

Bills Committee on Domestic Violence (Amendment) Bill 2007

Summary of views/suggestions given by deputations

Part I : Proposals for amending the Domestic Violence Ordinance (Cap. 189)

Name of deputation [LC Paper No. of submission]	Views/suggestions	The Administration's responses
1. Definition of "domestic violence" or "molest"		
<p>Alliance for the Reform of Domestic Violence Ordinance</p> <p>Amnesty International Hong Kong Section [LC Paper No. CB(2)2739/06-07(02)]</p> <p>Association for Concern for Legal Rights of Victims of Domestic Violence [LC Paper No. CB(2)2769/06-07(09)]</p> <p>Caritas Hong Kong - Family Service [LC Paper No. CB(2)2769/06-07(06)]</p> <p>Hong Kong Alliance for Family [LC Paper No. CB(2)2769/06-07(07)]</p> <p>Hong Kong Council of Social Service [LC Paper No. CB(2)2769/06-07(05)]</p>	<p>A definition of "domestic violence" or "molest" should be provided in the Domestic Violence Ordinance (Cap. 189) (DVO) to put beyond doubt that "violence" includes physical abuse, psychological abuse, sexual abuse, neglect of children, the elderly and the mentally incapacitated, stalking in intimate relationships, and exposing a child to domestic violence.</p>	<p>Although the term "molest" is not defined in the DVO, the concept is well established and recognised by the courts. The absence of a statutory definition affords the courts with the flexibility and latitude to establish, through court cases, molestation of different forms in accordance with the prevailing conditions.</p> <p>There is no doubt that the term "molest" includes, but is wider than violence. Decided court cases reveal that the concept of "molest" is wide in the context of family, extending to abuses beyond the more typical instances of physical assaults to include any form of physical, sexual or psychological molestation or harassment which has 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 confirms that the court has granted injunction under the DVO on grounds of physical, sexual and psychological abuses. In other words, the existing law already applies to psychological, physical and sexual abuse and there is no evidence of problems caused by the absence of a statutory definition. Therefore, there is no</p>

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		<p>need to define “molest” or introduce a new definition of “domestic violence”.</p> <p>The DVO is modelled on the relevant UK legislation and the UK also adopts the same approach of leaving “molest” undefined after a thorough review and public consultation conducted in the 1990’s. The concern is that to introduce a new definition of "molest" or "domestic violence" in the domestic violence law when there are abundant cases decided by the courts in Hong Kong and in the UK may inadvertently restrict the scope of coverage of the legislation, lead to borderline disputes, hence undermining the protection for victims of domestic violence, as it will be extremely difficult to clearly and exhaustively define “molest” or “domestic violence” in statutory term.</p> <p>Furthermore, introduction of a new definition may render the numerous previous decided court cases irrelevant, and it may be detrimental to the interest of the victims of domestic violence.</p> <p>In protection of the interests of domestic violence victims, the Administration does not favour introducing a statutory definition of “molest”. Outside the context of the law, however, we will 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 the public better understand the coverage of the DVO and the fact that the term "molest" in the DVO already applies to psychological abuse and sexual abuse.</p>

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		<p>As to the suggestion of extending the meaning of “molest” under the DVO to cover neglect of children, the elderly and mentally incapacitated persons, stalking and exposing a child to domestic violence, we are unable to accede to such proposals for reasons set out below :</p> <p>Our current legislative framework already affords extra protection to persons who, due to their young age or lack of mental capacity, are considered incapable of taking care of themselves and hence require intervention from the court for protection from violence or neglect.</p> <p>Neglect of children is a criminal offence under the Offences Against the Person Ordinance (Cap. 212), while the Protection of Children and Juveniles Ordinance (Cap. 213) and the Mental Health (Guardianship) Regulations (Cap. 136D) also provide civil remedies to children and mentally incapacitated persons in need of care or protection. The relevant legislation aim to render additional protection to those who lack the capacity to take care of themselves. Elders being adults should not be regarded as lacking such capacity solely because of their age. For vulnerable elders who are in need, the Government is providing them with a wide range of services and support.</p> <p>On the issue of stalking in the domestic context, it is already covered by the concept of “molest” and hence victims stalked by their relatives as specified in the DVO may in future seek injunctive protection through the civil route following the enactment of the bill.</p>

