

# **Hong Kong College of Paediatricians**

Response to the Consultation Paper  
on  
Interim Proposals on a Sex Offender Register  
prepared by  
The Law Reform Commission of Hong Kong

28<sup>th</sup> October 2008

The Hong Kong College of Paediatricians welcomes the review of legislations governing sexual and related offences and the interim proposal that a Sex Offender Register is to be established in Hong Kong to avoid previous sex offenders once again engaging in child-related occupations or given a position of trust in the care of children. The ultimate aim is to have a holistic scheme including treatment, rehabilitation, risk assessment and management of such offenders.

With regard to the nine recommendations of the Consultation Paper, our College has the following comments:

## ***Recommendation 1***

Our College is similarly against the introduction in Hong Kong of the US-style “Megan’s Law”.

## ***Recommendation 2***

Our College supports the interim measure of establishing an administrative scheme to enable the criminal conviction records of sexual offences of persons who undertake child-related work and work relating to mentally incapacitated persons to be checked.

It is not clear in the consultation paper whether records of sex offences committed prior to the age of 18 are included in the proposed scheme. This needs to be discussed as juvenile and adult sex offenders behave differently with a different propensity to re-offend especially for sex offences. Juvenile sex offenders are also more amenable to treatment. For them, there should be a strong focus on protection, treatment and rehabilitation.

## ***Recommendation 3***

Our College supports the non-exhaustive list of child-related work stated.

## ***Recommendation 4***

Our College is concerned that the checks are not mandatory. While it is understandable that this may not be required in the example given about a mother hiring a private tutor with a known favorable track record, our College recommends that the checks should be mandatory for registered organizations. As a temporary

measure, in order to avoid delays involved with changes in legislation, registered organizations should be urged to make this check mandatory within their organization.

Since 1997, the Child Care Services Ordinance allows “A person who is not a prohibited person” to request the Director of Social Welfare to issue “a certificate stating that as at the date of issue of the certificate the person is not to the knowledge of the Director a person who is prohibited from acting as a childminder”. The activities covered in the prohibition are much wider than sexual offences and very relevant to the protection of young children. Unfortunately this provision of the ordinance is little known in the field. Being a voluntary system, employers rarely request such a certificate from employees. Once again, the current recommendation puts the onus on employers to initiate the check as desired. This creates too much leeway till it is discovered that another child has been harmed.

#### ***Recommendation 5***

Our College recommends that the proposed scheme should apply to prospective employees and employees on probation. The scheme should also apply to prospective trainees and volunteers. Progressively, existing employees / trainees / volunteers should also be included.

#### ***Recommendation 6***

The proposed method of application is acceptable but as only checking via an auto-answering service is involved with no certificates issued, there needs to be a system of documentation by the employer who carried out the check. In a screening system where few positives are expected, any false negatives would much reduce the effectiveness of the system.

The result of the check is to be “available during a specified period”. It is not clear from the consultation paper whether it would be possible to retrieve information as to whether any check has been made should there be subsequent disputes.

#### ***Recommendation 7***

Our College agrees to the specified list of sexual offences being included.

#### ***Recommendation 8***

Our College agrees that the check will include only convictions of sex offences. It is therefore important that the employer understands the limitation of the check as it would not include, for example, allegations of sex offences which subsequently did not conclude with convictions for various reasons, including insufficient evidence, a fact not difficult to understand when the only evidence comes from a child or mentally incapacitated person. Neither would it include other forms of child abuse like physical assault of a child even when there was a conviction.

### ***Recommendation 9***

As serious sex offences are unlikely to be under the category of “spent” convictions, our College accepts this recommendation. On the other hand there is no mention in the Consultation Paper as to how long after a conviction without a re-offence will the check still reveal the conviction. This needs to be addressed as the risks are different with different sex offences, whether the offender was able to complete treatment and the assessed level of risk of re-offence.

### **Conclusion**

The proposal is an interim measure intended to be implemented with minimal delay. The Law Reform Commission recognizes that the recommendations are “extremely modest” compared with other jurisdictions considered by the Commission but the full recommendation or report from the Commission will not be available till 2009 or later with no definite time frame. Our College does not wish to see the interim measures giving an unwarranted sense of security that a system is already in place to protect children against repeat sex offenders. The establishment of more permanent and comprehensive measures should be accorded due priority.

A Sex Offender Register is only a small piece in the jigsaw of the prevention of child sexual abuse. The community needs to be aware that most such abuse are committed by family members and friends who are not paedophiles. Neither does the Sex Offender Register prevent the first offence. As Hong Kong does not have mandatory reporting of child maltreatment, offenders may be dismissed and change employers without going through an official investigative process. Even within the legal system, conviction not being registered may mean that there were difficulties in the collection of evidence, that the defendant was given the benefit of doubt or that through plea bargaining, the conviction was for a lesser offence. The interim proposal covers only convictions in Hong Kong. A system that requires potential employees from overseas to be checked prior to employment needs to be looked into as a number of countries do have such a system in place.

Community education and support to enhance adults’ ability to protect children and children’s ability to protect themselves are essential. Organizations involved with child-related work should have systems in place to avoid putting children at risk of abuse under the care of adults. In preparation for a more comprehensive approach to sex offenders, we need to have professionals trained in offender assessment and treatment. Investment in these areas will do much to prevent the trauma to our children from sexual abuse.