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**Report of the Bills Committee on
Domestic Violence (Amendment) Bill 2007**

Purpose

This paper reports on the deliberations of the Bills Committee on Domestic Violence (Amendment) Bill 2007 (the Bill).

Current legislative framework dealing with domestic violence

2. The legal framework dealing with domestic violence is made up of provisions in various pieces of legislation, imposing criminal sanctions on acts of violence, or providing civil remedies to victims of domestic violence.

Criminal legislative framework

3. The criminal legislative framework seeks to sanction all acts of violence, irrespective of the relationships between the abusers and the victims, and independent of where the violence acts occurs. The framework comprises -

- (a) the Offences Against the Person Ordinance (Cap. 212), imposing criminal sanctions on, inter-alia, murder, manslaughter, attempts to murder, wounding or inflicting grievous bodily harm, exposing child whereby life is endangered, ill-treatment or neglect by those in charge of child or young person, assaults occasioning actual bodily harm and common assaults; and
- (b) the Crimes Ordinance (Cap. 200), imposing criminal sanctions on acts of intimidation, arson, destroying or damaging property, and sexual offences including rape, incest, indecent assaults etc.

Civil legislative framework

4. The civil legislative framework seeks to provide civil remedies to victims of domestic violence. The framework comprises -

- (a) the Protection of Children and Juveniles Ordinance (Cap. 213), empowering the court to grant a supervision order or appoint legal guardian in respect of a child or juvenile who is in need of care or protection as defined under the Ordinance;
- (b) the Mental Health Ordinance (Cap. 136), empowering the Guardianship Board established under the Ordinance to make an emergency guardianship order if it has reason to believe that a mentally incapacitated person is in danger, or is being or likely to be maltreated or exploited and it is necessary to make immediate provision to protect that person; and
- (c) the Domestic Violence Ordinance (Cap. 189) (DVO), empowering the court to grant an injunction order, on application by a party to a marriage, or a man and a woman in cohabitation relationship, containing any or all of the following provisions for himself/herself or any child under the age of 18 living with him/her -
 - (i) a provision restraining the other party from molesting the applicant or any child living with the applicant (a non-molestation order);
 - (ii) a provision excluding the other party from the matrimonial home or from a specified part of the matrimonial home, or from a specified area (an exclusion order); and
 - (iii) a provision requiring the other party to permit the applicant to enter and remain in the matrimonial home or in a specified part of the matrimonial home (an entry order).

The DVO also empowers the court to attach a power of arrest to an injunction order if it is satisfied that the other party has caused actual bodily harm to the applicant or the child concerned.

Although cohabitation is not defined under the DVO, 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.

5. Aside from the above, the court has various jurisdiction under which to award injunctive relief. The first is under the divorce jurisdiction for the protection of the married applicants as part of pending matrimonial proceedings. Secondly, the court also has inherent jurisdiction for the protection of the legal or equitable rights of any applicants possessed of such rights. The jurisdiction is now in statutory form in relevant sections of the High Court Ordinance (Cap. 4) and District Court Ordinance (Cap. 336). These sections confer jurisdiction on the High Court or District Court to grant an injunction where it appears to the court to be just and convenient to do so. A victim of domestic violence may also seek protection under the law of tort such as proceedings in respect of assault, battery, nuisance or trespass.

Review of the DVO

6. In response to public concern over domestic violence, the Administration has conducted a review of the DVO and has identified the following areas that call for improvements -

- (a) only persons in current spousal or cohabitation relationships can apply for an injunction order under the DVO for himself/herself or any child living with him/her, despite the report of cases of violence that involve former spouses and former cohabitants;
- (b) only a child living with the applicant is entitled to the protection under the DVO;
- (c) a child cannot on his/her own apply for an injunction order under the DVO but has to rely on action to be taken by the applicant;
- (d) the court has no power to alter an existing custody or access order in respect of a child when granting an injunction order excluding the respondent from the matrimonial home;
- (e) the court can attach a power of arrest to an injunction order only if it is satisfied that the other party has caused actual bodily harm to the applicant or the child concerned;
- (f) restrictions are imposed on the court's power to issue exclusion order, in that the validity of the order is no longer than three months in the first instance, and the order may be extended only once, for a maximum of another three months only; and
- (g) similar restrictions are imposed as regards the power of arrest attached.