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		<p>We fully appreciate the negative impact on children of witnessing domestic violence and a wide range of counseling and crisis intervention services are provided to the children in need by the Family and Child Protective Services Units (FCPSUs) and the Clinical Psychology Units of the Social Welfare Department (SWD), including counseling services, statutory protection, residential child care services as well as psychological assessment and treatment. Apart from providing casework and clinical psychological services, the FCPSUs also work with clinical psychologists in preparing handbooks for the group activities of victims, abused children and batterers. We have also allocated additional resources to strengthen the psychological support to victims of domestic violence, with particular focus on children witnessing violence.</p>
<p>Parents for The Family Association [LC Paper No. CB(2)2456/06-07(04)]</p>	<p>A definition of "molest" should be added in the DVO to avoid ambiguity. Alternatively, a statutory advisory committee comprising members from different sectors of the community should be set up to consider cases where it is unclear if there is any element of domestic violence.</p>	<p>Please see above.</p>
<p>Zonta Club of Hong Kong, Zonta Club of Kowloon, Zonta Club of Hong Kong East, Zonta Club of New Territories, Zonta Club of Victoria and Zonta Club of Hong Kong II [LC Paper No. CB(2)2739/06-07(03)]</p>	<p>(a) An absence of a statutory definition provides flexibility to the courts to decide on individual cases whether "molestation" has occurred.</p>	<p>(a) As noted above, although the term "molest" is not defined in the DVO, the concept is well established and recognised by the courts. The absence of a statutory definition affords the courts with the flexibility and latitude to establish, through court cases, molestation of different forms in accordance with prevailing conditions.</p>

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	(b) It should be clarified whether the mental element of the abuser to whom an injunction order seeks to apply should be spelt out in the DVO.	(b) According to legal advice, “molestation” covers a wide variety of forms and degrees of abusive conduct but usually the conduct is intentional. Generally speaking, the court will take into account the mental state of the abuser when granting an injunction order. If the abuser has been physically violent towards the applicant, the court has, on occasion, granted a non-molestation order without reference to the intention of the respondent.
2. Scope of protected persons		
Alliance for the Reform of Domestic Violence Ordinance	Scope of the DVO should not only cover familial relationships based on marriage and blood ties but also intimate relationships, such as persons in same sex cohabitation relationship and couples who have never cohabited or been married.	<p>The Administration considers the proposed coverage of protected persons in the Bill appropriate, having regard to a number of overseas legislation, the cultural and societal factors in Hong Kong and the views/representations submitted by deputations. The current proposed coverage has included a wide range of immediate and extended familial relationships commonly accepted in the Chinese community. For victims in a more remote or special relationship with their abusers that fall outside the scope of the Ordinance, they may still seek protection under the law of tort or the inherent jurisdiction of the court.</p> <p>The Administration has stated the policy position on not covering same sex cohabitation relationships in the DVO in <i>LC Paper No. CB(2)2739/06-07(01)</i>, and recapitulated as follows –</p> <p>The DVO currently provides protection to persons in spousal relationship and their children and is also applicable to the “cohabitation of a man and a woman as it applies to marriage”.</p>

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		<p>In expanding the scope of the DVO to cover, inter alia, persons formerly in cohabitation relationship, we have not proposed any amendments to include same sex relationship under the DVO. Our reasons are:</p> <ul style="list-style-type: none"><li data-bbox="1328 475 2101 949">(a) in Hong Kong, a marriage contracted under the Marriage Ordinance (Cap. 181) is, in law, the voluntary union for life of one man and one woman to the exclusion of all others. Our law, which reflects Government's policy position, does not recognise same sex marriage, civil partnership, or any same sex relationship. Recognising same sex relationship is an issue concerning ethics and morality of the society. Any change to this policy stance would have substantial implications on the society and should not be introduced unless consensus or a majority view is reached by the society;<li data-bbox="1328 994 2101 1246">(b) at present, any acts of violence are liable to criminal sanctions under the relevant ordinances, irrespective of the relationship between the abuser and the victim. Persons in same sex relationship are afforded the same level of protection as with those in heterosexual relationship under our existing criminal legislative framework; and<li data-bbox="1328 1291 2101 1428">(c) the DVO serves to provide additional civil remedies to specified types of domestic violence victims. Those who fall outside the scope of the DVO may continue to seek protection under the law of tort or

