

LEGISLATIVE COUNCIL BRIEF

Mandatory Reporting of Child Abuse Bill

INTRODUCTION

A At the meeting of the Executive Council on 23 May 2023, the Council ADVISED and the Chief Executive ORDERED that the Mandatory Reporting of Child Abuse Bill (“Bill”), at Annex A, should be introduced into the Legislative Council (“LegCo”).

JUSTIFICATIONS

2. Children are vulnerable to abuse and neglect, as they may not be able to seek help or provide accounts of what happened in these cases. If the abuse or neglect is inflicted by the child’s parents or caregivers, such cases will less likely be reported by the families concerned. The harmful consequence of child abuse may negatively affect a child’s physical and psychological development for a lifetime, or even fatal in some cases. There have been calls for introducing a mandatory reporting mechanism in Hong Kong to ensure early and effective detection and intervention. A court judgment handed down in April 2021 concerning the death of a five-year-old girl due to abuse by her parents revived the concern about under-reporting of serious child abuse cases in Hong Kong, and the call for action.

3. In July 2021, the Government set up a cross-bureaux working group (“the Working Group”) comprising the Labour and Welfare Bureau (“LWB”), the Education Bureau (“EDB”), the then Food and Health Bureau (renamed as Health Bureau (“HHB”)) and the Security Bureau to explore the feasibility of introducing a mandatory reporting regime (“MRR”) for suspected child abuse cases in Hong Kong. Having regard to overseas experience and local practice, the Working Group proposes to

mandate specified professionals who have frequent contacts with children (“mandated reporters”) to report abuse cases as soon as practicable, if they suspect that a child “has been suffering serious harm” or “is at real risk of suffering serious harm”. The proposal is premised on the following considerations:

- (a) Children receive essential services regularly in schools as well as medical and social welfare institutions. Mandating professionals in these sectors to report suspected child abuse will create a wide protection web for children and send a strong deterrent to potential perpetrators that their abuse behaviours will be easily exposed.
- (b) The mandated reporters, after receiving appropriate training, are better placed to detect child abuse cases than members of the general public. Making it their duty to report, with criminal liability for non-compliance, will ensure early identification of more substantiated cases which require urgent investigation and support.
- (c) On balance, mandatory reporting of cases involving serious harm will achieve better results than requiring reporting on all suspected cases. The latter approach may result in an exponential increase in unsubstantiated referrals, which may divert scarce public resources from timely intervention into substantiated cases.

4. The Chief Executive (“CE”) announced in his 2022 Policy Address that the Government would introduce the Bill into LegCo in the first half of 2023 to enhance the protection for children.

THE LEGISLATIVE PROPOSAL

5. The Working Group has considered the feasibility of introducing an MRR by examining the following key issues :

- (A) whom to protect;
- (B) what types of suspected cases to be reported;
- (C) who are mandated to make reports;
- (D) what should be the appropriate level of penalty; and
- (E) how to safeguard mandated reporters' interest.

(A) Whom to protect?

6. The Working Group proposes to define children as persons aged below 18 on the consideration that the Protection of Children and Juveniles Ordinance (Cap. 213) defines children and juveniles as persons aged below 18. The same age threshold is adopted for the updated “Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation” (“Procedural Guide”) promulgated by the Social Welfare Department (“SWD”) in 2020. The United Nations Convention on the Rights of the Child and the World Health Organization also define children as persons aged below 18.

(B) What types of suspected cases to be reported?

7. The Working Group proposes that mandated reporters should be required to make a report if, during the course of work, they have reasonable grounds to suspect that a child “has been suffering serious harm” or “is at real risk of suffering serious harm”. Acts or omissions that may cause serious harm to a child include examples set out below –

- (a) inflicting physical injury on the child by violent means;
- (b) forcing or enticing the child to take part in any sexual activity;
- (c) intimidating, terrifying or denigrating the child in a severe or repeated manner such that the child’s psychological health is endangered or impaired; and
- (d) neglecting the child’s basic needs in a severe or repeated manner such that the child’s health or development is endangered or impaired.

Any of the following circumstances may add to the seriousness of the harm –

- (a) the harm persists for a substantial period or occurs frequently, though harm caused by a single incident may be considered as serious, having regard to the degree and extent of the harm and all other circumstances of the case;
- (b) the act or omission that causes the harm –
 - (i) appears to be premeditated; or
 - (ii) appears to involve threat, coercion, sadism or any other unusual element.

8. The Working Group proposes to exclude harm caused by another child from the MRR, so that institutions providing services for children can continue to handle bullying cases among children of similar age in accordance with the prevailing practices. In addition, harm caused by an accident (except when the accident is caused by the neglect of the parents or caregivers of the child) will be excluded.

9. SWD will, in collaboration with the Bureaux/Departments (“B/Ds”) concerned, draw up a Mandated Reporters’ Guide to illustrate reportable circumstances for physical abuse, sexual abuse, neglect and psychological abuse.

(C) Who are mandated to make reports?

10. The Working Group proposes that professionals who have frequent contacts with children and whose professions are currently subject to some form of regulation should be covered under the proposed MRR. Accordingly, LWB, EDB and HHB propose to specify the following categories of professionals as mandated reporters:

- (i) Social workers
- (ii) Child care workers/ child care supervisors
- (iii) Superintendents of residential child care service units
- (iv) Teachers

- (v) Wardens of boarding schools
- (vi) Nurses
- (vii) Doctors
- (viii) Dentists
- (ix) Dental hygienists
- (x) Chinese medicine practitioners
- (xi) Physiotherapists
- (xii) Occupational therapists
- (xiii) Medical laboratory technologists
- (xiv) Optometrists
- (xv) Radiographers
- (xvi) Pharmacists
- (xvii) Midwives
- (xviii) Chiropractors
- (xix) Speech therapists
- (xx) Dietitians
- (xxi) Audiologists
- (xxii) Clinical psychologists
- (xxiii) Educational psychologists

11. The Working Group proposes that the list of mandated reporters should be set out in a Schedule to the Bill so that it may be amended by way of subsidiary legislation to keep abreast of social circumstances.

(D) What should be the appropriate level of penalty?

