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Paper for the Panel on Welfare Services

**Report of the Subcommittee on Strategy and Measures
to Tackle Family Violence**

Purpose

This paper reports on the deliberations of the Subcommittee on Strategy and Measures to Tackle Family Violence (the Subcommittee).

Background

2. In light of the occurrence of the family tragedy on 11 April 2004 in Tin Shui Wai (TSW) and the wide public concern, a subcommittee was set up at the joint meeting of the Panel on Welfare Services and the Panel on Security on 24 May 2004 to study the most pressing issues concerning the strategy and measures to prevent and tackle family violence. The subcommittee completed its work at the conclusion of the last legislative term in July 2004.

3. The subcommittee was re-appointed at the commencement of the new legislative term by the Panel on Welfare Services on 8 November 2004 to continue to follow-up with the Administration on the strategy and measures to prevent and tackle family violence, including the implementation of the recommendations made in the Report of the Review Panel on Family Services in Tin Shui Wai (the Review Panel).

The Subcommittee

4. The terms of reference and the membership list of the Subcommittee are in **Appendices I and II**.

5. Under the chairmanship of Hon CHAN Yuen-han during the 2004-2005, 2005-2006 and 2007-2008 sessions and Dr Hon Fernando CHEUNG Chiu-hung during the 2006-2007 session, the Subcommittee has held 22 meetings with the Administration, including 17 meetings with deputations. A list of organisations/individuals which/who have given views to the Subcommittee is at **Appendix III**.

Deliberations of the Subcommittee

Policy to tackle domestic violence

6. The Administration has advised that it has always been the policy of the Government not to tolerate domestic violence, and this has once again been reiterated in the Chief Executive's 2005-2006 Policy Address. Recognising the nature of domestic violence, the policy objectives are to prevent domestic violence as far as practicable, ensure safety and provide support for victims of domestic violence and stop batterers from committing domestic violence acts. To achieve the policy objectives, the Government adopts a three-pronged approach, i.e. through the implementation of preventive measures (such as publicity, community education and enhancing social capital); supportive services (such as family services, housing assistance, financial assistance and child care services); and specialised services and crisis intervention (such as Family and Child Protective Services Units (FCPSUs), a Family Crisis Support Centre and refuge centres for women etc.) to tackle domestic violence.

7. Dr Hon Fernando CHEUNG considers that each policy bureau and Government department should develop action plan and set performance target to implement the “zero tolerance” policy against domestic violence, for without such the policy to tackle domestic violence is merely a slogan.

8. The Administration has pointed out that it is an established practice for all Government programmes and services to have their own action plan and performance target where practicable, and there is no exception for programmes and services targetted at combating domestic violence. It, however, will not be practicable for the Police to set down performance target for handling family violence cases, as the occurrence of the problem is outside their control.

Town planning and community building

9. Amongst others, the Review Panel is of the view that poor town planning has contributed in part to the occurrence of the family tragedy in TSW in April 2004. To avoid the recurrence of such a family tragedy, members have expressed the views that inter-departmental and cross-sectoral collaboration in the planning of welfare and other supporting facilities/services in new towns as well as developed areas need to be strengthened. Some members have commented

that the existing mechanism established by the District Offices (DOs) and District Councils (DCs) to discuss town planning, community development and district needs, to reflect the views to the relevant departments, and to monitor the provision of facilities and services in the districts concerned, does not appear to have functioned effectively.

10. On new town development, the Administration has advised that through new town development it seeks to ensure that adequate and suitable land has been reserved for the provision of various Government, institutional and community facilities to serve the future population of the new town. The actual provision and implementation programme of the various community facilities are determined by the concerned policy bureaux and the service-providing departments, taking into account local circumstances and available resources. In addition, through the District Administration Scheme, DCs and DOs of the Home Affairs Department (HAD) help ensure that public services and facilities are provided by relevant departments in an effective manner at the district level. Departments are required to consult DCs on local matters that affect the livelihood, living environment or well-being of residents in the districts. Each DC and DO have their mechanism to discuss with relevant departments matters such as district town planning, community development and district needs. This is mainly conducted through discussions at meetings of the DCs (or their committees) and the District Management Committees (DMCs). The DCs and DOs reflect local views to the relevant departments and monitor the provision of facilities and services. In addition, the DMCs (chaired by the District Officers and comprising representatives of the core departments in the district, the DC Chairman and Vice Chairman and committee chairmen) also provide a forum for tackling and resolving district issues among concerned departments.