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		inherent jurisdiction of the court. Persons in same sex relationship who suffer from violence perpetrated by their partners still have avenues to seek legal remedies.
<p>Amnesty International Hong Kong Section [LC Paper No. CB(2)2739/06-07(02)]</p> <p>Association for Concern for Legal Rights of Victims of Domestic Violence [LC Paper No. CB(2)2769/06-07(09)]</p> <p>Civil Rights for Sexual Diversities</p>	<p>Scope of the DVO should cover persons in same sex relationship, as not to do so will -</p> <p>(a) have the effect of discriminating against homosexuals on the ground of sexual orientation; and</p> <p>(b) contravene Article 2(1) of the International Covenant on Civil and Political Rights as applied to Hong Kong, which provides that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."</p>	<p>Please see the above for our policy considerations.</p>

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<p>Hong Kong Alliance for Family [LC Paper No. CB(2)2769/06-07(07)]</p>	<p>To extend the coverage of protected persons under the DVO to include persons formerly in spousal/cohabitation relationship may send a wrong message to the public that cohabitation has the same connotation as marriage.</p>	<p>The DVO has since its enactment in 1986 confined its scope of application to spouses, man/woman in cohabitation relationships, and their children under the age of 18. The legislation was introduced at a time when the increase in spousal abuse cases had given rise to great public concern, especially among the women's groups as most were battered wives cases. It should be noted that though cohabitation is not defined under the Ordinance, by virtue of section 6(3), the court is required to have regard to the permanence of the unmarried couple's relationship in extending injunctive relief. The Bill proposes to extend the scope of coverage to include former spouses and cohabitants having regard to the fact that as statistics could testify violence and abuse sometimes continue even after the couples in question have gone their separate ways.</p>
<p>Parents for The Family Association [LC Paper No. CB(2)2456/06-07(04)]</p>	<p>Scope of "relatives" proposed under the Bill is too extended, and should be narrowed down.</p>	<p>The Administration has extended the coverage of protected persons under the DVO after extensive consultation with the Legislative Council, various advisory bodies, the welfare service sector, women's groups and the general public. We consider the current scope of coverage appropriate in striking a balance between the need to provide protection for victims of domestic violence and the need to prevent over-legislating.</p>
<p>Zonta Club of Hong Kong, Zonta Club of Kowloon, Zonta Club of Hong Kong East, Zonta Club of New Territories, Zonta Club of Victoria and Zonta Club of Hong Kong II [LC Paper No. CB(2)2739/06-07(03)]</p>	<p>(a) Definition of "specified minor" proposed in new section 3(3) of the Bill should be widened to cover a child who is living with the applicant, regardless of whether that child is a natural child, adoptive child or</p>	<p>(a) The protection given to a child under the age of 18 has been considerably expanded under the Bill as compared with the existing DVO.</p> <p>At present, only a child living with the applicant is afforded the protection under the DVO. The scope of protection extended to minor is very restrictive indeed.</p>

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	<p>step-child of the applicant or respondent. Consideration should be given to the use of the definition of "relevant child" referred to in section 62 of the Family Law Act of 1996 in the United Kingdom (UK).</p> <p>(b) definition of "relatives" proposed in new section 3A(2) of the Bill is too specific to provide the court with any flexibility in extending protection to victims who do not fall within the list. Consideration should be given to the use of the term "associated persons" in the UK domestic violence legislation and the term "domestic relationship" in the New Zealand domestic violence legislation to include persons such as relatives of cohabitants and relatives of relatives.</p>	<p>For instance, it does not extend to application for injunction to prevent the violent party from molesting a child living with the violent party, or living with other relatives of the family, like grandparents.</p> <p>Under the Bill, the "living with" requirement is dispensed with so that a child of the applicant or the respondent would be covered by the injunction order even if he/she is not living with the applicant. Also, under the Bill, a child who has been "molested" by any of his/her relatives as specified may through his/her "next friends" apply for injunction order, whether or not the child lives with the said relative.</p> <p>Besides, any child who is molested by someone outside the scope of the Bill may seek protection under the Protection of Children and Juveniles Ordinance (Cap. 213). Under that Ordinance, the court is empowered to grant a supervision order or appoint legal guardian in respect of a child or juvenile who has been or is being assaulted, ill treated, neglected, sexually abused, or whose health, development or welfare had been or was being neglected or avoidably impaired.</p> <p>(b) Defining the term "relative" in the DVO helps enunciate and put beyond doubt the coverage of protected persons, and facilitates the implementation and application of the Ordinance. This approach is consistent with that of other legislation in Hong Kong, such as the Estate Duty Ordinance (Cap. 111), and the Mental Health Ordinance (Cap. 136). Persons who fall outside the scope of the</p>

