



THE CAYMAN ISLANDS LAW REFORM COMMISSION



DECriminalISATION OF SUICIDE

FINAL REPORT

31ST MARCH, 2020

THE CAYMAN ISLANDS LAW REFORM COMMISSION

Chairman: Mr. Hector Robinson, QC
Commissioners: Hon. Mr. Justice Alexander Henderson, QC
Mr. Vaughan Carter, Attorney-at-Law
Mr. Abraham Thoppil, Attorney-at-Law
Ms. Reshma Sharma, Solicitor General
Mr. Patrick Moran, Director of Public Prosecutions

Director: Mr. José Griffith, Attorney-at-Law
Senior Legislative Counsel: Mrs. Karen Stephen-Dalton, Attorney-at-Law
Paralegal Officer: Mrs. Katherine Wilks
Administrative Secretary: Mrs. Lourdes Pacheco

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CAYMAN ISLANDS LAW REFORM COMMISSION

DECRIMINALISATION OF SUICIDE

ACKNOWLEDGEMENTS

The Law Reform Commission extends thanks to all stakeholders and the general public for the valued contribution leading up to the preparation of this final report on the issue of the decriminalisation of suicide.

CAYMAN ISLANDS LAW REFORM COMMISSION

DECRIMINALISATION OF SUICIDE

1. INTRODUCTION

- 1.1 The Law Reform Commission submits for consideration its Final Report on the decriminalisation of suicide.

Background

- 1.2 The issue of the decriminalisation of suicide was examined by the Law Reform Commission in response to a referral by the Honourable Attorney General, dated January, 2019, requesting that the Law Reform Commission (“the Commission”) review the penal laws dealing with suicide¹ and, in particular, to consider whether the offence of suicide should be decriminalised. The referral comes against the background of a submission made to the Commission by the Legal Committee of the Alex Panton Foundation² (“the Foundation”) proposing the decriminalisation of suicide.
- 1.3 Every 40 seconds a person dies by suicide somewhere in the world and many more attempt suicide.³ The key risk factors for suicide are mental disorders such as bipolar, schizophrenia, personality disorders and depression as a result of stressful life events. Those who attempt suicide are at a high risk of future attempts and effective prevention measures should include, among other things, treatment for mental disorders. Essentially, people who attempt suicide are in need of help rather than punishment in view of association with a high psychiatric or psychological morbidity.⁴ However, the perception of suicide and suicidal ideations as criminal creates a barrier that prevents people from seeking appropriate treatment⁵ and the issue of suicide and treatment for suicide is a public health concern that needs to be managed in a sensitive manner.⁶

¹ Suicide is the act of intentionally taking one’s own life. See English by Oxford Dictionaries <https://en.oxforddictionaries.com/definition/suicide>.

² See the Alex Panton Foundation website at <https://alexpantonfoundation.ky/>.

³ Preventing Suicide: A global imperative, World Health Organization at page 6.

⁴ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4261212/>.

⁵ Alex Panton Foundation, Legislative Proposal to decriminalise suicide.

⁶ Ibid.5.

- 1.4 Notably, among young people 15-29 years of age, suicide is the second leading cause of death globally.⁷ A recent national survey of all children and youth at Cayman Islands public and private schools, including the University College of the Cayman Islands students, undertaken by the National Drug Council in collaboration with the Foundation produced statistics which suggest that the rates of suicide are continuously rising in the Cayman Islands, particularly amongst our children and young people as one in three children surveyed reported suicidal ideation and 13% reported actual attempted suicide. The Survey also suggested that only 5% of these children in need are seeking treatment.⁸
- 1.5 The Foundation’s primary objective is raising awareness of mental illnesses affecting children and young adults in the Cayman Islands with a particular focus on anxiety and depression⁹ and its submission sets out the potential benefits of decriminalising suicide to the Cayman Islands as follows —
- (a) to safeguard the rights of the people with mental illness and align the Cayman Islands with other progressive Commonwealth countries (including the UK, Canada, Australia, New Zealand, and most of Europe) that have abolished the crime of attempted suicide;
 - (b) to encourage further dialogue and consultation on mental health in our community; and
 - (c) to address mental health needs in our society with the potential to reduce delinquency and create a more productive workforce, an important step towards a healthier, more resilient community.¹⁰
- 1.6 The World Health Organization has also taken a keen interest in decriminalising suicide or attempted suicide at both international and national levels and the World Health Organization’s 2014 Report, “Preventing Suicide: A global imperative” (“the Suicide Report”) serves as a resource aimed at assisting policy-makers and other stakeholders in making suicide prevention an imperative.¹¹ The Suicide Report therefore urges countries

⁷ Ibid 3 and Ibid 5.

⁸ Ibid 5.

⁹ See the Alex Panton Foundation website at <https://alexpantonfoundation.ky/>.

¹⁰ Ibid 5.

¹¹ See the preface to Preventing Suicide: A global imperative, World Health Organization.

to review their legal provisions in relation to suicide to ensure they do not deter people from seeking help.¹²

- 1.7 The Suicide Report also states that many of the countries with laws stipulating punishments for suicide do not actually prosecute people who attempt suicide¹³ and the same is true in the Cayman Islands. There are no reported cases of prosecution being sought for those who attempt suicide in the Cayman Islands and this is in line with the view that suicide should be decriminalised in the Cayman Islands because treatment, rather than prosecution, is the appropriate and recommended response for a person struggling with a mental health crisis.

Research and consultation process

- 1.8 The Commission carried out comprehensive research and examination of the common law and the provisions in the Penal Code (2019 Revision) of the Cayman Islands (the “Penal Code”) and the Interpretation Law (2015 Revision) that save suicide as a criminal offence and make attempted suicide and assisted suicide criminal offences. A review of the relevant provisions of the Penal Code against the relevant provisions of the laws of various jurisdictions including England and Wales, Canada, India, Ireland and Singapore was carried out by the Commission¹⁴. In addition, the Commission consulted the Alex Panton Foundation and the Mental Health Commission in the initial stages of the review.
- 1.9 The research findings of the Commission were relied upon in the formulation of the Discussion Paper entitled “Decriminalisation of Suicide”, dated 12th August, 2019 (the “Discussion Paper”) which sets out the Commission’s initial recommendations regarding the decriminalisation of suicide and related matters. The Discussion Paper was published for an initial two month public consultation period on the 16th August, 2019 with a deadline set at 21st October, 2019. In addition to general media and website publication, the paper was sent directly to the following stakeholders —
- (a) Alex Panton Foundation;
 - (b) Mental Health Commission;
 - (c) Cayman Ministers’ Association; and

¹² Preventing Suicide: A global imperative, World Health Organization at page 51.