The Bill

7. The Bill seeks to amend the DVO to enhance protection for victims of domestic violence. The main provisions of the Bill are -

- (a) to extend the coverage of the DVO to include persons formerly in spousal/cohabitation relationships and their children; to parent-son/daughter, parent-son/daughter-in-law and grandparent-grandson/granddaughter relationships; and to other extended familial relationships including between a person and his/her brother, sister, brother-in-law, sister-in-law, uncle, aunt, nephew, niece and cousin;

- (b) to enable the court, in granting a non-molestation order, to require the respondent to attend a programme aimed at changing the attitude and behaviour of the abuser as approved by the Director of Social Welfare (DSW);
- (c) to enable a "next friend" of a child under the age of 18 to apply for an injunction order on behalf of the child;
- (d) to remove the requirement that the child has to be living together with the applicant to be entitled to protection under the DVO;
- (e) to enable the court to vary or suspend an existing custody or access order in respect of the child concerned when the court makes an exclusion order under the DVO;
- (f) to empower the court to also attach a power of arrest to a non-molestation order or an exclusion order if it reasonably believes that the respondent will likely cause bodily harm to the applicant or the child concerned; and
- (g) to extend the maximum period of an injunction order and the related power of arrest from a maximum of six months to 24 months.

The Bills Committee

8. At the House Committee meeting on 29 June 2007, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

9. Under the chairmanship of Dr Hon Fernando CHEUNG Chiu-hung, the Bills Committee has held nine meetings, including one meeting with deputations. A list of the organisations and individuals which/who have given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

Expanding the scope of the Bill to cover same sex cohabitants

10. Dr Hon Fernando CHEUNG, Hon Margaret NG, Hon Audrey EU, Hon Ronny TONG, Hon LEE Cheuk-yan, Hon Albert HO and Hon TAM Heung-man are of the view that providing protection to victims of domestic violence should be applied to all persons regardless of their gender so long as the relationship is cohabitual.

11. The Administration has pointed out that to enable same sex cohabitants to apply for an injunction under the DVO would be incompatible with other legislation. 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. The existing law, which reflects the Administration'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. 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 the existing criminal legislative framework.

12. Members remain of the view that same sex cohabitants should not be excluded from the protection of the DVO, as seeking civil injunctive orders under the DVO is the fastest, easiest and cheapest means to obtain protection from the court. Moreover, it has been pointed out that the exclusion of same sex relationships from the protection of the DVO may be inconsistent with the following human rights provisions of the Basic Law (BL) and the Hong Kong Bill of Rights (HKBOR) -

- (a) BL 25 provides that "All Hong Kong residents shall be equal before the law."; and
- (b) article 22 of HKBOR provides that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

In this regard, the Bills Committee has sought the views of the Equal Opportunities Commission (EOC).

13. The EOC has advised that the validity of excluding persons in same sex cohabitation from the protection of the DVO needs careful examination, having regard to the Court of Final Appeal (CFA) judgment in *Secretary for Justice v Yau Yuk Lung* [2007] 3 HKLRD 903. In that case, the respondent and another man were charged with having committed buggery with each other otherwise than in private, contrary to section 118F(1) of the Crimes Ordinance. The subsection provides that "A man who commits buggery with another man otherwise than in private shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 5 years." One of the questions of law before the CFA was whether section 118F(1) was discriminatory to the extent that it is inconsistent with the constitutional principles of equality enshrined in both BL and HKBOR. The CFA held that in criminalising only homosexual buggery otherwise than in private would plainly be unconstitutional under both BL 25 and article 22 of HKBOR in which sexual orientation is within the phrase "other status", unless difference in treatment between heterosexual and homosexual buggery could be justified. The legal principle relating to equality of treatment was summarised by the CFA as follows -

"In general, the law should usually accord identical treatment to comparable situations. However, the guarantee of equality before the law does not invariably require exact equality. Differences in legal treatment may be justified for good reason. In order for differential treatment to be justified, it must be shown that -

- (a) The difference must pursue a legitimate aim. For any aim to be legitimate there must be a genuine need for the difference.
- (b) The difference in treatment must be rationally connected to the legitimate aim.
- (c) The difference in treatment must be no more than is necessary to accomplish the legitimate aim."

