care or supervision orders are applied for, whether under the matrimonial Ordinances or the Protection of Children and Juveniles Ordinance (Cap 213), parents should be granted legal representation (by The Duty Lawyer Service if in the juvenile court, or by the Legal Aid Department if in the Family Court or the Court of First Instance) if they fulfil the eligibility requirements.

We also recommend that there should be legal representation provided by the Legal Aid Department for children and parents in wardship proceedings where the applicant is the Director of Social Welfare or other public agency, as the effect of the order is to take away the responsibility of the parents.

Law Society: Agreed. Legal Aid should be provided to both children and parents in wardship cases.

Recommendation 64 (Guidelines for duties of separate representatives)

We recommend the adoption of the Australian guidelines for setting out the duties of lawyers representing children and parents in the juvenile court for care and protection and supervision orders.

We also recommend that special training on how to interview and represent children and parents should be provided to lawyers for these sensitive and complex cases, and only lawyers with this special training should handle these cases.

We further recommend that these arrangements should apply to cases involving care and supervision orders being made under the matrimonial Ordinances in the Family Court.

Law Society: Agreed

Recommendation 65 (Assessment)

We recommend that, before making a care order, a District Judge should have the power under the matrimonial Ordinances to order that a child be assessed by a medical practitioner, clinical psychologist or an approved social worker, as is provided in section 45A of the Protection of Children and Juveniles Ordinance (Cap 213).

We also recommend that the Director of Social Welfare should have the power to order assessment in these proceedings in line with section 45A.

Law Society: Agreed

Recommendation 66 (Child's views)

We recommend that the views of a child should be taken into account in proceedings under the Protection of Children and Juveniles Ordinance (Cap 213).

Law Society: Agreed

Recommendation 67 (Contact in respect of a child in care)

We recommend that parents whose children are made the subject of care orders under the matrimonial Ordinances should be entitled to apply to have orders made to secure regular contact between them and their children.

We also recommend that section 34C(6) of the Protection of Children and Juveniles Ordinance (Cap 213) should be amended to allow the court to make an order for contact when a care order is being made.

Law Society: Agreed

Recommendation 68 (Age at which wardship orders cease)

We recommend that a provision be enacted clearly specifying that the duration of wardship orders ceases at 18 years.

We also recommend that it be made clear that the jurisdiction of the Official Solicitor ceases at the age of 18 years, except for persons suffering a disability beyond that age.

Law Society: Agreed

Recommendation 69 (Minimum age for marriage without parental consent)

We recommend the retention of 16 as the minimum age of marriage with parental consent.

We also recommend the reduction of the minimum age of marriage without parental consent from 21 to 18 years.

Law Society: Agreed

Recommendation 70 (Enforcement of orders)

We recommend that a mechanism for mutual legal assistance for the enforcement of orders for custody, access, residence and contact, and orders for the return of a child removed unlawfully from Hong Kong, and vice versa, be arranged with the Mainland.

Law Society: Agreed

Recommendation 71 (Consolidation of legislation)

We recommend that, as far as possible, the provisions dealing with disputes relating to children, arrangements on divorce, guardianship, disputes with third parties, or disputes between parents without accompanying divorce proceedings, should be consolidated into one existing Ordinance.

The Law Society strongly endorses this recommendation.

Recommendation 72 (Policy co-ordination)

We recommend that a single policy bureau should take over responsibility for creating and implementing policy for families and children and, in particular, all the matrimonial and children's Ordinances. It is a matter for the Administration to decide whether the Health, Welfare and Food Bureau or the Home Affairs Bureau should assume this responsibility.

Law Society: Agreed

Additional Recommendations by the Law Society

There is an anomaly in Section 10(3)(b) of the Guardianship of Minors Ordinance (Cap. 13) which authorises the court to make a maintenance order for maintenance an illegitimate child for period of 3 months only. We recommend the limitation of 3 months only. This limitation of 3 months should be removed as it cannot be justified in relation to the wasted costs incurred. We note Section 9(2) of the Separation and Maintenance Orders Ordinance (Cap.16) contains a similar provision and likewise this limitation should be removed.

**The Law Society of Hong Kong
The Family Law Committee
16 September 2008**

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