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		DVO may still seek civil protection under the law of tort or the inherent jurisdiction of the court.
Parents for The Family Association [LC Paper No. CB(2)2456/06-07(04)]	A "guardian ad litem", instead of a "next friend", should be appointed to apply for an injunction order under the DVO on behalf of a child under the age of 18.	Both “next friend” (起訴監護人) and “guardian ad litem” (辯護監護人) are legal terms referring to a party that represent a minor or mentally incapacitated person (MIP) in legal proceedings. The former refers to a person representing a minor or MIP who is the plaintiff or applicant; and the latter refers to a person representing a minor or MIP who is defendant or respondent. Since the purpose of the relevant proposed amendment in the Domestic Violence (Amendment) Bill is to enable a child to apply to the court for an injunction independently, the person through whom he makes the application should be described as the “next friend”.
Zonta Club of Hong Kong, Zonta Club of Kowloon, Zonta Club of Hong Kong East, Zonta Club of New Territories, Zonta Club of Victoria and Zonta Club of Hong Kong II [LC Paper No. CB(2)2739/06-07(03)]	The court should, on an application made by a person (the applicant), if satisfied that the applicant has real risk or likelihood of being molested by a relative of the applicant, grant injunction against that relative.	It is stipulated in the DVO and the Bill that the court may grant an injunction if it is satisfied that the applicant or a specified minor has been molested by the spouse or opposite sex cohabitant in a current or former relationship, or a relative specified in the Bill. It should, however, be noted that decided court cases have revealed that the concept of “molest” is wide in the context of family, extending to abuses beyond the more typical instances of physical assaults to include any form of physical, sexual or psychological molestation or harassment which has a serious detrimental effect upon the health and well-being of the victim, <u>and</u> the threat of any form of such molestation or harassment.

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3. Scope of the injunction order		
<p>Alliance for the Reform of Domestic Violence Ordinance</p> <p>Association for Concern for Legal Rights of Victims of Domestic Violence [LC Paper No. CB(2)2769/06-07(09)]</p> <p>Caritas Hong Kong - Family Service [LC Paper No. CB(2)2769/06-07(06)]</p>	<p>(a) "Injunction order" under the DVO should be renamed as "protection order" to better reflect the intent of the injunction order.</p> <p>(b) Scope of the injunction order should be expanded to include provisions giving the protected person the exclusive right to reside in the family home (an occupation order) and the right to take with him/her or to keep in his/her possession specified furniture and household items (a furniture order) as practised in places such as New Zealand.</p>	<p>(a) As noted from its long title, the intent of the DVO is to provide for the protection of persons from domestic violence and for matters ancillary thereto. This is achieved by enabling the court to grant an injunction order under the Ordinance restraining the behaviour of the abuser, with the ultimate intention of protecting the victims. The Administration considers that the existing terminology accurately reflects our policy intent and sees no reason for changes.</p> <p>(b) Domestic violence can spiral into personal injuries or even fatality in a short space of time. The immediacy and urgency serves to justify a special court procedure as provided for under the DVO to provide quick and immediate injunctive relief to victims of domestic violence for protection.</p> <p>The consideration of ancillary orders may complicate and prolong the court hearing, and is not an effective and efficient use of the special court procedure set up to deal with injunction applications. Matters involving maintenance, property ownership, possession of furniture or household items etc should be dealt with separately in the matrimonial proceedings or other civil proceedings. Should the protected persons concerned have financial difficulties, they could seek assistance from the SWD as necessary.</p>