14. The Administration has pointed out that unlike the facts in *Secretary for Justice v Yau Yuk Lung*, in which the impugned legislation applied specifically to persons engaging in male homosexual conduct, there is nothing in the DVO nor the Bill which singles out individuals for less favourable treatment on the ground of their sexual orientation. The purpose of the DVO is to provide additional protection in the form of civil injunctive orders to individuals in certain specific relationships who are particularly prone to falling victim to violence in the domestic context, i.e. married persons and cohabitants who have long standing quasi-spousal relationships. The latter category would include people who have not undergone marriage ceremony recognised under Hong Kong law. The DVO is never intended to apply to all categories of person who might, for one reason or another, decide to live in the same household. The categories of person who are not covered by the Bill could include friends, or fellow students or persons who choose, or are obliged to live together, for various reasons including a common economic interest, and it could not be argued that excluding same sex relationships from the protection of the DVO constitutes unlawful discrimination against the victim on the ground of sexual orientation. The absence of remedy under the DVO does not preclude the victim from the protection of the criminal law nor from seeking injunctive relief under the general law.

15. Members have urged the Administration to re-visit its position of not covering same sex cohabitants under the DVO. They are of the view that extending the protection under the DVO to persons in same sex cohabitation merely sought to protect such persons from being molested by their partners, and should not be regarded as equivalent to giving legal recognition to same sex relationships or providing legal entitlements to persons in such relationships.

16. Having regard to members' views, the Administration has re-examined the matter and come to the view that the protection under the DVO should be extended to cover cohabitation between persons of the same sex. It has however emphasised that the proposed extension of the scope of the DVO to cover such cohabitation is only introduced in response to the distinct and unique context of domestic violence. It remains the Administration's clear policy not to recognise same sex relationships. Any

change to this policy stance should not be introduced unless a consensus or a majority view is reached within the society.

17. The Administration has further advised that as the proposed amendment to the DVO to include cohabitation between persons of the same sex in its coverage would fall outside the scope of the Bill, the proposed amendment will have to be effected by way of a separate amendment bill. Accordingly, the Secretary for Labour and Welfare will, when moving the resumption of Second Reading debate on the Bill, undertake that the Administration will introduce amendments to the DVO to include cohabitation between persons of the same sex at the earliest possible time in the next legislative session. This two-stage approach seeks to ensure that the additional protection conferred by the current Bill could be implemented at the earliest opportunity, while the Administration would seek to introduce amendments to include cohabitation between persons of the same sex in the coverage of the DVO as soon as possible following the commencement of the new Legislative Council (LegCo) term.

18. Hon Miriam LAU supports the two-stage approach to enable the additional protection conferred by the Bill to be implemented as soon as practicable and without undue delay arising from the latest proposal.

19. Dr Hon Fernando CHEUNG welcomes the change of policy by the Administration to extend the coverage of the DVO to same sex cohabitants. Dr CHEUNG has however raised the concern about the delay in providing protection to same sex cohabitants in the DVO if the two-stage approach proposed by the Administration is adopted. Hon Audrey EU, Hon Margaret NG, Hon Emily LAU and Dr Hon YEUNG Sum's clear preference is for the Administration to consider amending the long title of the Bill such that amendments could be made to the Bill at the Committee Stage to extend coverage of the DVO to include same sex cohabitants.

20. The Administration has replied that Rule 58(9) of the Rules of Procedure of the Legislative Council (RoP) provides that "If any amendment to the title of the bill is made necessary by an amendment to the bill, it shall be made at the conclusion of the proceedings detailed above, but no question shall be put that the title (as amended) stand part of the bill; nor shall any question be put upon the enacting formula." Past precedent cases involving amendments to titles of bills moved by the Administration all proceeded in compliance with the requirements as set out in RoP 58(9). According to its legal advice, and in accordance with RoP 58(9), the Administration is not in a position to move an amendment to the title of the bill at the outset, so as to enable the proposed amendment to extend the coverage of the Bill to include same sex cohabitants. The Administration has added that more time is required to examine and draft the amendments to effect the intended coverage of same sex cohabitation. Timingwise, introducing the amendments in the new LegCo term would enable the Administration to devote the summer months to conducting research and preparing the amendments.