¹³ Ibid 5.

¹⁴ A comparison table of suicide laws of various countries is attached as Appendix 3.

(d) Cayman Islands Legal Practitioners Association.

Based on a request, from the Cayman Ministers' Association, the consultation period was extended to 31st October, 2019.

1.10 The Commission has received substantive responses from one member of the public and three of the stakeholders as follows —

- (a) Alex Panton Foundation;
- (b) Cayman Ministers' Association;
- (c) Mental Health Commission; and
- (d) Mr. Richard Coles.

1.11 The Alex Panton Foundation and the Mental Health Commission were mainly supportive of the Commission's views and recommendations and welcomed the proposal to amend the Penal Code to provide for the decriminalisation of suicide.

1.12 Mr. Richard Coles fully supported the Penal Code being amended to decriminalise suicide and attempted suicide so as not to punish those in crisis but to offer assistance. However, he thought it would be most unhelpful if the amendments proposed were to make suicide or attempted suicide lawful.

1.13 The Cayman Ministers' Association agreed with the comments of Mr. Richard Coles and whilst the Association did not not agree with the amendment Bills set out in the Discussion Paper, the Association stated that it would likely support an amendment Bill that arose from the Indian model¹⁵ being considered as providing a possible example of the sort of reform that we could and should adopt along the lines of the Cayman Islands' own constitutional basis.

Summary of recommendations

1.14 The Commission considered the comments and views of the respondents in response to the Discussion Paper and accordingly, a recommendation for the amendment of the Penal Code to provide for the decriminalisation of suicide is made and the recommendation is supported by draft legislation setting out the proposed provision.

¹⁵ See paragraphs 2.14 and 2.15.

- 1.15 Having regard to mental disorders being identified as the key risk factors for suicide and attempted suicide, the Commission considers that the relevant provisions of the Mental Health Law, 2013¹⁶ of the Cayman Islands are adequate to deal with persons who attempt suicide and as such no recommendations are made in that regard.
- 1.16 The Commission also recommends the retention of the offence of assisted suicide which usually relates to physical suffering rather than mental illness but, unless specifically saved, would fall away if the offence of suicide is repealed. This recommendation is also supported by draft legislation setting out the proposed provisions.
- 1.17 Suicide pacts are outside the scope of the Commission’s remit and are not discussed except to indicate that the provisions of the Penal Code in respect of suicide pacts¹⁷ are similar to legislation in respect of the suicide pacts in the United Kingdom¹⁸ and in other jurisdictions.¹⁹
- 1.18 The draft Laws attached as Appendices 1 and 2 make provision for amendment of the Penal Code and consequential amendment to the Health Care Decisions Law, 2019 based on the recommendations.

2. SUICIDE LAWS

Suicide and attempted suicide

- 2.1 Suicide is the act of intentionally taking one’s own life²⁰ and attempted suicide is described as non-fatal self-inflicted potentially injurious behavior with the intent to die.²¹
- 2.2 Suicide and attempted suicide are criminal offences in a small number of countries around the world although they are not criminal offences in the majority of countries.²² In the Early 19th century, most countries had laws that criminalised suicide and provided penalties, including forfeiture of property and imprisonment for persons who attempted

¹⁶ Law 10 of 2013.

¹⁷ See section 187 of the Penal Code.

¹⁸ See section 4 of the Homicide Act 1957, c. 11, Reginal. 5 and 6 Eliz 2. UK Public General Acts.

¹⁹ https://en.wikipedia.org/wiki/Suicide_legislation.

²⁰ See the definition of “suicide” in English by Oxford Dictionaries <https://en.oxforddictionaries.com/definition/suicide>.

²¹ See the definition of “suicide attempt” in Wikipedia, the Free Encyclopedia, https://en.wikipedia.org/wiki/Suicide_legislationhttps://en.wikipedia.org/wiki/Suicide_terminology

²² https://en.wikipedia.org/wiki/Suicide_legislation.

suicide. However, in the last half-century most countries (although not all) have decriminalised suicide. According to the Suicide Report, only 25 of the 192 countries and states surveyed have laws and punishments for attempted suicide.²³

Cayman Islands laws on suicide

- 2.3 In early English common law, suicide was a “Felo de se,” Latin for “felon on himself.” A person found guilty of suicide, even though dead, was subject to various punishments including forfeiture of property to the Crown and being given a profane burial.²⁴ The English common law offence of suicide (“self-murder”) was saved in the Cayman Islands by section 40 of the Interpretation Law (2015 Revision)²⁵ and there are no provisions repealing the offence for the Cayman Islands whether by Order in Council or through the enactment of legislation. Further, section 2 of the Penal Code provides that “*nothing in [the Penal Code] shall affect the liability, trial or punishment of a person for an offence against the common law or any other law in force in the Islands.*” Despite the fact that this common law offence was abolished in England and Wales almost 60 years ago, no such abolition has been effected in the Cayman Islands.²⁶
- 2.4 Under Cayman Islands law, attempted suicide is also an offence by virtue of section 318(1) of the Penal Code which provides that “*When a person intending to commit an offence begins to put his intention into execution by means adapted to its fulfilment and manifests his intention by some overt act but does not fulfil his intention to such an extent as to commit the offence, he is deemed to attempt to commit the offence.*”
- 2.5 Although there are no examples of cases of prosecutions for suicide or attempted suicide in the Cayman Islands, persons were prosecuted at common law in England and Wales for the offence of self-murder until 50 years ago. In many cases, prosecutions against persons who attempted suicide and survived were discharged but some were fined or sent to prison for a short sentence of up to six months. For example, when Lieutenant Geoffrey Walker attempted suicide on the beach in Dunkirk, using a French revolver he

²³ Preventing Suicide: A global imperative, World Health Organization at page 54.