11. In response to the recommendation of the Review Panel, the Administration has advised that the Yuen Long District Council, in addition to its existing committees responsible for different aspects of community development, has further established a Working Group on Tin Shui Wai Town Planning and Community Building since December 2004. The Working Group is chaired by the DC Vice Chairman and meets regularly to monitor the implementation of the recommendations of the Review Panel and the provision of services and facilities in TSW by departments. Through the joint effort of the Working Group, local stakeholders and concerned government departments, including HAD, the Social Welfare Department (SWD), the then Education and Manpower Bureau (now the Education Bureau), Leisure and Cultural Services Department and the Housing Department (HD), measures have been implemented to improve community services and facilities in TSW. These include strengthening the library service, speeding up the construction of the community hall and local open space projects, use of school premises and under-utilised car parks for organising leisure and cultural activities and community programmes. Through the effort of District Officer (Yuen Long), the process of establishing Mutual Aid Committees (MAC) for the residents of housing estates in TSW (North) has been speeded up and a

total of 30 MACs were set up in the period between November 2004 and July 2005. Through this MAC network, the DO (Yuen Long) has launched large-scale community building projects aiming at promoting social harmony and neighbourhood mutual help. In response to members' enquiry on setting up similar working groups in other districts, the Administration agrees to do so where necessary.

District welfare planning and coordination

12. In response to the TSW Report that District Social Welfare Officers (DSWOs) of SWD should work on a well-established welfare services planning mechanism with evidence-based information so as to critically assess the welfare needs of the district and scrutinise the available services provided to the residents in the district, the Administration has advised that SWD has developed a District Welfare Planning Protocol (the Protocol) which sets out a standardised planning framework and common approach for DSWOs to follow. A set of social indicators are also incorporated as part of the Protocol to provide consistent measurements of the multi-dimensional societal conditions at the districts and to serve as one of the means to map out district welfare needs and identify service gaps. The Protocol is available for public viewing at the SWD's website.

13. The Administration has also taken note of the Review Panel's recommendation on the need for a review of the roles, functions and structures of the existing District Coordinating Committees (DCCs). To take forward the recommendation, a pilot project was conducted in Kwun Tong District in July 2004, namely, "Kwun Tong District Concourse" (the Concourse), involving representatives from non-governmental organisations (NGOs), Kwun Tong DC, academics, schools, medical sector, business sector, government departments, community organisations and service users. Its aim was to prioritise and address the district-specific welfare-related issues through a cross-sector, cross-service and cross-department platform. In addition, the Concourse was also tasked to review, inter alia, the existing DCC mechanism in terms of its roles and functions, structures and composition, and draw up recommendations on the way forward of the DCC mechanism and the district welfare co-ordination mechanism. Having reviewed the district specific issues with reference to the district profile and service statistics and after in-depth deliberation, the Concourse selected domestic violence as the priority welfare issue to be tackled in Kwun Tong. A Task Group was formed to take on board a nine-month locality-based project on domestic violence in Sau Mau Ping and Po Tat area (the Sau Po Project) since January 2005. The project aimed at combating domestic violence in the locality by enhancing the early identification of families-at-risk and promoting cross-service collaboration. A series of community education programmes and training sessions were conducted and the procedures for referring battered spouse cases to FCPSU in the district were streamlined. The pilot project of the Concourse was completed in December 2005.

14. The Administration has advised that the outcome of the pilot project reveals that apart from maintaining the existing DCC mechanism to continue co-ordinating service-specific issues, a cross-service district welfare coordination mechanism should be set up to support DSWOs in formulating overall district welfare strategies and planning. The latter is a separate mechanism to facilitate DSWOs in prioritising various service needs and enhancing cross-sector and cross-service collaboration in the district. The new mechanism has been implemented by phases in all SWD districts in the financial years of 2006-2007 and 2007-2008.

Mechanisms for handling domestic violence

15. The Working Group on Combating Violence (WGCV), a dedicated multi-disciplinary committee set up by the Administration since 2001, is tasked to provide high-level coordination amongst parties concerned to tackle family and sexual violence. One of its tasks is to map out strategies and approaches in handling the problem, from prevention, service provision to inter-sector collaboration etc. The Working Group is chaired by the Director of Social Welfare (DSW) and comprises representatives from relevant policy bureaux, departments and NGOs. Similar committee/working groups are established to deal with child abuse, elder abuse and publicity campaigns in a coordinated manner.

16. Members are of the view that as the problem of domestic violence is multi-faceted, the WGCV, the Committee on Child Abuse (CCA) and the Working Group on Elder Abuse (WGEA) should be amalgamated to form a central body for handling domestic violence and the roles and functions of which should be expanded from being an advisory body at present to also participate in the formulation of policies to prevent and tackle family violence and oversee the full and effective implementation of these policies. Furthermore, a high-level commissioner post, preferably formed under the Chief Secretary for Administration (CS)'s Office, should be created to be the executive arm of the proposed central body.

