

立法會
Legislative Council

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LC Paper No. CB(2)522/07-08
(These minutes have been seen
by the Administration)

**Bills Committee on
Domestic Violence (Amendment) Bill 2007**

**Minutes of the 3rd meeting
held on Tuesday, 16 October 2007, at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Dr Hon Fernando CHEUNG Chiu-hung (Chairman)
Hon LEE Cheuk-yan
Hon Margaret NG
Hon James TO Kun-sun
Hon CHAN Yuen-han, SBS, JP
Dr Hon YEUNG Sum, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon CHOY So-yuk, JP
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man
- Member attending** : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
- Members absent** : Hon Albert HO Chun-yan
Hon Bernard CHAN, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon WONG Kwok-hing, MH
Hon KWONG Chi-kin

- Public Officers :** Miss Eliza LEE
attending Deputy Secretary for Labour and Welfare (Welfare)1
- Miss Hinny LAM
Principal Assistant Secretary for Labour and Welfare (Welfare)2
- Ms Winnie LEUNG
Assistant Secretary for Labour and Welfare (Welfare)2A
- Mrs Anna MAK
Assistant Director of Social Welfare (Family and Child Welfare)
- Ms PANG Kit-ling
Chief Social Work Officer (Domestic Violence)
Social Welfare Department
- Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting & Administration)
Department of Justice
- Miss Angie LI
Government Counsel
Department of Justice
- Clerk in** : Miss Mary SO
attendance Chief Council Secretary (2) 5
- Staff in** : Mr LEE Yu-sung
attendance Senior Assistant Legal Adviser 1
- Ms Maisie LAM
Council Secretary (2) 2
- Ms Sandy HAU
Legislative Assistant (2) 5

Action

I. Meeting with the Administration
[LC Paper No. CB(2)2739/06-07(01)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Action

2. Deputy Secretary for Labour and Welfare (Welfare)1 (DSLW(Welfare)1) briefed members on the Administration's responses to issues raised by members at the meeting on 20 July 2007, details of which were set out in the above Administration's paper.

Expanding the scope of the Bill to cover persons in same sex relationship

3. Miss TAM Heung-man suggested to seek the views of the Equal Opportunities Commission (EOC) on whether excluding persons in same sex relationship from the Domestic Violence Ordinance (Cap. 189) (DVO) was in conformity with the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383). Members expressed support. The Clerk would write to EOC to obtain the legal opinions.

Proposed anti-violence programme aimed at changing the attitude and behaviour of abusers

4. Dr YEUNG Sum noted that under the Bill, the court might, in granting a non-molestation order under the DVO, require the abuser to attend an anti-violence programme approved by the Director of Social Welfare aimed at changing the attitude and behaviour of the abuser. To better prevent recurrence of domestic violence, Dr YEUNG was of the view that the court should be empowered to require abusers of domestic violence on bind over order and those serving sentence in jail to attend an anti-violence programme.

5. DSLW(Welfare)1 responded as follows -

- (a) the Administration had to critically examine as to whether, and if so, how the suggestions made by Dr YEUNG in paragraph 4 above should be taken forward. One of the major considerations was whether, as a matter of principle and on parity grounds, abusers of domestic violence should be singled out from other offenders to attend mandatory counselling programme;
- (b) overseas experience showed that it was not empirically proven that court-ordered counselling programme for abusers of domestic violence was necessarily effective in preventing recurrence of domestic violence; and
- (c) the outcome of the two-year pilot project on Batterer Intervention Programme launched by the Social Welfare Department (SWD) since January 2006 to provide treatment to batterers joining the programme on a voluntary basis and batterers put on probation would provide useful reference for the Administration's consideration of the way forward on introducing court-ordered

Action

anti-violence programme for abusers of domestic violence.

6. Ms Miriam LAU expressed support for the proposed anti-violence programme under the Bill. Ms LAU was however of the view that the Bill should clearly spell out the consequence of not attending the anti-violence programme. DSLW(Welfare)1 advised that non-compliance of the requirement set by the court to attend the anti-violence programme constituted breach of the injunction order. Breach of the injunction was a contempt of court and could be punished by imprisonment or a fine.

