



August 15, 2018

The Law Reform Commission of Hong Kong  
4/F East Wing Justice Place  
18 Lower Albert Road, Central  
Hong Kong

To the Review of Sexual Offences Sub-Committee:

### **Regarding the Law Reform Commission's 2018 Public Consultation on Miscellaneous Sexual Offences**

The Women's Foundation (TWF) is a non-profit organisation dedicated to improving the lives of women and girls in Hong Kong. Our three key focus areas are:

- Challenging gender stereotypes
- Increasing the number of women in decision-making positions
- Empowering women in poverty to achieve a better quality of life for themselves and their families

Our response to the Law Reform Commission of Hong Kong's (HKLRC) public consultation on "Miscellaneous Sexual Offences" therefore focuses on these areas.

Currently, 1 out of 7 women will be sexually assaulted in her lifetime in Hong Kong yet 90% of victims will choose not to report the incident<sup>1</sup>. We also know from Hong Kong Police statistics that 24% of reported sexual assault cases are made by victims who are under the age of 16. Our work with key stakeholders in the community that are working to safeguard the well-being of sexual assault victims have revealed a number of areas that need addressing: insufficient legal protection, outdated sexual education curricula and inhibiting factors for women to utilise existing services. Of these, legal protection is paramount in ensuring that victims have the right to seek recourse, that perpetrators are accountable for their actions, and that all residents understand Hong Kong's position when it comes to sexual offences.

### **2012 & 2016 Public Consultations on Sexual Offences by the HKLRC**

After the HKLRC's establishment in 2006, TWF was encouraged by the reform of some of the sexual offences found in the Crimes Ordinance which has thus far included the creation of a register of sex offenders (proposed in 2008) and the abolishment of the assumption that boys under 14 are incapable of having sex (proposed in 2010), implemented in 2011 and 2012, respectively.

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<sup>1</sup> [Hong Kong Women's Coalition on Equal Opportunities, 2013.](#)

Since that time, the HKLRC embarked on a comprehensive review Hong Kong's laws around sexual offences, beginning with a 2012 public consultation on "Rape and other non-consensual sexual offences" which was followed by the 2016 public consultation on "Sexual offences involving children and persons with mental impairment". There are many critical recommendations in these reviews including updated definitions around consent and rape, gender neutrality, avoidance of distinctions based on sexual orientation, and the protective principle for particularly vulnerable groups.

As the HKLRC may be aware, in March 2016, the Equal Opportunities Commission submitted a series of recommendations to the Government on the Discrimination Law Review, which included a number of important recommendations for better protections against sexual harassment in employment, premises, services and clubs. To date, the Government has not implemented any recommendations with legislative amendments which leave many people vulnerable to sexual assault and sexual harassment without recourse.

**We strongly urge the HKLRC to put forward the 2012 and 2016 consultations to the Government without further delay. The consultations contain much needed reforms that would give added protection to current at-risk populations, particularly children and women. This prioritisation from the HKLRC would demonstrate the necessity of the Government adopting key recommendations from these consultations.**

### **Comments on 2018 "Miscellaneous Sexual Offences" Public Consultation**

With regards to the proposed changes in the "Miscellaneous Sexual Offences" we agree with the proposed amendments, with particular emphasis on the following four:

- **The introduction of specific provisions around voyeurism (Recommendation 3):** There have been many recorded complaints of voyeurism particularly via upskirting in Hong Kong, the most recent scandal taking place last month with the accused being a member of the Hong Kong Police Force<sup>2</sup>. As noted in the Consultation, jurisdictions such as Canada and England have enacted legislation addressing this as have Australia, Belgium and New Zealand. Last month, France was the most recent jurisdiction to propose adopting upskirting legislation<sup>3</sup>. Legislation that specifically targets upskirting and penalises the distribution of offensive images would send a clear message that this type of behaviour is not condoned.
- **The replacement of "assault with the intent to commit buggery" with "committing an offence with the intent to commit a sexual offence" (Recommendation 7):** In line with the HKLRC's other proposed recommendations to maintain gender neutrality, we fully endorse this recommendation.

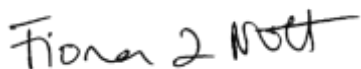
<sup>2</sup> SCMP, "[Hong Kong police officer admits taking upskirt photos and videos – including 12 of his colleague inside the station](#)". July 30 2018.

<sup>3</sup> The Independent, "[France to make 'upskirting' illegal](#)". July 24, 2018.

- **The replacement of “offence of burglary (with intent to rape)” with “trespass with intent to commit a sexual offence” that is in line with section 63 of the English Sexual Offences Act 2003 (Recommendation 8):** We agree that by using ‘any sexual offence’ instead of ‘rape’ or ‘serious sexual offence’ would provide much greater protection to victims regardless of gender orientation. We further agree with the expanding the current need for the offence to occur in a ‘building’ to ‘premises’.
- **The abolishment of homosexual or homosexual-related buggery and gross indecency offenses (Recommendation 9):** With reference to Recommendation 8, we endorse the HKLRC’s stance that the “principles of gender neutrality and avoidance of distinctions based on sexual orientation should lead to [the relevant] offences being removed.”

We will notify our networks about this consultation and encourage them to respond. We also look forward to the recommendations from all three public consultations being translated into action, and we will do our part to contribute towards this actualisation.

Sincerely,



Fiona Nott  
CEO, The Women’s Foundation