21. Hon Audrey EU, Hon Margaret NG, Hon Emily LAU and Dr Hon YEUNG Sum consider that as extending the coverage of the DVO to include same sex cohabitants is within the subject matter of the Bill to enhance protection to domestic

violence victims, introducing amendments to certain provisions of the DVO to cover same sex cohabitants could be allowed under RoP 57(4) governing amendments to bills. The Administration's legal advice is that the proposed amendment will contravene the scope test as specified under RoP 57(4), which requires that "an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates".

22. Whilst members prefer extending the coverage of same sex cohabitants in the current Bill, they take note of the Administration's position on the interpretation of the RoP regarding amendments to bills. Following discussion, the Bills Committee supports the two-stage approach as proposed by the Administration.

Providing a definition of "molest" in the DVO

23. Members are of the view that the term "molest" should be defined in the DVO to put beyond doubt that the term includes physical abuse, psychological abuse and sexual abuse.

24. The Administration has explained that although the term "molest" is not defined in the DVO, decided cases have revealed that in the context of family, the concept of "molest" is 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 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 reveals that the court has granted injunction under the DVO on grounds of the three different forms of abuse. There are also abundant cases decided by the courts in Hong Kong and in the United Kingdom (UK) that confirms the above interpretation of "molest".

25. The Administration has pointed out that to introduce a definition of "molest" in the DVO 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 and lead to borderline disputes, hence undermining the protection for victims of domestic violence. Furthermore, introduction of a new definition will render the thousands of previous decided cases irrelevant, and it may 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 disputes.

26. Whilst appreciating the concerns of the Administration, Hon Alan LEONG has suggested that the common law definition of the expression "molest" could be set out in the DVO while the continued application of the common law rules could be preserved. Section 62(2) of the Sales of Goods Ordinance (Cap. 26) provides that "The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Ordinance, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, shall continue to apply to

contracts for the sale of goods." Similar provisions are also found in the Bills of Exchange Ordinance (Cap. 19) and the Partnership Ordinance (Cap. 38).

27. The Administration has advised that although it is possible to provide for the continued application of the common law in a codifying ordinance, codification will, as a matter of general principle, inevitably limit the flexibility in the evolvement of the common law rule concerned. Codifying ordinances should be interpreted by examining the language of the relevant provision in its natural meaning and not strain for an interpretation which either reasserts or alters the pre-existing law. If any previous common law rules are inconsistent with the express provision of a statute, the statute prevails. Furthermore, rules laid down in other common law jurisdictions which are inconsistent with a Hong Kong statute should not be followed. Accordingly, any future development of the law will be limited to the scope of the words in the statute. It is also possible for a common law rule made outside Hong Kong, but codified in a Hong Kong statute, to be reversed by a higher court in the relevant jurisdiction. If that happens, it will necessitate a legislative amendment exercise in order to prevent the law of Hong Kong from progressing on a different path with other common law jurisdictions as far as the rule is concerned.

Extending the meaning of "molest" under the DVO

28. The Administration does not consider it necessary to extend the meaning of "molest" under the DVO to cover neglect of children, the elderly and mentally incapacitated persons, and stalking as suggested by some deputations. The 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. Neglect of children is a criminal offence under the Offences Against the Person Ordinance, while the Protection of Children and Juveniles Ordinance and the Mental Health (Guardianship) Regulations (Cap. 136D) also provide civil remedies to children and mentally incapacitated persons in need of care or protection. 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. On the issue of stalking in the domestic context, it is already covered by the concept of "molest" and hence victims stalked by their spouses/cohabitants may seek injunctive protection through the civil route.

29. The Administration has advised that the law should be coherent and consistent as a matter of legal principle. If it is decided that stalking behaviours should be penalised as a crime, all stalking behaviours, whether in domestic or non-domestic context, should be subject to the same treatment and liable to the same level of criminal sanction under the law. Moreover, to make stalking a criminal offence only in domestic context may give rise to significant enforcement problems as the frontline Police officers will have to ascertain the relationship between the complainant and the alleged offender before they can take any further action. The Administration also considers it neither appropriate as a matter of principle nor practical from the enforcement perspective to single out domestic stalking and legislate against such activity individually.