12. The Working Group proposes a 3-month imprisonment and a fine at level 5 (i.e. currently \$50,000) if mandated reporters do not comply with the reporting requirement, vis-à-vis a 10-year imprisonment for perpetrators under section 27 of the Offences against the Person Ordinance (Cap. 212). In proposing the above, we note that in local legislation that deal with serious crimes¹, a person who commits a serious offence will incur penalty ranging from 7 years to life imprisonment and fines at various levels, whereas a person who does not report such offences incurs a penalty

¹ Dangerous Drugs Ordinance (Cap. 134), Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), Criminal Procedure Ordinance (Cap. 221), Organized and Serious Crimes Ordinance (Cap. 455), United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).

of 3-month imprisonment and a fine at level 5. The Working Group considers that the proposed level of penalty should strike an appropriate balance between giving sufficient deterrent against non-reporting of child abuse, while ensuring that the penalty level is commensurate with the seriousness of offences committed by a mandated reporter as opposed to a perpetrator.

(E) How to safeguard mandated reporters' interest?

13. The Working Group proposes that the following provisions should be incorporated in the Bill to provide protection for mandated reporters in performing their function –

- (a) A person must not wilfully inhibit or obstruct a mandated reporter from making a report or impose any guidelines or requirement that has such effect.
- (b) A person must not disclose the identity of a mandated reporter as the person who made a report, or information from which such identity could be deduced, except under specified circumstances².
- (c) A mandated reporter does not incur any civil or criminal liability only by making a report.
- (d) A mandated reporter must not be held to have breached any code of professional conduct or ethics, or to have departed from any accepted standards of professional conduct, only by making a report.

14. On paragraph 13(d), upon the enactment of the Bill, the B/Ds concerned will invite the professional bodies under their respective purviews to review and amend their professional codes of practice/guidelines as necessary to ensure that they are in line with the new

² It is necessary for performing a function under an Ordinance, or for carrying into effect or doing anything authorized by an Ordinance; made under an order of a court; or made to prevent or mitigate a real risk of injury to a person, etc.

legislation. The B/Ds concerned have already made initial contacts with the relevant professional bodies to secure their understanding and support.

Defence

15. Some stakeholders have pointed out that teenage victims of sexual abuse could be deterred from seeking help from professionals if the proposed MRR allows no flexibility. The Working Group proposes to introduce a defence for a mandated reporter who has not reported a suspected child abuse case “as soon as practicable”, if the mandated reporter honestly and reasonably believes that the delay is in the best interests of the child, and on the condition that he/she must, during the delay, take actions that are reasonably necessary in the circumstances to protect the interests of the child (e.g. make appropriate arrangements to prevent further sexual abuse and address the child’s emotional disturbance).

16. To address the concern about the reporting burden on mandated reporters and duplication of reporting in cases involving multiple mandated reporters who work as a team (e.g. doctors, nurses and healthcare professionals in a hospital setting), the Working Group proposes to introduce a defence for a mandated reporter who has not made a report if he/she honestly and reasonably believes that another mandated reporter has made a report in respect of the same, or substantially the same, harm or risk.

Implementation

17. To allow sufficient lead time for the mandated reporters to complete training on their statutory obligation under the MRR and for the relevant professional bodies to review and amend their professional codes of practice/guidelines as necessary, we propose to implement the MRR 18 months after publication of the enacted legislation in the Gazette.

SUPPORTING MEASURES

Reporting channel

18. Mandated reporters will be required to make a report to SWD’s Family and Child Protective Services Unit (“FCPSU”) or the Police (both being “the Authority”) by phone or any other means, to be followed by a written report in specified format, as soon as practicable. The Authority will issue a written acknowledgment to the mandated reporter if the Authority can identify the child concerned based on the information in the report. Upon receiving the report, FCPSU and/or the Police will conduct initial screening, jointly or separately. If the report is substantiated, the Police will proceed to criminal investigation, while FCPSU will work out comprehensive protection and support services for the child and the family concerned, convene multi-disciplinary case conferences if necessary, and arrange follow up services by appropriate service units³ in accordance with the existing mechanism under the Procedural Guide. SWD and the Police will jointly develop a work protocol to ensure prompt and effective follow-up of the MRR reports received in a coordinated manner.

Training

19. SWD will set up an e-learning platform to provide appropriate training for mandated reporters to facilitate their early identification and reporting of suspected child abuse cases. The full course will include two modules: basic knowledge of child protection and basic knowledge of relevant legal and reporting issues relating to MRR, which will be rolled out in phases before and after the enactment of the Bill. In tandem, the B/Ds concerned will supplement the e-learning initiative through on-going training sessions on child protection organized for the professions under their respective purviews.

³ Including FCPSUs, Integrated Family Service Centres, Medical Social Services Units, School Social Work Service, etc.

Other supportive measures

20. In anticipation of a substantial increase in the demand for emergency placement of children upon the commencement of the new legislation, SWD has already embarked on increasing residential child care service places. A new Residential Child Care Centre (“RCCC”) with 48 service places will commence operation in the first quarter of 2024. We envisage that each RCCC place can take care of an average of four children in a year (hence a total of 192 children each year), as children with family members or relatives would not normally stay in an emergency place for a prolonged period. SWD is considering further measures to increase the supply of emergency places through setting up another RCCC and enhancing publicity to recruit more foster parents.

21. To complement the introduction of a statutory MRR, LWB will assist the Commission on Children (“CoC”) in launching a thematic campaign on child protection from mid-2023. Apart from organizing a series of stakeholder engagement activities, CoC will synergize the efforts of the B/Ds concerned in promoting the well-being of children, including SWD’s “Strengthening Families and Combating Violence” publicity campaign, the Police’s “Let’s T.A.L.K.” Child Protection Campaign, and EDB’s on-going efforts to encourage parents to adopt a positive parenting approach to nurture children.

22. The Government will continue to strengthen and review existing preventive and supportive measures, including social work services at schools, the mechanism of reporting non-attendance cases by schools, residential child care services and the Comprehensive Child Development Service. Details are set out at **Annex B**.

B

OTHER OPTIONS

23. Introducing the Bill is the only viable option to mandate specified professionals to report suspected child abuses as defined so as to ensure early identification and intervention in the interest of the children involved.

