For discussion
on 7 July 2026

Legislative Council Panel on Security

Improving the Laws on Sexual Offences in Hong Kong

Purpose

This paper briefs Members on the proposal of improving the laws on sexual offences in Hong Kong.

Background

2. Currently, sexual offences in Hong Kong, including rape, non-consensual buggery, gross indecency, bestiality, indecent assault, abduction, incest and other unlawful sexual acts, are mainly set out in the Crimes Ordinance (Cap. 200). Many of these offences are based on similar provisions in the laws of England enacted in 1956.

3. Since the introduction of these offences, social perceptions related to sexual offences have been evolving. The society has attached more importance to protecting vulnerable groups (such as children and persons with mental impairment ("PMIs")) from sexual abuse and exploitation; besides, it is believed that such protection should not differ by gender (i.e. both males and females should be protected), and that sexual autonomy should be respected. Although other major common law jurisdictions have gradually carried out legislative reforms in response to these changes, Hong Kong has yet to make corresponding updates or amendments to the laws on sexual offences in concrete terms.

4. Meanwhile, we notice inadequacies in the provisions on sexual offences in the Crimes Ordinance, which may give rise to a number of problems. For instance, some provisions lack clarity and certainty; some offences are gender-specific, resulting in a narrow scope; some provisions carry distinctions based on sexual orientation; some offences lack consistency on treatments across genders; the provisions and penalties of some sexual offences are not fully commensurate with the gravity of relevant acts; and the terminologies used in some provisions are outdated.

5. Against this backdrop, the Government considers it necessary to review and improve the laws on sexual offences in Hong Kong, so as to address the inadequacies of the current provisions and respond to changes in social perceptions related to sexual offences.

Review of Sexual Offences and the Government's Follow-up Work

6. The Law Reform Commission ("LRC") formed a sub-committee in 2006 to conduct a comprehensive review on sexual offences and related matters. From 2012 to 2020, a total of four consultation papers were published on specific areas[1]. Most of the recommendations received overwhelming or majority support in the course of the consultation. The LRC published two reports subsequently in 2019 and 2022,[2] making 72 final recommendations in total.[3]

7. Overall speaking, the Government agrees with the LRC's views and recommendations. The recommendations cover a wide range of offences and topics with far-reaching implications. The Government has been actively following up and examining the implementation of the recommendations in the two reports of the LRC, while drawing on the development of relevant laws in other major common law jurisdictions in formulating specific legislative amendment proposals. The Chief Executive also announced in his 2025 Policy Address that the Government would actively study the implementation of the recommendations in the two reports of the LRC to review and improve the laws on sexual offences in Hong Kong in a comprehensive manner, thereby better protecting children and PMIs.

Proposals of improving the laws on sexual offences in Hong Kong

8. As mentioned above, the Government considers it necessary to review and improve the laws on sexual offences in Hong Kong to achieve two policy objectives: (a) to strengthen protection for victims of sexual offences; and (b) to modernise the laws on sexual offences in Hong Kong to keep pace with the times.

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1 The four consultation papers are "Rape and Other Non-consensual Sexual Offences", "Sexual Offences Involving Children and Persons with Mental Impairment", "Miscellaneous Sexual Offences" and "Sentencing and Related Matters in the Review of Sexual Offences".

2 The two reports are "Review of Substantive Sexual Offences" and "Sentencing and Related Matters in the Review of Sexual Offences".

3 This refers to the 72 recommendations with Final Recommendations made in the two reports published by the LRC in 2019 and 2022.

9. To achieve the above policy objectives, we have formulated a range of legislative amendment proposals to improve the laws on sexual offences in Hong Kong, having considered the LRC's recommendations and the development of relevant laws in other major common law jurisdictions, including Australia, Canada, England and Wales, New Zealand, Scotland and Singapore. The proposal mainly cover the following areas:

(a) Non-consensual sexual offences;
(b) Sexual offences involving children;
(c) Sexual offences involving PMIs;
(d) Miscellaneous sexual offences; and
(e) Other related amendments: strengthening protection for victims of sexual offences.

For details of the proposal of improving the laws on sexual offences in Hong Kong, please refer to the consultation paper at **Annex**.

Public Consultation

10. To comprehensively review, amend and improve the laws on sexual offences in Hong Kong involves a number of sensitive and controversial issues that require careful consideration. A comprehensive and holistic assessment is necessary, and it is all the more important to listen to the views of the general public. Therefore, we are launching a one-month public consultation to invite the public to give their views on the proposal. After the close of the consultation period, we will consolidate, analyse and study the views collected. Subsequently, we will submit the legislative amendment proposal in the form of an amendment bill to the Legislative Council for consideration within this year, with the target of completing the legislative exercise within the current term of Government.

Way Forward

11. The Government attaches great importance to the well-being of the general public, in particular children and PMIs, and is committed to protecting them from sexual exploitation and abuse, which is the Government's original intent of enacting the laws on sexual offences. We

hope to improve the laws on sexual offences in Hong Kong, the earlier the better, so as to strengthen protection for victims of sexual offences while ensuring that the laws on sexual offences in Hong Kong can keep pace with the times.

12. Members are invited give their views on the proposal.

Security Bureau
June 2026

Annex

IMPROVING THE LAWS ON SEXUAL OFFENCES IN HONG KONG

CONSULTATION PAPER

SECURITY BUREAU

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CHAPTER 1 INTRODUCTION AND BACKGROUND

Existing Law

Currently, sexual offences in Hong Kong, including rape, non-consensual buggery, gross indecency, bestiality, indecent assault, abduction, incest and other unlawful sexual acts, are mainly stipulated in the Crimes Ordinance (Cap. 200). These offences are mainly set out in Part XII (primarily sections 118 to 128) of the Crimes Ordinance. Many of the provisions are based on similar ones in the English legislation dating back to 1956 [1].

2. Since the introduction of these offences, social perceptions related to sexual offences have been evolving. The society has attached more importance to protecting vulnerable groups (such as children and persons with mental impairment ("PMIs")) from sexual abuse and exploitation; besides, it is believed that such protection should not differ by gender (i.e. both males and females should be protected), and that sexual autonomy should be respected. Although other major common law jurisdictions have gradually carried out legislative reforms in response to these changes, Hong Kong has yet to make corresponding updates or amendments to the laws on sexual offences in concrete terms.

3. Meanwhile, we notice inadequacies in the provisions on sexual offences in the Crimes Ordinance, which may give rise to a number of problems. For example:

(a) Some provisions lack clarity and certainty: One of the important elements of the offences of rape and other non-consensual sexual offences [2] is that the victim does not "consent" to sexual intercourse with the defendant, or does not "consent" to engaging in a sexual act that involves the defendant, but the Crimes Ordinance does not clearly provide for a statutory definition on the circumstances that constitute "consent";

(b) Some offences are gender-specific, resulting in a narrow scope: For example, currently, only a man can be found

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1 For example, the Sexual Offences Act 1956 of the United Kingdom.

2 For example, indecent assault under the existing law.

guilty as a principal offender and only a woman can be a victim of rape [3];

(c) Some provisions carry distinctions based on sexual orientation: Some offences under the existing law are rooted on homosexual sexual act, such as the offences of buggery and gross indecency by males [4]. Nevertheless, the court has already ruled that some offences are unconstitutional out of discrimination based on sexual orientation. For example, the discrepancy in the age of consent between homosexual buggery and heterosexual sexual act was held unconstitutional.[5]

(d) Some offences lack consistency on treatments across genders: For example, the age of consent for buggery by males is 16 [6], but a man is not allowed to commit buggery with a girl under the age of 21 [7];

(e) Provisions and penalties of some sexual offences are not fully commensurate with the gravity of relevant acts: For example, the offence of rape is constituted by a man's penile penetration of a woman's vagina [8], while penile penetration of other parts of the body (such as the mouth) or penetration

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3 According to section 118(3) of the Crimes Ordinance, a man commits rape if:
"(a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and
(b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it."

4 Examples include sections 118C ("Homosexual buggery with or by man under 16") and 118H ("Gross indecency with or by man under 16") under the Crimes Ordinance.

5 Leung TC William Roy *v* Secretary for Justice ([2006] 4 HKLRD 211). Thereafter, the court also ruled other statutory offences targeting homosexual males unconstitutional out of discrimination based on sexual orientation, such as Secretary for Justice *v* Yau Yuk Lung Zigo and Another ([2007] 3 HKLRD 903) (nullifying section 118F(1)) and Yeung Chu Wing *v* Secretary for Justice ([2019] 3 HKLRD 238) (nullifying sections 118G, 118H, 118J(1) and 118K; and providing for remedial interpretation on sections 118C, 118I and 141(c)).

6 Under section 118C of the Crimes Ordinance, a man who commits buggery with a man under the age of 16 shall be liable to imprisonment for life.

7 Under section 118D of the Crimes Ordinance, a man who commits buggery with a girl under the age of 21 shall be liable to imprisonment for life.

8 On page 262 of the judgment of *R v Lee Wing On* ([1994] 1 HKC 257 (CA)), Wong J said: *"The judge correctly told the jury that there were 3 elements to the offence of rape, and sexual intercourse was one of them. He also correctly told the jury that it was not necessary to prove full sexual intercourse. The slightest penetration by the man's sexual organ into the woman's vagina was sufficient proof of sexual intercourse."*

of vagina or anus with a finger or an object does not constitute rape, although it may inflict the same degree of physical and mental harm on the victim. In such case, the defendant may be charged of indecent assault and is liable to a maximum penalty of imprisonment of 10 years, instead of rape, which is liable to life imprisonment. The severity of the acts concerned cannot be fully reflected; and

(f) Terminologies used in some provisions are outdated: For example, the term "buggery" is no longer used in some overseas jurisdictions that have reformed their laws on sexual offences.

4. Against this backdrop, the Government considers it necessary to review and improve the laws on sexual offences in Hong Kong, so as to address the inadequacies of the current provisions and respond to changes in social perceptions related to sexual offences, so as to strengthen protection for victims of sexual offences while modernising Hong Kong's laws on sexual offences to keep pace with the times.

Recommendations of the Law Reform Commission ("LRC") on the Review of Sexual Offences

5. The LRC formed a Review of Sexual Offences Sub-committee ("Sub-committee") in 2006 to review Hong Kong's law on sexual offences and the related offences (including a study on whether it is proper to maintain a sex offender register). In response to the views gathered by the Sub-committee through its consultation paper titled "Interim Proposals on a Sex Offender Register" published in July 2008, the LRC published the report on "Sexual Offences Records Checks for Child-related Work: Interim Proposals" in February 2010. The LRC also published the report on "The Common Law Presumption that a Boy Under 14 is Incapable of Sexual Intercourse" in December 2010.

6. Subsequently, the LRC published the report on "Review of Substantive Sexual Offences" in December 2019 and the report on "Sentencing and Related Matters in the Review of Sexual Offences" in May 2022, covering the topics of the four consultation papers published by

the LRC in the past 10-odd years[9], covering topics on rape and other non-consensual sexual offences, sexual offences involving children and PMIs, miscellaneous sexual offences, and sentencing and related matters in the review of sexual offences [10]. Before publication of the above two reports, the LRC had conducted extensive public consultation on each of the four consultation papers. In general, most of the recommendations received overwhelming or majority support in the course of consultation.

7. In view of general support received in the course of public consultation, the LRC proposed some principle-related recommendations and recommendations on substantive legislative amendments, including creation of a range of non-consensual sexual offences, creation of a range of new sexual offences involving children and PMIs, recommendations on penalties of the offences, review on treatment and rehabilitation of sex offenders, and review on the Sexual Conviction Record Check ("SCRC") Scheme. The two reports cover a wide range of topics and propose 72 final recommendations [11] (summary of the recommendations and the Government's views are set out in **Appendices A1 to A4**).

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[9] The four consultation papers are:

Topic of the consultation paper	Date of publication
(a) Rape and Other Non-consensual Sexual Offences	September 2012
(b) Sexual Offences Involving Children and Persons With Mental Impairment	November 2016
(c) Miscellaneous Sexual Offences	May 2018
(d) Sentencing and Related Matters in the Review of Sexual Offences	November 2020

[10] In addition to the sexual offences set out in sections 118 to 128 of the Crimes Ordinance, the remaining provisions in Part XII of the Crimes Ordinance (i.e. sections 129 to 159) cover a wide range of offences relating to prostitution or pornography. The LRC pointed out that it is not entirely clear that offences relating to prostitution should be considered as "sexual offences". In most cases, they are not truly sexual offences. They may in fact be more properly classified as offences against public disorder or involving public nuisance. Secondly, the interaction of the criminal law and pornography raises a wide range of issues which go well beyond the perceived scope of a project on sexual offences. Those issues include questions as to whether criminalising pornography is compatible with freedom of expression, whether certain categories of pornography should be permitted or licensed, and whether certain pornographic materials should be criminalised because they typically present wrongful or harmful images of women. Any reform of the law relating to prostitution or pornography in the Hong Kong context would involve wider social and policy issues. Therefore, the LRC decided not to include offences relating to prostitution or pornography in its review of sexual offences.

[11] This refers to the 72 Final Recommendations made in the two reports published by the LRC in 2019 and 2022.

The Government's views on the LRC's recommendations and the follow-up work

8. The Government has been proactively following up and progressively implementing the LRC's recommendations. Regarding the implementation of the work on the SCRC Scheme, the Government has implemented the recommendations set out in the LRC's report on "Sexual Offences Records Checks for Child-related Work: Interim Proposals" published in 2010 by launching the SCRC Scheme, which is an administrative measure, in 2011, so that sexual conviction records of persons engaging in work related to children and mentally incapacitated persons ("MIPs") are open for inspection. Later, the Government implemented in phases the recommendation on expanding the coverage of the SCRC Scheme in the LRC's report on "Sentencing and Related Matters in the Review of Sexual Offences" in 2022[12].

9. In addition, the Government also agrees with the LRC's recommendation on encouraging and promoting treatment and rehabilitation of sex offenders (i.e. the LRC's Final Recommendation 2 in **Appendix A4**). To this end, the Evaluation and Treatment Unit under the Correctional Services Department ("CSD") has implemented a number of measures to enhance incentives of persons in custody to participate in specialised treatment and rehabilitation programmes[13].

10. As regards legislative amendments, the Security Bureau completed the legislative amendment in 2012[14] to implement the recommendation set out in the LRC's report on "The Common Law Presumption that a Boy Under 14 is Incapable of Sexual Intercourse" published in 2010. The then legal presumption that a boy under 14 is incapable of sexual intercourse

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12 i.e. the LRC's Final Recommendation 3 in **Appendix A4**. Starting from December 2024, the SCRC Scheme was extended to cover "prospective" self-employed persons who are to take up work related to children and MIPs (such as private tutors, music teachers, sports coaches, persons providing door-to-door services, etc.). To further enhance protection for children and MIPs, the Government extended the SCRC Scheme to cover volunteers in December 2025 and will, by drawing on the experience in the first two phases, consider expanding the Scheme to cover all existing employees and self-employed persons as and when appropriate.

13 including access to electronic tablets and promotion of therapeutic sports, etc. The CSD has also been actively working with the Social Welfare Department, the Hospital Authority and non-governmental organisations to launch different initiatives with a view to strengthening the rehabilitation services for discharged persons with sexual convictions.

14 Statute Law (Miscellaneous Provisions) Ordinance (26 of 2012).

was abolished, meaning that a boy aged 10 or above (the age of criminal responsibility) but under 14 may need to bear criminal responsibility for committing an offence involving sexual intercourse. Besides, the Government implemented the recommendations set out in the LRC's report on "Voyeurism and Non-consensual Upskirt-photography" published in 2019. New offences of voyeurism, unlawful recording or observation of intimate parts, publication of images originating from the above two offences and publication or threatened publication of intimate images without consent were created in 2021 [15].

11. As regards the two reports on "Review of Substantive Sexual Offences" and "Sentencing and Related Matters in the Review of Sexual Offences" published in 2019 and 2022 respectively, the Government agrees with the LRC's views and recommendations on the whole. In view of the wide coverage and far-reaching implications of the offences and topics set out in the recommendations, the Government has been actively following up and examining the implementation of the recommendations in the two reports of the LRC [16], while drawing on the development of relevant legislation in other major common law jurisdictions in formulating specific legislative amendment proposals. The Chief Executive also announced in his 2025 Policy Address that the Government would actively study the implementation of the recommendations in the two reports of the LRC to review and improve the laws on sexual offences in Hong Kong in a comprehensive manner, thereby better protecting children and PMIs.

Improving the laws on sexual offences in Hong Kong

Objectives

12. As mentioned above, the Government considers it necessary to review and improve the laws on sexual offences in Hong Kong to achieve the following two policy objectives:

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15 This is relevant to the LRC's Final Recommendation 3 in **Appendix A3**.

16 For easier reference, a summary of the LRC's recommendations in the report on "Review of Substantive Sexual Offences" and the Government's views are set out in **Appendices A1 to A3**. A summary of the LRC's recommendations in the report on "Sentencing and Related Matters in the Review of Sexual Offences" and the Government's views are set out in **Appendix A4**.

(a) to strengthen protection for victims of sexual offences; and
(b) to modernise the laws on sexual offences in Hong Kong to keep pace with the times.

Guiding principles

13. Improving the laws on sexual offences involves complex and sensitive issues, including the law's underlying moral principles. Therefore, it is necessary to formulate a set of guiding principles to ensure consistency as we adopt reform approaches for a wide array of sexual offences involving different forms of criminal conduct and different degrees of culpability. In formulating legislative proposals, we have adopted the following guiding principles as recommended by the LRC[17]:

(i) Clarity of the law;
(ii) Respect for sexual autonomy;
(iii) Protective principle;
(iv) Gender neutrality;
(v) Avoidance of distinctions based on sexual orientation; and
(vi) Adherence to the Basic Law, the Hong Kong Bill of Rights Ordinance (Cap. 383) and the International Covenant on Civil and Political Rights.

14. Meanwhile, the LRC made recommendations on the principles on sentencing[18], i.e. the maximum penalties of the existing offences of rape and incest should continue to apply upon amendment, while the proposed penalties for other offences should be benchmarked against equivalent offences in other major common law jurisdictions, with suitable adjustments to be made according to the situation of Hong Kong.

Legislative amendment proposals

15. To achieve the above policy objectives (i.e. strengthening protection for victims of sexual offences and modernising the laws to keep pace with the times), on the basis of the coverage and recommendations of the LRC's review on relevant legislation, and on the premise of the above guiding principles as well as the principles on sentencing, we have, after

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17 This is relevant to the LRC's Final Recommendation 1 in **Appendix A1**.
18 i.e. the LRC's Final Recommendation 1 in **Appendix A4**.

studying the developments of relevant legislation in other major common law jurisdictions (including Australia, Canada, England and Wales, New Zealand, Scotland and Singapore), formulated a range of legislative amendment proposals to improve the laws on sexual offences in Hong Kong and to implement the LRC's recommendations, mainly covering the following areas:

(a) Non-consensual sexual offences;
(b) Sexual offences involving children;
(c) Sexual offences involving PMIs;
(d) Miscellaneous sexual offences; and
(e) Other related amendments: strengthening protection for victims of sexual offences.

16. The above legislative amendment proposals of the Government are set out in Areas (1) to (5) respectively in Chapter 2 below. Those proposals together with the proposed maximum penalties are set out in **Appendix B** [19] for easy reference.

[19] **Appendix B** also sets out the existing penalties of similar offences under the Crimes Ordinance for comparison.

CHAPTER 2 PROPOSAL FOR IMPROVING THE LAWS ON SEXUAL OFFENCES IN HONG KONG

Area (1) Non-consensual sexual offences

17. The area of "non-consensual sexual offences" revolves around acts in which the defendant compels the victim to engage in sexual act, covering the existing offences such as "rape", "non-consensual buggery" and "indecent assault". The existing Crimes Ordinance has not provided for the definitions of certain key legal concepts; furthermore, the provisions for some offences may not adequately reflect the range of non-consensual conduct which should be subject to criminal sanction.