Expanding the scope of the injunction order

30. Members note that in some overseas places such as New Zealand, the scope of the injunction order includes provisions giving the protected person the exclusive right to reside in the family home (an occupation order), the right to take with him/her or to keep in his/her possession specified furniture and household items (a furniture order), and to request temporary financial assistance from the respondent to meet his/her basic living expenses.

31. The Administration does not see the case for including provisions of ancillary orders in the injunction order granted by court under the DVO. 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. 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 Social Welfare Department (SWD) as necessary.

32. The Administration also does not see the case for including provisions in the injunction order 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, as the court is already empowered to award damages in addition to or in substitution for an injunction pursuant to section 48A of the District Court Ordinance.

Validity period of the injunction order

33. The Bill proposes to enable the court to extend the duration of the exclusion order and the entry order to a maximum of 24 months and for as many times as necessary, with the overall validity period not exceeding 24 months. Hon CHAN Yuen-han however holds the view that the court should be provided with the flexibility to decide the duration of the exclusion order and the entry order as appropriate.

34. The Administration has advised that 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. In order to strike a balance between the court's flexibility and legal certainty, the Bill only proposes to cap the maximum validity period of the exclusion order and the entry order at two years in order to dovetail with the corresponding matrimonial or custody proceedings which normally take about 18 to 24 months. The Bill has not introduced any changes to the existing arrangement of not imposing any cap on the duration of the non-molestation order under the DVO.

Language of the injunction order

35. Hon Albert HO considers that the language of the injunction order granted under the DVO should best be in Chinese, if the respondent is a person of Chinese descent, so that the respondent will well understand the legal consequences of not complying with the injunction order.

36. The Administration has advised that according to the Judiciary, there were a total of 15 injunction orders granted under the DVO between January and November 2007, 13 of which were prepared in English with the remaining two in Chinese. Separately, eight out of the 15 injunction orders granted had attached to them a power of arrest, and seven of them were in English. Under the Official Languages Ordinance (Cap. 5), both English and Chinese are official languages in Hong Kong for court proceeding. Under the High Court Civil Procedure (Use of Language) Rules, Cap. 5C and the District Court Civil Procedure (General) (Use of Language) Rules, Cap. 5A, a judge may use either or both of the official languages in any proceedings or a part of any proceedings before him as he/she considers appropriate for the just and expeditious disposal of the proceedings before him/her, and a party may file any document to be served on another party or person in either official language. In practice, if the applicant is represented by a lawyer, the lawyer has to prepare a draft injunction order for approval by the judge. While the language of the order usually follows the language of the application, the judge may, upon his own initiation or the request by the party/parties, direct that it be switched to the other official language as he/she considers appropriate for the just and expeditious disposal of the proceedings before him/her. Such arrangement applies to all injunction proceedings, whether or not they fall under the DVO. During an inter-parte hearing, the judge will explain to the respondent the content of the injunction order and the consequence of breaching it.

37. With regard to an ex-parte injunction order, the Administration has advised that if a party (i.e. the respondent) is served with an order in an official language with which he/she is not familiar, he/she may, within three days of being served, request in writing the party serving the order (i.e. the applicant) to provide a translation of the document into the other official language. Should the applicant refuse the request, the respondent may apply to the court for an order that the applicant should provide a translation of the injunction order within a reasonable period of time if the court is satisfied that the request is reasonable.

Meaning of "next friend"

38. The Administration has advised that according to legal advice, any person who is not connected with the defendant or has no interest adverse to that of the minor may act as "next friend". A "next friend" will normally be a family member, guardian or close acquaintance, who has no conflict of interest in the subject matter of the proceeding. If the action is prima facie for the benefit of the minor, the "next friend" will not necessarily be removed if he/she is impecunious and a stranger. Previous reported court cases in Hong Kong reveal that parent, sibling, grandparent, spouse, aunt, social worker, trust corporation have acted as "next friend".