Introducing a definition of "domestic violence" in the Bill

7. Mr Ronny TONG said that it was necessary to introduce a definition of "domestic violence" in the DVO to put beyond doubt that "violence" included psychological abuse and sexual abuse. Dr YEUNG Sum and Mr LEUNG Kwok-hung concurred.

8. DSLW(Welfare)1 responded that -

- (a) while the term "molest" was not defined in the DVO, decided cases had revealed that in the context of family, the concept of "molest" was wide, extending to abuses beyond the more typical instances of physical assaults to include any form of physical, sexual or psychological molestation or harassment which had a serious detrimental effect upon the health and well-being of the victim, and the threat of any form of such molestation or harassment. Information gathered from the Judiciary also revealed that the court had granted injunction under the DVO on grounds on the three different forms of abuse. There were also abundant cases decided by the courts in Hong Kong and in the United Kingdom (UK) that confirmed the above interpretation of "molest";
- (b) to now introduce a new definition of "molest" or "domestic violence" in the DVO when there were abundant cases decided by the courts in Hong Kong and in the UK might inadvertently restrict the scope of coverage of the legislation, hence undermining the protection for victims of domestic violence, as it would be extremely difficult to clearly and exhaustively define "molest" or "domestic violence" in legislative term. Furthermore, introduction of a new definition would render the thousands of previous decided cases irrelevant, and it might be detrimental to the interests of the domestic violence victims. A review on the UK Family Law Act, to which the DVO resembled, conducted in the early 1990s also came to the conclusion that it was best not to define the term "molest" in the legislation for fear of restricting the scope of the legislation and causing borderline

Action

disputes; and

- (c) the Administration would continue to strengthen publicity, public education and training in order to help victims, abusers, frontline professionals, such as the Police and social workers, and members of public better understand the coverage of DVO and the fact that the term "molest" in the DVO already applied to psychological abuse and sexual abuse.

9. Ms Miriam LAU said that the absence of the term "molest" in the DVO had resulted in different interpretations of the term by different judges. The setting up of a specialised domestic violence court should help to ameliorate the problem.

10. Ms Audrey EU said that the existing arrangement of not defining the term "molest" in the DVO and relying on decided court cases provided flexibility to the court in handling of cases involving domestic violence. To ascertain whether the aforesaid arrangement was comprehensive enough for handling all cases of domestic violence, Ms EU said that the Administration could explore whether previous cases involving domestic violence had difficulties in applying for injunction order due to the absence of a statutory definition of the term "molest" in the DVO. DSLW(Welfare)1 responded that hitherto, the Administration's attention had not been brought to such difficulties but she took note of Ms EU's advice.

Arrest for breach of injunction order

11. Ms Audrey EU noted that under clause 7 of the Bill, the court might attach an authorisation of arrest to a non-molestation order restraining the respondent from using violence against the applicant or the minor concerned if it reasonably believed that the respondent would likely cause bodily harm to the applicant or the minor concerned. Ms EU was of the view that the court should also attach an authorisation of arrest to a non-molestation order restraining the respondent from abusing the applicant or the minor concerned if it reasonably believed that the respondent would likely cause mental/psychological harm to the applicant or the minor concerned.

12. DSLW(Welfare)1 responded that the current proposal had already enhanced the protection for victims of domestic violence. She explained that the authorisation of arrest would give an exceptional power to the Police officer to arrest without warrant any person whom he/she reasonably suspected of being in breach of the injunction by reason of that person's use of violence or entry into any premises or area specified in the injunction. A right balance in containing the powers conferred upon the Police on the one hand and ensuring protection to victims on the other should be struck. She added that the Administration's proposal in this regard was in line with views expressed by stakeholders when

Action

consulted on the package of legislative amendments. Noting Ms EU's comments, DSLW(Welfare)1 agreed to consider this issue further.

Any other business

13. At the request of members, the Clerk would prepare a paper summarising the views of deputations on the Bill and the Administration's responses.