17. The Administration has sought the views of members of WGCV, CCA and WGEA on merging WGCV, CCA and WGEA into one central body to handle domestic violence, appointing an non-official to chair the central body and expanding the membership of the central body to include more NGOs and community groups at a joint meeting on 5 October 2005. As no consensus could be reached on the aforesaid proposals, the Administration considers that more study is needed before deciding on the way forward in altering the existing arrangements. The Administration has however accepted members' views that to facilitate more effective conduct of business, WGCV, CCA and WGEA should plan ahead with their meeting agenda and develop an annual work plan with concrete implementation timetable and a monitoring mechanism on the progress.

18. The Administration does not see the case for placing the central mechanism for handling domestic violence under the purview of CS, as the then Health, Welfare and Food Bureau (now the Food and Health Bureau), being the policy bureau of SWD, is charged for the policy responsibility on tackling domestic violence and reports to CS. There is established mechanism within the Government to deal with matters which straddle different policy areas.

19. Cross-sectoral and multi-disciplinary co-ordination and co-operation for handling domestic violence at the district level is forged by the DCC mechanism led by DSWO. The DCCs on Family and Child Welfare comprise representatives from government departments, local NGOs, community leaders, etc. to coordinate service delivery related to family violence particularly child abuse and spouse battering, amongst others, based on the specific needs in each district. Elder abuse, on the other hand, is handled by DCCs on Elderly Services. After the TSW family tragedy in April 2004, the Administration had reviewed the district co-ordination mechanism in handling domestic violence cases and considered that there was a need to have a platform in place for more focused discussion on the handling of domestic violence cases among related professionals in a format based on different district dynamics. To date, SWD has set up 11 District Liaison Groups on Family Violence (DLGFV) across the territory to address operational issues in handling domestic violence cases, including spouse battering, elder abuse and violence between other family members.

20. Members are of the view that the Administration should enlist not only representatives from the Police, FCPSUs, Integrated Family Service Centres (IFSCs), medical services units and district elderly community centres to sit on the DLGFV, but also representatives from organisations specialising in handling various kinds of domestic violence, such as Kwan Fook for spouse battering and Against Elderly Abuse of Hong Kong for elder abuse and Association Concerning Sexual Violence Against Women for sexual victims, as members of DLGFV, having regard to their experience and expertise.

21. The Administration has pointed out that the main objective of setting up DLGFV is to enhance district co-ordination in the handling of domestic violence cases by providing a platform for more focused discussion based on different district dynamics. Although the above-named organisations are not represented on any of the DLGFVs, they may be invited to attend the meeting on an ad hoc basis. Furthermore, representatives of these organisations may also be invited to sit on the multi-disciplinary case conferences if they are involved in the cases concerned. Nevertheless, the Administration has agreed to convey members' suggestion to the DSWOs concerned for consideration. The Administration has also agreed to convey the suggestion that the scope of work of DLGFV should be expanded to review serious or fatal domestic/sexual violence cases to DSWOs for consideration.

Housing assistance to victims of domestic violence

22. The Hong Kong Housing Authority (HA)'s policies on Compassionate Rehousing (CR), Conditional Tenancies (CT) and Household Splitting (HS) are summarised as follows -

Compassionate Rehousing

- (a) Any person who has genuine and imminent housing need and cannot resolve it on his own due to hardships may apply for housing assistance under CR, irrespective of he lives in public rental housing (PRH) or private housing. Applications for CR would be investigated and recommended by SWD. Generally speaking, CR applicants have to meet the eligibility criteria applicable to Waiting List applicants, including passing the Comprehensive Means Test (CMT) and the Domestic Property Test (DPT), and complying with residence rule. However, SWD may, on the merits of individual cases, recommend waiving some or all of the eligibility criteria. HD will, on the recommendation of SWD, allocate suitable flats to the applicants as soon as possible.

Conditional Tenancy

- (b) In a divorce case where an agreement cannot be reached between the two parties on their PRH tenancy, HD normally grants the tenancy to the party having custody of the child(ren) concerned. As legal proceedings often take time, and it may be stressful for the divorced parties to continue to live under the same roof, HD has since 1991 been providing temporary accommodation in the form of CT under the CR mechanism to applicants who have dependent child(en) and are awaiting the award of divorce decrees and custody orders, whether or not they live in PRH or private housing, subject to the recommendation of SWD. Generally speaking, CT applicants are required to pass the CMT and DPT and comply with the residence rule under the CR requirements. However, SWD may, on the merits of individual cases, recommend waiving some or all of the eligibility criteria. HD will, on the recommendation of SWD, allocate suitable flats to the applicants as soon as possible.