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<p>Amnesty International Hong Kong Section [LC Paper No. CB(2)2739/06-07(02)]</p> <p>Hong Kong Women Christian Council [LC Paper No. CB(2)2769/06-07(08)]</p> <p>Hong Kong Women's Coalition on Equal Opportunities [LC Paper No. CB(2)2769/06-07(02)]</p>	<p>Scope of the injunction order under the DVO should be expanded to include provisions giving the protected person the right to require payment by the respondent for compensation of the losses suffered as a result of the respondent's violence acts.</p>	<p>This is not necessary as pursuant to section 48A of the District Court Ordinance (Cap. 336), the court is already empowered to award damages in addition to or in substitution for an injunction.</p>
<p>Association for Concern for Legal Rights of Victims of Domestic Violence [LC Paper No. CB(2)2769/06-07(09)]</p>	<p>(a) Scope of the injunction order under the DVO should be expanded to include provisions giving the protected person the right to request for temporary financial assistance from the respondent to meet their basic living expenses.</p> <p>(b) An exclusion order granted by the court should contain a provision excluding the respondent from the workplace of the applicant and the school of the specified minor.</p>	<p>(a) As noted above, the remedies provided under the DVO seek to provide quick and immediate relief to victims of domestic violence. The provision of ancillary orders may complicate and prolong the court hearing process. Matters involving maintenance should be dealt separately in the matrimonial proceedings. Should the protected persons concerned have financial difficulties, they could seek assistance from the SWD as necessary.</p> <p>(b) This is not necessary. As provided in the existing section 3 and the proposed new section 3A of the DVO, the court may, in granting an exclusion order, exclude the respondent from the matrimonial home/common residence or from a specified part of the matrimonial home/common residence, or from a specified area, whether or not the matrimonial home is included in that area. Therefore, the court has the jurisdiction to exclude the respondent from the workplace of the applicant or the school of the specified minor if the court is satisfied that the applicant has been molested and such order is appropriate having</p>

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		regard to the factors laid down in section 3(2) that the court is required to take into account in the exercise of its jurisdiction to grant an exclusion or entry order.
Zonta Club of Hong Kong, Zonta Club of Kowloon, Zonta Club of Hong Kong East, Zonta Club of New Territories, Zonta Club of Victoria and Zonta Club of Hong Kong II [LC Paper No. CB(2)2739/06-07(03)]	<p>(a) A non-molestation order should explicitly prohibit the respondent from engaging or encouraging any other person to molest and damage the property of the protected persons.</p> <p>(b) The court should be empowered to make remedial orders requiring the respondent to participate in an alcohol/drug treatment programme and to make ancillary orders requiring both the respondent and the applicant to participate in a mediation and counselling programme.</p>	<p>(a) As far as we understand, the applicant usually seeks and the court usually grants a non-molestation order in the following terms –</p> <p style="padding-left: 40px;">“IT IS ORDERED THAT: -</p> <p style="padding-left: 80px;">(i) the Respondent be restrained either by himself, his servants or agents from assaulting, molesting, harassing or otherwise interfering with the Applicant;</p> <p style="padding-left: 80px;">(ii) the Respondent be restrained either by himself, his servants or agents from entering... [address of matrimonial home];...”</p> <p>(b) Under the Bill, it has been proposed that the court, when granting a non-molestation order, may require the respondent to participate in a programme aimed at changing the attitude and behaviour of the abuser. If the abusive acts of the abuser are related to his/her drug/alcohol problem, the operator of the anti-violence programme may refer the abuser to, as the case may be, various types of voluntary treatment and rehabilitation programmes for drug and alcohol addicts run by Department of Health, Hospital Authority and non-governmental organisations.</p>

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		<p>As regards the suggestion of making ancillary orders requiring the respondent and the applicant to participate in mediation, it is noted that the spirit of mediation rests upon both parties' cooperation and voluntary participation and is always premised on the assumption that both parties are more or less on an equal footing and can negotiate on a fair basis to protect their respective interests. Having regard to the fact that in most domestic violence cases, there is always an imbalanced power relationship between the abuser and the abused, and having regard to the concern over the victim's safety, we do not consider mediation an appropriate means to resolve cases involving domestic violence.</p>
4. Anti-violence programme		
Alliance for the Reform of Domestic Violence Ordinance	The court should require the respondent to participate in the proposed anti-violence programme if he/she has a past record of breaching the injunction order.	Under the proposed new section 3(1A) of the DVO, the court may, in granting a non-molestation order, require the abuser to attend the anti-violence programme, seeking to change his/her attitude and behaviour that lead to the granting of the injunction order.
Hong Kong Council of Social Service [LC Paper No. CB(2)2769/06-07(05)]	The DVO should set out clearly the objectives, content and standards of the proposed anti-violence programme.	The proposed provision enables the court to, in granting a non-molestation order, require the respondent to attend an anti-violence programme, which will have to be approved by the Director of Social Welfare. The objective of the programme, as stated in the Bill, is to aim at changing the attitude and behaviour of the abuser that lead to the granting of the injunction. The content and standard of the anti-violence programme are operational matters that need not be detailed in the law. SWD will in due course make public the relevant

