



The Secretary,
 Review of Sexual Offences Sub-committee,
 Law Reform Commission.
 4/F East Wing, Justice Place, 18 Lower Albert Road, Central.
 By fax (3918 4096)
 By e-mail (hklrc@hkreform.gov.hk).

Dear Sir/Madam,

Sexual Offences Involving Children and Persons with Mental Impairment

The Hong Kong Women Professionals and Entrepreneurs Association (HKWPEA) was established as a non-profit organization in September 1996 by a group of local women professionals and entrepreneurs. They are women professionals, business executives and entrepreneurs. For further information about HKWPEA, please visit our website: <http://www.hkwpea.org>.

We support most of the Consultation proposals for amending the relevant legislation, including the age consistency change to 16 years old, sex neutrality and the broadening of the scope of the sex offences. We agree with all the recommendations, subject to the following elaboration:

1.	Recommendation 6	We propose to retain the current legal status. As between 13 to 16 years old, a person should still be protected from penetrative acts. However, for other acts, the current law seems fine it is, that is, due to the different types of sexual acts, it is best for the courts to decide on the facts of the particular case.	
2.	Recommendation 17	Where the conduct will be covered by a new offence, a similar gender-specific offence can be removed.	
3.	Recommendation 19	Where the conduct will be covered by a new offence, a similar gender-specific old offence can be removed.	

4.	Recommendation 20	Where the conduct will be covered by a new offence, a similar gender-specific offence can be removed.	
5.	Recommendation 21	We agree with the proposal. The old offence is anachronistic, implying that a parent/guardian's approach is required if an unmarried girl chooses to leave home and to engage in sexual activity.	
6.	Recommendation 32	In the definition of situations where a relationship of care exists, a carer of a mentally impaired person should include both a person who is employed or contracted, or a volunteer.	
7.	Recommendation 34	It should be clarified that the evidential burden as regards the accused's knowledge of the victim's mental illness should be on the accused.	
8.	Recommendation 35	We believe that the definition of mental disorder may be uncertain. Hence the offences involving persons with mental impairment should not be extended to mental disorder, but should be extended to mentally handicapped (disabled) persons.	
9.	Recommendation 37	Where the conduct will be covered by a new offence, a similar old offence can be removed.	
10.	Recommendation 38	Where the conduct will be covered by a new offence, a similar old offence can be removed.	
11.	Recommendation 39	Where the conduct will be covered by a new offence, a similar old offence can be removed.	
12.	Recommendation 40	We would like to see legislation to protect young persons between 16-18, such as instances involving exploitation, violence and sexual activity which may result in physical or psychological trauma. In such cases, mutual consent may be questionable	

		and third parties should have a right to intervene and protect the “sufferers” and the law should criminalize certain conduct of those involved.	

Further, we have the additional observations:

- 1) We also support extending the coverage to institutions and carers, as well as those who are in a relationship of trust with mentally impaired persons (with reference to the Canadian scope). We understand the concern of carers and in addressing this, we propose that the Government consider to look into a clearer interpretation of the definition and degree of mental impairment, mental handicap or disability, and mental disorder, and to further refine the scope of the related offences as may be required to address any further concerns. We add that such concerns should not discourage the passage of new legislation to protect vulnerable people in such settings, and carers who are innocent would have all the necessary protection of the legal system in the courts and the jury in case of any potential claim. Hopefully a better balance can be made in protecting the vulnerable persons while not exposing their carers to any unjustified risk.

- 2) We propose that the Government seriously consider to create a Register of carers which can serve the purpose of identifying persons with convictions of sexual offences or violent offences or with other relevant attributes and ensuring those who pose danger are not free to take up positions where they place others at risk, especially to children, mentally impaired individuals and others needing care, such as old people. We note that this is a complex area which may involve issues of privacy, rehabilitation of offenders and anti-discrimination but we feel that something has to be done to address this problem of not having any regulation of carers, sooner or later, as the ageing society will make this problem more acute.

In closing, we would like to express our appreciation for the hard work of the Law Reform Commission and the subcommittees involved in this study and consultation in coming up with the detailed proposals for reform of this important area.

Yours faithfully

The Hong Kong Women Professionals and Entrepreneurs Association