²⁴ <https://www.thevintagenews.com/2016/12/27/in-early-english-common-law-suicide-was-a-punishable-crime/>.

²⁵ Section 40 of the Interpretation Law (1995 Revision) provides that “*the laws and statutes of England as were, prior to the commencement of the 1728 Act 1 George II Cap. 1, esteemed, introduced, used, accepted or received as laws in the Islands shall continue to be laws in the Islands save in so far as any such laws or Statutes have been, or may be, repealed or amended by any Law of the Islands.*”

²⁶ See section 1 of the Suicide Act 1961, c. 60, 9 and 10 Eliz 2, UK Public General Acts which does not extend to the Cayman Islands.

had found, he was prosecuted in June 1951 and fined £25 for his actions.²⁷ Similarly, in 1958, Lionel Churchill was found with a bullet wound in his forehead lying next to his decomposed wife who had recently passed away. He had tried but failed to take his own life in the bed of their Cheltenham home. Although the doctors said Churchill needed medical treatment at a mental hospital, magistrates disagreed and he was sent to prison for six months after pleading guilty.²⁸

Overview of laws of other countries in which suicide or attempted suicide is a criminal offence

2.6 The Cayman Islands are among the minority of countries, mainly from the African and Asian regions, that still criminalise suicide or attempted suicide. In the Caribbean, there are other countries that still have laws that expressly criminalise suicide or attempted suicide. For example, the Penal Code of the Bahamas²⁹ still provides that “*whoever attempts to commit suicide is guilty of a misdemeanor*”. Ghana, Kenya and Uganda are among the countries in Africa that currently criminalise attempted suicide. In Ghana, a person who attempts suicide is guilty of a misdemeanor.³⁰ The same provision is found in Kenya³¹ and Uganda.³² In Asia, Malaysia is among the countries that continue to criminalise attempted suicide.

Overview of laws of countries in which suicide is not a criminal offence

2.7 Research suggests that attempted suicide is usually the result of a combination of factors, including mental illness (and in particular depression). It is therefore imperative that legislative frameworks which decriminalise suicide are also capable of making provision for persons who are suffering from mental illnesses that cause them to attempt suicide. In that respect England, Ireland, Canada and India, among others, have all decriminalised suicide or attempted suicide and have laws that enable persons attempting suicide to be treated for mental illness rather than as criminals.

²⁷ <https://www.bbc.com/news/magazine-14374296>.

²⁸ Ibid 26.

²⁹ Chapter 84 Statute Law of the Bahamas.

³⁰ Section 57(2) of the Ghana Criminal Code (Act 29, 1960).

³¹ Kenya Penal Code, Chapter 63, section 226.

³² Penal Code Act of Uganda (Chapter 120, Laws of Uganda), section 210.

England and Wales

- 2.8 Under English common law, suicide was perceived as an immoral, criminal offence against God and also against the Crown.³³ It first became illegal in the 13th century and until 1822, the possessions of somebody who died by suicide could even be forfeited to the Crown. However, section 1 of the Suicide Act 1961³⁴ decriminalised suicide in England and Wales by providing that “the rule of law whereby it is a crime for a person to commit suicide is hereby abrogated”. Therefore, there is no basis under the current English law for prohibiting a person from taking their own life if the person has capacity to make that decision and a person who has failed in the attempt to kill himself will not be prosecuted.
- 2.9 In England and Wales, the Mental Health Act 1983³⁵ gives the opportunity for the issues that have caused a person to contemplate suicide to be addressed as a mental health matter. Section 136 of the Mental Health Act 1983 provides for the detention of a person who appears to a constable to be suffering from a mental disorder and to be in immediate need of care or control, if the constable thinks it necessary to do so in the interests of that person or for the protection of other persons. The term “mental disorder” is defined to mean any disorder or disability of the mind and the only purpose of the detention is to take the person to a safe place where the person can be assessed with a view to treatment. The detention rate under section 136 of the Mental Health Act 1983 relating to suicide prevention is reported to be as high as 80%.³⁶
- 2.10 In the *Rabone & Anor v Pennine Care NHS Trust* case (the “Rabone Case”)³⁷, Ms. Rabone, a voluntary patient diagnosed as suffering from a severe episode of recurrent depressive disorder was allowed to leave the hospital after she attempted suicide several times. On the second day of her leave Ms. Rabone took her own life. The Supreme Court found that Ms. Rabone was owed a positive operational duty under Article 2 (right to life) of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

³³ See Holt, Gerry (2011-08-03). BBC News - When suicide was illegal. <https://www.bbc.com/news/magazine-14374296>.

³⁴ c. 60 9 and 10 Eliz 2, UK Public General Acts.

³⁵ 1983 c.20, UK Public General Acts.

³⁶ See, The Conversation, *Changes to controversial police Mental Health Act powers may only be a sideways step*, Claire Warrington, PhD Candidate, <https://theconversation.com/changes-to-controversial-police-mental-health-act-powers-may-only-be-a-sideways-step-88504> University of Brighton.

³⁷ [2012] UKSC 2.

by the NHS Trust. The Trust should have taken preventative action to safeguard her life even though she was a voluntary patient not detained under the mental health legislation. The Supreme Court concluded that the trust failed to do all that it could reasonably have been expected to do in order to prevent the risk of her suicide.³⁸ It appears therefore, that Ms. Rabone should have been detained under section 136 of the Mental Health Act 1983.

- 2.11 The Rabone case demonstrates the importance of correctly balancing the competing interests of duty of care on one hand and personal autonomy on the other.³⁹ Lady Hale’s reasoning highlighted the difficulty in achieving this balance. She stated that - “There is a difficult balance to be struck between the right of the individual patient to freedom and self-determination and her right to be prevented from taking her own life [it] appears that there was no proper assessment of the risks before she was given leave and no proper planning for her care during the leave. Having regard to the nature and degree of the risk to her life, and the comparative ease of protecting her from it, I agree that her right to life was violated”.⁴⁰

Canada

- 2.12 When the Criminal Code was introduced in Canada in 1892, suicide and attempted suicide were both criminal offences under section 241(b) but these offences were removed from the Criminal Code in 1972. This means that a person who attempts suicide in Canada does not commit an offence under the Canada Criminal Code.
- 2.13 In 2012, the Federal Framework for Suicide Prevention Act⁴¹ was enacted to make it mandatory for the Government of Canada to establish a federal framework for suicide prevention that recognises that suicide, in addition to being a mental health issue, is a public health issue and that, as such, it is a health and safety priority. Section 2 of the Federal Framework for Suicide Prevention Act designates the appropriate entity within the Government of Canada to assume responsibility for —
- (a) providing guidelines to improve public awareness and knowledge about suicide;

³⁸ Ibid 45.