THE BILL

24. The Bill contains four Parts and two Schedules. The main provisions are as follows –

Part 1—Preliminary

- (a) **Clause 1** sets out the short title and provides for commencement.
- (b) **Clause 2** contains the definitions for the interpretation of the Bill, including the definition of *specified professional*.
- (c) **Clause 3** provides that the Bill applies to public officers in the same way as it applies to persons who are not public officers.

Part 2—Mandatory Reporting

- (d) **Clause 4** provides that if a reasonable ground to suspect that a child has been suffering serious harm or is at real risk of suffering serious harm comes to the notice of a specified professional during the course of work as a specified professional, then the professional is required to make a report in respect of the child as soon as practicable.
- (e) **Clause 5** provides for defences for a specified professional prosecuted for an offence under clause 4.
- (f) **Clause 6** provides for requirements for a report, including the form and content of the report.
- (g) **Clause 7** empowers the Director of Social Welfare (“Director”) to issue guidelines to provide practical guidance for the purposes of Part 2 of the Bill.
- (h) **Clause 8** provides for the legal effect of the guidelines.

Part 3—Protection for Specified Professional

- (i) **Clause 9** prohibits any person from wilfully inhibiting or obstructing a specified professional from making a report under clause 4.
- (j) **Clause 10** provides that the post-reporting protection under clauses 11 and 12 applies in relation to a specified professional in respect of a report if the professional honestly believed that he or she was required by the Bill to make the report.
- (k) **Clause 11** provides that a person must not disclose the identity of a specified professional as the person who made a report, except for the purposes, or under the circumstances, specified in that clause.
- (l) **Clause 12** provides that a specified professional does not incur any civil or criminal liability, and must not be held to have breached any code of professional conduct or ethics, only by making a report.

Part 4—Miscellaneous

- (m) **Clause 13** provides for the prosecution deadline for an offence under this Bill.
- (n) **Clause 14** empowers the Director to specify the relevant form and the way in which the form is to be submitted.
- (o) **Clause 15** empowers the Secretary for Labour and Welfare to amend Schedule 1 by notice published in the Gazette.

Schedules

- (p) **Schedule 1** contains a list of specified professionals.
- (q) **Schedule 2** contains related amendments to the Criminal Procedure Ordinance (Cap. 221).

LEGISLATIVE TIMETABLE

25. The legislative timetable will be –

Publication in the Gazette	2 June 2023
First Reading and commencement of Second Reading debate	14 June 2023
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

C 26. The proposal has financial and civil service, family, gender, as well as sustainability implications as set out at **Annex C**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The new legislation will apply to public officers personally if they fall under the list of professionals specified as mandated reporters. It has no economic, productivity or environmental implications.

PUBLIC CONSULTATION

27. We conducted two rounds of stakeholder engagement for the social welfare, education and healthcare sectors in the third quarter of 2021 and the latter half of 2022 respectively. We consulted CoC, Social Welfare Advisory Committee, Family Council and Women’s Commission in two phases in the latter half of 2021 and the latter half of 2022 respectively. The advisory committees and stakeholders generally agreed on the need to introduce an MRR in Hong Kong and urged the Government to ensure that adequate resources and supportive measures would be put in place before commencement of the Bill, including the manpower required for prompt and effective intervention by the government departments concerned, training capacity and lead time required to ready the mandated reporters, emergency placement for suspected abused children, and support services for relevant families. We briefed the LegCo Panel on Welfare

D Services on 13 September 2021 and 14 November 2022. The Panel generally supported the legislative proposal. A summary of the main views expressed by stakeholders is at **Annex D**.

PUBLICITY

28. We will issue a press release before gazettal of the Bill. A spokesperson will be available to handle media and public enquiries.

BACKGROUND

29. The reporting of suspected child abuse cases is currently made on a voluntary basis. The procedures for the identification and reporting mechanism as well as the protection actions, multidisciplinary case conferences and follow-up plans for suspected child abuse cases are set out in SWD's Procedural Guide.

30. According to SWD's statistics, the number of newly reported child abuse cases in the past five years are 1 064, 1 006, 940, 1 367 and 1 439. It is noted that in about 60% of the abuse cases, the perpetrators are parents.

ENQUIRY

31. Any enquiry on this brief can be directed to Miss Jeanne Cheng, Principal Assistant Secretary for Labour and Welfare (Children), at 2810 3973.

Labour and Welfare Bureau
Education Bureau
Health Bureau
Security Bureau
31 May 2023

Mandatory Reporting of Child Abuse Bill

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A BILL

To

Require certain professionals to report suspected serious child abuse cases; to provide for protection for the professionals for making the reports; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Mandatory Reporting of Child Abuse Ordinance.
- (2) This Ordinance comes into operation on the expiry of 18 months after the day on which it is published in the Gazette.

2. Interpretation

In this Ordinance—

Authority (主管當局) means—

- (a) the Director; or
- (b) the Commissioner of Police;

child (兒童) means a person below the age of 18 years;

court (法庭) includes a magistrate;

Director (署長) means the Director of Social Welfare;

report (舉報) means a report made under section 4(1);

specified professional (指明專業人員) means a person specified in Part 1 of Schedule 1.

3. Application to public officers

This Ordinance applies to public officers in the same way as it applies to persons who are not public officers.

Part 2**Mandatory Reporting****4. When must reports be made**

- (1) If a reasonable ground to suspect the following comes to the notice of a specified professional during the course of his or her work as a specified professional—
- (a) a person is a child at the material time; and
 - (b) at the material time, the child—
 - (i) has been suffering serious harm; or
 - (ii) is at real risk of suffering serious harm,
 the professional must, as soon as practicable after the material time, make a report in respect of the child in compliance with section 6.
- (2) However, a specified professional is not required to make a report under subsection (1) if the professional honestly and reasonably believes that the harm mentioned in subsection (1)(b) was, or is to be, caused solely by—
- (a) an accident not caused by the neglect of a responsible person of the child;
 - (b) the child himself or herself; or
 - (c) any other child who is not a responsible person of the child (otherwise than caused by any act of a sexual nature).
- (3) For subsection (1)(b), in determining whether the harm is serious, regard must be had to the degree and extent of the harm and all other circumstances of the case, and in particular, any of the following circumstances may add to the seriousness of the harm—

- (a) the harm persists for a substantial period or occurs frequently;
- (b) the act or omission that causes the harm—
 - (i) appears to be premeditated; or
 - (ii) appears to involve threat, coercion, sadism or any other unusual element.