18. To improve the laws on "non-consensual sexual offences", under this area, we mainly propose providing for key legal concepts, revising existing offences and creating new offences for non-consensual sexual acts, so as to enhance the clarity of the law, manifest the principle of sexual autonomy, and strengthen protection for the public under the protective principle.

(A) Provisions for key legal concepts

(1) "Consent"

19. Regarding the offence of rape and other "non-consensual sexual offences", a key element is that the victim does not consent to have sexual intercourse with the defendant or engage in the sexual act involving the defendant. The Crimes Ordinance does not provide a definition for the term "consent". **To enhance the clarity of the law,** and having studied relevant legislation of jurisdictions such as Canada, England and Wales, Scotland, Queensland (Australia), South Australia, Victoria (Australia), and California (the United States), we **propose devising a statutory definition for "consent", clarifying that "consent" encompasses the following elements[20]:**

[20] This is relevant to the LRC's Final Recommendations 2 and 3 in **Appendix A1**.

A person consents to sexual act if that person:

(a) has the capacity to consent to sexual act; and

(b) freely and voluntarily agrees to sexual act.

(2) The scope and withdrawal of consent

20. According to the principle of sexual autonomy, we consider that a person's consent to a particular sexual act does not imply consent to any other sexual act. For example, consenting to kissing does not imply consenting to sexual intercourse. Another example is that if a woman agrees to have sexual intercourse with a man provided that the latter wears a condom, but it turns out the man does not use a condom, it cannot be said that the woman consents to unprotected sex. Furthermore, based on the same principle of sexual autonomy, a person's consent to sexual act may be withdrawn at any time before or during such conduct. However, the Crimes Ordinance does not provide for the scope and withdrawal of consent.

21. **In pursuance of the spirit of the principle of sexual autonomy**, any person should have the right to attach conditions or restrictions to "consent", or to withdraw such a "consent". Having studied relevant legislation of jurisdictions such as England and Wales, as well as Scotland, we propose **providing for the scope and withdrawal of consent** [21], to the effect that:

(a) consent to a particular sexual act does not imply consent to other sexual acts; and

(b) consent to a sexual act may be withdrawn at any time before or during the sexual act; if the relevant sexual act continues to take place, after consent has been withdrawn, such a sexual act constitutes a "non-consensual sexual offence".

(3) Circumstances where a victim does not consent

22. Regarding "non-consensual sexual offences", for a defendant to be convicted, the prosecution must prove that (a) the victim does not consent

[21] This is relevant to Final Recommendation 6 of the LRC in **Appendix A1**.

to the sexual act with the defendant; and (b) the defendant knows that the victim does not consent to the sexual act with him [22], or the defendant does not reasonably believe that the victim consents to the sexual act with him [23]. **To enhance the clarity of the law and to protect the victims more effectively,** we **recommend specifying in the legislation a list of circumstances where a consent on the part of the victim is absent.** The list is made having considered the LRC's recommendations [24] and benchmarked against the legislation of various jurisdictions (including Australia, Canada, England and Wales, New Zealand, Scotland and Singapore). **When evidence establishes that the following circumstances exist at the time a sexual act occurs, a victim will be taken as not consenting the sexual act [25] since the victim lacks the capacity to consent to the sexual act, and/or does not freely and voluntarily consent to the sexual act.** The circumstances include:

1. ***The victim does not communicate consent either verbally or through actions;***
2. ***The victim submits to the sexual act because of extortion, coercion, blackmail, intimidation, or a fear of public humiliation or disgrace of himself or another person;***
3. ***The victim submits to the sexual act because of the use of violence (or threats of violence) against the victim by another person;***
4. ***The victim submits to the sexual act because of the use of violence (or threats of violence) by someone against another person, an animal or property;***
5. ***The victim submits to the sexual act because of another person's abuse of a position of trust or authority, or a relationship of dependency;***
6. ***The victim is unlawfully detained;***

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22 In this consultation paper, in accordance with section 7 of the Interpretation and General Clauses Ordinance (Cap. 1), words and expressions importing the masculine gender include the feminine and neuter genders.

23 This is relevant to the LRC's Final Recommendation 12 in **Appendix A1**. Besides, in assessing whether the defendant's belief about the victim's consent to the sexual act is reasonable, the jury must take into account all the circumstances, including whether the defendant has taken steps to ascertain that the victim consented.

24 Relevant recommendations of the LRC are Final Recommendations 4 and 5 in **Appendix A1**.

25 The prosecution must prove that the defendant knows that the victim does not consent to the sexual act with him, or the defendant does not reasonably believe that the victim consents to the sexual act with him.

7. The victim is asleep or unconscious;

8. Because of intoxication by drugs or alcohol, etc., the victim is unable to (i) understand what the act is, whether the act is sexual in nature, or the reasonably foreseeable consequences of the act; (ii) form a decision as to whether to engage in the act; or (iii) communicate any such decision;

9. The victim requests the use of sexually protective measures (such as a condom), or the defendant indicates that a protective measure would be used, but the defendant intentionally does not use or removes the protective measure, intentionally tampers with the protective measure, or continues with the protective measure despite becoming aware that it is no longer effective;

10. The victim is mistaken as to the nature or purpose of the sexual act;

11. The victim is mistaken as to the identity of the person engaging in the sexual act with him.

(Note: We propose to set out in the legislation that the "circumstances where a victim does not consent" are non-exhaustive. The court may determine that a victim does not consent to a sexual act based on the facts of individual cases.)

(B) Amending the offence of rape and creating three new non-consensual sexual offences

(1) Amending the non-consensual sexual offences: expanding the scope of the offence of rape

23. Section 118(3) of the existing Crimes Ordinance stipulates that:

> *"(3) A man commits rape if—*
>
> *(a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and*
>
> *(b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it."*

24. Under the existing law, only a man can be found guilty as a principal offender of rape and only a woman can be a victim. A man being sexually penetrated against his will is not covered by rape, even though the psychological trauma to him can be as great as that to a female victim. Besides, rape is constituted by a man's penile penetration of a woman's vagina, but penile penetration of other parts of the body (such as the mouth, anus or urethra), or penetration of the vagina, anus or urethra with a finger or an object, does not constitute rape, even though these acts can cause the same degree of physical and psychological harm.

25. **To strengthen protection for the public and to give effect to the principle of gender neutrality**, we propose, after studying the legislation of various jurisdictions (including Western Australia, England, and Scotland), **expanding the scope of rape to target the following acts**[26] and [27]:

> ***A person intentionally or recklessly does any of the following non-consensual acts of a sexual nature [28]:***
>
> ***(a) penetrates [29] the victim's vagina, anus or urethra with a bodily part (such as penis, finger or tongue) or an object; [30]***

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[26] This is relevant to the LRC's Final Recommendations 7 and 11 in **Appendix A1**. Besides, although the LRC recommends naming the expanded offence "sexual penetration without consent", we consider that the term "rape" is broadly understood by the Hong Kong community and clearly represents one of the most serious types of wrong in the society. The term also connotes the gravity and severity of the offence. Abandoning this commonly used term may run the risk of giving the public a false impression that the expanded offence is of a less serious nature as compared to the conventional offence of rape. Furthermore, the term "rape" is retained in most of the other common law jurisdictions (including England and Wales, Scotland and the Australian states of Victoria, Queensland, South Australia and Tasmania). Therefore, we recommend retaining the term "rape".

[27] The expanded rape offence will cover and replace section 118A of the Crimes Ordinance ("Non-consensual buggery"). This is relevant to the LRC's Final Recommendations 16 in **Appendix A1**.

[28] To provide greater clarity and certainty in the law, in respect of improving the laws on sexual offences in Hong Kong, we recommend providing for the definition of "sexual". An act/thing can be "sexual" based on its nature and the circumstances under which the act takes place, and any person's purpose in relation it. This is relevant to Final Recommendation 15 of the LRC in **Appendix A1**.

[29] To provide greater clarity and certainty in the law, we recommend that, for any sexual offence, "penetration" refers to a continuing act from entry to withdrawal. This is relevant to Final Recommendation 10 of the LRC in **Appendix A1**.

[30] To avoid ambiguity, we recommend that, for any sexual offence, any reference to a body part include one surgically (including sex re-assignment surgery) constructed, and a vagina also includes the vulva. This is relevant to Final Recommendation 9 of the LRC in **Appendix A1**.

(b) penetrates the victim's mouth with his penis;

(c) causes the aforementioned penetration (i.e. a woman compelling a man to have sexual intercourse with her).

26. In other words, based on our proposal, the scope of rape will be expanded to non-consensual penile or non-penile penetration of vagina, anus or urethra, as well as non-consensual penile penetration of the mouth. Apart from women, men can also be victims, and a woman can be found guilty as a principal offender of rape. We believe that our proposal can ensure adherence to the protective principle and gender neutrality, hence strengthening protection for the public.

27. We must emphasise that the above acts of penetration must be **sexual**. Non-sexual penetration due to medical reasons (e.g. a gynaecological examination) or for other purposes will not constitute sexual offences.

28. Regarding the penalty, considering that there is no difference between the gravity of the expanded offence of rape and that of the existing offence of rape, we **propose maintaining the maximum penalty as imprisonment for life**.

(2) Creating two new offences of sexual assault: sexual assault "involving touching" and sexual assault "without touching"

29. We propose creating three new offences, including two offences regarding sexual assault: sexual assault "involving touching" and sexual assault "without touching".

30. Currently, in accordance with section 122(1) of the Crimes Ordinance, a person who indecently assaults another person shall be guilty of an offence. The maximum penalty for the offence is imprisonment for 10 years. The offence of indecent assault covers a wide spectrum of criminal conduct of different degrees of gravity, ranging from merely "touching" to "non-penile sexual penetration". The existing Crimes Ordinance does not explicitly set out the detailed elements of the offence of "indecent assault". There is no statutory definition of "indecent", which can only be determined with reference to the facts of a particular

case.

31. Having studied relevant offences in England and Scotland, we consider it justified to reform the offence of indecent assault by replacing it with "sexual assault", with a shift of the focus from "indecent" (a concept related to public morality) to "sexual" to protect sexual autonomy of victims. Against this background, **to provide greater clarity and certainty in the law, and to protect one's sexual autonomy from unwanted sexual conduct**, we **propose**, with reference to the legislation of the above jurisdictions, **creating a new offence of "sexual assault involving touching" to replace "indecent assault", targeting the following conduct**[31]:

> ***A person intentionally or recklessly does any of the following non-consensual acts of a sexual nature:***
>
> ***(a) touches[32] the victim (including with any part of his body, with anything else, or through anything (e.g. through clothes));***
> ***(b) emits semen, urine, saliva or any other bodily fluid onto the victim;***
> ***(c) spills liquid onto the victim.***

32. On the other hand, "assault" in indecent assault can mean a battery or an assault. The nature of battery involves touching or contact, while the concept of assault under common law is given a wider meaning and goes beyond touching or contact to cover any conduct that may cause another person to apprehend the use of immediate and unlawful personal violence.

33. Considering that the existing offence of indecent assault is not restricted to touching or contact behaviour, if the new offence of "sexual assault" is only confined to sexual conduct that involves touching, certain currently unlawful cases may no longer be unlawful when the new offence

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31 This is relevant to the LRC's Final Recommendations 18 and 11 in **Appendix A1**.

32 To avoid ambiguity, for the purposes of any sexual offence, we propose that touching should include touching (a) with any part of the body; (b) with anything else; (c) through anything, and includes touching amounting to penetration. This is relevant to Final Recommendation 17 of the LRC in **Appendix A1**.

takes effect[33]. We consider that the scope of sexual assault should not be narrower than the existing scope of indecent assault, thereby reducing protection for victims. We consider that contactless assault behaviour of sexual nature should be criminalised, and **propose creating a new offence of "sexual assault without touching", targeting the following conduct**[34]:

> ***A person intentionally or recklessly engages in a non-consensual act of a sexual nature that does not involve touching, but causes the victim to apprehend the use (or threat of use) of immediate and unlawful personal violence against him, or causes the victim humiliation, alarm or distress.***

34. With respect to penalty, the maximum penalty of similar offences in England and Scotland is imprisonment for 10 years, which is the same as the maximum penalty for our existing offence of indecent assault. We **propose that the maximum penalty for the above two newly created sexual assault offences (namely sexual assault "involving touching" and sexual assault "without touching") be set at imprisonment for 10 years**.

(3) Creating a new offence of causing a person to engage in sexual act without consent

35. In accordance with section 119 of the Crimes Ordinance:

> *"(1) A person who procures another person, by threats or intimidation, to do an unlawful sexual act in Hong Kong or elsewhere shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 14 years."*

36. The existing provisions only cover unlawful sexual acts procured by threats or intimidation, which is overly restrictive and insufficient to deal with situations where a person uses other means (e.g. pressure, inducement or even persuasion) to cause another person to engage or take

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[33] For example, a person ("Person A") masturbates in front of another person ("Person B") and the ejaculated semen does not touch Person B. Such act may have already satisfied the elements of the existing offence of indecent assault. However, the above proposed new offence will not be able to adequately protect the victim (i.e. Person B) in cases involving no contact between the parties, and Person A would not be penalised.

[34] This is relevant to the LRC's Final Recommendations 19 and 11 in **Appendix A1**.

part in a sexual act against his will, for example:

(a) Person A compels Person B to engage in a sexual act with Person A (e.g. compelling Person B to masturbate with Person A); or

(b) Person A compels Person B to engage in a sexual act himself (e.g. compelling Person B to masturbate); or

(c) Person A compels Person B to engage in a sexual act with a third person ("Person C") (e.g. compelling Person B to penetrate Person C).

37. Furthermore, under the existing laws, if Person A compels Person B to engage in a sexual act with Person C (e.g. penetrate Person C) by threats or intimidation, Person A may be charged as an accessory for "aiding, abetting, counselling or procuring" the offence, but not as the principal; Person B, however, may face the charge of rape despite being a party forced to carry out an unlawful act by threats or intimidation.

38. The act of causing a person to engage in a sexual act without their consent by means of coercion, etc., (regardless of whether the sexual act involves penetration) is a serious violation of the compelled person's sexual autonomy. We consider it necessary to deal with such acts. With reference to relevant legislation in overseas jurisdictions, we **propose creating a new offence of "causing a person to engage in sexual act without consent" to replace the existing offence of "procurement by threats", targeting the following conduct**[35] and [36]:

A person intentionally causes another person to engage or take part in a sexual act without consent.

39. Under this proposed new offence, if a person ("Person A") causes another person ("Person B") (e.g. Person A compelling Person B) to

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35 This is relevant to the LRC's Final Recommendations 21 and 11 in **Appendix A1**.

36 The existing procurement offence under section 119 of the Crimes Ordinance catches an unlawful sexual act *"in Hong Kong or elsewhere"* procured by threats or intimidation. The ingredient of *"in Hong Kong or elsewhere"* will be retained under the proposed new offence for the prevention of cross-border sexual crimes.

perform a sexual act which is of criminal nature, the guilt should lie with the person who compelled the act (i.e. Person A) rather than the other person being compelled (i.e. Person B). **This embodies the principle of sexual autonomy while safeguarding the victim.**

40. Regarding the penalty, having studied similar provisions in overseas jurisdictions, we **propose that if a person causes another person to engage in a "penetrative" act without consent, the maximum penalty should be life imprisonment; if the sexual act does not involve "penetration", the maximum penalty should be imprisonment for 10 years.**

(C) Conclusion

41. This part sets out the proposals for improving the provisions on "non-consensual sexual offences". Drawing on the recent development of relevant legislation in other major common law jurisdictions, we primarily provide for the definitions of key legal concepts, including "consent", the scope and withdrawal of "consent", and circumstances where a victim does not consent to a sexual act. We also propose expanding the scope of rape and creating three new non-consensual sexual offences, namely two offences of sexual assault ("involving touching" and "without touching") and the offence of causing a person to engage in sexual act without consent, so as to provide greater clarity and certainty in the law, manifest the principle of sexual autonomy and strengthen protection for the public.

Area (2) Sexual offences involving children

42. The area of "sexual offences involving children" revolves around offences involving child victims, covering the existing offences such as "intercourse with girl under 13", "indecent conduct towards child under 16" and "homosexual buggery with or by man under 16" (set out in sections 123, 146 and 118C respectively of the Crimes Ordinance). These sexual offences mostly involve the protective principle. Certain existing provisions in the Crimes Ordinance specify the sex of the offenders or victims, rendering a narrow scope. Provisions of some offences lack consistency. Some offences make distinctions based on sexual orientation, while terms used in some provisions are not precise.

43. To improve the relevant provisions on "sexual offences involving children", we mainly propose creating a range of new offences involving child victims, so as to strengthen protection for children, a vulnerable group, under the protective principle, enhance the clarity of the law and respect sexual autonomy. To this end, we need to first discuss the "age of consent".

(A) Uniform "age of consent" of 16 years of age

44. Children below a certain age may not be able to give informed and meaningful "consent" to sexual acts, or understand and respond to their consequences. They may be more prone to sexual exploitation and may not be able to refuse or seek assistance.

45. "Age of consent" sets a boundary in law, so that children under that age are incapable of giving consent and any sexual act with persons below that age is wrong. A person shall bear criminal responsibility for sexual acts with a person under the age of consent. **In general, the current age of consent for most of the child sexual offences in Hong Kong is 16.** That is to say, a person may be prosecuted for sexual acts with a child under 16. However, a number of existing offences in the Crimes Ordinance involving children or young persons provide for different ages of consent. Examples are:

(a) intercourse with girl under 13 (section 123);

(b) intercourse with girl under 16 (section 124);

(c) abduction of unmarried girl under 18 for sexual intercourse (section 127); and

(d) buggery with girl under 21 (section 118D).

46. A discrepancy in the "age of consent" in different offences gives rise to inconsistency in law, which may be judicially challenged. Some inconsistencies have been declared unconstitutional by the court [37].

47. The age of consent in most of the other common law jurisdictions (including Australia, Canada, New Zealand, Scotland, South Africa, Singapore, England and Wales, and the United States) is 16. Raising the age of consent may compromise the sexual autonomy of the near-adults aged between 16 and 18, while lowering the age of consent may reduce the level of protection for children. Upon striking a balance between sexual autonomy and the protective principle, we are of the view that **Hong Kong should adopt a uniform "age of consent" and that the current "age of consent" at the age of 16, which is well-established in the society, should remain applicable irrespective of gender and sexual orientation, so as to enshrine the principles of "gender neutrality" and "avoidance of distinctions based on sexual orientation"** [38] [39]

(B) Creating eight new sexual offences involving children

48. The existing law mainly deals with three types of sexual acts,

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[37] For example, in Leung TC William Roy *v* Secretary for Justice, the Court of First Instance held that it was unconstitutional for the then Crimes Ordinance to accord a higher age of consent (age of 21) for homosexual sexual act by males, violation of which would trigger the offences of homosexual buggery and gross indecency by males, while the age of consent for heterosexual act between males and females was 16. Owing to this case, the Government included relevant provisions in the Statute Law (Miscellaneous Provisions) Ordinance 2014 to lower the age of consent for homosexual buggery by males and align it with that for heterosexual intercourse between males and females.

[38] This is relevant to the LRC's Final Recommendations 1 and 2 in **Appendix A2**.

[39] We are of the view that Hong Kong should adopt a uniform "age of consent" to specify that a person shall bear criminal responsibility for sexual acts with a person under that age. Regarding offenders of child sexual offences, we do not see a need to specific their age in the statute. In other words, sexual offences involving children may be committed by an offender of any age, who may not necessarily be an adult. This is relevant to the LRC's Final Recommendation 5 in **Appendix A2**.