³⁹ Ibid 45.

⁴⁰ Ibid 45, paragraph 107.

⁴¹. S.C. 2012, c. 30

- (b) disseminating information about suicide, including information concerning its prevention;
- (c) making publicly available existing statistics about suicide and related risk factors;
- (d) promoting collaboration and knowledge exchange across domains, sectors, regions and jurisdictions;
- (e) defining best practices for the prevention of suicide; and
- (f) promoting the use of research and evidence-based practices for the prevention of suicide.

India

2.14 Section 115 of the Mental Healthcare Act, 2017⁴² overturned section 309 of the Indian Penal Code⁴³ (which criminalised attempted suicide) and imposed a positive duty on the government to provide assistance and mental health services to those who have attempted suicide. Section 309 of the Indian Penal Code which provides that “*whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine or both*” was thought to be archaic and grossly inhumane and its overturn came after many appeals for it to be removed.⁴⁴

Section 115 of Mental Healthcare Act, 2017 provides that “*Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.*” That section also imposes a duty on the appropriate Government to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.

2.15 The support of mental health experts with regard to India’s move to decriminalise suicide was noted in an article in the National in April 2017⁴⁵. It was reported in that article that one psychiatrist said that people who attempted suicide were already “stressed out” and

⁴² No. 10 of 2017, Laws of India.

⁴³ Section 309 of the Indian Penal Code provided that whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

⁴⁴ see for example *Gian Kaur vs State of Punjab*. AIR 1996 Sc 946; 1996.

⁴⁵ *Attempted suicide no longer a crime as India changes attitude to mental health problems*, Rebecca Bundhun, <https://www.thenational.ae/world/attempted-suicide-no-longer-a-crime-as-india-changes-attitude-to-mental-health-problems-1.55290>.

needed assistance and counselling, rather than having to deal with the fear of being put behind bars. Another psychiatrist was reported to have said that the number of cases in which people had been jailed for attempted suicide was probably not large because most incidents were not reported to authorities. The view of the psychiatrist was that the old law had created a stigma around attempting suicide that had discouraged people from seeking help because they were afraid the police would come to them.⁴⁶

Singapore

- 2.16 Singapore has recently only passed a law to decriminalise suicide. Until January 2020, under section 309 of Singapore’s Penal Code, attempting suicide was an offence punishable by a term of at least one year imprisonment, a fine, or both. Singapore’s Penal Code Review Committee (“the Committee”) in its Report of August, 2018⁴⁷ proposed the repeal of section 309. The Committee stated that section 309 is a 19th century provision which “exists because it was thought that criminalisation was the best way to deter suicide attempts”.⁴⁸ The Committee noted that “there is a growing recognition that treatment, not prosecution”⁴⁹ is the appropriate response in cases of attempted suicide or suicide. Most of the respondents to the Committee’s report agreed that persons who attempt suicide should be provided with help rather than be penalised. However, a minority were of the view that the decriminalisation of attempted suicide is contrary to the societal view that life is precious.⁵⁰
- 2.17 The proposal to decriminalise attempted suicide was among the sweeping amendments in the Criminal Law Reform Bill⁵¹ tabled and passed by the Government in the Singapore Parliament in February, 2019. In the Parliamentary sitting held on 6th May 2019, the Bill drew strong views from various Members of Parliament. One view expressed in Singapore was that the relevant provisions in the Criminal Law Reform Bill should be reconsidered as retaining the law would deter suicide attempts and removing it would it

⁴⁶ Ibid 45.

⁴⁷ Penal Code Review Committee Report, August, 2018, <https://www.mha.gov.sg/docs/default-source/default-document-library/penal-code-review-committee-report3d9709ea6f13421b92d3ef8af69a4ad0.pdf>.

⁴⁸ Ibid 32, paragraph 50 at page 347.

⁴⁹ Ibid 32, paragraph 13 at page 339.

⁵⁰ First Reading of Criminal Law Reform Bill and the Government’s Response to Feedback on it, <https://www.mha.gov.sg/newsroom/press-release/news/first-reading-of-criminal-law-reform-bill-and-the-government-response-to-feedback-on-it>.

⁵¹ Section 89 of the Criminal Law Reform Bill, 2019, Singapore.

could cause more suicides to occur.⁵² It was suggested that the law could be retained while maintaining support, care and counselling for those who are contemplating suicide.⁵³ Another reason for not supporting the provision to decriminalise suicide was that it would remove the requirement to report on attempted suicides and would take away a “crucial means” through which professional care may be offered to a suicidal person.⁵⁴ The contrary view was that “a person in distress and attempting suicide should not be treated like a criminal and must be shown care and compassion with the necessary professional and psychosocial support”.⁵⁵

Consideration of Cayman Islands Mental Health legislation

- 2.18 The Commission supports the majority position that attempted suicide is a very serious problem that requires mental health interventions and should not be treated as a criminal offence. The decriminalisation of suicide would highlight the urgent need to develop a system to deliver mental health services to persons who attempt suicide in the Cayman Islands. In that regard, we consider that the Mental Health legislation already in place in the Cayman Islands is adequate to support the delivery of such services.
- 2.19 Sections 7, 8 and 9 of the Mental Health Law, 2013 are instructive. Section 7 gives a constable the power to apprehend and place in protective custody any person who is, by reason of mental impairment or serious mental illness, an immediate danger, or is likely to become a danger to him or her or others. The constable must with all reasonable dispatch, but in any case not longer than twelve hours, bring the person before a government medical doctor registered under the Health Practice Law (2005 Revision). The medical doctor must examine that person, and if the medical doctor considers that the person should be further detained the medical doctor shall, within twelve hours of receiving the patient, make an emergency detention order under section 6 after consultation with a medical officer. “Serious mental illness” is defined in section 2 of the

⁵² See Parliamentary Debates, Singapore Official Report, Thirteenth Parliament, Volume 94 No 103, Second Session, Monday, 06 May 2019 at <https://sprs.parl.gov.sg/search/fullreport?sittingdate=06-05-2019>, speech by Mr. Christopher De Souza, MP for Holland-Bukit Timah, See also MPs divided on views regarding move to decriminalise suicide, <https://www.todayonline.com/singapore/parliament-mps-divided-views-regarding-move-decriminalise-suicide>.

