

LRC issues report on voyeurism and non-consensual upskirt-photography

The following is issued on behalf of the Law Reform Commission:

The Law Reform Commission (LRC) released a report on "Voyeurism and Non-consensual upskirt-photography" today (April 30) recommending the introduction of a new and specific offence of voyeurism to deal with an act of non-consensual observation or visual recording (for example, a photograph, videotape, or digital image) of another person for a sexual purpose; and a new and specific offence in respect of non-consensual upskirt-photography.

The report follows a study on the overall review of substantive sexual offences by the LRC's Review of Sexual Offences Sub-committee (Sub-committee), chaired by Mr Peter Duncan, SC, which issued three consultation papers in September 2012, November 2016 and May 2018 respectively. Noting the strong sentiments received in the consultation exercises and the imminent need for the introduction of these new offences, it was decided that it would be to the benefit of our community to expeditiously publish the report ahead of the remaining work of the Sub-committee. The responses to the consultation papers have been taken into account in formulating the final recommendation as regards voyeurism and non-consensual upskirt-photography in the report.

The report recommends that a specific offence of voyeurism should be introduced along the lines of section 67 of the English Sexual Offences Act 2003 to criminalise acts of non-consensual observation or visual recording of another person for a sexual purpose. Such an act is a serious violation of another person's sexual autonomy. The English approach is favoured as it covers all aspects of the conduct including observation, channelling and recording; the purpose of obtaining sexual gratification is an element of the offence; and the definition of "a private act" is provided for in the legislation.

The report also recommends that a specific offence of non-consensual upskirt-photography should be introduced along the lines of the newly added section 67A of the English Sexual Offences Act 2003 while taking into account a few issues.

Firstly, the act of non-consensual upskirt-photography should be outlawed irrespective of its purpose. A catch-all provision would also have the advantage of criminalising acts of non-consensual upskirt-photography which are committed by persons under the employment of a third party and may do so for the purpose of obtaining a monetary return rather than for the purpose of obtaining sexual gratification or for humiliating, alarming or distressing the victim.

Secondly, there should be an additional offence to criminalise an act of non-consensual upskirt-photography done for the purpose of obtaining sexual

gratification. Such an offence would then qualify as a sexual offence and be covered by the Sexual Conviction Record Check Scheme.

Thirdly, the catch-all provision would be a statutory alternative offence if the purpose of obtaining sexual gratification cannot be proved at trial.

Lastly, the new offence of non-consensual upskirt-photography should cover any place (i.e. irrespective of whether the act took place in public or private).

Copies of the report are available on request from the Secretariat of the Law Reform Commission at 4/F, East Wing, Justice Place, 18 Lower Albert Road, Central, Hong Kong. The report can also be accessed on the Commission's website at www.hkreform.gov.hk.