Examples—

Examples of an act or omission that may cause serious harm to a child are—

- (a) inflicting physical injury on the child by violent means;
 - (b) forcing or enticing the child to take part in any act of a sexual nature;
 - (c) intimidating, terrifying or denigrating the child in a severe or repeated way such that the child's psychological health is endangered or impaired; and
 - (d) neglecting the child's basic needs in a severe or repeated way such that the child's health or development is endangered or impaired.
- (4) To avoid doubt—
- (a) for subsection (1), it is immaterial whether the specified professional actually formed a suspicion as to the matters mentioned in paragraphs (a) and (b) of that subsection based on the ground mentioned in that subsection; and
 - (b) for subsection (3), harm caused by a single incident may be considered as serious, having regard to the degree and extent of the harm and all other circumstances of the case.
- (5) A specified professional who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.
- (6) In this section—

material time (關鍵時間) means the time at which the ground mentioned in subsection (1) comes to the notice of the specified professional;

responsible person (負責人), in relation to a child, means a person who has the custody, charge or care of the child.

5. Defences for offence under section 4

- (1) If a specified professional is prosecuted under section 4(5) for contravening section 4(1) in respect of a child, it is a defence for the professional to establish that—
 - (a) the professional had made a report before the time of the alleged contravention in respect of—
 - (i) the same, or substantially the same, serious harm suffered by the child; or
 - (ii) the same, or substantially the same, real risk of the child suffering serious harm; or
 - (b) the professional honestly and reasonably believed that another specified professional had made a report before the time of the alleged contravention in respect of—
 - (i) the same, or substantially the same, serious harm suffered by the child; or
 - (ii) the same, or substantially the same, real risk of the child suffering serious harm.
- (2) If a specified professional is prosecuted under section 4(5) for failing to make a report in respect of a child as soon as practicable after the material time as defined by section 4(6) (*delay*), it is a defence for the professional to establish that the professional—
 - (a) honestly and reasonably believed that the delay was in the best interests of the child; and

(b) has, during the delay, taken actions that are reasonably necessary in the circumstances to protect the interests of the child.

- (3) A specified professional is taken to have established a matter that needs to be established for a defence under subsection (1) or (2) if—
 - (a) there is sufficient evidence to raise an issue with respect to that matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (4) Without limiting the definition of *report* in section 2, a reference to a report in subsection (1) includes a notification in any way to an Authority before this Ordinance comes into operation.

6. Requirements for reports

- (1) A report must be made in the form specified by the Director under section 14.
- (2) A report must contain sufficient information for an Authority to identify the child concerned.
- (3) A report must be submitted to an Authority in the way specified by the Director under section 14.

7. Director may issue guidelines

- (1) The Director may issue guidelines to provide practical guidance for the purposes of this Part.
- (2) The Director must—
 - (a) publish the guidelines in a way appropriate to bring them to the notice of persons affected by them; and
 - (b) make copies of the guidelines available to the public free of charge.

- (3) The guidelines are not subsidiary legislation.
- (4) The Director may amend or revoke the guidelines. Subsections (2) and (3) apply to an amendment or revocation of the guidelines in the same way as they apply to the guidelines.

8. Effect of guidelines

- (1) A person does not incur any civil or criminal liability only because the person has contravened the guidelines issued under section 7 (as may be amended under that section) (*guidelines*).
- (2) If, in any legal proceedings, the court is satisfied that a provision of the guidelines is relevant to the determination of a matter that is in issue in the proceedings—
 - (a) the guidelines are admissible in evidence in the proceedings; and
 - (b) proof that the person contravened, or did not contravene, the provision may be relied on by a party to the proceedings as tending to establish or negate the matter.
- (3) In any legal proceedings, a document that purports to be a copy of the guidelines is, in the absence of evidence to the contrary, to be presumed to be a true copy of the guidelines.

Part 3

Protection for Specified Professionals

Division 1—Pre-reporting Protection

9. Prohibition on inhibiting or obstructing making of reports

- (1) A person must not wilfully—
 - (a) inhibit or obstruct a specified professional from making a report; or
 - (b) impose any guideline or requirement that has such an effect.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

Division 2—Post-reporting Protection

10. Application of this Division

This Division applies in relation to a specified professional in respect of a report made by him or her if, at the time of making the report, the professional honestly believed that he or she was required by this Ordinance to make the report.

11. Prohibition on disclosing identity of specified professionals who made reports

- (1) A person commits an offence if the person discloses the identity of a specified professional as the person who made a report, or information from which such identity could be deduced.
- (2) However, the person does not commit an offence under subsection (1) if—

- (a) the disclosure is necessary for performing a function under an Ordinance, or for carrying into effect or doing anything authorized by an Ordinance;
 - (b) the disclosure is made for the consideration of the institution of, or otherwise for the purpose of, any criminal proceedings or any investigation of a criminal complaint;
 - (c) the disclosure is made with the written consent of the professional;
 - (d) the disclosure is made under an order of a court;
 - (e) the disclosure is made for the purpose of seeking advice from, or the giving of advice by, a counsel or a solicitor or any other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance;
 - (f) the identity of the professional, or the information, has already been lawfully disclosed or made available to the public; or
 - (g) the disclosure is made to prevent or mitigate a real risk of injury to a person.
- (3) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

12. No liability incurred by making reports

- (1) A specified professional does not incur any civil or criminal liability only by making a report.

- (2) A specified professional must not be held to have breached any code of professional conduct or ethics, or to have departed from any accepted standards of professional conduct, only by making a report.

Part 4**Miscellaneous****13. Prosecution deadline**

- (1) A prosecution for an offence under this Ordinance may only be started before the end of the specified period.

Note—

This replaces the time limit under section 26 of the Magistrates Ordinance (Cap. 227).

- (2) In this section—

specified period (指明限期), in relation to an offence, means the period of 12 months after the date on which the offence is discovered by the Authority that first discovers the offence.

14. Director may specify form and related matter

The Director may specify—

- (a) a form to be used for any matter provided for under this Ordinance; and
(b) the way in which the form is to be submitted.