Besides, we are of the view that the existing arrangements under which all consensual acts by children aged 13 or above but under 16 are to be criminalised should be retained, but there should be prosecutorial discretion as to whether a charge is brought to a certain case. This is relevant to the LRC's Final Recommendation 8 in **Appendix A2**. Meanwhile, the Police will maintain the discretion to caution, instead of charging, an eligible young offender under the existing Police Superintendent's Discretion Scheme.

namely vaginal intercourse, buggery and indecent assault, which may not be sufficient to cover all kinds of sexual acts causing harm to children. We are of the view that **coverage of protection for children should be widened and other sexual acts should be prohibited. To improve the law on "sexual offences involving children", we propose creating eight new offences involving child victims aged under 16 [40]. The new offences can be divided into the following three types:**

Type 1	Offences parallel to the "non-consensual sexual offences" under Area (1) in terms of nature and coverage *(a total of four newly created offences)*
Type 2	Additional offences specifically created targeting abuses of vulnerable groups such as children *(a total of two newly created offences)*
Type 3	Sexual offences of a preparatory/ancillary nature specifically created for early prevention of sexual exploitation of children *(a total of two newly created offences)*

40 On the premise that the "age of consent" is 16, our policy direction is to enhance protection for children under 16, a vulnerable group, in strict adherence to the protective principle. If specific offences are created for different age groups under 16, the offence elements will basically be same as those in offences targeting "children under 16". Moreover, a single set of offences for "children under 16" suffices to cover child victims of different ages under 16. Even if there is uncertainty as to whether a child was under a certain age when the sexual act took place (e.g. the victim cannot remember clearly how old he was when the case occurred), the defendant may still be charged with an offence "involving children under 16", thereby plugging the possible loopholes. Moreover, persons aged above 16 are near-adults and are more mature in appreciating the consequences of sexual acts hence consenting thereto. In line with the related guiding principle, their sexual autonomy should be respected. Criminal law should not easily prohibit them from engaging or participating in sexual acts. In fact, relevant legislation of major common law jurisdictions mostly adopt the age of 16 years as the defining age for sexual offences involving children and young persons. Besides, we must stress that the general non-consensual sexual offences proposed in Area (1) above can offer protection to victims of all non-consensual sexual acts, regardless of their age. Therefore, non-consensual sexual acts with persons at the age between 16 and 18 will be covered by the non-consensual sexual offences.
Based on the above considerations, we propose creating a single series of offences for "child victims under 16". The above is relevant to the LRC's Final Recommendations 3 and 40 in **Appendix A2**.

49. A range of new offences involving child victims are set out in details below[41].

Type 1: Offences parallel to the "non-consensual sexual offences" under Area (1) in terms of nature and coverage

50. First, we have proposed creating four "non-consensual sexual offences" under Area (1), namely rape, sexual assault "involving touching" and "without touching", and causing a person to engage in sexual act without consent. With reference to relevant legislation of overseas jurisdictions, **we propose creating child sexual offences corresponding to the above four proposed sexual offences[42] , with a view to strengthening the protection for child victims. Our proposal is as follows:**

(1) Creating a new offence of "sexual penetration of a child under 16", which corresponds to the expanded version of the offence of "rape" under Area (1) "non-consensual sexual offences" [43], to substitute the offences of "homosexual buggery with or by man under 16" (section 118C), "buggery with girl under 21" (section 118D), "intercourse with girl under 13" (section 123) and

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41 Regarding the proposed child sexual offences, absolute liability shall apply if a case involves a victim under 13. It is not open for the defendant to raise a defence of reasonable but mistaken belief as to the age of the child. If a case involves a victim aged 13 or above but under 16, we are of the view that absolute liability applies in most cases, subject to the availability of a statutory defence (for example, whether or not there was in-person contact between the defendant and the victim when the former committed the crime, and whether or not the defendant had taken all reasonable steps to ascertain the age of the victim). Besides, the amended legislation will not provide for marital defence, along the spirit of the protective principle. The above is relevant to the LRC's Final Recommendations 6 and 7 in **Appendix A2**.

42 Same as non-consensual sexual offences, Type 1 of child sexual offences also criminalise four types of acts and thus share similar offence elements. However, in the case of non-consensual sexual offences, the prosecution must prove that (a) the victim does not consent to the sexual act with the defendant; and (b) the defendant knows that the victim does not consent to the sexual act with him, or the defendant does not reasonably believe that the victim consents to the sexual act with him. In the case of child sexual offences, the prosecution is required to prove that the victim is under the age of 16.

43 Rape refers to non-consensual sexual intercourse (see the discussion under Area (1) "non-consensual sexual offences" above). However, with regard to this offence which involves victims under 16, taking into account the "age of consent" at 16, young persons under the age of 16 are incapable of giving consent in law, and thus the issue of whether the victim consents or not does not exist. Therefore, we propose naming the offence "sexual penetration of a child under 16". This is in line with the existing practice in the Crimes Ordinance, under which existing offences involving children and young persons of similar nature as that of the proposed offences are not named "rape" (such as the offences of "intercourse with girl under 13" and "intercourse with girl under 16").

"intercourse with girl under 16" (section 124) [44] ***under the Crimes Ordinance, targeting the following conduct*** [45]***:***

A person intentionally or recklessly does any of the following acts of a sexual nature to a child under 16:

1. ***penetrates the victim's vagina, anus or urethra with a bodily part (such as penis, finger or tongue) or an object;***
2. ***penetrates the victim's mouth with his penis;***
3. ***causes the aforementioned penetration.***

51. Our policy direction is to enhance protection for vulnerable groups, along the spirit of the protective principle. Children below 16 is a vulnerable group. Any sexual assault on them by any person will cause severe negative impacts on their physical and mental health. **Sexual penetration of a child under 16 is even socially unacceptable and warrants heavier punishment.** Therefore, we **propose creating a new offence of "sexual penetration of a child under 16",** which corresponds to the offence of "rape", to **substitute altogether the following existing offences:** "homosexual buggery with or by man under 16", "buggery with girl under 21", "intercourse with girl under 13" and "intercourse with girl under 16". **To reflect the severity of the offences, we propose that the maximum penalty for the above proposed offences be life imprisonment to enhance the deterrent effect. This proposed sentence is in line with the maximum penalty (i.e. life imprisonment) for relevant existing offences in Hong Kong** [46] **and the expanded offence of rape as discussed above.**

(2) Creating a new offence of "sexual assault of a child under 16 involving touching", targeting the following conduct [47]***:***

A person intentionally or recklessly does any of the following acts of a sexual nature to a child under 16:

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44 This is relevant to the LRC's Final Recommendations 17, 19 and 20 in **Appendix A2**.

45 This is relevant to the LRC's Final Recommendation 10 in **Appendix A2**.

46 These include "homosexual buggery with or by man under 16" (section 118C), "buggery with girl under 21" (section 118D) and "intercourse with girl under 13" (section 123) under the Crimes Ordinance.

47 This is relevant to the LRC's Final Recommendation 11 in **Appendix A2**.

1. ***touches the victim (including with any part of his body, with anything else, or through anything (e.g. through clothes);***
2. ***emits semen, urine, saliva or any other bodily fluid onto the victim;***
3. ***spills liquid onto the victim.***

52. Regarding the penalty, we have proposed a maximum penalty of imprisonment for 10 years for the two offences of sexual assault "involving touching" and "without touching" under Area (1). To manifest the protective principle, we consider that heavier punishment should be imposed for offences involving child victims. Having studied similar offences in overseas jurisdictions, we **propose that the maximum penalty for "sexual assault of a child under 16 involving touching" should be imprisonment for 14 years.**

(3) Creating a new offence of "sexual assault of a child under 16 without touching" to target the following act:

A person intentionally or recklessly engages in an act of a sexual nature against a child under 16 which does not involve touching, but causes the victim to apprehend the use (or threat of use) of immediate and unlawful personal violence against him, or causes the victim humiliation, alarm or distress.

53. Regarding the penalty, we **propose a maximum penalty of imprisonment for 14 years** for this newly created offence, with reference to the above offence of "sexual assault of a child under 16 involving touching" of a similar nature.

54. The creation of the above two new offences of sexual assault of a child under 16 "involving touching" and "without touching" will substitute the following existing offences: "gross indecency with or by man under 16" (section 118H) and "indecent conduct towards child under 16" (section 146) under the Crimes Ordinance.[48]

[48] This is relevant to the LRC's Final Recommendations 20 and 18 in **Appendix A2**.

(4) Creating a new offence of "causing or inciting a child under 16 to engage in sexual act", targeting the following conduct [49 and 50]

A person intentionally causes or incites a child under 16 to engage or take part in a sexual act

55. Regarding the penalty, having studied the penalties for similar offences in overseas jurisdictions, we **propose that the maximum penalty for causing or inciting a child under 16 to engage in a sexual act involving "penetration" should be life imprisonment; if the sexual act does not involve "penetration", the maximum penalty should be imprisonment for 14 years.**

Type 2: Additional offences specifically created targeting abuses of vulnerable groups such as children

56. Apart from the above, we consider that provisions should be introduced to protect children against specific acts of sexual exploitation. **Our proposals are as follows:**

(5) Creating a new offence of "engaging in sexual act in the presence of a child under 16"

57. Currently, there is no offence of engaging in sexual act in the presence of a child in Hong Kong. Given that paedophiles may seek to obtain sexual gratification by masturbating or engaging in sexual acts with others while knowing that a child is watching, and that such acts may cause the child humiliation, alarm or distress and severe harm, we consider that under the **protective principle, there is a need to better protect children from possible sexual exploitation.** Drawing on the latest development of relevant legislation in overseas jurisdictions, we **propose creating a new offence of "engaging in sexual act in the presence of a child under 16", targeting the following conduct**[51]:

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49 This is relevant to the LRC's Final Recommendations 12 in **Appendix A2**.

50 With reference to the proposed new offence of "causing a person to engage in sexual act without consent" under Area (1), this proposed new offence will similarly include the ingredient of *"in Hong Kong or elsewhere"* so as to catch the unlawful act of causing or inciting children to engage in sexual act in Hong Kong or elsewhere, for the prevention of cross-border sexual crimes and for enhancing the protection for children.

51 This is relevant to the LRC's Final Recommendation 13 in **Appendix A2**.

Any person who intentionally engages in sexual act in the presence of a child under the age of 16, or causes a child to be present while a third party (as opposed to the defendant himself) is engaging in sexual act, and the purpose of engaging the child is for obtaining sexual gratification, or causing the child humiliation, alarm or distress.

58. Given the crowded living conditions in Hong Kong, some families might be living in flats without bedrooms, it is possible for a child to see his parents engaging in sexual acts. Questions may therefore arise as to whether these parents might be caught inadvertently. We wish to emphasise that the legislative intent of proposing this offence is to bring to justice those who **intentionally** engage in sexual act in the presence of a child **for the purpose of obtaining sexual gratification, or causing the child humiliation, alarm or distress.** In other words, unless the parents possess such deliberate intent or purpose, or intentionally cause the child to be present for the purpose of obtaining sexual gratification or causing the child humiliation, distress or alarm, they will not have committed such offence.

59. Regarding the penalty, with reference to the provisions for similar offence in overseas jurisdictions, we **propose that the maximum penalty be imprisonment for 10 years if the victim is a child under the age of 13 at the time the offence is committed, and imprisonment for 5 years if the victim is a child aged between 13 and 16 at the time the offence is committed.**

(6) Creating a new offence of "causing a child under the age of 16 to look at a sexual image, see or hear sexual written or verbal communication, or causing a child to send a sexual image or communication"

60. Currently, in Hong Kong, there is no offence of causing a child to look at a sexual image, see or hear sexual written or verbal communication, or causing a child to send a sexual image or communication. Given that paedophiles may seek to obtain sexual gratification by coercing a child to look at a sexual image, disturbing a child by sexual written or verbal communication, or causing a child to send a sexual image or communication, and that such act may cause the child humiliation, alarm

or distress, and possibly severe harm, we consider that **under the protective principle, there is a need to better protect children from possible sexual exploitation.** Drawing on the latest development of relevant legislation in overseas jurisdictions, we **propose creating a new offence of "causing a child under 16 to look at a sexual image, see or hear sexual written or verbal communication, or causing a child to send a sexual image, or sexual written or verbal communication", targeting the following acts**[52]:

> ***Any person who intentionally sends a sexual image or sexual written or verbal communication to a child under 16, or causes a child to look at a sexual image, see or hear sexual written or verbal communication or causes a child to send a sexual image or sexual written or verbal communication, for the purpose of obtaining sexual gratification or causing the child humiliation, alarm or distress.***

61. Regarding the penalty, having studied the provisions for similar offence in overseas jurisdictions, we **propose that the maximum penalty be imprisonment for 10 years if the victim is a child under the age of 13 at the time the offence is committed, and imprisonment for 5 years if the victim is a child aged between 13 and 16 at the time the offence is committed.**

Type 3: Sexual offences of a preparatory/ancillary nature specifically created for early prevention of sexual exploitation of children

62. For early prevention of sexual exploitation of children, we specifically propose creating two sexual offences of a preparatory/ancilliary nature. This is intended to ensure that where an offender has taken preparatory steps or engaged in an act to abuse a child, the relevant individuals can still be prosecuted even if the child has not actually suffered (for example, law enforcement officers arrive in time to prevent the sexual offence from occurring). **Our proposals are as follows:**

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[52] This is relevant to the LRC's Final Recommendation 14 in **Appendix A2**.

(7) Creating a new offence of "sexual grooming of a child"

63. Sexual grooming of a child refers to the phenomenon of a paedophile who grooms a child with a view to engaging in conduct that constitutes a sexual offence against the child. The paedophile may groom a child by communicating with the child in order to gain the child's trust and confidence. This is often done through electronic means and is commonly carried out on a mobile phone or on the internet. The paedophile would eventually arrange to meet the child with the intention of sexually abusing the child victim when they meet. Currently, the Crimes Ordinance has no provision for the offence of "sexual grooming of a child".

64. The merit of introducing an offence on sexual grooming of a child is that it allows police officers to take early action to investigate cases where there are indications that children have been or will be abused. **It may prevent the commission of actual sexual offences against children, serve as a deterrent to would-be sex predators, and better protect children against sexual exploitation.** Drawing on the latest development of relevant legislation in overseas jurisdictions, we **propose creating a new offence of "sexual grooming of a child", targeting the following conduct**[53]:

> ***A person who, having met or communicated with a child, intentionally meets the child, or travels (or makes arrangements to travel) with the intention of meeting the child, and that person intends to sexually abuse the child or engage in an act which will have constituted the commission of a child sexual offence during the said meeting[54].***

65. In particular, we notice that the legislation on sexual grooming of a child in some overseas jurisdictions contains provisions in respect of **"fictitious young persons"**, which allow prosecution in situations where the accused believes that he is communicating with a person under 16 but is in fact communicating with a police officer operating in a covert role. This provision can facilitate police investigation, enabling them to catch the groomer before a child is actually sexually abused. We **consider that**

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53 This is relevant to the LRC's Final Recommendation 22 in **Appendix A2**.

54 These include, but are not limited to, the commission of offences related to child pornography.

this provision has its merits and will incorporate it into our proposal.

66. Regarding the penalty, with reference to similar provisions in other jurisdictions, we propose **that the maximum penalty for this offence be imprisonment for 10 years.**

(8) Creating a new offence of "arranging or facilitating the commission of a child sexual offence"

67. Section 159G of the Crimes Ordinance provides for the offence of attempting to commit an offence. The basis for securing a conviction is that the accused must "*[do] an act that is more than merely preparatory to the commission of the offence*". There may be chances that a paedophile has been taking preparatory steps or actions to prepare for the commission of a child sexual offence. The offence may not take place eventually for various reasons (including when sufficient protection is offered to the child victims would-be). The existing offences may not be able to capture the accused, and a would-be child sex offender may be set loose.

68. We see the need to create a new offence in Hong Kong, so that authorities can take early steps to track down paedophiles who take preparatory steps to make arrangements for, or facilitate the commission of, a child sexual offence, thereby preventing children from being sexually abused. For example, a person (Person A) intentionally drives another person (Person B) to meet a child, and Person A intends to let Person B, or believes that Person B will, have sexual act with the child. Whether the sexual act actually takes place or not, Person A has already committed the said offence. This new offence will be a significant step towards better protection for children against sexual exploitation. With reference to relevant legislation in various jurisdictions, we **propose creating a new offence of "arranging or facilitating the commission of a child sex offence", targeting the following conduct**[55]:

> ***Any person who intentionally arranges or facilitates an act that involves the commission of a child sexual offence by himself (or another person).***

[55] This is relevant to the LRC's Final Recommendation 15 in **Appendix A2**.

69. It is worth mentioning that persons involved in providing help, advice, treatment and support to young people in matters of sexual health, such as contraception, should not be regarded as aiding, abetting, arranging or facilitating a criminal offence. Otherwise, healthcare workers will be deterred from rendering assistance to young people on sex matters, and youngsters will be discouraged from seeking appropriate professional help and advice on sex-related problems. Therefore, a person will not commit the offence of "arranging or facilitating the commission of a child sexual offence" if that person's actions are intended to protect a child from pregnancy or sexually transmitted infection, to protect the physical safety of a child or to promote a child's emotional well-being by the giving of advice rather than for the purpose of obtaining sexual gratification.[56]

70. Regarding the penalty, drawing on the latest development of relevant legislation in overseas jurisdictions, we **propose that the maximum penalty for this offence should be equivalent to the maximum penalty for the principal child sexual offence in question, so as to reflect the severity of the relevant child sexual offence, thereby creating greater deterrence to potential offenders.**

(C) Other related matters: extraterritorial effect for sexual offences involving children

71. Currently, section 153P of the Crimes Ordinance provides for extraterritorial effect of certain sexual offences involving child victims specified in Schedule 2, for instance, intercourse with girl under 13 (section 123) and indecent conduct towards child under 16 (section 146). The following persons may be prosecuted in Hong Kong if they commit any act which would have been a sexual offence specified in Schedule 2 had it been committed in Hong Kong:

(a) a Hong Kong resident[57] or a body[58] who commits the relevant act outside Hong Kong against a child victim under 16 (regardless of whether the child is a Hong Kong resident); or

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[56] The above statutory exceptions should also apply to other sexual offences involving children. This is relevant to the LRC's Final Recommendation 16 in **Appendix A2**.

[57] Including a Hong Kong permanent resident or a person who ordinarily resides in Hong Kong.

[58] Including a body corporate that is incorporated or registered in Hong Kong, and a body of persons, whether corporate or unincorporate, that has a place of business in Hong Kong.

(b) any person or body[59] who commits the relevant act outside Hong Kong against a child victim under 16 who is a Hong Kong resident[60].

72. Pursuant to Article 34 of the United Nations Convention on the Rights of the Child applicable to Hong Kong, children should be protected from all forms of sexual exploitation and sexual abuse. To ensure that the new legislation proposed above is effective in covering paedophiles who travel abroad to commit sexual offences involving children, we propose, with reference to relevant legislation in other jurisdictions, **stipulating that the proposed new sexual offences involving children should have extraterritorial effect, so as to protect children from perpetrators who travel abroad to commit sexual offences against them**[61].

(D) Conclusion

73. This part sets out the proposals for improving the provisions on "sexual offences involving children". With reference to relevant legislation in other jurisdictions, we consider that there should be a uniform "age of consent" of 16 years of age in Hong Kong. We also propose creating eight new sexual offences involving children, which comprise four new offences parallel to the "non-consensual sexual offences" under Area (1) in terms of nature and coverage, two additional offences specifically created targeting abuses of vulnerable groups such as children, and two new sexual offences of a preparatory/ancillary nature specifically created for early prevention of sexual exploitation of children. These proposals aim to accord better protection to children while giving effect to the principles of "gender neutrality" and "avoidance of distinctions based on sexual orientation".

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59 A body of persons, whether corporate or unincorporate.

60 Including a Hong Kong permanent resident or a person who ordinarily resides in Hong Kong.

61 This is relevant to the LRC's Final Recommendation 41 in **Appendix A2**.

Area (3) Sexual offences involving persons with mental impairment

74. The area of "sexual offences involving PMIs" revolves around offences involving victims who are PMIs, covering existing offences such as "buggery with mentally incapacitated person", "gross indecency by man with male mentally incapacitated person" and "intercourse with mentally incapacitated person" (set out in sections 118E, 118I and section 125 respectively of the Crimes Ordinance). Most of these sexual offences are related to the protective principle. Some existing provisions under the Crimes Ordinance are gender-specific, while some are based on sexual orientation.