Household splitting

- (c) If the person in question is a PRH tenant, where there is serious and deep-rooted disharmony among family members, or where there are other reasons deserving sympathetic consideration, he may apply to HD for "splitting" on the recommendation of SWD. If both the main and the splinter households pass the CMT and the DPT, they

will be offered an additional PRH flat for living separately. An eligible splinter household will be offered a refurbished flat in the New Territories. If the splinter household passes the DPT but fails the CMT, he may apply for a one-year temporary licence to stay in Interim Housing in the New Territories. Licence fees will be charged at the current market level during the period. If a household cannot meet the above eligibility criteria but his case deserves sympathetic consideration, HD will refer it to SWD to assess whether CR should be recommended.

23. Members have held a total of four meetings with the Administration and deputations to discuss the issue of housing assistance to victims of domestic violence. Major concerns/views of members are set forth in the ensuing paragraphs.

24. Members have questioned why HD does not accede to all HS requests recommended by SWD in accordance with established policy. The Administration has explained that in principle, HD will accede to splitting requests recommended by SWD. The only reasons why this sometimes is not the case include that the applicants fail to pass the CMT and DPT, are found to have doubtful occupation, and/or that the circumstances of the applicants have changed after the cases are referred back to HD. To further improve the processing of HS applications, HD has agreed with SWD that in future, frontline staff of HD will first conduct an eligibility vetting (including the CMT and DPT) for those who intend to apply for HS. Eligible cases will then be referred to SWD for consideration. Subject to the recommendation of SWD, HD will allocate a flat to the applicant as soon as possible. Rejection, if any, must be endorsed by Senior Housing Managers with concrete reasons. The Administration has also advised that if, for specific reasons such as failure to meet the CMT or DPT that HS requests are rejected by HD, but the applicants have genuine and imminent housing needs which cannot be dealt with by themselves, SWD may recommend eligible applicants to HD for consideration of allocation of PRH flats under CR. According to the respective policy, SWD may, on individual merits, recommend to HD for waiving of certain conditions, e.g. income exceeding the required ceiling or not meeting the minimum requirement on duration of stay in Hong Kong.

25. The Administration has informed members that in drawing up the annual PRH allocation, HA currently reserves 2 000 flats for HS and CR (including CT) applications. The figure is projected on the basis of the number of past cases. It serves merely as a reference for planning instead of a ceiling for flat allocation. In fact, upon receipt of HS and CR cases recommended by SWD, HD will process them as soon as possible to provide housing assistance to each of the applicants, subject to the availability of resources. The number of flats allocated in a year may exceed 2 000 if the situation so warrants.

26. Members consider that the eligibility criteria for CT should be relaxed to also cover couples in disputes not yet proceeded for divorce/not prepared to proceed with divorce. The Administration has advised that HD may, in considering their special and urgent circumstances and on the recommendation of SWD, exercise its discretion to arrange temporary accommodation for them.

27. Members have urged HD and SWD to see that their frontline staff well understand the policies on CR, CT and HS so as to better provide prompt and timely assistance to victims of domestic violence.

28. The Administration has advised that there are established mechanisms at both the district and the headquarters levels of SWD and HD to regularly exchange views and share experience with each other on the handling of housing assistance. To ensure consistency in the application of the housing assistance policies across the board, training is regularly provided to both SWD and HD staff concerned. Notwithstanding, should there be different views with HD on a particular case during the initial assessment stage, SWD staff will liaise with HD staff at the district level, and where necessary, at the central level, to hammer out the differences.

29. Members have requested the Administration to provide seamless housing arrangements for victims of domestic violence, such as setting up a hostel to provide interim housing to the victims, having regard to the facts that the length of stay at the existing four refuge centres for women is generally limited to two weeks due to heavy demand for shelter service and the long waiting time for allocation of a PRH flat under the CR, CT and HS arrangements. Upon receipt of SWD's recommendation, HD normally takes about four weeks to complete the flat allocation for CT and CR cases and an average of about two months for processing the tenants' splitting applications.

30. The Administration has advised that the establishment of refuge centres for women is to meet the immediate and temporary housing needs of victims of domestic violence. In general, the caseworkers concerned will discuss with the victims to work out a discharge plan taking into consideration their own wish and safety, for instance applying for CR or CT, moving to a rented unit, staying with their maiden family, relatives or friends, etc. Depending on the needs of individual cases, extension up to one month or more to a maximum of three months have been granted. SWD will closely monitor the demand for service of refuge centres and consider increasing the capacity of these centres to address the need. At present, apart from a total of 180 places provided by the four refuge centres funded by SWD and operated by SWD, the newly-established CEASE Crisis Centre has since early 2008 been providing 80 short-term accommodation places for victims of domestic violence and sexual violence. The Administration has pointed out that for victims of domestic violence with imminent housing needs, HD pledges to allocate PRH flats to the applicants in about 10 working days. SWD and HD will continue to work closely and accord priority to urgent cases to

assist families in need.