15. Amendment of Schedule 1

The Secretary for Labour and Welfare may, by notice published in the Gazette, amend Schedule 1.

16. Related amendments

The Criminal Procedure Ordinance (Cap. 221) is amended as set out in Schedule 2.

Schedule 1

[ss. 2 & 15]

Specified Professionals**Part 1****Professionals**

1. A registered pharmacist within the meaning of the Pharmacy and Poisons Ordinance (Cap. 138).
2. A registered dentist within the meaning of the Dentists Registration Ordinance (Cap. 156).
3. An enrolled dental hygienist within the meaning of the Ancillary Dental Workers (Dental Hygienists) Regulations (Cap. 156 sub. leg. B).
4. A registered medical practitioner within the meaning of the Medical Registration Ordinance (Cap. 161).
5. A registered midwife within the meaning of the Midwives Registration Ordinance (Cap. 162).
6. A registered nurse or enrolled nurse within the meaning of the Nurses Registration Ordinance (Cap. 164).
7. A child care worker or supervisor within the meaning of the Child Care Services Regulations (Cap. 243 sub. leg. A).

8. A registered teacher or permitted teacher (within the meaning of the Education Ordinance (Cap. 279)) who is working in a specified school.
9. A person approved to be appointed under regulation 56(6) and (7) of the Education Regulations (Cap. 279 sub. leg. A) as a warden of a boarding school within the meaning of those Regulations that is a specified school.
10. A registered medical laboratory technologist within the meaning of the Medical Laboratory Technologists (Registration and Disciplinary Procedure) Regulations (Cap. 359 sub. leg. A).
11. A registered occupational therapist within the meaning of the Occupational Therapists (Registration and Disciplinary Procedure) Regulations (Cap. 359 sub. leg. B).
12. A registered optometrist within the meaning of the Optometrists (Registration and Disciplinary Procedure) Regulation (Cap. 359 sub. leg. F).
13. A registered radiographer within the meaning of the Radiographers (Registration and Disciplinary Procedure) Regulation (Cap. 359 sub. leg. H).
14. A registered physiotherapist within the meaning of the Physiotherapists (Registration and Disciplinary Procedure) Regulation (Cap. 359 sub. leg. J).
15. A registered chiropractor within the meaning of the Chiropractors Registration Ordinance (Cap. 428).

16. A registered social worker within the meaning of the Social Workers Registration Ordinance (Cap. 505).
17. A listed Chinese medicine practitioner or registered Chinese medicine practitioner within the meaning of the Chinese Medicine Ordinance (Cap. 549).
18. A person employed as a member of the teaching staff or a principal of the Youth College of the Vocational Training Council established under the Vocational Training Council Ordinance (Cap. 1130).
19. A person employed by the Government as a teacher or a principal who is working in a Government school.
20. A person registered by the Director as a superintendent of a residential child care service unit.
21. A person who professes to practise as, or publishes his or her name as, an audiologist.
22. A person who professes to practise as, or publishes his or her name as, a clinical psychologist.
23. A person who professes to practise as, or publishes his or her name as, a dietitian.
24. A person who professes to practise as, or publishes his or her name as, an educational psychologist.
25. A person who professes to practise as, or publishes his or her name as, a speech therapist.

Part 2

Interpretation

1. In this Schedule—
 - Government school* (官立學校) means a school entirely maintained and controlled by the Government;
 - specified school* (指明學校) means a school within the meaning of the Education Ordinance (Cap. 279), but does not include—
 - (a) a Government school;
 - (b) a school that only provides post secondary education within the meaning of that Ordinance; or
 - (c) an exempted school within the meaning of the Education (Exemption) (Private Schools Offering Non-Formal Curriculum) Order (Cap. 279 sub. leg. F).

Schedule 2

[s. 16]

Related Amendments to Criminal Procedure Ordinance (Cap. 221)

1. **Section 79B amended (evidence by live television link)**
 - (1) Section 79B(2)(b)—
 - Repeal**
 - “or”.
 - (2) After section 79B(2)(b)—
 - Add**
 - “(ba) an offence under section 4(5) or 9(2) of the Mandatory Reporting of Child Abuse Ordinance (of 2023); or”.
2. **Section 79C amended (video recorded evidence)**
 - (1) Section 79C(2)(b)—
 - Repeal**
 - “or”.
 - (2) After section 79C(2)(b)—
 - Add**
 - “(ba) an offence under section 4(5) or 9(2) of the Mandatory Reporting of Child Abuse Ordinance (of 2023); or”.
3. **Section 79E amended (depositions)**
 - (1) Section 79E(1)(b)—
 - Repeal**

“or”.

(2) After section 79E(1)(b)—

Add

“(ba) an offence under section 4(5) or 9(2) of the Mandatory Reporting of Child Abuse Ordinance (of 2023); or”.

Explanatory Memorandum

The main object of this Bill is to require certain professionals (*specified professional*) to report suspected serious child abuse cases and to provide for protection for specified professionals for making the reports.

2. The Bill contains 4 Parts and 2 Schedules.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.
4. Clause 2 contains the definitions for the interpretation of the Bill.
5. Clause 3 provides that the Bill applies to public officers in the same way as it applies to persons who are not public officers.

Part 2—Mandatory Reporting

6. Clause 4 provides that if a reasonable ground to suspect that a child has been suffering serious harm, or is at real risk of suffering serious harm, comes to the notice of a specified professional during the course of his or her work as a specified professional, the professional is required to make a report in respect of the child as soon as practicable.
7. Clause 5 provides for defences for a specified professional prosecuted for an offence under clause 4.
8. Clause 6 provides for requirements for a report, including the form and content of the report.
9. Clause 7 empowers the Director of Social Welfare (*Director*) to issue guidelines to provide practical guidance for the purposes of Part 2, and clause 8 provides for the legal effect of the guidelines.

Part 3—Protection for Specified Professionals

10. Clause 9 prohibits any person from wilfully inhibiting or obstructing a specified professional from making a report under clause 4.
11. Clause 10 provides that the post-reporting protection under clauses 11 and 12 applies in relation to a specified professional in respect of a report if the professional honestly believed that he or she was required to make the report.
12. Clause 11 provides that a person must not disclose the identity of a specified professional as the person who made a report, except for the purposes, or under the circumstances, specified in that clause.
13. Clause 12 provides that a specified professional does not incur any civil or criminal liability, and must not be held to have breached any code of professional conduct or ethics, only by making a report.