75. To improve the laws on "sexual offences involving PMIs", we mainly propose creating a series of new offences involving victims who are PMIs, so as to strengthen protection for this vulnerable group under the protective principle, and to manifest the principle of sexual autonomy.

(A) Directions on improving the laws on "sexual offences involving PMIs"

76. At present, the Crimes Ordinance provides for sexual offences involving victims who are **mentally incapacitated persons**. Section 117(1) of the Crimes Ordinance defines a "mentally incapacitated person" as:

> ***"****A mentally disordered person or a mentally handicapped person (within the meaning of the Mental Health Ordinance (Cap. 136)) whose mental disorder or mental handicap*[62]*, as the case may be, is of such a nature or degree that that person is incapable of living*

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[62] The definition of "mental disorder" is provided in the Mental Health Ordinance as:
"(a) mental illness;
(b) a state of arrested or incomplete development of mind which amounts to a significant impairment of intelligence and social functioning which is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned;
(c) psychopathic disorder; or
(d) any other disorder or disability of mind which does not amount to mental handicap, and 'mentally disordered' shall be construed accordingly.
The definition of "mental handicap" is:
"sub-average general intellectual functioning with deficiencies in adaptive behaviour, and 'mentally handicapped' shall be construed accordingly."

an independent life or guarding himself against serious exploitation, or will be so incapable when of an age to do so."

77. As such, only victims who are so severely impaired to the extent of **being incapacitated** are protected under the current provisions. Other PMIs, such as those with mental handicap or mental disorder of a lower degree, are currently not covered (see details below).

78. Having studied the legislation of other jurisdictions, we consider that the following approaches may be adopted in providing protection for PMIs, based on the level of their mental capacity.

(a) Persons with severe mental impairment to the extent of incapacity (hereinafter referred to as "PSMIs")

79. PSMIs lacked the capacity to consent to sexual acts[63]. Under the protective principle, any sexual acts with them should be absolutely prohibited and are strictly outlawed. This is the current approach taken under the laws of Hong Kong.

(b) PMIs with a certain degree of capacity

80. If PMIs have a lower degree of mental impairment, they still have the capacity to consent to sexual acts, and thus their sexual autonomy should be respected. However, to adhere to the protective principle, offences should be put in place to address sexual conduct arising from sexual exploitation of their mental condition. To strike a balance between sexual autonomy and the protective principle, we **propose addressing the issue via the below directions**:

(i) The offender sexually exploiting the PMI by obtaining his "consent" via particular means: Although PMIs have the capacity to "consent", their "consent" is obtained by the offender via undue **means such as inducement, threat or deception**. To this end, we **propose creating offences targeting offenders who procure sexual acts with PMIs via such means.**

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63 This is relevant to the LRC's Final Recommendation 4 in **Appendix A1.**

(ii) The offender who is in a relationship of care with the PMI, or abuses a position of trust or authority or a relationship of dependency with the latter, and sexually abuses the PMI: This covers exploitation of PMIs by their carers, including carers inside or outside the institutions serving PMIs (hereinafter referred to as "inside or outside an institution") (for example, care workers in an institution, domestic helpers, etc.). Sexual exploitation of a PMI upon an abuse of a position of trust or authority (for example, teacher-student relationship, religious leader-congregant relationship, employer-employee relationship, etc.) or a relationship of dependency with a PMI is also covered. In other words, a "consent" given by a PMI may be negated if it is obtained by the above persons who abuse their position. We **propose creating offences targeting sexual acts with PMIs by offenders involved in their care, or involved in an abuse of a position of trust or authority, or a relationship of dependency.**

81. Against this background, we will put forward proposals to improve the legislation in line with the above directions, with a view to addressing the above three circumstances involving PMIs. In this regard, we must first examine the definitions of "PMI" and "PSMI".

(B) How to define "PMI" and "PSMI"?

82. As mentioned above, pursuant to the existing definition in the Crimes Ordinance, a protected person, on top of being a mentally disordered person or a mentally handicapped person (as defined in the Mental Health Ordinance), must also be incapable of living an independent life or protecting himself because of his mental disorder or mental handicap. In other words, other PMIs (for example, those with mental handicap or mental disorder of a lower degree and fall short of the high requirement of "incapability of living an independent life or guarding himself against serious exploitation") will not be classified as a "mentally incapacitated person" and are currently not covered by the protection net. If they become the victim of an alleged sexual offence, it may be difficult for the

prosecution to bring a charge on any of the existing sexual offences involving "mentally incapacitated persons". The existing definition cannot accord adequate protection to PMIs of different degrees, and is far from perfect. **We consider it necessary to revise the definition.**

83. As analysed above, some PMIs with a lower degree of impairment have the capacity to consent to sexual acts, and so their sexual autonomy should be respected. Nevertheless, they may be prone to exploitation if there are no offences covering these group of PMIs. We need to strike a balance between the respect for sexual autonomy and the protective principle. In this connection, with reference to relevant legislation in other jurisdictions, we **propose**:

(a) **removing the part involving the high requirement of "incapacitated" from the statutory definition;**

(b) **replacing the term "mentally incapacitated persons" with "person with mental impairment"** [64], so as to replace the meaning of "incapacitated" with "mental impairment" (i.e. not completely incapacitated);

(c) **revise the relevant definition to achieve the following effect:**

"A PMI refers to a mentally disordered person or a mentally handicapped person within the meaning of the Mental Health Ordinance."

A mentally disordered person or a mentally handicapped person within the meaning of the Mental Health Ordinance falls within a vulnerable group, as should be protected under the law.

84. **The new definition proposed above can cover more PMIs who need to be protected under the legislation** [65], including those with a lower degree of mental impairment, offering them protection under the law while

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64 This is relevant to the LRC's Final Recommendation 36 in **Appendix A2.**

65 This is relevant to the LRC's Final Recommendation 35 in **Appendix A2.**

respecting their sexual autonomy.

85. On the basis of the new definition proposed above and benchmarked against relevant legislation in other jurisdictions, **a PMI is classified as a PSMI if he is unable to do any of the following:**

(a) understand what the act is, whether the act is sexual in nature, or its reasonably foreseeable consequences;

(b) form a decision as to whether to engage in the act (or as to whether the act should take place), or

(c) communicate any such decision.

(C) Improving the laws on sexual offences involving PMIs

86. To begin with, we have proposed creating four "non-consensual sexual offences" under Area (1), i.e. rape, sexual assault "involving touching" and "without touching", and causing a person to engage in sexual act without consent. In addition, for Area (2), we have proposed creating two additional offences specifically created targeting abuses of vulnerable groups, i.e. "engaging in sexual act in the presence of the victim" and "causing the victim to look at a sexual image, see or hear sexual written or verbal communication, or causing the victim to send a sexual image or communication".

87. With reference to relevant legislation in overseas jurisdictions, we **consider that,** in order to offer better protection to PMIs, **corresponding sexual offences with regard to the above six types of acts should be created for each of the three abovementioned circumstances relating to PMIs [66], which means a total of 18 targeted offences should be created. The six types of acts to be subject to criminal sanction are**

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[66] i.e.:
1. PMIs who are so severely impaired to the extent of incapacity;
2. PMIs who possess some capacity to give "consent", with the law focusing on addressing the following two circumstances –
   - sexual exploitation of PMIs by perpetrators using inducement, threat or deception to obtain their "consent"; and
   - sexual exploitation of PMIs by perpetrators in a relationship of care or arising from abuse of a position of trust or authority, or a relationship of dependency.

summarised as follows:

(i) Sexual penetration with a PMI:

A person intentionally or recklessly does any of the following acts of a sexual nature to a PMI:

1. *penetrates the victim's vagina, anus or urethra with a bodily part (such as penis, finger or tongue) or an object;*
2. *penetrates the victim's mouth with his penis;*
3. *causes the aforementioned penetration.*

(ii) Sexual assault against a PMI involving touching:

A person intentionally or recklessly does any of the following acts of a sexual nature:

1. *touches the victim (including with any part of his body, with anything else, or through anything (e.g. through clothes);*
2. *emits semen, urine, saliva or any other bodily fluid onto the victim;*
3. *spills liquid onto the victim.*

(iii) Sexual assault against a PMI without touching:

A person intentionally or recklessly engages in an act of a sexual nature against a PMI which does not involve touching, but causes the victim to apprehend the use (or threat of use) of immediate and unlawful personal violence against him, or causes the victim humiliation, alarm or distress.

(iv) Causing or inciting a PMI to engage in sexual act[67];

A person intentionally causes or incites a PMI to engage or take part in a sexual act

(v) Engaging in sexual act in the presence of a PMI:

Any person who intentionally engages in sexual act in the presence of a PMI, or causes a PMI to be present while a third

party (as opposed to the defendant himself) is engaging in sexual act for the purpose of obtaining sexual gratification or causing the PMI humiliation, alarm or distress.

(vi) Causing a PMI to look at a sexual image, see or hear sexual written or verbal communication or causing a PMI to send a sexual image or communication

Any person who intentionally sends a sexual image or sexual written or verbal communication to a PMI or causes a PMI to look at a sexual image, see or hear sexual written or verbal communication or causes a PMI to send a sexual image or communication for the purpose of obtaining sexual gratification or causing the PMI humiliation, alarm or distress.

88. With reference to similar provisions in laws of overseas jurisdictions, we **propose creating the following 18 sexual offences involving PMIs[68] and [69] to substitute the offences of "buggery with mentally incapacitated person", "gross indecency by man with male mentally incapacitated person", "intercourse with mentally incapacitated woman", "abduction of mentally incapacitated person from parent or guardian for sexual act" (set out in sections 118E, 118I, 125 and 128 respectively of the Crimes Ordinance), and "sexual intercourse with patients" under section 65(2) of the Mental Health Ordinance[70].** The proposed 18 sexual offences dealing with the three circumstances involving PMIs and their maximum penalties are detailed as follows:

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67 With reference to the proposed new offence of "causing a person to engage in sexual act without consent" under Area (1), this proposed new offence will similarly include the ingredient of *"in Hong Kong or elsewhere"* so as to catch the unlawful act of causing or inciting PMIs to engage in sexual act in Hong Kong or elsewhere, for the prevention of cross-border sexual crimes and for enhancing the protection for PMIs.

68 This is relevant to the LRC's Final Recommendations 23 to 30 in **Appendix A2**.

69 The mental impairment of some PMIs may not be so severe, and one may not be able to tell whether they are PMIs simply by observing their demeanour. It will only be fair to the defendant that he is not held liable under the relevant PMI sexual offence if he does not have knowledge that the other party in the sexual act is a PMI. Therefore, there is an offence element in the proposed offences involving PMIs that the defendant needs to know or can reasonably expect that the victim is a PMI, before the defendant can be found guilty. This is relevant to the LRC's Final Recommendation 33 in **Appendix A2**.

70 This is relevant to the LRC's Final Recommendations 37 to 39 in **Appendix A2**.

(i) Targeting victims who are PSMIs

Proposed offence	Proposed maximum penalty
1. Sexual penetration with a PSMI	Imprisonment for life
2. Sexual assault of a PSMI involving touching	Imprisonment for 14 years
3. Sexual assault of a PSMI without touching	Imprisonment for 14 years
4. Causing or inciting a PSMI to engage in sexual act	Imprisonment for life if a "penetrative" act is involved; otherwise, imprisonment of 14 years
5. Engaging in sexual act in the presence of a PSMI	Imprisonment for 10 years
6. Causing a PSMI to look at a sexual image, see or hear sexual written or verbal communication or causing that person to send a sexual image or communication	Imprisonment for 10 years

(ii) Targeting PMI victims with a certain degree of capacity to "consent", and are sexually exploited by offenders using particular means

Proposed offence			Proposed maximum penalty
7.	Inducement, threat or deception to procure	Sexual penetration with a PMI	Imprisonment for life
8.		Sexual assault of a PMI involving touching	Imprisonment for 14 years
9.		Sexual assault of a PMI without touching	Imprisonment for 14 years
10.		Causing a PMI to engage in or agree to engage in sexual act	Imprisonment for life if a "penetrative" act; otherwise, imprisonment of 14 years
11.		Engaging in sexual act in the presence of a PMI	Imprisonment for 10 years
12.		Causing a PMI to look at a sexual image, see or hear sexual written or verbal communication or causing a PMI to send a sexual image or communication	Imprisonment for 10 years

(iii) Targeting PMI victims with a certain degree of capacity to "consent", and are sexually exploited by offenders in a relationship of care or abusing a position of trust or authority or a relationship of dependency with the PMIs

Proposed offence			Proposed maximum penalty
13.	Sexual penetration with a PMI	(i) by people involved in his care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency[71]	Imprisonment for life
14.	Sexual assault of a PMI involving touching		Imprisonment for 14 years
15.	Sexual assault of a PMI without touching		Imprisonment for 14 years
16.	Causing or inciting a PMI to engage in or agree to engage in sexual act		Imprisonment for life if a "penetrative" act is involved; otherwise, imprisonment for 14 years
17.	Sexual act in the presence of a PMI		Imprisonment for 10 years
18.	Causing a PMI to look at a sexual image, see or hear sexual written or verbal communication or causing a PMI to send a sexual image or communication		Imprisonment for 10 years

(D) Other relevant matters: extraterritorial effect for sexual offences involving PMIs

89. As mentioned above, the Crimes Ordinance currently provides for extraterritorial effect of certain sexual offences involving child victims. We have proposed in the above that all new child sexual offences have

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[71] In the legislation, the definition of situations where a relationship of care exists should cover offenders who may sexually abuse PMIs, whether inside or outside an institution. A person with a function to perform (whether employed in the institution or not) in an institution, or a person trying to sexually abuse PMIs under the guise of volunteering will be equally culpable. On the other hand, mere visitors to an institution who have no function to perform therein or no relationship of care with the PMI will not be covered. The law will also specify institutions covered. Persons involved in the care of PMIs outside an institution, for instance, domestic helpers or private nurses, should also be included in the definition of carer.
In addition, we will provide for exceptions, including: (i) the PMI and the carer/person with a position of trust or authority, or a relationship of dependency were married; or (ii) there was a lawful sexual relationship between the PMI and the carer/person with a position of trust or authority, or a relationship of dependency which pre-dated the relationship of care (i.e. the sexual relationship existed within a reasonable period before the carer/person with a position of trust or authority, or a relationship of dependency becomes involved in the care, assistance or services of a PMI), so that these carers will not be inadvertently caught by the PMI-related sexual offences. This is relevant to the LRC's Final Recommendations 31 and 32 in **Appendix A2**.

extraterritorial effect. As PMIs should be given the same level of protection as children, we **propose that the new PMI sexual offences should also have extraterritorial effect, so as to protect PMIs from perpetrators who travel abroad to commit sexual offences against them.**[72]

(E) Conclusion

90. This part sets out the proposals for improving the provisions on sexual offences involving PMIs. With reference to relevant legislation in other jurisdictions, we have revised the relevant definition, so that more vulnerable persons that require protection by the legislation can be covered under the new definitions. We also propose creating 18 new PMI sexual offences to focus on addressing (a) offenders' sexual acts with PSMIs; (b) sexual exploitation of PMIs by offenders using particular means; and (c) sexual exploitation of PMIs by offenders in a relationship of care, or abusing a position of trust or authority, or a relationship of dependency with the PMIs.

[72] This is relevant to the LRC's Final Recommendation 41 in **Appendix A2**.

Area (4) Miscellaneous sexual offences

91. In addition to the non-consensual sexual offences and sexual offences involving children and PMIs, we also propose, in line with the recommendations of the LRC, to improve the provisions on miscellaneous sexual offences. In this regard, we primarily propose revising and creating miscellaneous sexual offences, covering incest, sexual exposure, bestiality, necrophilia and acts committed with the intention of committing a sexual offence, in order to manifest the protective principle, and the principles of gender neutrality, respect for sexual autonomy and avoidance of distinctions based on sexual orientation.

(A) Expanding the coverage of the offence of "incest"

92. Incest is a serious crime breaking the fabric of a family. Current laws in Hong Kong provides for two offences of incest to address sexual exploitation or illicit sexual relationships within the family. Section 47 of the Crimes Ordinance stipulates that a man commits incest if he has sexual intercourse with a woman who is, to his knowledge, his granddaughter, daughter, sister [73] or mother. [74] Consent on the part of the said woman is not a defence in such a case. According to section 48, a woman aged 16 or above commits incest if she, with consent, permits her grandfather, father, brother [75] or son to have sexual intercourse with her. [76]

93. To **improve the provisions on the offence of incest**, we **make the following proposals**:[77]

(a) In view of the guiding principles of **gender neutrality**, it is not necessary to have separate incest offences for men and women. **The offences will be combined as one**;

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73 Section 49 of the Crimes Ordinance stipulates that in Part VI, "brother" and "sister" respectively include half-brother and half-sister.

74 Section 47 is not applicable to adoptive daughter.

75 Section 49 of the Crimes Ordinance stipulates that in Part VI, "brother" and "sister" respectively include half-brother and half-sister.

76 Section 51 of the Crimes Ordinance stipulates that prosecution for an offence under sections 47 and 48 shall be instituted with the consent of the Secretary for Justice.

77 This is relevant to the LRC's Final Recommendation 1 in **Appendix A3**. In addition, for the revised offence of incest, the requirement of instituting prosecution with the consent of the Secretary for Justice is maintained.

(b) Similarly, in view of the guiding principle of **gender neutrality**, it is not necessary to create an age floor of 16 for female incest offenders, which creates differential treatment for offenders based on sex. **The age of the offender will not be specified in the revised offences of incest** [78].

(c) In line with **the protective principle, particularly to strengthen the protection for children, the offence of incest will be extended to cover a wider range of family relationships**, which include full-blood or half-blood uncles and nephews (and the corresponding female family members); lineal ancestors including great-grandfathers and lineal descendants including great-grandsons (and the corresponding female family members); adoptive parents (including former adoptive parents); and step-parents; and

(d) In view of **the protective principle and avoidance of distinctions based on sexual orientation, the coverage of incest should be extended from penile penetration of the vagina to penetration of the vagina, anus and urethra with any parts of the body/other objects; penile penetration of the mouth; as well as causing the aforementioned penetration. This is consistent with the actions covered by other sexual offences involving penetration mentioned above (such as rape).**

94. Regarding the penalty, according to the current provisions, the maximum penalty is life imprisonment if the offence involves a female under the age of 13; imprisonment for 20 years if it involves a female aged between 13 and 16; and imprisonment for 14 years in all other cases.

95. As mentioned above, in sexual offences involving children, the maximum penalty for the offence of "penetration of a child under 16" is life imprisonment. If the revised offence of incest maintains the existing sentencing framework, a defendant in a case involving a child victim aged between 13 and 16 would face a maximum penalty of life imprisonment if charged with the offence of "penetration of a child under 16", but the

[78] This is relevant to the LRC's Final Recommendation 5 in **Appendix A2**.

maximum penalty would be imprisonment for 20 years if the defendant is a family member of the victim and is charged with the offence of incest. **To ensure consistency in the law and to strengthen protection for children, we propose that the maximum penalty for the revised offence of incest be life imprisonment if a child under the age of 16 is involved. As for other circumstances, given that the expanded offence of incest is of a similar gravity to the existing offence of incest, we propose maintaining the current penalty level, i.e. imprisonment for 14 years.**

(B) Creating a new offence of "sexual exposure"

96. According to section 148 of the Crimes Ordinance, a person who, without lawful authority or excuse, in any public place or in view of the public indecently exposes any part of his body shall be guilty of an offence and shall be liable on conviction to a fine of $1,000 and to imprisonment for 6 months. The existing offence is essentially a public order offence rather than a sexual offence, and does not adequately address situations where exposure targets a specific victim in a sexual or threatening way.