⁵³ Ibid 52.

⁵⁴ Ibid 52.

⁵⁵ See Parliamentary Debates, Singapore Official Report, Thirteenth Parliament, Volume 94 No 103, Second Session, Monday, 06 May 2019 at <https://sprs.parl.gov.sg/search/fullreport?sittingdate=06-05-2019>, speech by MP Anthea Ong (Nominated Member), See also MPs divided on views regarding move to decriminalise suicide, <https://www.todayonline.com/singapore/parliament-mps-divided-views-regarding-move-decriminalise-suicide>.

Mental Health Law, 2013 to mean a substantial disorder of thought, mood, perception, orientation or memory which - (a) grossly impairs a person's judgement, behaviour; capacity to recognise reality or ability to meet the ordinary demands of life; or (b) poses a danger to the person concerned or others, but does not include a sole diagnosis of alcoholism or drug abuse, that is, a diagnosis of alcoholism or drug abuse without any other ailment of a mental nature.

- 2.20 Under section 8 of the Mental Health Law, 2013, a medical officer may detain a person further by making an observation order allowing the person to be detained in a hospital or a prescribed place of safety for up to fourteen days to facilitate the assessment of that person to determine whether that person needs to undergo treatment for mental impairment or a serious mental illness. Further, under section 9 of the Mental Health Law, 2013, a responsible medical officer may, after consultation with another medical officer, make a treatment order, if a person under an observation order persists in his mental impairment or serious mental illness to an extent calling for further detention or violates an assisted outpatient treatment order.
- 2.21 Sections 7, 8 and 9 of the Mental Health Law, 2013, when read with the definition of "serious mental illness" in section 2 of that Law, appears to be wide enough to empower a police officer to apprehend and take persons who are suspected to be about to attempt or to have attempted suicide, and who are believed to be dangerous to himself or other persons, to a medical officer for assessment and for observation and treatment, where necessary.
- 2.22 The Commission considered whether to amend section 7 of the Mental Health Law, 2013 to expressly provide for the police to have the power under that Law to take a person suspected of attempting or about to attempt suicide into protective custody. However, section 7 and the other provisions of the Mental Health Law, 2013 already ensure that the police and medical practitioners have the necessary powers to intervene to ensure that help is available to persons who require help when they need it.

Recommendations

- 2.23 The Commission recognises that treatment (rather than prosecution) is the appropriate response to persons who are so distressed that they attempt suicide. That view is shared by the respondents to the Discussion Paper.
- 2.24 The Commission considered the approach taken by the United Kingdom, Canada and India among other countries in decriminalising suicide and, in the Discussion Paper, the Commission recommends that the Penal Code be amended to provide for the abrogation of the rule of law which makes it a crime for a person to commit suicide.
- 2.25 However, in response to the Discussion Paper, the Cayman Ministers' Association considered that section 115 of India's Mental Healthcare Act, 2017 provided an example of the reform that could and should be adopted for the Cayman Islands along the lines of the Cayman Islands' own constitutional basis. Having considered section 115 of India's Mental Healthcare Act, 2017 against section 309 of the Indian Penal Code, the Commission's view is that section 309 of the Indian Penal Code is of no effect in law (or even as a deterrent) as long as section 115 of India's Mental Healthcare Act, 2017 remains in force. The Commission's view is based on the rule of statutory interpretation which mandates that the later enactment will prevail unless express provision is made.⁵⁶
- 2.26 Accordingly, the Commission recommends that suicide should no longer be a crime in the Cayman Islands and that an amendment to the Penal Code to decriminalise suicide is necessary. The Commission therefore prepared the draft Penal Code (Amendment) Bill, 2020⁵⁷ which proposes to insert in the Penal Code (2019 Revision) a new section 186A to provide for the abrogation of the rule of law which makes it a crime for a person to commit suicide. The proposed amendment would bring the law of the Cayman Islands in line with that of most countries, including the United Kingdom and Canada.

Recommendation 1: That the Penal Code be amended to provide for the abrogation of the rule of law which makes it a crime for a person to commit suicide.

⁵⁶ *Argyll (Duke) v Inland Revenue Commissioners* (1913) 109 LT 893 and *Kariapper v Wijrsinha* 1968 AC 716.

⁵⁷ Attached as Appendix 1.

Recommendation 2: That the Mental Health Law, 2013 be maintained in its current form as the definition of “serious mental illness” is wide enough to cover a person who is about to attempt or attempts to take his or her own life and it makes provision for such a person to be apprehended by a police officer and taken to a medical practitioner for assessment and for observation and treatment, where necessary.

Assisted suicide

- 2.27 Assisted suicide is suicide undertaken with the aid or encouragement of another person.⁵⁸ In most countries, assisted suicide is a crime with an exception in some cases for physician assisted suicide under limited and strict conditions.⁵⁹
- 2.28 Assisted suicide usually relates to conditions which cause physical suffering rather than mental illness and the Commission acknowledges that the Foundation’s proposal was limited to the decriminalisation of suicide on the basis that suicide and attempted suicide relate to treatable mental illnesses and that assisted suicide and euthanasia are totally separate issues. However, the offence of assisted suicide exists in the Cayman Islands as an inchoate offence linked to the offence of suicide and a review of the offence was undertaken by the Commission in light of the recommendation to decriminalise suicide.

Cayman Islands laws on assisted suicide

- 2.29 Section 18 of the Penal Code makes it an offence to aid or abet, counsel or procure the commission of an offence and as such captures the offence of assisted suicide (aiding, abetting, counselling or procuring suicide) as long as suicide remains a criminal offence. Again, there are no reported cases of prosecution for assisted suicide in the Cayman Islands.
- 2.30 If the common law offence of suicide is removed as is recommended by the Commission, assisted suicide under section 18 of the Penal Code would also fall away unless express provision is made in the Penal Code as is provided under English Law.