Part 4—Miscellaneous

14. Clause 13 provides for the prosecution deadline for an offence under the Bill.
15. Clause 14 empowers the Director to specify the relevant form and the way in which the form is to be submitted.
16. Clause 15 empowers the Secretary for Labour and Welfare to amend Schedule 1 by notice published in the Gazette.

Schedules

17. Schedule 1 contains a list of specified professionals.
18. Schedule 2 contains related amendments to the Criminal Procedure Ordinance (Cap. 221).

Preventive and Supportive Measures

The Government has spared no effort in continuously strengthening and reviewing existing preventive and supportive measures. The Government’s preventive and supportive measures in place and in the pipeline include:

- (a) ***Continuously strengthening social work services at schools*** –EDB has implemented the policy of “one school social worker for each school” in public sector primary schools as well as primary schools under the Direct Subsidy Scheme since the 2018/19 school year. A Consultation Service Grant has also been provided for procuring consultation, supervision and other support services for school social workers so as to further enhance the school social work and guidance services, including handling suspected child abuse cases. Since the 2019/20 school year, SWD has implemented the “two school social workers for each school” measure in secondary schools with supervisory manpower strengthened correspondingly. Starting from the 2021/22 school year, SWD has further strengthened the supporting manpower for school social work services in secondary schools throughout the territory so as to provide more intensive professional services for the needy students. In addition, SWD has regularized the Pilot Scheme on Social Work Service for Pre-primary Institutions in the 2022/23 school year. Early and appropriate interventions are made through early identification of and support to pre-primary children with welfare needs, and professional counselling and timely referral for relevant family members.

- (b) ***Continuously reviewing the mechanism of reporting non-attendance cases by schools*** – EDB requires primary and secondary schools to report to EDB on the 7th day of students’ continuous absence from schools, irrespective of the reasons for absence. Schools must comply strictly with the reporting requirements. In case of default, schools will be required to explain and take remedial actions. If EDB learns that a school has delayed reporting or failed to report suspected non-attendance cases as required, EDB will take the initiative to investigate and, where necessary, adopt different means, including issuing letters, visiting schools, etc., to remind schools that they must report cases as required. EDB has been reviewing the existing reporting mechanism

with a view to enhancing the effectiveness of handling non-attendance cases including strengthening the collaborations with schools such as heightening schools' awareness of the importance of timely reporting of non-attendance cases, sharing effective support measures, etc.. As regards kindergartens, the prevailing reporting mechanism for absentees in kindergartens aims to raise the alertness of the school personnel, and facilitate kindergartens' early identification of students in need of support or suspected child abuse cases so that early intervention and appropriate support and services can be provided in a timely manner. Should the school personnel notice any wounds or other signs of child abuse, even if a student is not absent or has been absent for less than seven days, they should immediately handle the case in accordance with the Procedural Guide. In the circumstances that a criminal offence may have been committed, the school should report the case to the Police as soon as possible.

(c) ***Strengthening the regulation and monitoring of residential child care services*** – SWD completed the Review of the Residential Child Care and Related Services in two phases in August 2022 and March 2023 and has been following up the recommendations in the Review Report. In the First Phase Review, amongst others, SWD has strengthened the regulation and monitoring of RCCCs/Residential Special Child Care Centres (“RSCCCs”), including:

- (i) requiring RCCCs/RSCCCs to install closed-circuit television system and confirming such installation; requiring RCCCs/RSCCCs to formulate policies and mechanisms for proactive monitoring and viewing records; updating the inspection checklist for strengthening the depth and breadth of inspections;
- (ii) adding health inspectors who were nurses and former law enforcement agency staff to Child Care Centres Advisory Inspectorate, enhancing unannounced inspections based on the principle of risk management and increasing the frequency of inspections in different periods;
- (iii) requiring operators to enhance the internal monitoring mechanism;
- (iv) setting a surveillance period for non-compliant operators, during which, SWD will closely monitor the effectiveness of implementing the improvement measures as a consideration to

decide whether the operator is suitable for the continued provision of part or all of the services subvented by SWD;

- (v) setting up service quality groups comprising the Justices of the Peace and independent persons from different backgrounds to conduct unannounced visits to RCCCs/RSCCCs. The service quality groups have commenced operation since October 2022;
- (vi) compiling a code of practice for RCCCs/RSCCCs to enable the operators/supervisors to have a more focused understanding on the service regulations and requirements; and
- (vii) deregistration of the child care supervisors and child care workers whom the Director considers no longer fit for the relevant work.

In the Second Phase Review, which covers other types of residential child care services¹, recommendations for improvement in terms of service quality, regulation, planning and provision include: to increase the manpower of different ranks, expand the scope of professional staff support services in residential care homes, strengthen staff training, and require superintendents to complete training courses on child protection, enhance the internal audit mechanism of service operators, and set a surveillance period for non-compliant operators, etc.. The report also recommended to introduce flexible recruitment and care arrangements for foster care service, and strengthen the support and training for foster parents. SWD is proactively following up with the report and will ensure that the recommendations for improvement are effectively implemented.

- (d) ***Reviewing the Comprehensive Child Development Service (“CCDS”)***
– CCDS is a cross disciplinary collaborative initiative which makes use of the Maternity and Child Health Centres, hospitals under the Hospital Authority, Integrated Family Service Centres/Integrated Services Centres and pre-primary institutions, to identify at-risk pregnant women, mothers with post-natal depression, families with psychosocial needs, and pre-primary children with health, developmental and behavioural problems and make referrals to the relevant health and

¹ These include institutional services, i.e. children’s homes, boys’/girls’ homes and boys’/girls’ hostels; and non-institutional services, i.e. foster care service, small group homes (“SGHs”) and SGHs for mildly mentally handicapped children.

social service units for appropriate follow-up actions and support services. In light of the recommendation of the Working Group on Children Protection under the CoC, LWB commissioned a consultant to review CCDS in December 2022. The consultant was tasked to explore ways to enhance the operation mode, strengthen early intervention and risk-based preventive measures, formulate effective assessment methods and indicators for service intervention and enhance the collaboration with non-governmental organizations on provision of supporting services at district level. The review will be completed by June 2024.