97. A number of overseas jurisdictions have created specific offences to cover sexual exposure targeting a specific victim, focusing on the violation of the victim's sexual autonomy rather than a breach of public order. The above act is akin to sexual assault, with the purposes of sexual gratification; or humiliating, alarming or distress the victim. It is more aggressive in nature. It violates the victim's sexual autonomy and warrants punishment. **To strengthen protection for the public, respect sexual autonomy and create a deterrent effect on potential offenders**, we **propose creating a new offence of "sexual exposure" where a specific victim is targeted**, targeting the following conduct [79]:

> ***Any person who, in a public or private place, intentionally exposes his genital to a victim without the latter's consent, for the purpose of sexual gratification or to cause the victim humiliation, alarm or distress.***

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[79] This is relevant to the LRC's Final Recommendation 2 in **Appendix A3**. In addition, the proposed newly created offence will not replace the existing offence of indecent exposure under section 148 of the Crimes Ordinance. The purpose of this existing offence is to uphold public morality. It may cover acts of indecent exposure in a public place that do not target any victim and do not violate a person's sexual autonomy. This is relevant to the LRC's Final Recommendation 20 in **Appendix A1**.

98. Regarding the penalty, with reference to similar offences in overseas jurisdictions, we **propose a maximum penalty of imprisonment for 5 years for the above newly created offence**.

(C) Creating a new offence of "sexual penetration of an animal"

99. Section 118L of the Crimes Ordinance provides for the offence of bestiality where a person commits buggery with an animal. According to the common law definition of "buggery", it consists of sexual intercourse by a man with a beast. Sexual acts with animals might lead to, in addition to animal cruelty, contravention of public morality. The LRC referred to a report published by the review committee of the Home Office of the United Kingdom [80], stating that evidence shows that acts of abuse of animals are associated with other sexual offences, such as child sexual abuse. In addition, "bestiality" or "buggery" are outdated terminologies and are no longer used in equivalent sexual offences in some major common law jurisdictions.

100. Having studied relevant legislation in overseas jurisdictions, and **with a view to enhancing the clarity of the law and strengthening protection for the public,** we **propose to create a new offence of "sexual penetration of an animal"[81] to substitute the offence of bestiality to specifically target sexual acts with animals. As regards penalties, we propose to retain the maximum penalty for the existing offence of bestiality (i.e. a fine at level 5 and imprisonment for 10 years).**

(D) Creating a new offence of "sexual act with a dead person"

101. In Hong Kong, there is currently no specific offence that criminalises sexual act with a deceased person. Existing sexual offences apply only to acts committed against living persons. While certain conduct involving corpses may, in limited circumstances, be prosecuted under general offences such as "prevention of lawful burial of a corpse" under common law, these provisions do not directly address the unique

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80 Paragraph 8.5.3 of *Setting the Boundaries: Reforming the law on sex offences* (July 2000), Home Office of the United Kingdom.

81 This is relevant to the LRC's Final Recommendation 4 in **Appendix A3**.

harm posed by necrophilia (i.e., sexual attraction or sexual acts involving corpses) or provide adequate protection for the dignity of the deceased, where such act is highly distressing to the families of the deceased. Therefore**, sexual acts with a dead person warrant prohibition.**

102. Having studied similar legislation in overseas jurisdictions (England and Wales, Canada, Singapore and New Zealand), we **propose creating an offence of "sexual act with a dead person"[82] to criminalise sexual act with a dead person [83].** Considering that necrophilia (particularly sexual act with a deceased person) constitute an insult on the deceased, it is necessary that the penalties can act as a deterrent to potential offenders, so as to assure the families of the deceased that the law will protect the remains of their loved ones from sexual abuse. Drawing on the penalty for the newly created offence of "sexual penetration of an animal" mentioned above, we **propose that the maximum penalty for the offence of "sexual act with a dead person" be imprisonment for 10 years.**

103. In addition to the above, we **propose criminalising the following three categories of acts committed with the intent to commit a sexual offence**, in order to accord better protection to **potential** victims. Even if the sexual act in question does not take place ultimately (for example, law enforcement officers arrive in time to prevent the sexual offence from occurring), the perpetrator will still be guilty of an offence if they commit any of the following acts:

(a) Administering a substance for sexual purposes;

(b) Trespass with intent to commit a sexual offence; or

(c) Committing an offence with intent to commit a sexual offence.

Please refer to Items (E), (F) and (G) below for details.

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82 This is relevant to the LRC's Final Recommendation 5 in **Appendix A3**.

83 Including both penile penetration and non-penile penetration.

(E) Creating a new offence of "administering a substance for sexual purposes"

104. Section 121 of the Crimes Ordinance provides for the offence of administering any drug, matter or thing to obtain or facilitate an unlawful sexual act. This covers the use of a drug, matter or thing to stupefy or overpower another person to enable anyone to have an unlawful sexual act with the victim.

105. Nevertheless, the existing offence has some limitations. For instance, the scope of "unlawful sexual act", i.e., unlawful sexual intercourse, buggery or an act of gross indecency, is narrowly defined and may not cover all forms of sexual act. The scope of the existing offence may lead to difficulty in bringing a charge, since the victim may have been stupefied or overpowered and may have difficulty in recalling whether it was the above unlawful sexual act or other forms of sexual act that has taken place.

106. **To strengthen protection for potential victims and to enhance the clarity of the law**, we see the need to extend this offence to cover any sexual act, and to change "drug, matter or thing" to "substance" to enhance the clarity of the law. Having studied similar legislation in overseas jurisdictions, we **propose that the offence of "administering drugs to obtain or facilitate unlawful sexual act" be substituted by a new offence "administering a substance for sexual purposes"[84] to target the following act**:

> ***Any person who, without the victim knowing it, intentionally administers drugs or other substances to a victim for sexual purposes, including by deceiving the victim regarding the quantity or strength of such substances, in order to induce the victim to consent to taking them.***

107. Regarding the penalty, we **propose that the maximum penalty for the existing offence of "administering drugs to obtain or facilitate unlawful sexual act" (i.e. imprisonment for 14 years) be applicable to the newly created offence of "administering a substance for sexual**

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[84] This is relevant to the LRC's Final Recommendation 6 in **Appendix A3**

purposes".

(F) Creating a new offence of "trespass with intent to commit a sexual offence"

108. Section 11 of the Theft Ordinance (Cap. 210) provides for the offence of committing burglary (with intent to rape). This provision applies where a person enters a building as a trespasser with the intention of raping a woman. However, the existing offence has several limitations. It only applies to "buildings" and does not cover other areas such as a garden. Moreover, it is confined to intent to rape, excluding other forms of sexual abuses. Furthermore, the provision is gender-specific, applying only where the intended victim is a woman.

109. Having studied similar legislation in overseas jurisdictions, we **propose that the existing offence of "burglary (with intent to rape)" be substituted by a newly created offence of "trespass with intent to commit a sexual offence"[85] , which extends the coverage of the offence to premises other than buildings, thereby better protecting the victims. The scope of the offence is also extended from intent to rape to other sexual offences, which aligns with the guiding principles of gender neutrality and avoidance of distinction based on sexual orientation.**

110. Regarding the penalty, we **propose that the maximum penalty for the existing offence of "burglary (with intent to rape)" (i.e. imprisonment for 14 years) be applicable to the newly created offence of "trespass with intent to commit a sexual offence"**.

(G) Creating a new offence of "committing an offence with intent to commit a sexual offence"

111. Section 118B of the Crimes Ordinance provides for the offence of assault with intent to commit buggery. For instance, the provision would apply where an individual attacks a victim to make it easier to commit buggery but is apprehended before carrying out the act. The existing offence presents certain limitations. For instance, the provision only applies to **assault** with intent to commit buggery. **Other offences** (such

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[85] This is relevant to the LRC's Final Recommendation 8 in **Appendix A3.**

as unlawful detention) committed in preparation for a sexual offence are not covered by the existing offence. Moreover, the existing offence focuses solely on buggery. The restrictive scope of the offence may not offer sufficient protection to victims and risks perpetuating distinction based on sexual orientation.

112. In view of the above and having studied similar legislation in overseas jurisdictions, we consider it necessary to extend the coverage of the offence in order to **better protect victims from sexual assault, to uphold sexual autonomy more effectively, and to adhere to the guiding principle of avoidance of distinctions based on sexual orientation**. We propose that **the existing offence of "assault with intent to commit buggery" be substituted by a new offence of "committing an offence with intent to commit a sexual offence"[86], which applies to any offence committed for a planned/intended sexual act (including an offence of aiding, abetting, counselling or procuring such an offence), but not limited to assault. It will also cover any sexual act with intent (not limited to buggery** [87]).

113. Regarding the penalty, with reference to similar legislation in overseas jurisdictions, we **propose that the maximum penalty be life imprisonment if kidnapping or unlawful detention is committed for a sexual offence. If other offences are committed for a sexual offence, in line with the maximum penalty (imprisonment for 14 years) of the newly created offence of "trespass with intent to commit a sexual offence" mentioned above, which is of a similar nature, we propose that the maximum penalty for this new preparatory offence be set at the same level (i.e. imprisonment for 14 years)**.

(H) Conclusion

114. This part sets out a total of seven proposals for improving provisions on miscellaneous sexual offences, namely (1) expanding the coverage of the offence of "incest", and creating the new offences of (2) "sexual exposure"; (3) "sexual penetration of an animal"; (4) "sexual act

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86 This is relevant to the LRC's Final Recommendation 7 in **Appendix A3.**

87 This proposed amendment can also avoid using the outdated terminology of "buggery, which no longer exists in equivalent offences for some other common law jurisdictions.

with a dead person"; and (5) three categories of acts committed with the intent to commit a sexual offence, with a view to maintaining the protective principle, and the principles of gender neutrality, respect for sexual autonomy and avoidance of distinctions based on sexual orientation

Area (5) Other related amendments: Strengthening protection for victims of sexual offences

115. The relevant government departments and the Judiciary have been implementing various measures to protect victims of sexual offences and vulnerable witnesses. Although the LRC did not make relevant recommendations in its reports of "Review of Substantive Sexual Offences" and "Sentencing and Related Matters in the Review of Sexual Offences," we believe that while improving the laws on sexual offences in Hong Kong to strengthen legal sanction against offenders, there is a need to put forward a series of other relevant amendment proposals in line with the expanded scopes of sexual offences and victims. This is mainly achieved through extending the application scope of existing victim protection measures under the existing Crimes Ordinance to victims protected under the revised or newly created sexual offences, thereby strengthening the protection for sexual-offence victims and vulnerable witnesses from secondary victimisation.

116. The proposals on extraterritorial effect for sexual offences involving children and PMIs have been mentioned above. Other relevant legislative amendments proposed by the Government are illustrated below.

(A) Amendments related to enhancing protection measures for sexual offence victims

<u>Measures to better protect privacy of sexual offence victims</u>

(1) "Anonymity of complainants"

117. Section 156 of the Crimes Ordinance provides for the anonymity of victims in "specified sexual offences", so as to prevent secondary victimisation of the potential victim resulting from being identified. The provisions also prohibit the media from reporting the identity of the victim, which is then often replaced with pseudonymised codes such as "X". Under section 117(1) of the Crimes Ordinance, a "specified sexual offence" refers to "rape, non-consensual buggery, indecent assault, an attempt to commit any of those offences, aiding, abetting, counselling or procuring

the commission or attempted commission of any of those offences, and incitement to commit any of those offences".

118. We **propose expanding the scope of "specified sexual offences" mentioned above, so that "anonymity of complainant" under** section 156 of the Crime Ordinance **will cover victims in non-consensual sexual offences, sexual offences involving children, sexual offences involving PMIs, miscellaneous sexual offences, voyeurism-related offences and other related sexual offences [88]and their privacy can be better protected**.

(2) Restricting cross-examination on the victim in court about his sexual experience with persons other than the defendant

119. Section 154(1) of the existing Crimes Ordinance stipulates restrictions in trials for the offences of rape and indecent assault concerning questions about the victims' sexual experience. It provides that no evidence and no question in cross-examination shall be adduced or asked about any sexual experience of a victim with a person other than that defendant, so as to avoid disparaging the victim's character to create a situation favorable to the defendant [89].

120. We **proposes expanding** the scope of the sexual offences covered in the abovementioned provision **to victims of the extended "specified sexual offences" mentioned above**, so that no question in cross-examination will be asked at the trial about any sexual experience of the victim with a person other than that defendant, and **the privacy of victims of sexual offences can be better protected**.

(3) Giving evidence by live television link

121. According to section 79B(4A) of the Criminal Procedure Ordinance (Cap. 221), if a victim is to give evidence in proceedings involving a specified sexual offence, the court may, on application or on its

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88 Including offences relating to prostitution and obscene articles involving child and PMI victims, e.g. "trafficking in persons to or from Hong Kong" (section 129) and "control over persons for purpose of unlawful sexual intercourse or prostitution" (section 130).

89 However, if the refusal of these restrictions will lead to unfairness against the defendant, the magistrate/judge reserves the power to allow that such questions or evidence to be asked or adduced.

own motion, permit the victim to give evidence by way of a live television link, so as to mitigate the psychological pressure or secondary victimisation on the victim for being present at court concurrently with the defendant. Following **the above proposal to extend the scope of "specified sexual offences", victims of the offences set out below may, after the legislative amendment, submit evidence by live television link. Such relevant offences include non-consensual sexual offences, sexual offences involving children, sexual offences involving PMIs, miscellaneous sexual offences, voyeurism-related offences and other related sexual offences** [90].

Measures for the vulnerable groups

(4) The court has the right to remove the offender from the guardianship of the victim

122. Section 47(4) of the Crimes Ordinance stipulates that under specified circumstances, the court has the right to remove the incest offender from the guardianship of the victim: "*On the conviction before any court of any man of an offence under this section [incest], or of an attempt to commit the same [incest], against any woman under 21 years of age, or of inciting a woman under that age, who is to his knowledge his granddaughter, daughter or sister, to have sexual intercourse with him, it shall be in the power of the court to divest the offender of all authority over such female, and if the offender is the guardian of such woman, to remove the offender from such guardianship, and in any such case to appoint any person or persons to be the guardian or guardians of such woman during her minority or any less period…*"

123. We **propose extending the above provision to cover the extended "specified sexual offences" mentioned above, so that the court has the right to remove the convicted person of sexual offences involving children and PMIs from the guardianship of the child victim or PMI victim concerned, and appoint another person as the guardian, thereby minimising the chance of the convicted person sexually**

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[90] Including offences relating to prostitution and obscene articles involving child and PMI victims, e.g. "trafficking in persons to or from Hong Kong" (section 129) and "control over persons for purpose of unlawful sexual intercourse or prostitution" (section 130).

abusing the vulnerable persons again, and strengthening protection for them.

<u>Measures to strengthen protection of victims in voyeurism-related offences</u>

(5) Special procedures in trials to protect child victims

124. Sections 79B, 79C and 79E of the Criminal Procedure Ordinance provide for the special procedures in trials to protect child victims in the "offences of sexual abuse"[91]. We propose amending the above provisions to cover voyeurism-related offences, **so that the special procedures may apply to child victims of these offences and enable them, subject to the appropriate conditions of the provisions:**

(a) to give evidence by way of a live television link;

(b) to receive examination-in-chief via video recording, which may be used as evidence in the proceedings; and

(c) to give evidence by depositions in writing.

The purpose of the above proposal is to establish trial procedures that facilitate victims' testimony while ensuring procedural justice, hence reducing the psychological pressure or secondary victimisation on the victim caused by the repeated recounts of the sexual offence, or by being present in the same room with the defendant, as well as protecting the victims' privacy.

(6) Allowing the court to order the defendant or other persons to remove, delete or destroy intimate images concerned as appropriate to further protect the victims

125. According to section 159AAL of the Crimes Ordinance ("disposal order"), in criminal proceedings of "specified offences", the Secretary for

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[91] According to section 79A of the Criminal Procedure Ordinance, *offence of sexual abuse* means—
"(a) an offence against Part VI or Part XII, other than sections 126, 147A and 147F, of the Crimes Ordinance (Cap. 200); or
(b) an offence against section 3 of the Prevention of Child Pornography Ordinance (Cap. 579)".

Justice may make an application to the magistrate for the removal, deletion or destruction of the intimate images concerned. The magistrate may also exercise his right to order the defendant to remove, delete of destroy those intimate images within a specified period. "Specified offence" is defined in section 159AAK of the Crimes Ordinance to mean *"**publication** of images originating from the commission of offence under section 159AAB(1) [voyeurism] or 159AAC(1) [unlawful recording or observation of intimate parts]"*, and *"**publication** or threatened publication of intimate images without consent"*. Any person who **obtains** or **keeps** intimate images through voyeurism, or unlawful recording or observation of intimate parts, but does not publish or threaten to publish such images, is not caught under the existing disposal order.

126. We **propose extending the "specified offences" to cover "voyeurism" and "unlawful recording or observation of intimate parts", allowing the court to order the defendant or other persons to remove, delete or destroy intimate images concerned as appropriate to further protect the victims.**

(7) The defendant's spouse being competent and compellable to give evidence for the prosecution regarding the specified offences specified in law in the case of sexual offences committed in respect of a child of the family

127. Under section 57(4) of the existing Criminal Procedure Ordinance, in case of sexual offences committed in respect of a child of the family [92], the spouse of the defendant shall be competent to give evidence for the prosecution, and shall be compellable in law to give evidence for the prosecution in respect of "specified offences". Therefore, for sexual offences committed in a family, including incest and rape, the spouse of the defendant may be requested to give evidence to facilitate the investigation of facts in the alleged offence. Under section 57(12), "specified offences" refer to offences specified in Part VI (incest) or Part XII (sexual and related offences) of the Crimes Ordinance. We **proposes extending the "specified offences" to cover voyeurism-related offences, hence enabling the spouse of the defendant to give evidence for the prosecution according to law and further protecting the victims**.

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[92] The child is under 16 or is a PMI (or a PMI during the trial).

(B) Other related amendments

128. Further to the Government's proposals to introduce a new series of non-consensual sexual offences, sexual offences involving children, sexual offences involving PMIs and miscellaneous sexual offences, the Government will also abolish or revise existing sexual offences that are outdated [93], such as abolishing buggery-related offences on the basis of an extended scope of the offence of rape (see **Appendix C** for details), thereby giving effect to the guiding principles of gender neutrality and avoidance of distinctions based on sexual orientation. The Government will also propose corresponding technical amendments to other relevant ordinances with regard to the amendments to sexual offences in the Crimes Ordinance.

(C) Conclusion

129. This part mainly proposes a series of amendments for strengthening protection for victims of sexual offences. We propose consequential amendments to extend the existing scope of measures protecting victim privacy or targeting vulnerable groups of certain sexual offences under the Crimes Ordinance, to cover victims of the revised or newly created sexual offences, as well as victims of voyeurism-related offences. Together with the abovementioned proposal to establish extraterritorial effect for sexual offences involving children and PMIs, there are a total of eight measures to strengthen the protection of victims of sexual offences.

[93] This is relevant to the LRC's Final Recommendation 16 in **Appendix A1**, Final Recommendations 19, 20 and 37 in **Appendix A2**, and Final Recommendation 9 in **Appendix A3**.

CHAPTER 3 WAY FORWARD

130. The Government attaches great importance to the well-being of children, PMIs and the general public, and is committed to protecting them from sexual exploitation and abuse, which is the Government's original intent of enacting the laws on sexual offences. To comprehensively review the laws on sexual offences in Hong Kong covers a wide spectrum of sexual offences of different categories. A number of sensitive and controversial issues that require careful consideration are involved. Hence, to amend and improve the laws on sexual offences in Hong Kong, a comprehensive and holistic assessment is necessary, and it is all the more important to listen to the views of the general public. It is also necessary to solicit public opinions. The public is now invited to provide their views.

131. Looking ahead, the Security Bureau hopes to improve the laws on sexual offences in Hong Kong, the earlier the better, so as to strengthen protection for victims of sexual offences while ensuring that the laws on sexual offences in Hong Kong can keep pace with the times.

CHAPTER 4 OFFERING YOUR VIEWS

132. Members of the public are invited to express their views in respect of the proposals made in this paper. Your views should be submitted to the Security Bureau by post, by fax or by email on or before 5 August 2026.