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		information to ensure transparency.
Hong Kong Women's Coalition on Equal Opportunities [LC Paper No. CB(2)2769/06-07(02)]	Consideration should be given to enabling the court to order the abusers who breach the injunction order under the DVO to participate in the proposed anti-violence programme.	Breach of injunction order is a contempt of court and can be punished by imprisonment or a fine. Requiring the abuser to participate in the anti-violence programme is a new rehabilitation initiative seeking to change the violent attitude and behaviour of the abuser.
5. Arrest for breach of injunction order		
Alliance for the Reform of Domestic Violence Ordinance Association for Concern for Legal Rights of Victims of Domestic Violence [LC Paper No. CB(2)2769/06-07(09)] Caritas Hong Kong - Family Service [LC Paper No. CB(2)2769/06-07(06)] Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch [LC Paper No. CB(2)2769/06-07(03)]	An authorization of arrest should be automatically attached to an injunction order made under the DVO.	The current proposal to empower the court to also attach an authorization of arrest to an injunction order if it reasonably believes that the respondent will likely cause bodily harm to the protected person has already enhanced the protection for victims of domestic violence. The authorization of arrest will 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. The attachment or otherwise of the authorization of arrest is at the discretion of the court. As the authorization of arrest is a form of restriction of a person's liberty, it should be subject to proper procedural safeguards. The court's discretion is a good form of procedural safeguard in ensuring that the authorization of arrest is rightly granted given the merits of the individual case and will not be exercised arbitrarily.

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6. Validity period of the injunction order		
<p>Alliance for the Reform of Domestic Violence Ordinance</p> <p>Association for Concern for Legal Rights of Victims of Domestic Violence [LC Paper No. CB(2)2769/06-07(09)]</p>	<p>The court should be provided with the flexibility to decide the duration of the exclusion order and the entry order as appropriate.</p>	<p>The DVO currently does not impose any cap on the duration of the “non-molestation” order and there is no change proposed in the Bill. In respect of the exclusion order or entry order made under the DVO, the Bill proposes to extend the duration to a maximum of 24 months, and the court is enabled to extend the order for as many time as necessary, with the overall validity period not exceeding 24 months.</p> <p>According to legal advice, the exclusion order or entry order has routinely been referred to as a “draconian” order by the court and should be granted only when it is necessary to do so in order to avoid severe hardship on the part of the respondent. It is also widely held that such order should be discontinued as soon as it is no longer required.</p> <p>In order to strike a balance between the court’s flexibility and legal certainty, we have proposed to cap the maximum validity period at 2 years in order to dovetail with the corresponding matrimonial or custody proceedings, which normally take about 18 to 24 months.</p>

Part II : Other suggestions

<p align="center">Organisation [LC Paper No. of submission]</p>	<p align="center">Views/suggestions</p>	<p align="center">Response by the Administration</p>
<p>1. Application for injunction order</p>		
<p>Alliance for the Reform of Domestic Violence Ordinance</p> <p>Amnesty International Hong Kong Section [LC Paper No. CB(2)2739/06-07(02)]</p> <p>Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch [LC Paper No. CB(2)2769/06-07(03)]</p> <p>Hong Kong Council of Social Service [LC Paper No. CB(2)2769/06-07(05)]</p>	<p>(a) Procedures for applying for an injunction order should be simplified so as to enable victims of domestic violence to apply for the order on their own.</p> <p>(b) Procedures for applying for ex parte or temporary injunction order should be simplified to enable victims of domestic violence to obtain quick and temporary relief from molestation. The ex parte order should remain in force until the return day of an inter parte hearing of the application.</p> <p>(c) Application form for injunction order should be made available at the Police stations, Legal Aid Department and women refuge centres.</p>	<p>We understand that the Judiciary is preparing an information leaflet to facilitate the public in understanding the application procedures for injunction order under the DVO. The Judiciary will finalise and publish the information leaflet after enactment and commencement of the Bill.</p>
<p>Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch [LC Paper No. CB(2)2769/06-07(03)]</p>	<p>(a) Application for an injunction order under the DVO should be made with the Magistrates' Courts, instead of the District</p>	<p>(a) As provided under the DVO, applications for injunction orders under the DVO are handled by the District Court (the Family Court), which is conveniently located in Wan Chai. For urgent cases, it may be handled by the Court</p>