31. Members have pointed out that some batterers refuse to move out of their matrimonial home because they are unwilling to accept PRH flats in the New Territories or they fail to pass the CMT or DPT. To better protect victims of domestic violence, consideration should be given to providing batterers interim housing in urban area or waiving the requirement for them to pass the CMT or DPT for a PRH flat under the HS arrangements.

32. The Administration has pointed out that any person who has genuine and imminent housing need and cannot resolve it by his own means may apply for housing assistance. For batterers with housing need, like other persons in need of housing assistance, social workers of SWD or NGOs will assess the case (such as the family background of client concerned, his/her welfare needs and financial means), and recommend appropriate assistance if they can meet the relevant eligibility criteria. Depending on the actual circumstances of individual cases, SWD may provide the subject client with other suitable assistance, including short-term financial relief to meet rental and removal expenses, and temporary accommodation in singleton hostels and the Family Crisis Support Centre (FCSC) operated by the Caritas - Hong Kong. At present, there are a total of 1 175 singleton hostel and temporary shelter places and FCSC has a capacity of 40 to help people under family crisis.

33. To better step up publicity to enhance tenants' awareness of the policies on CR, CT and HS, the Administration has undertaken to make the leaflets on these policies as well as the application procedures more easily understood by the general public. Efforts will also be made to put up posters and distribute leaflets in the management offices and lobbies of public housing estates to inform residents on the availability of various types of housing assistance.

Prosecution of abusers in cases involving domestic violence

34. Members have held three meetings with the Administration and deputations to discuss the issue of prosecution of abusers in cases involving domestic violence. Major concerns/views of members are set forth in the ensuing paragraphs.

35. Members consider that the Police and the Department of Justice (DoJ) have not exhausted all avenues to gather evidence against the abusers of domestic violence for the purpose of prosecution and have not provided adequate support to victims during the criminal judicial process, hence resulted in the low prosecution rate. Members are of the view that instead of solely relying on the victim to give evidence, and having regard to the fact that domestic violence often remains a one-against-one case, frontline Police officers should also take the initiative to, say, interview neighbours and family members, including young children of the victims, and gather other circumstantial evidence. The policy of "zero tolerance"

should be strictly observed by the Police and DoJ in the prosecution of abusers. Promoting family unity should not come into play in the prosecuting policy or the making of bind over order in cases involving domestic violence. In all instances, frontline Police officers should interview the victims and abusers to get their testimony before deciding whether there is sufficient evidence to initiate prosecution action, rather than dismissing domestic violence cases as mere family disputes.

36. The Hong Kong Police Force has advised that frontline Police officers will take the full circumstances of the case into consideration when reviewing the sufficiency of evidence to initiate prosecution action against the abusers, and under no circumstances will the Police rely solely on the willingness of the victims to give evidence. The Police handles and investigates all reports of domestic violence professionally and conducts thorough investigations according to the circumstances of each report. Where there is evidence of an offence, Police will take prompt and decisive actions to effect arrest. Depending on the circumstances of each individual case and subject to availability of sufficient evidence such as the victims' and witnesses' testimony, medical reports and other circumstantial evidence, the Police will initiate prosecution action. In the absence of any other witnesses, the Police may encounter difficulties in verifying the accounts of the victims and the abusers as domestic violence cases often occur in private. Despite the existence of medical reports and other circumstantial evidence, the victim's testimony remains the crucial part in establishing the prosecution case. Nevertheless, a victim, for various reasons, may decline to provide further information to the Police, not to mention testifying against the abuser in criminal proceedings. Under these circumstances, the Police may encounter certain difficulties in initiating prosecutions against the abusers.

37. The Hong Kong Police Force has further advised that legislation and established procedures are in place for the Police to determine the appropriateness of prosecuting or applying for binding over orders against the abusers. All reports of domestic violence will be thoroughly investigated and decisions will be made in accordance with the "The Statement of Prosecution and Practice" and "The Policy for Prosecuting Cases involving Domestic Violence" of DoJ. If a victim, after giving statement to the Police, refuses to testify against the abuser in criminal proceedings, such proceedings will have to be put on hold unless there are other witnesses or evidence available. As an alternative, application may be made to the court for binding over the abuser. Under no circumstances will frontline Police officers treat family violence cases as family disputes lightly and arbitrarily. The Police is committed to handling and investigating all reports of domestic violence professionally. Since May 2006, supervisory officers at the rank of Sergeant or above have been designated to take charge of the initial police investigations and actions at scene to ensure proper case classifications and handling. The measure is further complemented by the implementation of the Emergency Referral Questionnaire and the Action Checklist since November 2006. There is no cause for concern over the classification of domestic violence related

crime cases as all frontline Police officers are properly trained to investigate and determine as to whether any criminal act or offence is committed.