Postal address: Security Bureau A Division - Public consultation on improving the laws on sexual offences in Hong Kong,
8th Floor, East Wing,
Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong

Fax no.: 2524 3762

Email address: sexualoffences@sb.gov.hk

133. To facilitate our response to consultation and our subsequent analysis, members of the public should submit their views using the response form in **Appendix D**.

134. When submitting views on this consultation paper, members of the public may choose whether to provide personal data. The views and the personal data collected may be forwarded to the relevant government policy bureaux and departments for purposes directly related to this consultation. The policy bureaux and departments receiving such data may use the information for this purpose only.

135. For individuals and groups (hereinafter referred to as "senders") submitting their views on this consultation paper, their names and views may be published for public reference. In our public or internal discussions, or in any of the subsequent reports issued, we may cite the senders' views submitted in respect of the consultation paper.

136. We respect the senders' wish if they prefer not to disclose their identity and/or keep all or some of their views confidential. If senders state in their views that they do not wish to disclose their identity, we will

remove their names, contact details, identification numbers and signatures when publishing their views. We will not publish the views of senders who request that their views be kept confidential.

137. For senders who have not requested in their submissions that their identity or views be kept confidential, we will assume that their names and views can be published in full.

138. Any sender who has provided his personal information to the Security Bureau in his submission has the right to access and correct his personal information. Requests to access and correct personal information should be sent in writing to the correspondence address above.

Security Bureau
June 2026

Appendix A1

Summary of Recommendations of the Law Reform Commission ("LRC") in the Report on "Review of Substantive Sexual Offences" in 2019 in relation to the Consultation Paper on "Rape and Other Non-consensual Sexual Offences" and the Government's Views

The LRC's Review of Sexual Offences Sub-committee published the consultation paper on "Rape and Other Non-consensual Sexual Offences" on 17 September 2012, and made 21 preliminary recommendations. The LRC's 20 Final Recommendations and the Government's views are set out below:

Final Recommendation 1 Guiding principles for reform

2. The LRC recommends that any reform of the substantive law on sexual offences should be guided by a set of guiding principles and any departure from those principles should be justified. The LRC recommends that the guiding principles should include:

(a) Clarity of the law.
(b) Respect for sexual autonomy.
(c) The protective principle.
(d) Gender neutrality.
(e) Avoidance of distinctions based on sexual orientation.
(f) The provisions of the International Covenant on Civil and Political Rights, the Hong Kong Bill of Rights Ordinance (Cap 383) and the Basic Law should be adhered to.

The Government's View

3. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 2 **A statutory definition of consent**

4. The LRC recommends that there should be a statutory definition of "consent" in relation to sexual intercourse or sexual activity.

The Government's View

5. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 3 **The proposed definition of consent**

6. The LRC recommends the adoption of a statutory definition of consent to the effect that a person consents to sexual activity if the person:

(a) freely and voluntarily agrees to the sexual activity; and
(b) has the capacity to consent to such activity.

The Government's View

7. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 4 **Capacity to consent to sexual activity**

8. The LRC recommends that the new legislation should contain a provision to the effect that a person is incapable of consenting to sexual activity where, by reason of mental condition, intoxication, or age (as the case may be), the person is unable to do one or more of the following:

(a) understand what the conduct is;
(b) form a decision as to whether to engage in the conduct (or as to whether the conduct should take place); or
(c) communicate any such decision.

The Government's View

9. The Government's views on Final Recommendations 4 and 5 of **Appendix A1** are collectively set out in paragraph 11 below.

Final Recommendation 5 **No consent if deception as to its nature or purpose of sexual act, or impersonation**

10. The LRC recommends that the new legislation should incorporate provisions along the lines of section 76(2)(a) and (b) of the English Sexual Offences Act 2003 to the effect that there can be no consent by the complainant, and the accused cannot have believed that the complainant consented, where the accused:

(a) intentionally deceived the complainant as to the nature or purpose of the relevant sexual act; or
(b) intentionally induced the complainant to consent to the relevant sexual act by impersonating a person known personally to the complainant.

The Government's View

11. The Government generally agrees with the overall direction of Final Recommendations 4 and 5 in **Appendix A1**. Having considered the LRC's recommendation and benchmarked against the legislation of various jurisdictions, the Government proposes further enhancements in this proposal by specifying in the legislation a list of circumstances where a consent on the part of the victim is absent (see Area (1) Non-consensual sexual offences in Chapter 2 of the consultation paper), including situations where the victim is mistaken as to the nature or purpose of the sexual act, or the identity of the person engaging in the sexual act with him. In addition, the Government proposes a uniform "age of consent" at the age of 16. The law will provide that a person under the age of consent does not have the capacity to give consent. Furthermore, the Government also proposes creating new sexual offences involving PMIs, including those protecting PSMIs.

Final Recommendation 6 **The scope and withdrawal of consent**

12. The LRC recommends that the new legislation should incorporate provisions along the lines of sections 15(2), (3) and (4) of the Sexual Offences (Scotland) Act 2009 to the effect that:

(a) consent to particular sexual conduct does not imply, of itself, consent to any other sexual conduct;
(b) consent to sexual conduct may be withdrawn at any time before or, in the case of continuing sexual conduct, during the sexual conduct; and
(c) if sexual conduct takes place, or continues to take place, after consent has been withdrawn, it takes place, or continues to take place, without consent.

The Government's View

13. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 7 **Scope of the offence of sexual penetration without consent**

14. The LRC recommends that the new legislation should incorporate provisions along the lines of sections 319 and 328 of the Western Australian Criminal Code Act Compilation Act 1913 to the effect that the scope of sexual penetration without consent should cover penetration of the vagina or anus; and penile penetration of the mouth of another person.

The Government's View

15. The Government agrees with and will implement the LRC's recommendation on expanding the scope of the offence of rape. Nevertheless, the Government proposes to retain "rape" as the name of the offence (see Area (1) Non-consensual sexual offences in Chapter 2 of the consultation paper).

No Final Recommendation 8

16. According to the consultation paper published by the LRC's Sub-committee in 2012, preliminary recommendation 8 is "Distinction between rape and other forms of non-penile sexual penetrative acts". The LRC, in its report on "Review of Substantive Sexual Offences" published in 2019, did not maintain the view that a distinction should be made between non-consensual sexual offences which involved penile sexual penetrative acts and non-penile penetrative acts. The LRC discarded the abovementioned preliminary recommendation 8. Hence, there is no Final Recommendation 8 in the 2019 Report.

Final Recommendation 9 Definitions of a penis and a vagina

17. The LRC recommends that the new legislation should provide that for the purposes of any sexual offence a penis should include a surgically constructed penis and a vagina should include (a) the vulva and (b) a surgically constructed vagina (together with a surgically constructed vulva).

The Government's View

18. The Government agrees with and will implement the LRC's recommendation. On this basis, the Government further proposes that, for any sexual offence, any reference to a body part include one surgically (including sex re-assignment surgery) constructed (see Area (1) Non-consensual sexual offences in Chapter 2 of the consultation paper).

Final Recommendation 10 Meaning of "penetration"

19. The LRC recommends that for the purposes of any sexual offence, penetration should be defined to mean a continuing act from entry to withdrawal.

20. The LRC further recommends that where penetration is initially consented to but at some point of time the consent is withdrawn, "a continuing act from entry" should mean a continuing act from that point of time at which the consent previously given is withdrawn.

The Government's View

21. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 11 **Mental element as to the act of penetration and other relevant sexual acts**

22. The LRC recommends that the new legislation should expressly provide that the act of sexual penetration without consent and the relevant acts in the other non-consensual sexual offences (namely, the possible new offences of sexual assault, and causing a person to engage in sexual activity without consent) must be committed intentionally or recklessly.

23. The LRC also recommends that the new legislation should provide that self-intoxication is not a defence to sexual penetration without consent and the other non-consensual sexual offences.

The Government's View

24. Overall, the Government agrees with the LRC's direction regarding the mental element in non-consensual sexual offences. On the basis of the LRC's recommendation, and having considered relevant legal provisions in other jurisdictions, the Government will implement the LRC's recommendations while optimising the proposed amendments.

25. The Government agrees with and will implement the LRC's recommendation. Self-intoxication will not be a defence upon legislative amendment.

Final Recommendation 12 **Reform option for dealing with genuine (but mistaken) belief in consent**

26. The LRC recommends in relation to the offence of sexual penetration without consent and other non-consensual sexual offences that the new legislation should incorporate provisions along the lines of sections 1(1)(b), 1(1)(c), 1(2), 2(1)(c), 2(1)(d), 2(2), 3(1)(c), 3(1)(d), 3(2), 4(1)(c), 4(1)(d) and 4(2) of the English Sexual Offences Act 2003 to the effect that:

(a) it should be necessary for the prosecution to prove that (i) the complainant did not consent; (ii) the accused did not reasonably believe that the complainant consented; and

(b) whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps the accused took to ascertain whether the complainant consented.

27. The LRC further recommends that section 118(4) of the Crimes Ordinance (Cap 200) should be repealed upon the enactment of the new legislation.

The Government's View

28. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 13 **The offence of procurement of an unlawful sexual act by false pretences should be retained**

29. The LRC recommends that the offence of procurement by false pretences under section 120 of the Crimes Ordinance (Cap 200) should be retained upon the enactment of the new legislation.

The Government's View

30. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 14 **Sexual intercourse obtained by threat or intimidation not involving the use of force (such as economic threat)**

31. The LRC recommends that sexual intercourse obtained by economic pressure should be dealt with on a case by case basis to decide whether sexual penetration without consent was committed by reference to the concept of consent and it is not necessary to have a new offence to cover such cases.

The Government's View

32. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 15 **Definition of "sexual"**

33. The LRC recommends that for the purposes of any sexual offence, the definition of "sexual" in section 78(a) and (b) of the English Sexual Offences Act 2003 should be adopted, subject to the deletion of *"because of its nature it may be sexual and"* from section 78(b). The definition of sexual will therefore be along the following lines: it is sexual if a reasonable person would consider that –

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or

(b) because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

The Government's View

34. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 16 **Abolition of the offence of non-consensual buggery**

35. The LRC recommends that the offence of non-consensual buggery under section 118A of the Crimes Ordinance (Cap 200) should be abolished upon the enactment of the new offence of sexual penetration without consent.

The Government's View

36. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 17 **Definition of touching**

37. The LRC recommends the adoption of the definition of "touching" in section 79(8) of the English Sexual Offences Act 2003 to the effect that, for the purposes of any sexual offence, touching includes touching:

(a) with any part of the body,
(b) with anything else,
(c) through anything,

and in particular includes touching amounting to penetration.

The Government's View

38. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 18 **Sexual assault (first category)**

39. The LRC recommends that the offence of sexual assault in the new legislation should be constituted by a person (A) who, without the consent of another person (B) and without a reasonable belief that B consents, intentionally does any of the following things:

(a) touches B where the touching is sexual;
(b) ejaculates semen onto B;
(c) emits urine, saliva or any other bodily fluid onto B sexually.

40. The LRC further recommends that the offence of indecent assault in section 122 of the Crimes Ordinance (Cap 200) should be abolished upon the enactment of the new legislation.

The Government's View

41. The Government agrees with and will implement the LRC's recommendation. On the basis of the LRC's recommendation, with reference to past precedents/actual situations, the Government will further optimise the legal provisions to encompass more situations. In addition, the Government proposes to use "sexual assault involving touching" as opposed to "sexual assault (first category)" as the offence name to better reflect the nature of the offence as involving touching.

Final Recommendation 19 **Sexual assault (second category)**

42. The LRC recommends that the offence of sexual assault in the new legislation should also be constituted by a person (A) who, without the consent of another person (B) and without a reasonable belief that B consents, intentionally does an act of a sexual nature which causes B to apprehend the use or threat of use of immediate and unlawful personal violence.

The Government's View

43. The Government agrees with and will implement the LRC's recommendation. On the basis of the LRC's recommendation, with reference to past precedents/actual situations, the Government will further optimise the legal provisions to encompass more situations. In addition, the Government proposes to use "sexual assault without touching" as opposed to "sexual assault (second category)" as the offence name to better reflect the nature of the offence as concerning acts without touching.

Final Recommendation 20 **Sexual assault (third category); retention of the offence of indecent exposure**

44. The LRC recommends that the offence of indecent exposure under section 148 of the Crimes Ordinance (Cap 200) should be retained upon the enactment of the new legislation in respect of non-consensual upskirt-photography.

The Government's View

45. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 21 **Causing a person to engage in sexual activity without consent; and abolition of the offence of procurement by threats or intimidation**

46. The LRC recommends that the new legislation should include an offence of causing a person to engage in sexual activity without consent, along the lines of section 4 of the English Sexual Offences Act 2003 with necessary modifications.

47. The LRC also recommends that the words "in Hong Kong or elsewhere" should be added to the ingredients of the proposed offence of causing a person to engage in sexual activity without consent so that the sexual activity can take place inside or outside Hong Kong, though the act of causing must take place inside Hong Kong.

48. The LRC also recommends that the offence of procurement by threats or intimidation in section 119 of the Crimes Ordinance (Cap 200) should be abolished upon the enactment of the new legislation.

The Government's View

49. The Government agrees with the overall directions recommended by the LRC. On the basis of the LRC's recommendation, with reference to actual situations, the Government will further optimise the legal provisions to encompass more situations, with a view to implementing the recommendations on creating a new offence of "causing a person to engage in sexual act without consent" to substitute section 119 of the Crimes Ordinance.

Appendix A2

Summary of Recommendations of the Law Reform Commission ("LRC") in the Report on "Review of Substantive Sexual Offences" in 2019 in relation to the Consultation Paper on "Sexual Offences involving Children and Persons with Mental Impairment" and the Government's Views

The LRC's Review of Sexual Offences Sub-committee published the consultation paper on "Sexual Offences involving Children and Persons with Mental Impairment" on 1 November 2016, and made 41 preliminary recommendations. The LRC's 40 Final Recommendations and the Government's views are set out below:

Final Recommendation 1 — A uniform age of consent of 16 years in Hong Kong

2. The LRC recommends that there should be a uniform age of consent in Hong Kong of 16 years of age, which should be applicable irrespective of gender and sexual orientation.

The Government's View

3. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 2 — Offences involving children and young persons be gender neutral

4. The LRC recommends that offences involving children and young persons should be gender neutral in the new legislation.

The Government's View

5. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 3 **A range of offences involving children under 13 and another range of offences involving children under 16**

6. The LRC recommends that the law reflects the protection of two categories of young persons, namely, children under 13 and children under 16 respectively with a range of offences for each category rather than one single offence of child abuse.

The Government's View

7. Regarding the LRC's recommendation of creating two range of offences respectively protecting children under 13 and children under 16, the Government considers that the offence elements thereof will be basically the same. A single set of offences for "children under 16" suffices to cover child victims of different ages under 16. Even if there is uncertainty as to whether a child was under a certain age when the sexual act took place (e.g. the victim cannot remember clearly how old he was when the case occurred), the defendant may still be charged with an offence "involving children under 16", thereby plugging the possible loopholes. Based on this consideration, we propose creating a range of offences (instead of a single offence on child sexual abuse) targeting "child victims under 16". This applies to any recommendations below on creating separate offences for children under 13 and children under 16, with no further repetition.

Final Recommendation 4 **The word "unlawful" be removed from all offences involving sexual intercourse or sexual act**

8. The LRC recommends that the word "unlawful" should be removed from all offences involving sexual intercourse or sexual act in the Crimes Ordinance (Cap 200).

The Government's View

9. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 5 **Offences involving children and young persons be capable of being committed by either an adult or a child offender**

10. The LRC recommends that the proposed offences involving children and young persons be capable of being committed by either an adult or a child offender thus rendering it unnecessary to specify the age of the offender in the relevant legislation.

The Government's View

11. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 6 **Absolute liability should apply to offences involving children between 13 and 16 years and there should not be a distinction between penetrative and non-penetrative sexual activity**

12. The LRC is of the view that absolute liability should apply to offences involving children between 13 and 16 years and there should not be a distinction between penetrative and non-penetrative sexual activity.

The Government's View

13. If a case involves a victim aged 13 or above but under 16, we are of the view that absolute liability applies in most cases, subject to the availability of a statutory defence (for example, whether or not there was in-person contact between the defendant and the victim when the former committed the crime, and whether or not the defendant had taken all reasonable steps to ascertain the age of the victim).

Final Recommendation 7 **Marital defence to offences involving children be abolished**

14. The LRC recommends that there should not be any marital defence to offences involving children in the new legislation (and any such existing defence should be abolished).

The Government's View

15. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 8 **Consensual sexual activity between persons who are between 13 and 16 be criminalised but with prosecutorial discretion to bring a charge in appropriate cases**

16. The LRC recommends that all consensual sexual activity between persons who are between 13 and 16 years of age should be criminalised but recognising that prosecutorial discretion will be exercised as to whether a case is appropriate for a charge to be brought.

The Government's View

17. The Government agrees with and will implement the LRC's recommendation.

No Final Recommendation 9

18. According to the consultation paper published by the LRC's Sub-committee in 2016, preliminary recommendation 9 is "Proposed new offence: Penile penetration of a child under 13/16". The LRC, in its report on "Review of Substantive Sexual Offences" published in 2019, recommended that the new legislation only needed to include an offence on sexual penetration, and was of the view that different offences should be created for the two age groups. The LRC discarded the abovementioned preliminary recommendation 9. Hence, there is no Final Recommendation 9.

Final Recommendation 10 **Proposed new offences: Penetration of a child under 13 and that under 16**

19. The LRC recommends that the new legislation should include an offence of penetration of a child under 13, along the lines of sections 5 and 6 of the English Sexual Offences Act 2003.

20. However, the LRC recommends that the new legislation should incorporate a provision along the lines of section 319 of the Western Australian Criminal Code Act Compilation Act 1913 to the effect that the scope of sexual penetration should cover any penetration of the vagina or anus and also penile penetration of the mouth.

21. The LRC also recommends a similar offence of penetration of a child under 16.

The Government's View

22. The Government agrees with and will implement the LRC's recommendation, and will replace "penetration" with "sexual penetration", so as to highlight that only penetration of a sexual nature (penetration out of reasons including pure medical examination will be excluded) may amount to prosecution.

Final Recommendation 11 **Proposed new offences: Sexual assault of a child under 13 and that under 16**

23. The LRC recommends that the new legislation should include an offence of sexual assault of a child under 13. The offence should be constituted by a person (A) who intentionally does any of the following acts to another person (B) and B is a child under 13:

(a) touches B where the touching is sexual;
(b) ejaculates semen onto B; or
(c) emits urine, saliva or any other bodily fluid onto B sexually.

24. The LRC also recommends a similar offence of sexual assault of a child under 16.

The Government's View

25. The Government agrees with and will implement the LRC's recommendation. With reference to the non-consensual sexual offences, the Government further proposes that the relevant offence should be separated into "sexual assault involving touching" and "sexual assault without touching" against child victims, so as to strengthen protection to children, which is a vulnerable group.

26. With regard to Final Recommendation 11 in **Appendix A2** concerning the creation of "sexual assault involving touching", same as the Government's view on Final Recommendation 18 in **Appendix A1**, the Government will further optimise the legal provisions to encompass more situations, with reference to past precedents/actual situations.

Final Recommendation 12 **Proposed new offences: Causing or inciting a child under 13 and that under 16 to engage in sexual activity**

27. The LRC recommends that the new legislation should include an offence of causing or inciting a child under 13 to engage in sexual activity, along the lines of section 8 of the English Sexual Offences Act 2003.

28. The LRC also recommends a similar offence of causing or inciting a child under 16 to engage in sexual activity.

The Government's View

29. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 13 **Proposed new offences: Engaging in sexual activity in the presence of a child under 13 and that under 16**

30. The LRC recommends that the new legislation should include an offence of engaging in sexual activity in the presence of a child under 13 along the lines of section 22 of the Sexual Offences (Scotland) Act 2009.