Implications of the Proposal

Financial and Civil Service Implications

With reference to the experience in overseas jurisdictions, the implementation of MRR for suspected child abuse cases would lead to the increase of reported cases. Recurrent provision of \$24.2 million has been approved for creating 41 permanent posts to enhance the Government's enforcement and support capacity, providing appropriate training to practitioners in the relevant professions and strengthening the promotion and public education work on child protection, to facilitate the implementation of the Bill.

2. We would review the actual situation upon the implementation of MRR and seek additional resources in accordance with the established mechanism where necessary and justified.

Family Implication

3. The proposal will strengthen the protection for children against abuse, violence or neglect by facilitating early identification and effective intervention of suspected child abuse cases. It enables early identification of more severe child abuse cases than would otherwise come to the attention of the authority, and may help reduce incidents of serious child abuse.

4. In addition, the proposal reinforces family members' obligation to provide support and protection to children. It also facilitates the provision of family support services to vulnerable or at-risk families when appropriate, especially where family members might be reluctant to seek help and the children are less able to seek assistance themselves. It also helps create a more child-centred culture, encourage child-focused parenting and strengthen parent-child connection, thereby promoting family harmony.

Gender Implication

5. With reference to the gender breakdown of the child abuse victims under different types of abuse, it is noted that females (401 cases in 2021) are more susceptible to sexual abuse than males (47 cases in 2021). The proposal will facilitate early detection and intervention of child abuse cases and thereby strengthening the protection for children, especially female in relation to sexual abuse.

Sustainability Implication

6. In terms of protection for children, the proposal will create a wider protection web for children and a strong deterrent to potential perpetrators that their abuse behaviours will be easily exposed. This also help avoid the harmful consequence of child abuse, including the impact on children's physical and mental health.

7. Apart from promoting family harmony as mentioned in paragraph 4, the proposal will also increase awareness and reinforce the moral responsibility of the general public to report child abuse/neglect, and help create a child-oriented culture that will not tolerate any abuse of children.

**Summary of Main Views of Stakeholders
on the proposed Mandatory Reporting Regime**

(A) Views on the Legislative Proposal

Definition of Children

- (i) Having considered the definition of children adopted by the United Nations Convention on the Rights of the Child and the World Health Organization, most stakeholders supported defining children as persons aged under 18. Individual stakeholders proposed to define children as persons aged under 16 to reflect the ability of older children in making informed decisions. Some other individual stakeholders suggested that mentally incapable persons aged over 18 should also be covered.

Definition of Types of Suspected Cases subject to Reporting

- (ii) Some stakeholders were concerned that the reporting threshold were too broad and might cover cases other than child abuse, including bullying among children and accidents involving children etc.; hence suggested that these circumstances should be exempted from the MRR.
- (iii) Some stakeholders suggested that the Mandated Reporters' Guide should focus on elaborating the mandatory reporting thresholds and giving more illustrations of circumstances required reporting.
- (iv) It was suggested that a uniform definition of serious child abuse cases that require reporting should be worked out to provide consistent criteria for stakeholders in different sectors.
- (v) Some stakeholders advised that “neglect”, “psychological abuse” and even some physical injuries could hardly be discovered in a timely manner. It was suggested that the Government should provide clearer and more specific guidelines and real-case illustrations of reportable circumstances.

- (vi) Some stakeholders said that the reportable circumstances concerning children staying at residential care services units should be clearly set out. For example, whether safety measures, such as applying physical restraints to individual residing children suffering from hyperactivity disorder or serious emotional and behavioural problems, would be regarded as child abuse.

List of Mandated Reporters

- (vii) Most stakeholders of the social welfare and education sector agreed that social workers and teachers etc. should be included in the list of practitioners subject to the mandatory reporting requirement in order to cover practitioners fulfilling both criteria in respect of “frequent contacts with children” and “professions or work currently subject to some form of regulation”. Some stakeholders suggested that persons-in-charge of the boarding section of schools should be clearly defined. Some stakeholders of the healthcare sector expressed reservation about whether the 13 healthcare professions subject to statutory registration and the five healthcare professions under the Accredited Registers Scheme for Healthcare Professions to be included into the mandatory reporting regime (MRR) fulfill the criteria of “frequent contacts with children”. Most practitioners pointed out that their contacts with children are limited in terms of duration, frequency and scope; hence they would not have sufficient information or evidence to prove that child abuse was involved in a case and requested clear guidelines to help identify child abuse cases.
- (viii) Some stakeholders suggested that the list should be expanded to cover practitioners who had frequent contacts with children but their professions or work were not currently subject to any forms of regulation, including foster parents, janitors, private tutors, tutors of tutorial schools, and coaches or instructors of various types of activities for children.
- (ix) As the handling of suspected child abuse cases often involved inter-disciplinary collaboration, some stakeholders enquired whether professionals in different disciplines should reach a consensus on the same case before reporting it; which party or whether all parties involved should make the report if a suspected case was identified by more than one practitioner simultaneously; and whether a mandated reporter who did not report the case because he/ she knows that

another mandated reporter had made the report would be subject to criminal liability.

- (x) Some stakeholders were concerned if the mandated reporter was convicted of failing to make a report, whether the employer or supervisor would also be subject to criminal liability. There was also a concern over whether the mandated reporter who had already reported the case to the management would be subject to criminal liability for the latter's failure or delay in reporting the case eventually.

Penalty for Failure to Meet MRR

- (xi) Stakeholders generally recognized that the penalty level should be commensurate with the different nature/seriousness of offences committed by non-reporters relative to perpetrators of child abuse. Heavy penalty has been imposed for serious offences under some local legislation while non-reporting of such serious offences incurs a penalty of 3-month imprisonment and a fine of \$50,000.
- (xii) A few stakeholders opined that the proposed penalty level for failure to meet the MRR was too stringent, which might put stress on staff and lead to disqualification from their professions. It was suggested that a mandated reporter who did not make a report should only be fined for the first-time offence while repeated offences should be subject to fine and imprisonment. Another stakeholder also proposed a reward system in lieu of penalties to alleviate the stress on frontline staff.
- (xiii) Practitioners of the healthcare sector reflected that they in fact had very limited contacts with children in terms of duration, frequency and scope. Hence, in determining the liability of the MRR, considerations for social workers and teachers should not be equally applied to healthcare professionals, and the role of different professions in service delivery should be taken into account.
- (xiv) Individual stakeholders proposed to further raise the penalty level to five years of imprisonment for enhanced deterrence.