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	<p>Court, to provide more convenience to the applicants.</p> <p>(b) The courts should be empowered to grant a temporary injunction order before hearing the case, which should be conducted within 10 days.</p>	<p>of First Instance.</p> <p>(b) According to the Judiciary, urgent applications for ex-parte injunction order under the DVO are normally dealt with on the same day or the next day of submission. Such ex-parte order will be in force until the return date of inter-partes hearing, usually held in two weeks' time.</p>
<p>Alliance for the Reform of Domestic Violence Ordinance</p> <p>Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch</p> <p>[LC Paper No. CB(2)2769/06-07(03)]</p>	<p>A third party should be permitted to apply for an injunction order on behalf of the victim of domestic violence.</p>	<p>According to the High Court Rules (Cap. 4A) and District Court Rules (Cap. 336H), "a person under disability" is required to sue by a next friend or defended by a guardian ad litem. For the purpose of the relevant provisions, "a person under disability" includes a child under the age of 18 or a mentally incapacitated person. Other than a person under disability, all persons should initiate legal proceeding on their own.</p>
<p>2. Mandatory anti-violence programme</p>		
<p>Association for Concern for Legal Rights of Victims of Domestic Violence [LC Paper No. CB(2)2769/06-07(09)]</p> <p>Caritas Hong Kong - Family Service [LC Paper No. CB(2)2769/06-07(06)]</p> <p>Harmony House [LC Paper No. CB(2)2739/06-07(04)]</p> <p>Hong Kong Council of Social Service</p>	<p>Court-ordered anti-violence programme should be introduced to require abusers of domestic violence who are serving sentence in jail, put on probation and being bound over to attend the programme.</p>	<p>Under the existing criminal legislative framework, the court may, pursuant to the Probation of Offenders Ordinance (Cap. 298), make a probation order requiring a person convicted of an offence to be under the supervision of a probation officer. A probation order may in addition require the offender to comply with such requirements as the court considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the same offence or the commission of other offences. In connection with the above, the court has been referring convicted batterers put on probation to attend the Batterer Intervention Programme</p>

Organisation [LC Paper No. of submission]	Views/suggestions	Response by the Administration
<p>[LC Paper No. CB(2)2769/06-07(05)]</p> <p>Hong Kong Women's Coalition on Equal Opportunities</p> <p>[LC Paper No. CB(2)2769/06-07(02)]</p>		<p>(BIP). The pilot BIP was launched by SWD in January 2006 to provide treatment to batterers put on probation by the court, as well as to those who join the programme on a voluntary basis.</p> <p>The Administration has to critically examine as to whether, and if so, how the suggestion of requiring abusers of domestic violence on bind-over order and those serving sentence in jail to attend an anti-violence programme should be taken forward. One of the major considerations is whether, as a matter of principle and on parity ground, abusers of domestic violence should be singled out from other offenders to attend such programme. Moreover, overseas experience shows that it is not empirically proven that court-ordered counseling programme for abusers of domestic violence is necessarily effective in preventing recurrence of domestic violence. Voluntary participation is more desirable to achieve treatment gains.</p> <p>The outcome of the two-year pilot project on BIP launched by the SWD in January 2006 to provide treatment to batterers joining the programme on a voluntary basis and batterers put on probation will provide useful reference for the Administration to consider the way forward for the proposed introduction of court-ordered anti-violence programme for abusers of domestic violence.</p>

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3. Establishment of a specialised domestic violence court		
<p>Alliance for the Reform of Domestic Violence Ordinance</p> <p>Amnesty International Hong Kong Section [LC Paper No. CB(2)2739/06-07(02)]</p> <p>Association for Concern for Legal Rights of Victims of Domestic Violence [LC Paper No. CB(2)2769/06-07(09)]</p> <p>Caritas Hong Kong - Family Service [LC Paper No. CB(2)2769/06-07(06)]</p> <p>Zonta Club of Hong Kong, Zonta Club of Kowloon, Zonta Club of Hong Kong East, Zonta Club of New Territories, Zonta Club of Victoria and Zonta Club of Hong Kong II [LC Paper No. CB(2)2739/06-07(03)]</p>	<p>A specialised domestic violence court to handle both criminal and civil cases relating to domestic violence should be set up for speedy handling of domestic violence cases and providing comprehensive support to victims.</p>	<p>The Administration has already raised with the Judiciary the feasibility of modelling on the UK experience in dealing with domestic violence cases in a specialised way, including clustering and fast-tracking cases in the court, in which pre-trial hearings of domestic violence related criminal cases were grouped in one court session, as well as enhancements to court listing arrangements. The Judiciary is currently examining the various options in improving the handling of domestic violence cases in court, including the legal and technical issues.</p>
<p>The Law Society of Hong Kong [LC Paper No. CB(2)2739/06-07(05)]</p>	<p>A truly dedicated Family Court with exclusive jurisdiction to handle all family disputes, including the making of care and protection orders, should be set up. Furthermore, a specialised unit should be established within the Family Court to handle all domestic violence-related crime cases.</p>	<p>Please see above.</p>

