



**Submissions on the Consultation Paper of the Law Reform
Commission's Review of Sexual Offences Sub-committee**

“Interim Proposals on a Sex Offender Register”

The Law Society's Criminal Law & Procedure Committee has considered the Consultation Paper published by the Law Reform Commission's Review of Sexual Offences Sub-committee on *“Interim Proposals on a Sex Offender Register”* and has the following comments:

1. The Committee agrees there is a need to protect children and mentally incapacitated persons (“MIP”) against possible exploitation by those convicted of sexual offences in view of the number of cases involving children and MIP where the adults have abused their positions of trust. Members understand consideration of the appropriate legislative proposals in this regard takes time and welcome the LRC Sub-committee's recommendation, pending its final comprehensive proposals for legislative changes, for the Administration to establish an administrative system as an interim measure to enable criminal conviction records for sexual offences of person who undertake child-related work and work relating to MIP to be checked.
2. The Committee understands the interim measure put forward by the LRC Sub-committee is subject to the following parameters:
 - (a) it has to be plainly lawful and not infringing of any human rights;
 - (b) it has to be capable of being implemented quickly by way of administrative guidelines without the introduction of legislation; and
 - (c) it should not run counter to or jeopardize any long-run comprehensive reforms in the treatment, rehabilitation and punishment of sex offenders.

3. The Committee noted the proposed definition of “*child-related work*” under Recommendation 3 will not cover work in places where the services offered are not directly targeted at children but where children are frequent visitors and suggests that for the better protection of children, the definition should be expanded to also cover work in such places.
4. The Committee noted with concern that Recommendation 4 has not proposed a “*mandatory*” obligation on employers to conduct sexual conviction records check on prospective employees undertaking child-related work or MIP-related work. Members understand the rationale behind this are because of the thinking that the proposed interim measure should be plainly lawful and capable of implementation without legislation and that the focus of the interim measure should be to give the employer a choice and the means to ascertain whether a prospective employee has any sexual conviction records. The Committee would urge the LRC Sub-committee to review the need to impose a mandatory duty upon the employers to conduct sexual conviction records check as when the future legislation is introduced; particularly when this only involves the making of a telephone enquiry with the Police.
5. The Committee noted the proposal for the Police to handle sexual conviction records checks by way of auto-telephone answering service based on the information stored in the police’s database and suggests there should be adequate measures in place to ensure the accuracy of the check results and avoid administrative error. The Committee would like to ascertain how the proposed mechanism would actually work in practice: e.g. how the conviction records were being kept by the Police at the moment; how such data would be utilized by the Police in a sexual conviction records check to ensure that only those conviction records relating to the “specified” sexual offences and which are not “spent” convictions would be revealed; and what safeguards would be built into the system to ensure the accuracy of the check results and the consequences of an administrative error.
6. The Committee agrees with the proposal under Recommendation 7 that the sexual conviction records check should reveal only a specified list of sexual offences and the employer should be made aware of the list of specified sexual offences and the limitations of the check. However, there are mixed views on whether all conviction records in respect of the specified sexual offences should be disclosed or only those relating to children and/or MIP. Some

members favour tilting the balance more towards protection of children and MIP as the rationale of the scheme should be to deter sex offenders from seeking out child-related work as they should be in a better position to control their acts in the first place. Others have reservation on the proposal to disclose all conviction records irrespective of whether they are child-related or MIP-related or not.

7. The Committee noted the LRC Sub-Committee does not think the proposed sexual conviction records check should be extended to cover those only arrested or charged with a sexual offence but acquitted on technicality or otherwise under circumstances where suspicion of involvement in such offences might remain. Whilst the acquittal rate for sexual offences involving children and MIP is high and arguably it may save potential victims by disclosing the fact that a person has been arrested for sexual offence but acquitted on technicality, the Committee agreed that there may be legal and human rights problems for the interim measure, when this has no legal backing, to draw a line between disclosure of acquittals on merit and technicality.
8. The Committee appreciates that in the absence of any legislative basis, the interim measure has to be subject to various restrictions and as such, it will certainly fall short of being the ideal system for protection of children and MIP against possible abuse by a paedophile in the long run. The Committee looks forward to receiving the comprehensive legislative proposals from the LRC Sub-committee in this regard and reserves its rights to make comments on the final proposals.

Criminal Law & Procedure Committee
The Law Society of Hong Kong

30 October 2008