⁵⁸ Wikipedia, the Free Encyclopedia, https://en.wikipedia.org/wiki/Assisted_suicide.

⁵⁹ Wikipedia, the Free Encyclopedia, https://en.wikipedia.org/wiki/Suicide_legislation.

- 2.31 The recently enacted Health Care Decisions Law, 2019 gave legislative effect to the policy of the Cayman Islands Government regarding assisted suicide and euthanasia⁶⁰ by expressly providing that the Law does not authorise euthanasia or assisted suicide.⁶¹ However, section 37(1) of the Health Care Decisions Law, 2019 provides for immunity, where a doctor, registered practitioner or proxy acts in good faith and without negligence and in compliance or purported compliance with a directive made by a person. Section 37(1) of the Health Care Decisions Law, 2019 applies notwithstanding sections 188(d) (causing death defined), 191 (responsibility of person who has charge of another) and 211 (other negligent acts causing harm) of the Penal Code. Further, section 41 of the Health Care Decisions Law, 2019 makes provision for brainstem death cases so that if a person has been certified as brainstem dead, a doctor may withdraw all life-sustaining measures from the deceased.
- 2.32 Section 4 of the Health Care Decisions Law, 2019 states that it does not affect the operation of Part VI of the Penal Code (which deals with offences against the person, including murder and manslaughter) except as provided in section 37 and 41 of the Health Care Decisions Law, 2019. This means that a doctor who complies with sections 37 and 41 would not be guilty of an offence under Part VI of the Penal Code. If the offence of assisted suicide is expressly provided for in Part VI of the Penal Code, the exceptions provided for in sections 37 and 41 of the Health Care Decisions Law, 2019 would also be applicable in respect of that offence.
- 2.33 It is noted that the terms “assisted suicide” and “euthanasia” are used in the Health Care Decisions Law, 2019 without definition and as such the ordinary meaning of those words normally apply for the purposes of that Law unless that Law is amended to include specific definitions for those words.

⁶⁰ The painless killing by a doctor of a patient suffering from an incurable and painful disease or in an irreversible coma, Oxford English dictionaries.

⁶¹ Section 4(a) of the Health Care Decisions Law, 2019.

Overview of laws on assisted suicide in other countries

England and Wales

- 2.34 All forms of assisted dying are illegal in England and Wales. Section 2 of the Suicide Act 1961 (which deals with complicity in relation to suicide) makes it a criminal offence in England and Wales for a person to do an act capable of encouraging or assisting the suicide or attempted suicide of another person, and if the act was intended to encourage or assist suicide or an attempt at suicide. The person who encouraged or assisted need not be a specific person (or class of persons) known to, or identified by the person encouraging or assisting and an offence may be committed whether or not a suicide, or an attempt at suicide, occurs. An offence under section 2 is triable on indictment and a person convicted of such an offence is liable to imprisonment for a term not exceeding 14 years. Further, if on the trial of an indictment for murder or manslaughter of a person it is proved that the deceased person committed suicide, and the accused committed an offence in relation to that suicide, the jury may find the accused guilty of the offence of encouraging or assisting suicide.
- 2.35 Section 2(4) of the Suicide Act 1961 also provides that proceedings for assisted suicide must not be instituted for an offence under that section except by or with the consent of the Director of Public Prosecutions. The Director of Public Prosecutions has issued guidelines setting out when a prosecution is, or is not, likely to happen⁶² and the Crown Prosecution Service in England and Wales looks at individual cases to ascertain whether a prosecution should be brought for assisted suicide.
- 2.36 Originally, section 2 of the Suicide Act 1961 provided that a person who “aids, abets, counsels or procures” the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years.
- 2.37 Section 2 of the Suicide Act 1961 was amended by the Coroners and Justice Act 2009 (the “2009 Act”)⁶³ in an attempt to clarify, rather than change, the law on assisted suicide, by replacing the previous substantive offence (in subsection (1) as originally

⁶² Suicide: Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide <https://www.cps.gov.uk/legal-guidance/suicide-policy-prosecutors-respect-cases-encouraging-or-assisting-suicide>.

⁶³ 2009, c.25.

enacted) and attempt offence (by virtue of the Criminal Attempts Act 1981, section 1) with a single offence expressed in terms of “encouraging or assisting” the suicide or attempted suicide of another person.⁶⁴ This change followed recommendations in the Law Commission Report “Inchoate liability for assisting and encouraging crime” (July 2006) and the Government-commissioned report “Safer Children in a Digital World” (March 2008). The Government’s intention to legislate was set out in a Written Ministerial Statement to Parliament (479 HC Official Report (6th series) col 142WS). The Secretary of State for Justice and Lord Chancellor explained the rationale on the second reading of the Bill for the 2009 Act in the House of Commons as follows —

“Both the Law Commission and an independent review identified confusion about the scope of the law on assisted suicide. ... [s 59 of the 2009 Act] does not substantively change the law, but it does simplify and modernise the language of section 2 of the Suicide Act 1961 to increase public understanding and to reassure people that the provision applies as much to actions on the internet as to actions offline.”⁶⁵

- 2.38 Changes to the Law relating to assisted suicide to allow for euthanasia have been proposed and Assisted Dying Bills have been brought before the UK Parliament several times. In 2015, one such Bill was rejected by Parliament after much debate. The last Assisted Dying Bill was introduced into the House of Lords by Lord Falconer in 2016. The purpose of the Bill was to enable competent adults who are terminally ill to be provided at their request with specified assistance to end their own life.
- 2.39 The Assisted Dying Bill would allow doctors in England and Wales to end the life of a terminally ill and mentally competent patient with less than six months to live and independent doctors would have to sign a declaration that the person had made a decision to die. The patient would then administer the drugs themselves while in the company of a health professional. The health professional would not be allowed to administer the medicine. Campaigners for the Bill advocated that “assisted dying must be a fundamental