38. The DoJ has pointed out that in deciding whether to take forward a prosecution in a case of domestic violence, the prosecutors will need to consider alignment with the public interests. Public interests will normally require that a prosecution be brought in a case of domestic violence if (i) there is sufficient evidence to provide a reasonable prospect of conviction, and (ii) the victim is willing to give evidence. It should however be pointed out that the fact that the victim is not willing to give evidence will not necessarily cause the case to be dropped. The prosecutor will actively consider what other evidence may be available. It is not to be assumed that bringing the victim to court to testify is the only way to prove a case.

39. The DoJ has emphasised that bind over order is not sought to promote family unity. A bind over order may be appropriate as an alternative to prosecution if the case is minor, the parties are reconciled, there is no history of violence and there is a concern over a future breach of the peace. A bind over order may also be sought if the victim withdraws support for the prosecution, and the prosecution decides to discontinue the case. Even then, the prosecutor should only seek such an order if there is still sufficient evidence to substantiate the complaint. A bind over order operates in the interest of preventive justice. In some instances, an accused may offer to be bound over on condition that the charge(s) is/are dropped. The prosecutor will approach any such proposal with great caution. It will only be accepted after a careful consideration of the possible consequences and whether it will be in the public interests to do so. To dispose of the case in this way is not likely to be in the public interests in cases involving serious violence. Ultimately, it will be for the court, not the prosecution or the defence, to decide if a bind over order is appropriate in the case presented before it.

40. The DoJ has also advised that prosecution against the abuser may still be pursued against the wishes of the victim if the violence is so serious, or the previous history shows such a real and continuing danger to the victim or the children or other person. If the prosecutor concludes that the case should continue and that it is necessary to rely on the victim's evidence to prove the case, it has to be decided (i) whether an application can be made to use the victim's statement in evidence without the victim to testify under section 65B of the Criminal Procedure Ordinance (Cap. 221) (in which case the consent of the defence is required); (ii) whether the prosecution can proceed by helping the victim to attend court by use of special measures such as CCTV; and (iii) whether the victim should be compelled to give evidence in person in court. If the victim decides to withdraw support for the prosecution but there is sufficient evidence to proceed, the prosecution will decide whether to prosecute in reliance upon the other evidence. The safety of the victim and any children will be considered. Relevant factors include the seriousness of the offence, the victim's injuries

(whether physical or psychological), the chances of the accused offending again, whether the accused planned the attack, if the accused used a weapon, the making of the threats before or after the attack, if there are any children living in the household, the continuing threat to the health and safety of the victim or anyone else who is, or may become, involved, the current state of the victim's relationship with the accused, the history of the relationship and the accused's criminal history, particularly any previous violence.

41. Members have raised query whether the prosecution policy for domestic violence is premised on preserving family unity rather than safeguarding victims' safety, as evidenced in paragraph 15 of "The Policy for Prosecuting Cases involving Domestic Violence" which states that "The prosecutor should obtain information about the family circumstances and the likely effect of a prosecution on the members of the family". As prosecutors and Police officers are not professionally trained to assess the likely effect of a prosecution on the members of the family of the victims, multi-disciplinary teams comprising the Police, prosecutors and social workers, among others, should be set up to handle prosecution of abusers in cases involving domestic violence as is practised in the United States of America.

42. The Administration does not see the case for setting up multi-disciplinary teams to handle prosecution of abusers in cases involving domestic violence, as the "Procedural Guidelines for Handling Battered Spouse Cases", which applies to all concerned professionals, already sets out the roles of various parties, such as the Police, prosecutors and social workers etc. in case handling and management. To strengthen communication amongst the Police, the SWD and local NGO service units and to discuss measures to enhance the collaboration in handling domestic violence cases including high-risk cases, DLGFVs have been set up in all SWD districts since March 2005.

43. The DoJ has also advised that Hong Kong being a common law jurisdiction, it is not feasible for the prosecutor to engage in the investigation of a case. Should the prosecutor need more information in deciding whether to prosecute a case, request to the Police for conducting further investigation will be made. Where necessary, prosecutor may approach the concerned social worker for any relevant information to assist him/her in the decision-making process. However, to better facilitate prosecutors in deciding whether or not to institute prosecution against the abuser, DoJ is considering a scheme to allow prosecutors to interview witnesses to seek clarification of evidence given, as has been done in Australia and recently implemented in the United Kingdom (UK) on a pilot basis. Views of the Hong Kong Bar Association and the Law Society Hong Kong will be sought on this judicial initiative.