14. There being no other business, the meeting ended at 4:35 pm.

Council Business Division 2
Legislative Council Secretariat
6 December 2007

**Proceedings of the third meeting of
Bills Committee on Domestic Violence (Amendment) Bill 2007
on Tuesday, 16 October 2007, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000441	Chairman	Opening remarks	
000442 - 000634	Miss Margaret NG Chairman	The Secretariat was requested to prepare a paper summarising the views of deputations on the Bill and the Administration's responses	✓ (Clerk to prepare the paper)
000635 - 000754	Miss TAM Heung-man Chairman	Scope of the Domestic Violence Ordinance (Cap. 189) (DVO) should include persons in same sex relationship	
000755 - 001118	Admin	Briefing by the Administration on paragraph (a) of LC Paper No. CB(2)2739/06-07(01) on the comparison between the major provisions of the DVO as proposed to be amended and the relevant legislation in the United Kingdom (UK), New Zealand and Singapore	
001119 - 001557	Miss Margaret NG Admin Chairman SALA1 Miss TAM Heung-man Ms Audrey EU	The Secretariat was requested to write to the Equal Opportunities Commission (EOC) on whether excluding persons in same sex relationship from the DVO was in conformity with the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383)	✓ (Clerk to write to EOC)
001558 - 001656	Chairman Admin	Briefing by the Administration on paragraph (b) of LC Paper No. CB(2)2739/06-07(01) detailing the reasons why same sex relationship was not covered by the Bill	
001657 - 002329	Chairman Admin	Briefing by the Administration on paragraph (c) of LC Paper No. CB(2)2739/06-07(01) concerning whether the court might, under the existing criminal legislative framework, require an abuser to attend an anti-violence programme aimed at changing his/her attitude and behaviour	
002330 - 003659	Dr YEUNG Sum Chairman Admin Mr LEUNG Kwok-hung	The court should be empowered to require abusers of domestic violence serving sentence in jail, put on probation and being bound over to attend an anti-violence programme	
003700 - 004149	Ms Miriam LAU Admin Chairman	Legal consequence of not attending the anti-violence programme should be spelt out in the Bill	
004150 - 004657	Ms LI Fung-ying Admin	Effectiveness of the pilot Batterer Intervention Programme launched by the Social Welfare Department (SWD) since January 2006	

Time marker	Speaker	Subject	Action required
004658 - 005252	Chairman Admin	To require abusers of domestic violence on bind over order and those serving sentence in jail to attend an anti-violence programme	
005253 - 005711	Admin	Briefing by the Administration on paragraph (d) of LC Paper No. CB(2)2739/06-07(01) detailing the content of the anti-violence programme referred to in the proposed new section 3(1A) of the DVO, including its duration, what would constitute non-participation, and the penalty for non-participation	
005712 - 010240	Ms Miriam LAU Admin Chairman	Follow-up action by caseworkers upon the completion of the anti-violence programme	
010241 - 010533	Admin	Briefing by the Administration on paragraph (e) of LC Paper No. CB(2)2739/06-07(01) detailing the selected court cases in Hong Kong and the UK which revealed that the concept of "molest" in the context of family already applied to psychological abuse	
010534 - 011644	Mr Ronny TONG Admin	Need for introducing a definition of "domestic violence" in the DVO	
011645 - 013340	Dr YEUNG Sum Admin Ms Audrey EU Chairman Mr Ronny TONG	Whether previous cases involving domestic violence had difficulties in applying for injunction order due to the absence of a statutory definition of the term "molest" in the DVO	
013341 - 013858	Ms Miriam LAU Admin Chairman	Setting up of specialised domestic violence court to ensure the consistency in the interpretations of the term "molest" by different judges	
013859 - 014030	Mrs Sophie LEUNG Admin	Promoting gender mainstreaming in the Judiciary	
014031 - 020048	Ms Audrey EU Admin Chairman SALA1 Mr LEUNG Kwok-hung	An authorisation of arrest should be attached to a non-molestation order if the court reasonably believed that the respondent would likely cause mental/psychological harm to the applicant or the minor concerned	
020049 - 020603	Miss CHAN Yuen-han Chairman Admin	Urged the Administration to provide a definition of "molest" in the DVO, devise follow-up plans for participants who had completed the anti-violence programme, and empower the court to attach an authorisation of arrest to a non-molestation order if it reasonably believed that the respondent would likely cause mental/psychological harm to the applicant or the minor concerned	