⁶⁴ General Note, Halsbury’s annotations, [https://www.lexisnexis.com/uk/legal/search/enhRunRemoteLink.do?ersKey=23_T28744852822&backKey=20_T28744852829&homeCsi=274768&A=0.7658737635853704&urlEnc=ISO-8859-1&&remotekey1=normcite\(1961_60a_Prov2\)&remotekey2=All%20Subscribed%20Commentary%20Sources&dpsi=0200&cmd=f:exp&service=QUERY&origdpsi=0200&linktype=RCL&id=id5](https://www.lexisnexis.com/uk/legal/search/enhRunRemoteLink.do?ersKey=23_T28744852822&backKey=20_T28744852829&homeCsi=274768&A=0.7658737635853704&urlEnc=ISO-8859-1&&remotekey1=normcite(1961_60a_Prov2)&remotekey2=All%20Subscribed%20Commentary%20Sources&dpsi=0200&cmd=f:exp&service=QUERY&origdpsi=0200&linktype=RCL&id=id5)

⁶⁵ 487 HC Official Report (6th series) col 3.

right for us all that we must be free from torture and suffering, we must have the freedom to choose for ourselves how we leave it if our death is fast approaching.⁶⁶ On the other hand, those opposing the Bill claimed that if the Assisted Dying Bill passed, people's lives would be ended without their consent, through mistakes and abuse.⁶⁷

2.40 Lord Falconer's Assisted Dying Bill received its first reading but the second reading of the Bill was not scheduled before the 2016-2017 session of Parliament was prorogued and the Bill made no further progress.⁶⁸

Canada

2.41 Assisted suicide remains a criminal offence under section 241(1) of the Canada Criminal Code⁶⁹ so that anyone found guilty of counselling another to take his or her own life or of aiding a suicide is liable to imprisonment of up to 14 years, whether or not the suicide attempt was successful.

2.42 However, the Medical Assistance in Dying Act⁷⁰ amended the Canada Criminal Code in 2016 to introduce, certain exceptions to the offence of assisted suicide where the assistance is given by a health practitioner. The exceptions to the offence of assisted suicide were introduced after much debate in both the Canada federal and provincial legislatures with regard to the right of individuals to assisted suicide, particularly in cases where a person's disability prevents them from committing the act without assistance.⁷¹

2.43 In 2011, a lawsuit was filed by the British Columbia Civil Liberties Association to challenge the law against assisted suicide. The case *Carter v Canada*⁷² was brought on behalf of the families of two women who suffered debilitating conditions. The first was Kay Carter who died in 2010 and Gloria Taylor who died 2012. The case was brought before the Supreme Court in 2014 and, early in 2015, the court voted unanimously to

⁶⁶ Sir Patrick Stewart, actor and Dignity in Dying supporter, <https://www.itv.com/news/2015-08-14/sir-patrick-stewart-assisted-dying-must-be-a-fundamental-right-for-us-all>.

⁶⁷ Writing for ITV News, Silent Witness actress and disability campaigner Liz Carr, ITV Report, 14 August 2015 at 4:03pm, <https://www.itv.com/news/2015-08-14/actress-liz-carr-we-need-an-assisted-living-bill-not-an-assisted-dying-bill/>.

⁶⁸ See Assisted Dying Bill [HL] 2016-17, <https://services.parliament.uk/bills/2016-17/assisteddying.html>.

⁶⁹ (R.S.C., 1985, c. C-46).

⁷⁰ An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying) (S.C. 2016, c. 3).

⁷¹ See Background Paper, Euthanasia and assisted Suicide in Canada, Publication no 2015-139-E, Julia Nicholl Marlisa Tiedemann, Legal and Social Affairs Commission, Parliamentary information and research service. <https://bdp.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2015-139-e.pdf>.

⁷² *Carter v Canada* (Attorney General), 2015 SCC 5, [2015] 1 SCR 331 [Carter].

allow physician-assisted suicide for “a competent adult person who clearly consents to the termination of life; and has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition”. The court reasoned that the Criminal Code “prohibition on physician-assisted dying infringes the right to life, liberty and security of the person in a manner that is not in accordance with the principles of fundamental justice. The object of the prohibition is not, broadly, to preserve life whatever the circumstances, but more specifically to protect vulnerable persons from being induced to commit suicide at a time of weakness.”⁷³

- 2.44 In June 2016, more than a year after the Supreme Court decision, the Medical Assistance in Dying Act established the procedural safeguards and eligibility criteria for medically assisted suicide. According to the Act, to be eligible a person must be at least 18 years of age and capable of making decisions with respect to their health, with a grievous and irremediable medical condition”. Further the person must be in an advanced state of irreversible decline, in which their “natural death has become reasonably foreseeable.”⁷⁴

Ireland

- 2.45 By section 2 of Ireland’s Criminal Law (Suicide) Act 1993⁷⁵, a person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years.⁷⁶ Further, if on the trial of an indictment for murder, murder to which section 3 of the Criminal Justice Act, 1990 applies or manslaughter, it is proved that the person charged aided, abetted, counselled or procured the suicide of the person alleged to have been killed, he may be found guilty of an offence.⁷⁷ Proceedings are not to be instituted for an offence under section 2 except by or with the consent of the Director of Public Prosecutions.⁷⁸ The effect of this provision is

⁷³ Ibid 72.

⁷⁴ Section 241.2 of the Canada Criminal Code.

⁷⁵ Number 11 of 1993.

⁷⁶ Criminal Law (Suicide) Act, 1993, section 2(2).

⁷⁷ Criminal Law (Suicide) Act, 1993, section 2(3).

⁷⁸ Criminal Law (Suicide) Act, 1993, section 2(4).

that where suicide has taken place or been attempted, three possible offences may have been committed: murder, manslaughter, or aiding or abetting suicide.

Guernsey

- 2.46 More recently, in 2018, States Assembly in Guernsey, a British Crown Dependency, rejected proposals to legalise assisted dying.⁷⁹ As a British Crown Dependency, Guernsey can adopt its own primary laws, but all primary laws must be approved by the Privy Council, a group of senior politicians who assess the future impact of the Guernsey legislation on the United Kingdom. If the proposal had been accepted and legislation to permit assisted dying had been developed and adopted, Guernsey could have become the first place in the British Isles to adopt assisted dying⁸⁰ and this would have raised much debate not only in the British Isles but also in other British territories such as the Cayman Islands.