Safeguards for Mandated Reporters

- (xv) Many stakeholders opined that the proposed obligation of MRR mainly rested with frontline staff, and expressed concerns that employers or organizations would inhibit/prevent them from fulfilling the obligation. Some stakeholders were worried that they would be treated unreasonably if the employer disagreed with the reporting; the reporter's relationship with the child and the parents would be damaged; or even their personal safety would be endangered. It was suggested that the liability of the employer or organization under the MRR should be explicitly spelt out, e.g. by making express provisions to prohibit the employer or organization from inhibiting/preventing others from fulfilling the obligation, and that any non-compliance by the employer or organization would be liable to the same criminal liability.
- (xvi) It was suggested that any disclosure of mandated reporter's identity or information from which their identity could be deduced should be subject to the same criminal liability, so as to better protect the mandated reporters.
- (xvii) Some stakeholders were concerned that the proposed safeguarding provisions would only cover the reporting of cases that met the mandatory reporting thresholds, and hence reporting cases that fell below the thresholds might lead to prosecution or a breach of the code of professional conduct or ethics.
- (xviii) An organization providing services to victims of sexual violence pointed out that some teenage victims of sexual abuse might be reluctant to seek help for fear of being exposed under the MRR. It was suggested that the victims should be allowed to request professionals not to report their cases when they sought help from non-governmental organizations and that the mandated reporter concerned should be exempted from the MRR.

Reporting Channels

- (xix) Some stakeholders were of the view that a clearer definition of "as soon as practicable" should be given so that mandated reporters would not be considered to have missed the timeframe for making reports and therefore would not breach the law inadvertently. Other

stakeholders were concerned that without a definitive timeline, mandated reporters might delay making the report and hence weaken the protection for children.

- (xx) Some stakeholders suggested that SWD and the Police should consider standardizing the format of the written report and prepare a simple form to facilitate mandated reporters in fulfilling the obligation of MRR. Individual stakeholders urged the Government to provide clearer reporting flow and guidelines. On the other hand, individual stakeholders opined that those who had made reports to the Police should not be required to complete the written report.

Training Arrangements

- (xxi) Stakeholders considered that mandated reporters should be required to receive relevant training to ensure that they had basic capacity for identification and handling of child abuse cases. Some stakeholders were of the view that a clearer and more specific elaboration of the roles and responsibilities of mandated reporters should be included in the training content so as to alleviate concerns of frontline staff. Besides, some stakeholders considered it necessary to ensure that the new legislation is enacted after practitioners have completed the relevant training and that clear and detailed operation guidelines should be provided.
- (xxii) Stakeholders suggested that training for mandated reporters should be included as pre-service training to ensure that practitioners had received relevant training prior to employment. It was also suggested that the training should be included in continuing professional development programmes for relevant professions, covering real-life scenarios and cases of different professionals' daily services, etc..
- (xxiii) A stakeholder suggested that face-to-face training should be provided for frontline staff, in addition to online and self-learning training. Interactive workshops should also be arranged to enhance the ability of frontline education practitioners to make professional judgment and boost their confidence in identification of suspected child abuse cases. Moreover, it was suggested that information related to child protection should be updated regularly, and new or common precedent cases should be added to the training content.

(B) Views on the Preventive and Supportive Measures

- (i) Stakeholders were concerned whether the SWD and relevant government departments had sufficient manpower to cope with the substantial increase in the number of reported cases upon implementation of the MRR. Other stakeholders opined that the legislation might lead to more hidden cases and some perpetrators would be more reluctant to seek assistance or arrange treatment for child abuse victims.
- (ii) Stakeholders worried that given the shortage of places under the existing emergency placement services for children, the services might not be able to address the surge in the number of cases upon implementation of the MRR. It was suggested that SWD should make earlier planning to ensure that suspected child abuse victims could secure suitable placement in time.
- (iii) Some frontline social workers of non-governmental organizations expressed difficulty in dealing with uncooperative parents who did not allow social workers to approach suspected child abuse victim. It was suggested that the Government should delegate more power to social workers and provide concrete support to facilitate their intervention in related cases.
- (iv) Some stakeholders suggested setting up a support hotline or an online quick Questions and Answers platform for operation outside office hours.
- (v) Some stakeholders suggested that a central data bank for children/families at risk should be set up to enable professionals to make reference and facilitate their early identification of child abuse cases.
- (vi) Some stakeholders proposed to promote cross-sectoral collaboration, such as assigning healthcare staff to relevant service units to conduct body check for children in need and assist front line staff in identifying child abuse cases.
- (vii) Some stakeholders opined that ample precautions should be taken, including providing high-risk (e.g. drug abuse, drug addiction and depression) parents and single-parent families with emotional

counselling and other family support services as appropriate, as well as referring their children with special needs for assessment and rehabilitation services to enhance their resilience.

- (viii) Some stakeholders considered that parent and community education should be strengthened to foster positive parenting, develop correct concepts of child protection and provide an enabling environment for the development needs of children.
- (ix) Some stakeholders suggested that guidelines should be given to the management of schools, hospitals and social welfare organizations to ensure that they have sufficient knowledge and understanding to facilitate mandated reporters' fulfilment of their statutory obligation. Individual stakeholders said that legislation and/or guidelines should be drawn up to specify if organizations were authorized to take relevant photos or videos for record and as evidence to support their judgement on the need to report.
- (x) Stakeholders suggested that parent support and education should be strengthened so as to remind parents not to resort to corporal punishment in parenting and help them realize the seriousness of child abuse.
- (xi) Stakeholders suggested that the Government should, in tandem with its efforts on the new legislation, step up public education to raise civic awareness of child protection.
- (xii) Some stakeholders considered that issuing letters to schools who had delayed or failed to report students' continuous absence was inadequate and called on the Government to consider more effective means to ensure schools would report suspected non-attendance cases.