44. In view of paragraph 15 of "The Policy for Prosecuting Cases involving Domestic Violence", Dr Hon Fernando CHEUNG has suggested that it should be made a standing practice for DoJ to require a detailed report from SWD's social

workers on the family circumstances of the victim and the likely effect of a prosecution on the members of the family of the victim in all cases involving domestic violence in deciding whether or not to prosecute. The DoJ agrees to consider the suggestion.

45. Some members have asked why DoJ will not consider the views of NGOs about the family circumstances of the victims, but will do so if the same is provided by FCPSUs of SWD. The DoJ's reply is that information on the family circumstances of the victims from SWD or from NGOs will only become a relevant consideration in deciding whether or not to discontinue a case or take a plea for a lesser charge. In most domestic violence cases, no social welfare report on the family background of the victim is required. Usually, some background information on the victim and the victim's family will be provided in the victim's own statement and also in the covering report prepared by the Police. In response to members' enquiry on whether the Police will accept information from NGOs concerning the family circumstances of the victims, the Hong Kong Police Force has advised that only firsthand testimony of the victim could be admitted as evidence. Information provided by social workers relating to what the victim has verbally stated about the incident is inadmissible in criminal proceedings. Nevertheless, case workers of SWD could, where necessary, contact the District Commanders or the Assistant Divisional Commanders to follow up on the case investigation or to relate any fresh development of a domestic violence case. In relation to any suspected mishandling of domestic violence cases, the aggrieved victim could lodge a complaint with the Complaints Against Police Office.

46. Some members remain unconvinced that the Police has done enough in enhancing the procedure for collection of evidence in domestic violence incidents given the low prosecution rate against abusers. They have suggested that the Police should take the abuser to the Police station to obtain a cautioned statement, if the abuser admitted in sound mind at the scene the use of violence against the victim; video-tape the scene and arrange for the victim to undergo a medical check, if the victim refused to give evidence to testify against the abuser at the scene; and allow more time, say, four weeks, for the victim to consider bringing a criminal complaint against the abuser. In the meantime, social workers should be arranged to provide advice and support to the victim on giving evidence to testify against the abuser.

47. The Hong Kong Police Force has pointed out that some of the suggestions, e.g. obtaining cautioned statement from the abuser regardless of any confession and arranging medical check for victim etc. are in fact standard requirements conducted in accordance with established procedures. Notwithstanding, there is always room for improvement in the handling and investigation of all reports of domestic violence by the Police. The Police would be happy to convene a meeting to brief members and deputations on Police investigations of domestic violence.

48. In response to members' concern about inconsistency in the application of the prosecution policy relating to domestic violence due to different interpretations of individual prosecutors, the DoJ has pointed out that all decisions made by junior prosecutors on whether or not to pursue prosecution on a crime case, including a case involving domestic violence, are subject to a review by a senior prosecutor at the directorate level. Regardless of the severity of the injury caused to the victim, prosecution will most certainly be taken against the abuser if the victim agrees to stand trial to testify against the abuser either at court or via a live television link. It is only when the victim refuses to testify against the abuser during trial, despite already having given written statement, and when there is no other sufficient evidence, will the case be discontinued. In deciding whether or not to take a plea from the abuser for a lesser charge, the prosecution will seek the views of the victim, but will not treat these views as determinative.

49. Hon Alan LEONG has proposed that in order to realise the "zero tolerance" policy and having regard to the difficulties of initiating prosecution under the existing charging policy when domestic violence often occurs in private, consideration should be given to initiating prosecution action against the accused who has previous history of domestic violence unless he/she can prove otherwise.

50. The DoJ has replied that a reverse onus proposal would not withstand a constitutional challenge unless it can be justified on the proportionality test. "Reference to the prevalence and severity of certain crime does not add anything new or special to the balancing exercise" (see Sachs J's comment in *State v Coetzee* [1997] 2 LRC 593 at 677). Neither would the need to punish and deter assist, as that consideration equally applies to all other crimes. Nor would the difficulty in bringing domestic violence cases through the criminal justice system if the victim is unwilling to give evidence against the accused help, as this is a phenomenon which is also applicable to other crimes.

51. Members have urged that testimony given by victims of domestic violence suffering from or had mental illness should not be prejudiced by the Police in determining whether to initiate prosecution action against the abusers. The Police should also come up with ways to effectively deal with domestic violence-related crime cases whereby self-defence is claimed by parties involved.