Switzerland

- 2.47 Article 114 of the Swiss Criminal Code⁸¹ makes any active role in manslaughter on request a criminal offence so that any person who for commendable motives, and in particular out of compassion for the victim, causes the death of a person at that person's own genuine and insistent request is liable to a custodial sentence not exceeding three years or to a monetary penalty.
- 2.48 Under Article 115 of the Swiss Criminal Code, the incitement or assistance to suicide from selfish motives is also a criminal offence with a penalty of a custodial sentence not exceeding five years or to a monetary penalty.
- 2.49 However, by omission, Swiss law allows a person to provide to another person the means to commit suicide as long as the reasons for doing so are not based on self-interest (such as monetary gain). For example, lethal drugs may be prescribed as long as the recipient

⁷⁹ <https://gov.gg/article/163966/Assisted-Dying>.

⁸⁰ See <https://www.independent.co.uk/news/uk/home-news/guernsey-assisted-dying-law-parliament-vote-against-euthanasia-terminally-ill-a8359111.htm>.

⁸¹ Swiss Criminal Code of 21 December 1937, 311.0.

takes an active role in the drug administration, but active euthanasia (such as the act of administering a lethal injection) is not legal.⁸²

Australian State of Victoria

2.50 On 29 November 2017, the Parliament of the Australian state of Victoria passed the Voluntary Assisted Dying Act 2017⁸³ which legalises euthanasia in that State. The Law will come into effect in the middle of 2019. The Voluntary Assisted Dying Act 2017 allows a person in the late stages of advanced disease to take medications prescribed by a doctor that will bring about their death at a time they choose. Only people who meet all the conditions and follow the process set out in the law can access the voluntary assisted dying medication. A person's decision to ask for voluntary assisted dying must be voluntary and consistent and fully informed. The person accessing voluntary assisted dying must have an advanced disease that will cause their death and that is likely to cause their death within six months and causing the person suffering that is unacceptable to them. The person must have the ability to make and communicate a decision about voluntary assisted dying throughout the formal request process. They must also be an adult 18 years or over who has been living in Victoria for at least 12 months and be an Australian citizen or permanent resident.⁸⁴

Recommendations

2.51 The Commission considered whether to amend the Penal Code to make provision for assisted suicide as the offence of aiding, abetting, counseling procuring the suicide of another currently provided for by virtue of section 18 of the Penal Code would fall away once suicide is no longer a criminal offence. The Commission is of the view that the Penal Code should be amended to retain assisted suicide as a substantive offence rather than an inchoate offence so that even if suicide is decriminalised it would be an offence to encourage or assist the suicide or attempted suicide of another person. The Commission's recommendation to retain assisted suicide as an offence is made having regard to the recommendation to decriminalise suicide, the policy of the Government given legislative effect in the Health Care Decisions Law, 2019 and the changes made to

⁸² See https://en.wikipedia.org/wiki/Euthanasia_in_Switzerland.

⁸³ No. 61 of 2017.

⁸⁴ Ibid 83 and see <https://www.betterhealth.vic.gov.au/health/servicesandsupport/voluntary-assisted-dying>.

the Suicide Act 1961 in the United Kingdom to clarify the offence of assisted suicide and the reasons for those changes.

2.52 Accordingly, the draft Penal Code (Amendment) Bill, 2020 proposes to insert in the Penal Code (2019 Revision) a new section 186B which provides for criminal liability for complicity in another's suicide. Under the proposed new section 186B, a person who does an act capable of encouraging or assisting the suicide or attempted suicide of another person and the act was intended to encourage or assist suicide or an attempt at suicide commits an offence and is liable on conviction to imprisonment for a term of fourteen years. A person may commit the offence whether or not a suicide, or an attempt at suicide, occurs and a person convicted of such an offence is liable to imprisonment for a term of fourteen years. The new section 186B also provides that if on the trial of an indictment for murder or manslaughter it is proved that the deceased person committed suicide, and the accused committed an offence under that section in relation to that suicide, the accused may be found guilty of the offence. Further, proceedings may be instituted for an offence under section 186B except by or with the consent of the Director of Public Prosecutions.

2.53 In light of the recommendation to amend the Penal Code to decriminalise suicide and retain the offence of assisted suicide, the Commission also proposes consequential amendments to the Health Care Decisions Law, 2019 which gave legislative effect to the policy of the Cayman Islands Government regarding assisted suicide and euthanasia by expressly providing that the Law does not authorise euthanasia or assisted suicide. Therefore, the Commission prepared the draft Health Care Decisions (Amendment) Bill, 2020⁸⁵ which amends section 2 of the Health Care Decisions Law, 2019 to insert definitions for the terms "assisted suicide" and "euthanasia". The term "assisted suicide" is defined to mean suicide undertaken by a person with the encouragement or assistance of another person and the term "euthanasia" is defined to mean the painless killing by a registered practitioner of a person suffering from an incurable and painful disease or a coma.

Recommendation 3: That the Penal Code be amended to retain assisted suicide as a

⁸⁵ Attached as Appendix 2.

substantive offence.

Recommendation 4: That the Health Care Decisions Law, 2019 be amended to provide definitions for the terms “assisted suicide” and “euthanasia” for the purposes of that Law.

3. CONCLUSION

- 3.1 The review of the common law offence of suicide, Penal Code, Mental Health Law, 2013, Health Care Decisions Law, 2019 and laws of comparable jurisdictions relating to suicide suggests that suicide should no longer be an offence in the Cayman Islands. The Commission has considered the views and recommendations of the stakeholders and public received during the public consultation on the Discussion Paper. Accordingly the Commission recommends the amendment of the Penal Code to expressly abrogate the common law offence of suicide.
- 3.2 The Commission recommends that the Penal Code should be amended to make express provision to retain the offence of assisted suicide which would fall away if the common law offence of suicide is removed.
- 3.3 The Mental Health Law, 2013 does not require amendment with regard to suicide as it contains adequate provisions to allow for the detention, assessment, observation and treatment, where necessary of a person who tries to take their own life.
- 3.4 The draft Penal Code (Amendment) Bill, 2020 and Health Care Decisions (Amendment) Bill, 2020 attached as Appendices 1 and 2 would give legislative effect to the recommendations of the Commission.

Cayman Islands Law Reform Commission
31st March, 2020