31. The LRC also recommends a similar offence of engaging in sexual activity in the presence of a child under 16.

32. These two offences should also be constituted by causing such a child to be present while a third person is engaging in a sexual activity. Moreover, the purpose of the accused's act should be for obtaining sexual gratification, humiliating, distressing or alarming the child, or any combination of these purposes.

33. The LRC recommends that the Government considers the need for an additional offence which would render it criminal for a person to engage in sexual activity in the presence of a child, being reckless as to whether such conduct would have the effect of humiliating, distressing or alarming the child.

The Government's View

34. The Government agrees with and will implement the LRC's recommendation on creating an offence on "engaging in sexual activity in he presence of a child under 16".

35. With regard to the LRC's recommendation in paragraph 33 in **Appendix A2**, having considered the offence elements of similar offences in overseas jurisdictions, the Government considers that the act of engaging in sexual activity in the presence of a child under 16 should be carried out intentionally by the accused, instead of recklessly.

Final Recommendation 14 **Proposed new offences: Causing a child under 13 and that under 16 to look at a sexual image**

36. The LRC recommends that the new legislation should include an offence of causing a child under 13 to look at a sexual image along the lines of section 23 of the Sexual Offences (Scotland) Act 2009.

37. The LRC also recommends a similar offence of causing a child under 16 to look at a sexual image.

38. The purpose of the accused's act should be for obtaining sexual gratification, humiliating, distressing or alarming the child, or any combination of these purposes. The definition of a sexual image in section 23(3) of the Sexual Offences (Scotland) Act 2009 should be adopted.

39. The new legislation should also include text and audio messages along the lines of section 24 of the Sexual Offences (Scotland) Act 2009.

The Government's View

40. The Government agrees with and will implement the LRC's recommendation. On the basis of the LRC's recommendation, having considered similar offences in other overseas jurisdictions, the Government further proposes adding "causing a child to send a sexual image or communication" as one of the criminalised acts of the offence. To sum up, any person who intentionally sends a sexual image or sexual written or verbal communication to a child under 16, or causes a child to look at a sexual image, see or hear sexual written or verbal communication or causes a child to send a sexual image or sexual written or verbal communication, for the purpose of obtaining sexual gratification or causing the child humiliation, alarm or distress, may be prosecuted.

Final Recommendation 15 **Proposed new offence: Arranging or facilitating the commission of a child sex offence**

41. The LRC recommends that the new legislation should include an offence of arranging or facilitating the commission of a child sex offence along the lines of section 14 of the English Sexual Offences Act 2003.

The Government's View

42. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 16 **Health and treatment issues as exceptions to aiding, abetting and counselling a child sex offence**

43. The LRC recommends there should be exceptions to aiding, abetting and counselling an offence involving children along the lines of section 14 of the English Sexual Offences Act 2003, where a person's actions are intended to protect a child from pregnancy or sexually transmitted infection, to protect the physical safety of a child or to promote a child's emotional well-being by the giving of advice.

The Government's View

44. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 17 **Sexual intercourse with a girl under 13 and that under 16 be abolished**

45. The LRC recommends that the offences of sexual intercourse with a girl under 13 (section 123 of the Crimes Ordinance (Cap 200)) and sexual intercourse with a girl under 16 (section 124 of the Crimes Ordinance (Cap 200)) should be abolished upon the enactment of the new legislation.

The Government's View

46. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 18 **Indecent conduct towards a child under 16 be abolished**

47. The LRC recommends that the offence of indecent conduct towards a child under 16 in section 146 of the Crimes Ordinance (Cap 200) should be abolished upon the enactment of the new legislation.

The Government's View

48. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 19 **A man committing buggery with a girl under 21 be abolished**

49. The LRC recommends that the offence of a man committing buggery with a girl under 21 in section 118D of the Crimes Ordinance (Cap 200) should be abolished upon the enactment of the new legislation.

The Government's View

50. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 20 **Homosexual buggery with or by man under 16 and gross indecency with or by man under 16 be abolished**

51. The LRC recommends that the offence of homosexual buggery with or by man under 16 (section 118C of the Crimes Ordinance (Cap 200)) and gross indecency with or by man under 16 (section 118H of the Crimes Ordinance (Cap 200)) should be abolished upon the enactment of the new legislation.

The Government's View

52. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 21 **Abduction of an unmarried girl under 16 and abduction of an unmarried girl under 18 for sexual intercourse be abolished**

53. The LRC recommends that the offences of abduction of an unmarried girl under 16 (section 126 of the Crimes Ordinance (Cap 200)) and abduction of an unmarried girl under 18 for sexual intercourse (section 127 of the Crimes Ordinance (Cap 200)) should be abolished upon the enactment of the new legislation.

The Government's View

54. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 22 **Proposed new offence of sexual grooming**

55. The LRC recommends that the new legislation should include an offence of sexual grooming, along the lines of section 15 of the English Sexual Offences Act 2003.

56. The LRC also recommends that apart from meeting the child or travelling with the intention of meeting the child, sexual grooming may also be constituted by making arrangements to travel with the intention to meet the child.

57. The LRC also recommends that it should be an ingredient of the offence that the accused did not reasonably believe that the child was 16 or over at the time of the offence.

58. The LRC also recommends that the "fictitious young person" provision in section 131B(1A) of the New Zealand Crimes Act 1961 should be adopted.

The Government's View

59. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 23 **Proposed new offence: Inducement, threat or deception to procure sexual activity with a person with mental impairment**

60. The LRC recommends that the new legislation should include an offence of inducement, threat or deception to procure sexual activity with a person with mental impairment, along the lines of section 34(1) of the English Sexual Offences Act 2003.

61. The LRC also recommends that the proposed offence should cover both penetrative and non-penetrative sexual activity.

The Government's View

62. The Government agrees with and will implement the LRC's recommendation. On the basis of the LRC's recommendation, the Government proposes further refining the offence to include sexual penetration, "sexual assault involving touching" and "sexual assault without touching" against a PMI procured by inducement, threat or deception.

Final Recommendation 24 **Proposed new offence: Causing a person with mental impairment to engage in or agree to engage in sexual activity by inducement, threat or deception**

63. The LRC recommends that the new legislation should include an offence of causing a person with mental impairment to engage in or agree to engage in sexual activity by inducement, threat or deception, along the lines of section 35(1) of the English Sexual Offences Act 2003.

The Government's View

64. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 25 **Proposed new offence: Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with mental impairment**

65. The LRC recommends that the new legislation should include an offence of engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with mental impairment, along the lines of section 36(1) of the English Sexual Offences Act 2003.

66. In order to constitute the offence, the accused's act should be for the purpose of obtaining sexual gratification, humiliating, distressing or alarming the person with mental impairment, or any combination of these purposes.

The Government's View

67. The Government will combine Final Recommendations 25 and 26 in **Appendix A2**. The Government agrees with and will implement the LRC's recommendation. On the basis of the LRC's recommendation, having considered similar provisions in other overseas jurisdictions, and with reference to similar offences involving child victims, the Government proposes that this offence should further encompass the acts of intentionally causing a PMI to be present while a third party (as opposed to the defendant himself) is engaging in sexual act for the purpose of obtaining sexual gratification or causing the PMI humiliation, alarm or distress. The defendant should be procuring the presence of the PMI by inducement, threat or deception.

Final Recommendation 26 **Proposed new offence: Causing a person with mental impairment to watch a sexual act by inducement, threat or deception**

68. The LRC recommends that the new legislation should include an offence of causing a person with mental impairment to watch a sexual act by inducement, threat or deception, along the lines of section 37(1) of the English Sexual Offences Act 2003.

69. In order to constitute the offence, the accused's act should be for the purpose of obtaining sexual gratification, humiliating, distressing or alarming the person with mental impairment, or any combination of these purposes.

The Government's View

70. The Government agrees with and will implement the LRC's recommendation (see paragraph 67 of **Appendix A2**).

71. Having considered similar provisions in other overseas jurisdictions, and with reference to similar offences involving child victims (paragraphs 30 to 35 of **Appendix A2**), the Government proposes creating a separate offence of "causing a PMI to look at a sexual image, see or hear sexual written or verbal communication or causing a PMI to send a sexual image or communication by inducement, threat or deception".

Final Recommendation 27 **Proposed new offence: Sexual activity with a person with mental impairment (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency**

72. The LRC recommends that the new legislation should include an offence of sexual activity with a person with mental impairment (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency.

73. This proposed offence should cover touching or penetration which is sexual.

The Government's View

74. The Government agrees with and will implement the LRC's recommendation. On the basis of the LRC's recommendation, the Government proposes further refining the offence to include sexual penetration, "sexual assault involving touching" and "sexual assault without touching" against a PMI (i) by people involved in his care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency.

Final Recommendation 28 **Proposed new offence: Causing or inciting sexual activity of a person with mental impairment (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency**

75. The LRC recommends that the new legislation should include an offence of causing or inciting sexual activity of a person with mental impairment (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency.

The Government's View

76. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 29 **Proposed new offence: Sexual activity in the presence of a person with mental impairment (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency**

77. The LRC recommends that the new legislation should include an offence of sexual activity in the presence of a person with mental impairment (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency.

78. In order to constitute the proposed offence, the accused's act should be for the purpose of obtaining sexual gratification, humiliating, distressing or alarming a person with mental impairment, or any combination of these purposes.

The Government's View

79. The Government will combine Final Recommendations 29 and 30 in **Appendix A2**. The Government agrees with and will implement the LRC's recommendation. On the basis of the LRC's recommendation, having considered similar provisions in other overseas jurisdictions, and with reference to similar offences involving child victims, the Government proposes that this offence should further encompass the acts of intentionally causing a PMI to be present while a third party (as opposed to the defendant himself) is engaging in sexual act for the purpose of obtaining sexual gratification or causing the PMI humiliation, alarm or distress. The act of procuring the PMI's presence should be (i) performed by a person involved in the PMI's care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency.

Final Recommendation 30 **Proposed new offence: Causing a person with mental impairment to watch a sexual act (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency**

80. The LRC recommends that the new legislation should include an offence of causing a person with mental impairment to watch a sexual act (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency.

81. In order to constitute the proposed offence, the accused's act should be for the purpose of obtaining sexual gratification, humiliating, distressing or alarming a person with mental impairment, or any combination of these purposes.

The Government's View

82. The Government agrees with and will implement the LRC's recommendation (see paragraph 79 of **Appendix A2**).

83. Having considered similar provisions in other overseas jurisdictions, and with reference to similar offences involving child victims (paragraphs 36 to 40 of **Appendix A2**), the Government proposes creating a separate offence of "causing a PMI to look at a sexual image, see or hear sexual written or verbal communication or causing a PMI to send a sexual image or communication (i) by people involved in his care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency".

Final Recommendation 31 **Proposed definition of situations where a relationship of care exists**

84. The LRC recommends that a relationship of care should exist if a person (A) who is involved in the care of a person with mental impairment (B) in any one of two situations:

(a) firstly, A is any person who has a function to perform in a specified institution (whether employed there or not) or provides volunteering service in that institution.
(b) secondly, A is a provider of care, assistance or services to B in connection with B's mental illness.

85. The LRC further recommends that the meaning of specified institutions should be determined by the Government when the new legislation is put in place.

The Government's View

86. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 32 **Exceptions where care provider and person with mental impairment are married or in pre-existing relationship**

87. The LRC recommends that in respect of the proposed new offences covering situations where a relationship of care exists, there should be exceptions to liability (i) where the person with mental impairment and the person who is involved in his or her care are married; or (ii) where there is a lawful sexual relationship between them which pre-dates the care relationship.

88. The LRC further recommends that the exception in respect of pre-existing sexual relationship should apply where a lawful sexual relationship had existed between the parties within a reasonable period before a party became involved in the care, assistance or services of a person with mental impairment.

The Government's View

89. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 33 **Requirement as to knowledge of mental illness**

90. The LRC recommends that it should be a requirement of the proposed new offences involving persons with mental impairment that the accused had actual or constructive knowledge that the victim was a person with mental impairment.

The Government's View

91. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 34 **Evidential burden as regards the accused's knowledge of the victim's mental illness**

92. The LRC recommends that in respect of the proposed new offences involving persons with mental impairment covering situations where a relationship of care exists and those involving abuse of a position of trust or authority, or a relationship of dependency, there should be a provision imposing an evidential burden on an accused as regards the accused's knowledge of the victim's mental impairment, along the lines of sections 38(2), 39(2), 40(2) and 41(2) of the English Sexual Offences Act 2003.

The Government's View

93. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 35 **Proposed new offences involving persons with mental impairment applicable to mentally disordered persons or mentally handicapped persons**

94. The LRC recommends that the proposed new offences involving persons with mental impairment should apply to a mentally disordered person or mentally handicapped person (as defined in the Mental Health Ordinance (Cap 136)) whose mental disorder or mental handicap, as the case may be, is of a nature or degree that the person is incapable of guarding himself or herself against sexual exploitation.

The Government's View

95. The Government largely agrees with the LRC's recommendation on amending the definition of "persons with mental impairment" in view of the creation of sexual offences involving PMIs. We propose the new definition as –

> *"A PMI refers to a mentally disordered person or a mentally handicapped person within the meaning of the Mental Health Ordinance."*

A mentally disordered person or a mentally handicapped person within the meaning of the Mental Health Ordinance falls within a vulnerable group, as should be protected under the law. In addition, we will remove the requirement of "incapacitated" from the statutory definition, so as to encompass more PMIs warranting protection of the law.

Final Recommendation 36 **Draftsman to decide what term to describe the person with mental impairment**

96. The LRC recommends that the issue as to what term is to be used to describe the person with mental impairment in the new legislation should be left to the draftsman to decide.

The Government's View

97. The Government agrees with and will implement the LRC's recommendation. We will devise an appropriate term to describe PMIs with the law draftsman.

Final Recommendation 37 **A man committing buggery with a mentally incapacitated person, a man committing gross indecency with a male mentally incapacitated person, a man having intercourse with a woman mentally incapacitated person be abolished**

98. The LRC recommends that the offences of a man committing buggery with a mentally incapacitated person (section 118E of Crimes Ordinance (Cap 200)), a man committing gross indecency with a male mentally incapacitated person (section 118I of Crimes Ordinance (Cap 200)), a man having intercourse with a woman mentally incapacitated person (section 125 of Crimes Ordinance (Cap 200)) should be abolished upon the enactment of the new legislation.

The Government's View

99. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 38 **Abduction of a mentally incapacitated person from her or his parent or guardian for a sexual act be abolished**

100. The LRC recommends that the offence of abduction of a mentally incapacitated person from her or his parent or guardian for a sexual act (section 128 of the Crimes Ordinance (Cap 200)) should be abolished upon the enactment of the new legislation.

The Government's View

101. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 39 **Sexual intercourse with patients be abolished**

102. The LRC recommends that the offence of sexual intercourse with patients in section 65(2) of the Mental Health Ordinance (Cap 136) should be abolished upon the enactment of the new legislation.

The Government's View

103. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 40 **The Government to consider whether there should be legislation for the protection of young persons aged 16 or above but under 18**

104. The LRC recommends the Government to consider the merits in proposing legislation for the protection of young persons aged 16 or above but under 18 from the policy angle, and in consultation with the legislature as and when appropriate.

The Government's View

105. Persons aged above 16 are near-adults and are more mature in appreciating the consequences of sexual acts hence consenting thereto. In line with the related guiding principle, their sexual autonomy should be respected. Criminal law should not easily prohibit them from engaging or participating in sexual acts. In fact, relevant legislation of major common law jurisdictions mostly adopt the age of 16 years as the defining age for sexual offences involving children and young persons. Besides, we must stress that the general non-consensual sexual offences proposed under Area (1) Non-consensual sexual offences in Chapter 2 of the consultation paper above can offer protection to victims of all non-consensual sexual acts, regardless of their age. Therefore, non-consensual sexual acts with persons at the age between 16 and 18 will be covered by the non-consensual sexual offences.

Final Recommendation 41 **Proposed new offences involving children (including sexual grooming) and those involving persons with mental impairment to have extraterritorial effect**

106. The LRC recommends that the proposed new offences involving children including sexual grooming and the proposed new offences involving persons with mental impairment should have extraterritorial effect.

The Government's View

107. The Government agrees with and will implement the LRC's recommendation.

Appendix A3

Summary of Recommendations of the Law Reform Commission ("LRC") in the Report on "Review of Substantive Sexual Offences" in 2019 in relation to the Consultation Paper on "Miscellaneous Sexual Offences" and the Government's Views

The LRC's Review of Sexual Offences Sub-committee published the consultation paper on "Miscellaneous Sexual Offences" on 16 May 2018, and made nine preliminary recommendations. The LRC's nine Final Recommendations and the Government's views are set out below:

Final Recommendation 1 — **The specific offence of incest be retained but should be reformed. It should apply to other forms of penetration or sexual activity and cover adoptive parents**

2. The LRC recommends that the offence of incest be retained and the term "incest" should continue to be used.

3. The LRC also recommends that the offence of incest be reformed and the new offence should:

(a) be gender neutral;
(b) cover all penile penetration of the mouth, vagina and anus; and
(c) be extended to cover uncles (aunts) and nieces (nephews) who are blood relatives.

4. The LRC is of the view that the new offence should:

(a) apply to other forms of penetration; and
(b) cover adoptive parents.

5. The LRC recommends the retention of the need for the Secretary for Justice's consent to prosecute.

The Government's View

6. The Government, in principle, agrees with the LRC's recommendation. On the basis of the LRC's recommendation, with reference to actual situations, the Government will further optimise the legal provisions to include more familial relationship in the implementation of this recommendation.

Final Recommendation 2 **Proposed new offence of sexual exposure**

7. The LRC recommends that the new legislation should include an offence of sexual exposure along the lines of section 8 of the Sexual Offences (Scotland) Act.

8. The LRC also recommends that the offence of sexual exposure should have all of the following elements:

(a) exposure of one's genitals in a sexual manner to another person ("B") with the intention that B will see them;
(b) the exposure is made in a public or private place;
(c) the exposure is made without the consent of B and without any reasonable belief that B consents; and
(d) the purpose of the exposure is for
    (i) obtaining sexual gratification, or
    (ii) humiliating, distressing or alarming B.

The Government's View

9. The Government agrees with the LRC's recommendation. On the basis of the LRC's recommendation, the Government will further optimise the legal provisions in the implementation of this recommendation.

Final Recommendation 3 **Proposed new specific offence of voyeurism and non-consensual upskirt-photography**

10. The LRC recommends the introduction of an offence of voyeurism.

11. The LRC recommends that such an offence be along the lines of section 67 of the English Sexual Offences Act 2003.

12. The LRC recommends the introduction of a specific offence in respect of non-consensual upskirt-photography.

13. The LRC recommends that the offence referred to in (3) above be along the lines of the newly added section 67A of the English Sexual Offences Act 2003 while taking into account the following:-

(a) there be an offence in respect of conduct the purpose of which is to obtain sexual gratification;
(b) there be a separate offence irrespective of the purpose of the conduct;
(c) that the offence (b) above be a statutory alternative to (a) above in addition to it being a "stand-alone" offence; and
(d) the offences in (a) and (b) should cover any place.

The Government's View

14. The Government has implemented the recommendations set out in the LRC's report on "Voyeurism and Non-consensual Upskirt-photography" published in 2019. New offences of voyeurism, unlawful recording or observation of intimate parts, publication of images originating from the above two offences and publication or threatened publication of intimate images without consent were created in 2021.

Final Recommendation 4 **Bestiality be replaced by an offence of sexual intercourse with an animal**

15. The LRC recommends that the offence of bestiality in section 118L of the Crimes Ordinance (Cap 200) should be replaced by an offence of sexual intercourse with an animal.

The Government's View

16. The Government agrees with the LRC's recommendation. On the basis of the LRC's recommendation, the Government will further optimise the legal provisions to create a new offence of "sexual penetration of an animal" to substitute the existing provision.

Final Recommendation 5 **Proposed new offence of sexual activity with a dead person**

17. The LRC recommends that there should be a new offence of sexual activity with a dead person.

The Government's View

18. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 6 **Administering drugs to obtain or facilitate an unlawful sexual act be replaced by the offence of administering a substance for sexual purposes**

19. The LRC recommends that the offence of administering drugs to obtain or facilitate an unlawful sexual act in section 121 of the Crimes Ordinance (Cap 200) be replaced by the offence of administering a substance for sexual purposes.