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4. Criminalisation of certain domestic violence acts		
Against Elderly Abuse of Hong Kong [LC Paper No. CB(2)2769/06-07(01)]	Elder abuse should be made a criminal offence.	There is no universally accepted definition of elder abuse, and perceptions and the descriptive definition of elder abuse vary among groups across and within communities, reflecting distinctions between acceptable and unacceptable interpersonal and communal behaviour in different communities. Whilst there is no specific and stand-alone ordinance on elder abuse, rights and interests of the elders are protected by law. On criminal legislative framework, the existing law seeks to sanction all acts of violence, irrespective of the relationships between the abusers and the victims, and independent of where the act of violence occurs. On civil legislative framework, if the DVO is amended as proposed, its provisions will be extended to familial relationships other than spouses and cohabitants, and hence accord elders the same level of protection as other victims of domestic violence falling within those familial relationships. In addition, the Government has all along provided a comprehensive range of services and support for vulnerable elders in need.
Alliance for the Reform of Domestic Violence Ordinance Association for Concern for Legal Rights of Victims of Domestic Violence [LC Paper No. CB(2)2769/06-07(09)]	Exposing a child to witness domestic violence should be made a criminal offence.	The proposal of making the exposure of child(ren) to domestic violence a criminal offence is a controversial subject, and has read-across implications on other crime which occur in front of the children. It will pose a question as to why we should single out witnessing domestic violence as a crime, but not other violence acts. We have reservation on this proposal. Nevertheless, as mentioned above, we appreciate the negative impact on children of witnessing domestic violence and a wide range of counseling and crisis intervention services are

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		<p>provided to the children in need by the FCPSUs and the Clinical Psychology Units of the SWD, including counseling services, statutory protection, residential child care services as well as psychological assessment and treatment. Apart from providing casework and clinical psychological services, the FCPSUs also work with clinical psychologists in preparing handbooks for the group activities of victims, abused children and batterers. We have also allocated additional resources to strengthen the psychological support to victims of domestic violence, with particular focus on children witnessing domestic violence.</p>
<p>Caritas Hong Kong - Family Service [LC Paper No. CB(2)2769/06-07(06)]</p>	<p>Legislation to guard against parents leaving the children unattended at home should be introduced, subject to the adequate provision of child care and nursery facilities.</p>	<p>Neglect of children is a criminal offence under existing law. Under sections 26 of the Offences Against the Person Ordinance (Cap. 212), any person who unlawfully abandons or exposes a child under the age of 2 years, whereby the life of such child is endangered, or the health of such child is or is likely to be permanently injured, shall be guilty of an offence and liable on conviction on indictment to imprisonment of 10 years. Under section 27, any persons above the age 16 who ill-treats, neglects, abandons or exposes such child or young person under the age of 16 shall be guilty of an offence and liable on conviction on indictment to imprisonment of 10 years.</p> <p>There are established cases that successfully prosecuted the parent or carer who left the concerned child unattended at home. According to information provided by the Police, between January 2005 and September 2007, the Police handled a total of 36 child neglect cases involving children being left unattended at home, of which eight children neglected by their</p>

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		<p>parents or carers had accidents and sustained physical injuries. Of the 19 cases that were dealt with by the court after police investigation, the offenders in 12 cases were prosecuted whilst the rest were given bind-over orders.</p> <p>The court is also empowered under the Protection of Children and Juveniles Ordinance (Cap. 213) to grant a supervision order or appoint legal guardian in respect of a child or juvenile who has been or is being assaulted, ill treated, neglected, sexually abused, or whose health, development or welfare has been or is being neglected or avoidably impaired.</p> <p>Legislation aside, it is more important to strengthen parent education to remind them of the danger to leave young children at home alone, and to provide parents in need with necessary child care services. In this regard, the SWD subsidises NGOs to provide a wide range of day child care services, including child care centres, kindergartens-cum-child care centres, and community-based mutual help care centres.</p>