39. Hon Audrey EU has suggested specifying DSW as the "next friend" referred to in the Bill. The Administration does not consider it necessary, as the concept of "next friend" is a well-settled common law concept. Generally, any adult who is willing to be responsible for the conduct and cost of legal proceedings instituted on behalf of the minor may act as "next friend" of a minor. Based on this principle, DSW is not precluded from being a "next friend" of a minor, who has no suitable family member to act as his/her "next friend". That said, it should be noted that under such circumstances the more appropriate and expeditious way for DSW to remove a child from immediate risk is to apply for an order commonly known as care or protection order under the Protection of Children and Juvenile Ordinance, which empowers the Juvenile Court to commit a child to the care of any person, grant a supervision order or appoint DSW to be the legal guardian in respect of a child who has been or is being assaulted, ill treated, neglected, sexually abused or avoidably impaired, or who requires care or protection.

Protecting a child living with the applicant

40. Under the Bill, any child, including natural, adoptive or step child, of the applicant, or the respondent would be covered by the injunction order, and whether that child is living with the applicant or not is not relevant to the court's consideration. Also, under the Bill, a minor who has been molested by any of his/her specified relatives, as set out in new section 3A of the Bill, may in his/her own right, through his/her "next friend", apply for an injunction order, whether or not the minor lives with the said relative. Whilst welcoming the enhanced protection extended to a minor under the Bill, members have requested the Administration to restore the protection afforded under the DVO to "a child living with the applicant".

41. The Administration has explained that neither the DVO nor the Bill is intended to address all inter-personal violence in a domestic context. The policy intent is to focus protection under the Bill to people in familial relationships as defined under the Bill. It is against such a background that the qualification of the "living-with" requirement is proposed to be removed from the DVO, in order that a minor who is molested by his/her parent or specified relative could seek protection under the DVO, irrespective of whether or not he/she is living with the applicant or the violent party. At present, as long as the child is living with the applicant and molested by the spouse/cohabitant of the applicant, the applicant may apply for the an injunction under the DVO to protect the child from further molestation. Nevertheless, given the overall objective of the Bill to enhance protection to domestic violence victims, the Administration will move amendments to reinstate protection of the DVO for any minor living with the applicant concerned from being molested by the applicant's spouse or cohabitant, and extend protection for any minor living with the applicant concerned from being molested by the applicant's former spouse or cohabitant. The Administration has emphasised that such amendment will not detract from the policy intent of the Bill to focus on extending protection to domestic violence victims as defined by specified family relationships.

Others amendments to be moved by the Administration

42. The Administration has also undertaken to move the following amendments to the Bill -

- (a) to amend clause 2 to replace "Secretary for Health, Welfare and Food" by "Secretary for Labour and Welfare". Following the re-organisation of the Government Secretariat with effect from 1 July 2007, the Secretary for Labour and Welfare is now the public officer who is in charge of the Bill;
- (b) to amend clauses 4(2), 5 and 7 to put beyond doubt that in relation to an exclusion order, the respondent would be restrained from "entering and remaining" in the specified area;
- (c) to amend clause 7(1) to reinstate in the amended section 5(1) that the court could attach an authorization of arrest to a non-molestation order or exclusion order granted under the inherent jurisdiction of the court upon application by a party to a marriage against the other party to a marriage, and to add "actual" before bodily harm in section 5(1A)(b) to tally with the term adopted in section 5(1A)(a). Corresponding amendment will be made to add "actual" before bodily harm in the Schedule for consistency sake;
- (d) to amend clause 7 to exclude also the black rainstorm warning day when computing time for the purpose of implementing the DVO;
- (e) to amend clause 8 to clarify that the court should have regard to the permanence of the cohabitation relationship in granting an injunction, with or without an authorisation of arrest attached, and whether the persons were in an existing or a former cohabitation relationship; and
- (f) to amend clause 10 to modify the Chinese text of new section 7A(3)(b)(ii) for language consistency.

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

43. To facilitate rehabilitation of the abusers which will be conducive to the better prevention of recurrence of domestic violence, the Bill proposes that the court may, in granting a non-molestation order under the DVO, require the abuser to attend an anti-violence programme as approved by DSW, seeking to change his/her attitude and behaviour that lead to the granting of the injunction order.