20. The LRC recommends that the proposed offence be along the lines of section 11 of the Sexual Offences (Scotland) Act 2009.

The Government's View

21. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 7 **Assault with intent to commit buggery be replaced by a new offence of committing an offence with intent to commit a sexual offence**

22. The LRC recommends that the offence of assault with intent to commit buggery in section 118B of the Crimes Ordinance (Cap 200) be replaced by a new offence of committing an offence with intent to commit a sexual offence.

23. The LRC recommends that the new offence be along the lines of section 62 of the English Sexual Offences Act 2003.

The Government's View

24. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 8 **Burglary (with intent to rape) be replaced by a new sexual offence of trespass with intent to commit a sexual offence**

25. The LRC recommends that the offence of burglary (with intent to rape) in section 11 of the Theft Ordinance (Cap 210) be replaced by a new sexual offence of trespass with intent to commit a sexual offence.

26. The LRC recommends that the new offence be along the lines of section 63 of the English Sexual Offences Act 2003.

27. The LRC further recommends that the new offence should cover trespass with intent to commit any sexual offence and such intent must have been formed at the time when the accused enters the premises as a trespasser.

The Government's View

28. The Government agrees with the direction of the LRC's recommendation. On the basis of the LRC's recommendation, the Government will further optimise the legal provisions to encompass more situations in the implementation of this recommendation.

Final Recommendation 9 **Assault with intent to commit buggery, procuring others to commit homosexual buggery, gross indecency by man with man otherwise than in private, and procuring gross indecency by man with man be abolished**

29. The LRC recommends that the following offences be abolished:

(a) Assault with intent to commit buggery (section 118B of the Crimes Ordinance (Cap 200)).
(b) Procuring others to commit homosexual buggery (section 118G of the Crimes Ordinance (Cap 200)).
(c) Gross indecency by man with man otherwise than in private (section 118J of the Crimes Ordinance (Cap 200)).
(d) Procuring gross indecency by man with man (section 118K of the Crimes Ordinance (Cap 200)).

The Government's View

30. The Government agrees with and will implement the LRC's recommendation.

Appendix A4

Summary of Recommendations of the Law Reform Commission ("LRC") in the Report on "Sentencing and Related Matters in the Review of Sexual Offences" in 2022 and the Government's Views

The LRC's Review of Sexual Offences Sub-committee published the consultation paper on "Sentencing and Related Matters in the Review of Sexual Offences" on 12 November 2020, and made three preliminary recommendations. The LRC's three Final Recommendations and the Government's views are set out below:

Final Recommendation 1

2. For the offences recommended in the Report on Review of Substantive Sexual Offences:

(a) The LRC recommends that the current penalties for the existing offences of rape and incest should continue to apply to the recommended offences of sexual penetration without consent and incest.
(b) The LRC further recommends that the penalties for the new offences proposed be set by reference to the penalties for the corresponding offences in the respective overseas jurisdictions with suitable adjustments.
(c) The LRC makes no final recommendation on the proposed penalties for the proposed new offences of voyeurism and non-consensual upskirt-photography.

The Government's View

3. The Government agrees with and will implement the LRC's recommendation.

Final Recommendation 2

4. The LRC recommends that the current specialised treatment and rehabilitation programs for sex offenders available on a voluntary basis at the Correctional Services Department be maintained.

5. The LRC recommends that the general practice for judges to exercise discretion to obtain psychological and psychiatric assessment reports of sex offenders for sentencing should continue to apply.

6. The LRC recommends that the Government reviews and considers the introduction of an incentive scheme in the prison institutions.

7. The LRC recommends that the provision of specialised post-release supervision to discharged sex offenders under the existing statutory schemes be maintained.

8. The LRC recommends that the Government considers strengthening the rehabilitation services for discharged sex offenders.

The Government's View

9. The Government agrees with and implements the LRC's recommendation on the treatment and rehabilitation of sex offenders in phases. Details are set out in Chapter 1 of the consultation paper.

Final Recommendation 3

10. The LRC does not recommend that the Sexual Conviction Record Check Scheme ("the SCRC Scheme") become mandatory for the time being.

11. The LRC recommends the Government extends the SCRC Scheme to its fullest and evaluates the need to make it a mandatory scheme at an appropriate time.

12. The LRC recommends that the current SCRC Scheme be extended to cover all existing employees, self-employed persons, and volunteers.

13. The LRC does not recommend that the SCRC Scheme be extended to include spent convictions.

The Government's View

14. The Government agrees with and implements the LRC's recommendation on the SCRC Scheme in phases. Details are set out in Chapter 1 of the consultation paper.

Appendix B

Offences which the Government Proposes to Create/Amend and Proposed Maximum Penalty

Similar Existing Offences in the Crimes Ordinance	Existing Maximum Penalty	Proposed Offences	Proposed Maximum Penalty
Non-consensual Sexual Offences			
➢ Rape (section 118) ➢ Non-consensual buggery (section 118A)	Imprisonment for life	(1) Rape	Imprisonment for life
Indecent assault (section 122)	Imprisonment for 10 years	(2) Sexual assault involving touching	Imprisonment for 10 years
		(3) Sexual assault without touching	Imprisonment for 10 years
Procurement by threats (section 119)	Imprisonment for 14 years	(4) Causing a person to engage in sexual act without consent	If "penetrative" act is involved: imprisonment for life; otherwise: imprisonment for 10 years
Sexual Offences Involving Children			
➢ Homosexual buggery with or by man under 16 (section 118C) ➢ Buggery with girl under 21 (section 118D) ➢ Intercourse with girl under 13 (section 123)	Imprisonment for life	(5) Sexual penetration of a child under 16	Imprisonment for life
➢ Intercourse with girl under 16 (section 124)	Imprisonment for 5 years		
➢ Indecent conduct towards child under 16 (section 146)	Imprisonment for 10 years	(6) Sexual assault of a child under 16 involving touching	Imprisonment for 14 years
➢ Gross indecency with or by man under 16 (section 118H)	Imprisonment for 2 years	(7) Sexual assault of a child under 16 without touching	Imprisonment for 14 years
Procurement of girl under 21 (section 132)	Imprisonment for 5 years	(8) Causing or inciting a child under 16 to engage in sexual act	If "penetrative" act is involved: imprisonment for life; otherwise: imprisonment for 14 years

Similar Existing Offences in the Crimes Ordinance	Existing Maximum Penalty	Proposed Offences	Proposed Maximum Penalty
[No similar existing offences]	*[No similar existing offences]*	(9) Engaging in sexual act in the presence of a child under 16	If child victim is under 13: imprisonment for 10 years; otherwise: imprisonment for 5 years
[No similar existing offences]	*[No similar existing offences]*	(10) Causing a child under the age of 16 to look at a sexual image, see or hear sexual written or verbal communication, or causing a child to send a sexual image or communication	If child victim is under 13: imprisonment for 10 years; otherwise: imprisonment for 5 years
[No similar existing offences]	*[No similar existing offences]*	(11) Sexual grooming of a child	Imprisonment for 10 years
[No similar existing offences]	*[No similar existing offences]*	(12) Arranging or facilitating the commission of a child sexual offence	Equivalent to the maximum penalty for the principal child sexual offence in question
Sexual Offences Involving PMIs			
➢ Buggery with mentally incapacitated person (section 118E) ➢ Intercourse with mentally incapacitated person (section 125)	Imprisonment for 10 years	(13) Sexual penetration with a PSMI	Imprisonment for life
Gross indecency by man with male mentally incapacitated person (section 118I)	Imprisonment for 2 years	(14) Sexual assault against a PSMI involving touching	Imprisonment for 14 years
		(15) Sexual assault against a PSMI without touching	Imprisonment for 14 years
Procurement of mentally incapacitated person (section 133)	Imprisonment for 10 years	(16) Causing or inciting a PSMI to engage in sexual act	If "penetrative" act is involved: imprisonment for life; otherwise: imprisonment for 14 years
[No similar existing offences]	*[No similar existing offences]*	(17) Engaging in sexual act in the presence of a PSMI	Imprisonment for 10 years
[No similar existing offences]	*[No similar existing offences]*	(18) Causing a PSMI to look at a sexual image, see or hear sexual written or verbal communication or causing a PSMI to send a sexual image or communication	Imprisonment for 10 years

Similar Existing Offences in the Crimes Ordinance	Existing Maximum Penalty	Proposed Offences			Proposed Maximum Penalty
➢ Buggery with mentally incapacitated person (section 118E) ➢ Intercourse with mentally incapacitated person (section 125)	Imprisonment for 10 years	(19)	Inducement, threat or deception to procure	Sexual penetration with a PMI	Imprisonment for life
Gross indecency by man with male mentally incapacitated person (section 118I)	Imprisonment for 2 years	(20)		Sexual assault against a PMI involving touching	Imprisonment for 14 years
		(21)		Sexual assault against a PMI without touching	Imprisonment for 14 years
Procurement of mentally incapacitated person (section 133)	Imprisonment for 10 years	(22)		Causing a PMI to engage in sexual act	If "penetrative" act is involved: imprisonment for life; otherwise: imprisonment for 14 years
[No similar existing offences]	*[No similar existing offences]*	(23)		Engaging in sexual act in the presence of a PMI	Imprisonment for 10 years
[No similar existing offences]	*[No similar existing offences]*	(24)		Causing a PMI to look at a sexual image, see or hear sexual written or verbal communication or causing a PMI to send a sexual image or communication	Imprisonment for 10 years

<table>
<tr><th>Similar Existing Offences in the Crimes Ordinance</th><th>Existing Maximum Penalty</th><th colspan="2">Proposed Offences</th><th>Proposed Maximum Penalty</th></tr>
<tr><td>➢ Buggery with mentally incapacitated person (section 118E)
➢ Intercourse with mentally incapacitated person (section 125)</td><td>Imprisonment for 10 years</td><td rowspan="2">(25) Sexual penetration with a PMI</td><td rowspan="6">(i) by people involved in his care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency</td><td rowspan="2">Imprisonment for life</td></tr>
<tr><td>➢ “Offences against patients” (section 65) and “Sexual intercourse with a woman under guardianship” (section 65A) of the Mental Health Ordinance</td><td>Imprisonment for 5 years</td></tr>
<tr><td rowspan="2">Gross indecency by man with male mentally incapacitated person (section 118I)</td><td rowspan="2">Imprisonment for 2 years</td><td>(26) Sexual assault against a PMI involving touching</td><td>Imprisonment for 14 years</td></tr>
<tr><td>(27) Sexual assault against a PMI without touching</td><td>Imprisonment for 14 years</td></tr>
<tr><td>Procurement of mentally incapacitated person (section 133)</td><td>Imprisonment for 10 years</td><td>(28) Causing or inciting a PMI to engage in sexual act</td><td>If “penetrative” act is involved: imprisonment for life; otherwise: imprisonment for 14 years</td></tr>
<tr><td>[No similar existing offences]</td><td>[No similar existing offences]</td><td>(29) Engaging in sexual act in the presence of a PMI</td><td>Imprisonment for 10 years</td></tr>
<tr><td>[No similar existing offences]</td><td>[No similar existing offences]</td><td>(30) Causing a PMI to look at a sexual image, see or hear sexual written or verbal communication or causing a PMI to send a sexual image or communication</td><td>Imprisonment for 10 years</td></tr>
</table>

Similar Existing Offences in the Crimes Ordinance	Existing Maximum Penalty	Proposed Offences	Proposed Maximum Penalty
Miscellaneous Sexual Offences			
➢ Incest by men (section 47)	If woman victim is under 13: imprisonment for life; if woman victim is under 16 but is of or above 13: imprisonment for 20 years; others: imprisonment for 14 years	(31) Incest	If victim is under 16: imprisonment for life; others: imprisonment for 14 years
➢ Incest by women of or over 16 (section 48)	Imprisonment for 14 years		
Indecency in public (section 148)[94]	Fine at level 5 and imprisonment for 6 months	(32) Sexual exposure	Imprisonment for 5 years
Bestiality (section 118L)	Fine at level 5 and imprisonment for 10 years	(33) Sexual penetration of an animal	Fine at level 5 and imprisonment for 10 years
[No similar existing offences]	*[No similar existing offences]*	(34) Sexual act with a dead person	Imprisonment for 10 years
Administering drugs to obtain or facilitate unlawful sexual act (section 121)	Imprisonment for 14 years	(35) Administering a substance for sexual purposes	Imprisonment for 14 years
Assault with intent to commit buggery (section 118B)	Imprisonment for 10 years	(36) Committing an offence with intent to commit a sexual offence	If kidnapping or unlawful detention is committed: imprisonment for life; otherwise: imprisonment for 14 years
Burglary (with intent to rape) (section 11) of the Theft Ordinance	Imprisonment for 14 years	(37) Trespass with intent to commit a sexual offence	Imprisonment for 14 years

[94] The LRC recommended retaining "indecency in public" (section 148) as it is an offence against the public order. The LRC recommended creating a new offence of "sexual exposure" which targets sexual abusive behaviours depraving victims' sexual autonomy. Hence, the maximum penalty of "indecency in public" only serves as a reference here.

Appendix C

Offences which the Government Proposes to Substitute

Further to the Government's proposals to introduce a new series of non-consensual sexual offences, sexual offences involving children, sexual offences involving PMIs and miscellaneous sexual offences. The Government will substitute the below obsolete offences given the new sexual offences will cover the scope of the existing provisions –

<u>Crimes Ordinance (Cap. 200)</u>

(1) Non-consensual buggery (section 118A);

(2) Assault with intent to commit buggery (section 118B);

(3) Homosexual buggery with or by man under 16 (section 118C);

(4) Buggery with girl under 21 (section 118D);

(5) Buggery with mentally incapacitated person (section 118E);

(6) Procuring others to commit homosexual buggery (section 118G);

(7) Gross indecency with or by man under 16 (section 118H);

(8) Gross indecency by man with male mentally incapacitated person (section 118I);

(9) Gross indecency by man with man otherwise than in private (section 118J);

(10) Procuring gross indecency by man with man (section 118K);

(11) Bestiality (section 118L);

(12) Procurement by threats (section 119);

(13) Administering drugs to obtain or facilitate unlawful sexual act (section 121);

(14) Indecent assault (section 122);

(15) Intercourse with girl under 13 (section 123);

(16) Intercourse with girl under 16 (section 124);

(17) Intercourse with mentally incapacitated person (section 125);

(18) Abduction of unmarried girl under 16 (section 126);

(19) Abduction of unmarried girl under 18 for sexual intercourse (section 127);

(20) Abduction of mentally incapacitated person from parent or guardian for sexual act (section 128);

(21) Indecent conduct towards child under 16 (section 146);

Mental Health Ordinance (Cap. 136)

(22) Sexual intercourse with patients (section 65(2)); and,

Theft Ordinance (Cap. 210)

(23) Burglary (with intent to rape) (section 11).

Appendix D

Improving the Laws on Sexual Offences in Hong Kong

Response Form to Consultation Paper

Members of the public are invited to submit the completed response form to the Security Bureau by post, by fax or by email on or before 5 August 2026.

Postal address: Security Bureau A Division - Public consultation on improving the laws on sexual offences in Hong Kong,
8th Floor, East Wing,
Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong

Fax no.: 2524 3762

Email address: sexualoffences@sb.gov.hk

1. Improving the laws on sexual offences in Hong Kong requires a set of guiding principles to ensure consistency across proposed amendments, which cover a wide array of sexual offences involving different forms of criminal conduct and different degrees of culpability. Do you agree with the guiding principles set out in Chapter 1 of the consultation paper (i.e. clarity of the law; respect for sexual autonomy; protective principle; gender neutrality; avoidance of distinctions based on sexual orientation; and adherence to the Basic Law, the Hong Kong Bill of Rights Ordinance (Cap. 383) and the International Covenant on Civil and Political Rights)?

(a) Yes ..... ☐

(b) No ..... ☐

2. Regarding the offence of rape and other "non-consensual sexual offences", a key element is that the victim does not consent to have sexual intercourse with the defendant or engage in the sexual act involving the defendant. Do you agree with specifying in the legislation a list of circumstances where a consent on the part of the victim is absent (i.e. when evidence establishes that the circumstances exist at the time a sexual act occurs, the victim will be taken as not consenting the sexual act)?

(a) Yes ..... ☐

(b) No ..... ☐

3. To improve the laws on "non-consensual sexual offences", the Government proposes expanding the scope of the offence of rape, and criminalizing the following three types of behaviours: sexual assault "involving touching" and "without touching", and causing a person to engage in sexual act without consent. Do you agree with this reform direction?

(a) Yes ..... ☐

(b) No ..... ☐

4. Do you agree with continuing to apply the age of 16 as the "age of consent" (i.e. specifying in the legislation that children under 16 are incapable of giving "consent". A person shall bear criminal responsibility for sexual acts with a person under the age of consent)?

(a) Yes ..... ☐

(b) No ..... ☐

5. In terms of sexual offences involving PMIs, the existing Crimes Ordinance (Cap. 200) only protects mentally incapacitated persons. One of the key directions in improving the law is to cater for PMIs who have the have the capacity to consent to sexual acts, and the law should address situations where perpetrators take advantages of PMIs' mental condition to sexually exploit them. Do you agree with this reform direction?

(a) Yes ……. ☐

(b) No ……. ☐

6. The consultation paper proposes to create additional offences specifically created targeting abuses of vulnerable groups such as children and PMIs (i.e. criminalising the act of engaging in sexual act in the presence of victims, and sending sexual image or sexual communication to victims, etc.) with a view to plugging loopholes in the existing law and according better protection to them against sexual exploitation. Do you agree with this direction of improving the law?

(a) Yes ……. ☐

(b) No ……. ☐

7. The consultation paper proposes providing for extraterritorial effect for new offences involving children or PMIs, so as to protect them against sexual exploitation by perpetrators who travel abroad to commit sexual offences. Do you agree with this recommendation?

(a) Yes ……. ☐

(b) No ……. ☐

8. The consultation paper proposes to create two new sexual offences of a preparatory/ancillary nature specifically created for early prevention of sexual exploitation of children ("sexual grooming of a child" and "arranging or facilitating the commission of a child sexual offence"). Do you agree with this direction of improving the law?

(a) Yes ..... ☐

(b) No ..... ☐

9. Do you agree that miscellaneous sexual offences (including incest, sexual exposure, bestiality, necrophilia and acts committed with the intention of committing a sexual offence) should be covered in the legislative amendment exercise on the laws of sexual offences in Hong Kong?

(a) Yes ..... ☐

(b) No ..... ☐

10. Do you agree with the Government's proposals on strengthening protection for victims of sexual offences?

(a) Yes ..... ☐

(b) No ..... ☐

Other views

In addition to responding to the above questions, you may also indicate other comments in the boxes below:

Name：	
Telephone number (optional)：	
Email address (optional)：	
Date：	

Personal Data Collection Statement

Members of the public provide personal pursuant to this form on a voluntary basis. The views and the personal data collected may be forwarded to the relevant government policy bureaux and departments for purposes directly related to this consultation. The policy bureaux and departments receiving such data may use the information for this purpose only.

For individuals and groups (hereinafter referred to as "senders") submitting their views on this consultation paper, their names and views may be published for public reference. In our public or internal discussions, or in any of the subsequent reports issued, we may cite the senders' views submitted in respect of the consultation paper.

We respect the senders' wish if they prefer not to disclose their identity and/or keep all or some of their views confidential. If senders state in their views that they do not wish to disclose their identity, we will remove their names, contact details, identification numbers and signatures when publishing their views. We will not publish the views of senders who request that their views be kept confidential.

For senders who have not requested in their submissions that their identity or views be kept confidential, we will assume that their names and views can be published in full.

Any sender who has provided his personal information to the Security Bureau in his submission has the right to access and correct his personal information. Requests to access and correct personal information should be sent in writing to the correspondence address above.