

本函檔號 OUR REF. : EOC/LEG/01
來函檔號 YOUR REF.:
電 話 TEL. NO. : 2106-2157
圖文傳真 FAXLINE : 2511-8142

(By Fax & By Mail)

9 March 2010

Panel on Security
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong
(Attn.: Mr. Raymond LAM, Ch Council Secy (2)1)

Dear Mr. Lam,

**Law Reform Commission Report on
sexual offences records checks for child-related work**

Thank you for your letter of 3 March 2010 inviting the Equal Opportunities Commission (EOC) to provide views on the proposals in the Law Reform Commission (LRC) Report on sexual offences records checks for child-related work (the Report) issued by the LRC in February 2010.

After a quick review of the Report, we note that the proposed sexual offences records checks scheme (the Scheme) has the following key features:

- Name and other personal information of sex offenders would not be made available for inspection by the general public
- An interim administrative scheme would be introduced to enable the criminal conviction records for sexual offences of persons who undertake child-related work and work relating to mentally incapacitated persons (MIP) to be checked
- “Child-related work” would be defined as work where the usual duties involve, or are likely to involve, contact with a child under 18 or a MIP
- Employees, volunteers, trainees and self-employed persons undertaking

child-related or MIP-related work would be covered under the Scheme

- A check would not be made mandatory
- The Scheme would be implemented in stages, covering prospective employees only in the initial phase
- A check can only be initiated by the job applicant/data subject
- A “clean” record check result would not be recorded in writing but would be communicated verbally to the applicant or his/her employer
- The proposed records checks should reveal only a specified list of sexual offences
- Information other than conviction records would not be revealed
- The Scheme would not cover allegations or acquittals
- As an interim measure, sexual offences that are regarded as “spent” under section 2 of the Rehabilitation of Offenders Ordinance (Cap 197) would not be disclosed

The EOC as a whole has not yet had the opportunity to consider this subject. So the following observations represent the view of the Office of the Chairperson only. We are supportive of the endeavours to minimise the risk of sexual and physical harm to children and MIP by establishing the Scheme to enable employers to screen the suitability of their employees who undertake child-related work. We are of the view that on the whole a good balance has been struck between taking reasonable steps to ensure protection is afforded to children on the one hand, and to ensure that the rights of ex-offenders are respected on the other.

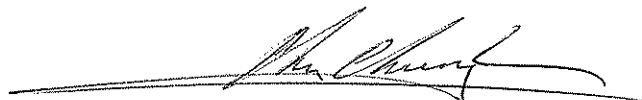
Under the proposed scheme, a “clean” record check result would not be recorded in writing, but would be communicated verbally to the job applicant or the employer concerned. So, theoretically a “not-clean” record check result would also be communicated to the employer under certain circumstances. On the other hand, “child-related work” has a wide definition and employers of a wide range of fields would be enabled to demand for a “clean” record check.

Article 33 of the Basic Law provides that “Hong Kong residents shall have freedom of choice of occupation.” While appreciating that the proposed scheme is not a scheme to automatically bar previous sex offenders from working in child-related fields, we are concerned that in reality, and as rightly pointed out in the Report, some employers or parents may simply refuse to allow a previous sex offender, even after rehabilitation, to work in a child-related field solely on the basis of his or her conviction

record. If that happens, it may impose another hurdle on these ex-offenders' employment opportunities and adversely impact upon their rehabilitation and re-integration.

We are of the view that sufficient measures should be put in place to ensure that employment opportunities for rehabilitated sex offenders would not be inadvertently affected by the introduction of the Scheme. Specifically, targeted education programmes for employers and parents, who are enabled to demand for a "clean" record check under the Scheme, should be rolled out together with the Scheme so as to equip them with the necessary knowledge to comply with applicable laws and principles relating to human rights, natural justice, privacy, equal opportunities, and records management. Employers in child-related work fields should also be encouraged and assisted to develop risk assessment frameworks and to train up appropriately skilled staff to assess risks to children's safety.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ferrick CHU', is written over a horizontal line.

(Ferrick CHU)
for Chairperson
Equal Opportunities Commission