44. Members note that the proposed anti-violence programme will be educational in nature and applicable to different types of abusers and their participation will be decided by the court. Whilst the detailed requirements of the proposed programme are being thrashed out by SWD, it is expected to comprise five core components, viz. rapport building and ownership, control and monitoring of violence, self-understanding (learn, confront and challenge), skills training and building, and relapse

prevention. The proposed anti-violence programme is expected to consist of 12 two to three-hour sessions conducted by mental health professionals (social workers, counselors or psychologists) in the form of either one-on-one or group session. Non-governmental organisations (NGOs) will be engaged in delivering the programme and they will be invited to submit programme proposals for approval by DSW in due course. The approved programmes should include the above key elements and may be modified to suit different types of abuses concerned. The respective NGO service providers will be required to record attendance of participants. Absence from a scheduled session without prior notification to the service provider will be regarded as non-compliance of the requirement set by the court and hence a breach of the injunction concerned. Breach of an injunction is a contempt of court and can be punished by imprisonment or a fine.

45. To better prevent recurrence of domestic violence, members have asked whether the court may, in its criminal jurisdiction, require an abuser to attend an anti-violence programme approved by DSW aimed at changing the attitude and behaviour of the abuser.

46. The Administration has advised that 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 order. 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/her of the same offence or the commission of other offences. In connection with the aforesaid, the court has been referring convicted batterers put on probation to attend the pilot Batterer Intervention Programme (BIP) launched by SWD since 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.

47. Dr Hon YEUNG Sum has suggested empowering the court to require abusers of domestic violence on bind over order and those serving sentence in jail to attend the anti-violence programme.

48. The Administration has advised that as a matter of principle and on parity grounds, it is arguable whether abusers of domestic violence should be singled out from other offenders to attend mandatory counselling programme. Overseas experience has shown that it is not empirically proven that court-ordered counselling programme for abusers of domestic violence is necessarily effective in preventing recurrence of domestic violence. The outcome of the two-year pilot project on BIP launched by SWD should help to provide useful reference for the Administration's consideration of the way forward on introducing court-ordered anti-violence programme for abusers of domestic violence.

Formulating judicial guidelines to facilitate consistent handling of domestic violence cases

49. Hon Miriam LAU considers that to ensure consistent handling of domestic violence cases, including the granting of injunction order under the DVO, consideration should be given to the issue of judicial guidelines.

50. The Administration informs members that the Judiciary has advised that in handling applications under the DVO, judges in the Family Court will exercise their powers under section 3 of the DVO and apply similar principles in relevant precedent cases, where appropriate. On the criminal side, domestic violence cases are dealt with at the Magistrates' Courts, the District Court or the Court of First Instance, depending on the nature and seriousness of individual cases. As each case depends on its own facts, the Judiciary considers that the issue of judicial guidelines may not serve any practical purpose.

Establishing a specialised domestic violence court

51. Hon Margaret NG has requested the Administration to follow up with the Judiciary on the suggestion of setting up a specialised domestic court to handle both civil and criminal cases relating to domestic violence.

52. The Administration has advised that the Judiciary is examining the feasibility of modeling 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 are grouped in one court session, as well as enhancements to court listing arrangements. The Administration has undertaken to the Panel on Welfare Services that it would report to the Panel when there is concrete progress on the way forward. The Administration would also explore with relevant parties on other administrative measures that UK has put in place to provide better support to domestic violence victims, including enhanced partnership among criminal justice agencies, early identification of eligible cases for fast-tracking handling, strengthened training of personnel in the criminal justice system (including Police officers and prosecutors), better witness support and improvement to court security.

Committee Stage amendments

53. The Committee Stage amendments to be moved by the Administration and agreed by the Bills Committee are in **Appendix III**.

Recommendations

54. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 18 June 2008 and the commencement of the Amendment Ordinance, if passed by the Council, on 1 August 2008.

Advice sought

55. Members are requested to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
29 May 2008

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

Membership list

Chairman	Dr Hon Fernando CHEUNG Chiu-hung
Members	Hon Albert HO Chun-yan Hon LEE Cheuk-yan Hon Margaret NG Hon James TO Kun-sun Hon CHAN Yuen-han, SBS, JP Hon Bernard CHAN, GBS, JP Dr Hon YEUNG Sum, JP Hon Miriam LAU Kin-ye, GBS, JP Hon Emily LAU Wai-hing, 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 WONG Kwok-hing, MH Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung Hon Ronny TONG Ka-wah, SC Hon KWONG Chi-kin Hon TAM Heung-man Hon Mrs Anson CHAN, GBM, JP (since 14 December 2007)
	(Total : 21 Members)
Clerk	Miss Mary SO
Legal Adviser	Mr LEE Yu-sung
Date	14 December 2007

Bills Committee on Domestic Violence (Amendment) Bill 2007

- A. Organisations which have given oral representation to the Bills Committee
1. Against Elderly Abuse of Hong Kong
 2. Alliance for the Reform of Domestic Violence Ordinance
 3. Amnesty International Hong Kong Section
 4. Association Concerning Sexual Violence Against Women
 5. Association for Concern for Legal Rights of Victims of Domestic Violence
 6. Caritas-Hong Kong Family Service
 7. Civic Party
 8. Civil Rights for Sexual Diversities
 9. Hong Kong Alliance for Family
 10. Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)
 11. Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch
 12. Hong Kong Council of Social Service
 13. Hong Kong Women Christian Council
 14. Hong Kong Women's Coalition on Equal Opportunities - Anti Domestic Violence Programme
 15. Parents for the Family Association
 16. Society for Community Organization
 17. Women Coalition of HKSAR
 18. Zonta Club of Hong Kong
 19. Zonta Club of Hong Kong East
 20. Zonta International

B. Organisations and individuals which/who have provided written submissions only

1. Association for the Advancement of Feminism
2. Fruit in Suits, Hong Kong
3. Harmony House
4. Hong Kong Human Rights Monitor
5. Hong Kong Sex Culture Society
6. The Law Society of Hong Kong
7. The Society of Truth and Light
8. Midnight Blue
9. Society for the Study of Sexualities and Sex-pol
10. 主愛同志運動
11. Mr Nigel Collett
12. Mr William LEUNG

DOMESTIC VIOLENCE (AMENDMENT) BILL 2007

COMMITTEE STAGE

Amendments moved by the Secretary for
Labour and Welfare

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting "Secretary for Health, Welfare and Food" and substituting "Secretary for Labour and Welfare".
4(2)	(a) In paragraph (g), in the English text, by deleting "excluding" and substituting "provision". (b) In paragraph (g), in the English text, by adding "prohibiting" before "the respondent -". (c) In the proposed subparagraphs (i) and (ii), by deleting "from -" and substituting "from entering or remaining in -".
4(5)	In the proposed section 3(3), by repealing everything after "means a" and substituting - "minor - (a) who is a child (whether a natural child, adoptive child or step-child) of the applicant or respondent concerned; or

(b) who is living with the applicant concerned.".

5 In the proposed section 3A(4)(b), by deleting "excluding the respondent from -" and substituting "prohibiting the respondent from entering or remaining in -".

7(1) (a) In the proposed section 5(1), by deleting everything before "the court" and substituting -

"(1) Where a court grants, pursuant to section 3 or 3A, or pursuant to any other power upon an application made by a party to a marriage against the other party to the marriage, an injunction containing -

(a) a provision restraining any person from using violence against another person ("protected person"); or

(b) a provision prohibiting any person from entering or remaining in any premises or area,".

(b) In the proposed section 5(1A), by deleting "an authorization of arrest under subsection (1)" and substituting "under subsection (1) an authorization of arrest to an injunction granted against a person".

(c) In the proposed section 5(1A)(a), by deleting "respondent" and substituting "person".

(d) In the proposed section 5(1A)(b), by deleting
"respondent will likely cause" and substituting
"person will likely cause actual".

7

(a) By adding -

"(2A) Section 5(2) is amended by adding "or
remaining in" after "entry into".".

(b) By adding -

"(5) Section 5(4) is amended by adding "warning
day or black rainstorm" after "gale".".

8(3)

In paragraph (a), by adding "under section 3" after "made".

10

In the proposed section 7A(3)(b)(ii), in the Chinese text,
by repealing everything after "包括" and substituting "在
聆訊進行時備呈法院的社會福利署署長的任何報告。".

17

In the proposed Schedule, in the English text, by adding
"actual" after "likely cause".