52. The Police has advised that in cases of assaults or wounding where both parties claimed self-defence, thorough investigation will be conducted by the Police to verify the facts, and if necessary legal advice will be sought, before deciding whether there is sufficient evidence to prosecute either one or both parties. There are clear guidelines for Police officers to interview and deal with domestic violence victims suspected of suffering from mental illness.

Assistance to victims of domestic violence to testify against their abusers

53. Members are of the view that support service for victims of domestic violence to testify against their abusers at court should be strengthened in areas such as arranging the victims to see the court beforehand and learn about the court procedures, arranging a social worker to go with the victims to court to give evidence, providing a separate access for victims to enter the court and allowing victims to give evidence by use of special measures such as CCTV. In addition, consideration should be given to establishing a legal advocate scheme as practised in UK. To encourage victims of domestic violence to come forward to testify against their abusers, criminal proceedings should be held and conducted expeditiously.

54. The Administration has advised that various witness support services are provided to the victims undergoing court proceedings by the Police and SWD. The Police will explain to the victims about the investigation progress and court procedures, while SWD will provide supportive services including counselling, court visit, escort by social worker during trial, etc. To strengthen support services for victims of domestic violence, SWD has in May 2007 published a new information kit to help victims understand their rights, the protection and remedies afforded by law, as well as the support services provided by the Government. The information kit has been widely distributed through SWD offices, NGOs, the Police, 18 DOs, etc. Notwithstanding, the Administration will follow up with SWD on ways to further strengthen assistance and support to victims of domestic violence undergoing court proceedings against the abusers. The Administration is well aware of the latest witness support programme in UK and will consider applying such initiatives in Hong Kong where feasible and suitable. SWD will also strengthen its support for victims attending court proceedings.

55. The DoJ has also advised that there are separate rooms at all courts for witnesses to stay while waiting for their turn to appear at court. If the court is satisfied that the victim is a "witness in fear", application under section 79B (giving evidence by live television link) and section 79C (video recorded evidence) of the Criminal Procedure Ordinance to testify against the abuser can also be made. In order to avoid delays in bringing cases involving vulnerable witnesses to trial, DoJ has implemented measures to facilitate the fast-tracking of such cases. These include where possible, vulnerable witness cases to be tried in Chinese, legal advice on vulnerable witness files to be provided within seven working days of their receipt from the Police, vulnerable witness cases to be committed for trial on the first return day, etc.

Handling of domestic violence cases by the Police

56. Since December 2004, a new acknowledgement system has been introduced to strengthen the communication between frontline Police officers and social workers of SWD during the case referral process. On receiving a Police

referral, the social workers will acknowledge receipt and inform the Police of the contact details of the responsible social worker, and whether or not the victims and/or abusers have responded to the services provided. To enhance availability of information for frontline Police officers, the Police has developed a database known as the Central Domestic Violence Database (CDVD) to allow officers to be made aware of previous reports of domestic violence and related reports involving the complainant or complainee in the preceding two years. This may include contact details of the responsible social workers and if services have been provided. This mechanism enables frontline Police officers to have more knowledge about the background of the reported cases and hence to take more effective and appropriate intervention at scene.

57. In response to the recommendations made by the Coroner's Court in respect of the death inquest into the cause of death of four family members in the TSW incident on 5 September 2005, the Police formed a Working Group to study the recommendations and how to take them forward. The recommendations are as follows -

- (a) standardised investigation procedure should be set up, e.g. (i) a checklist for questioning; (ii) design a form in term of any media, e.g. electronic format for recording;
- (b) for those classified cases (especially emergency cases), frontline Police should have no authority to downgrade the cases before full investigation;
- (c) the role of frontline Police should not be to mediate;
- (d) more comprehensive training on domestic violence should be provided to the police in districts where the occurrence of domestic violence is of high frequency; and
- (e) for all cases reported in police stations, the duty officer should record the cases. A monitoring system should be set up to ensure the reporting is completely recorded.

58. The Hong Kong Police Force reported to the Subcommittee on 28 March 2006 about its plan to introduce an Emergency Referral Questionnaire and an Action Checklist to improve Police response to domestic violence reports and to ensure standardisation of investigations. Members note that the Questionnaire has adopted the concept of risk assessment that is universally employed in the policing of domestic violence. It is designed as an assessment tool to guide officers to reveal existing high risk factors within the victim family by going through a series of simple but crucial threat assessment questions, e.g. recent assault history, severity of injuries, use of weapons. The questions will lead to a decision on whether immediate threat management is required to remove the

victim and his/her children to a place of refuge or alternatively of immediate turning out of the SWD response team. In recognition of the complexity involved in domestic violence and the number of procedures to be followed, the Action Checklist has been designed to guide officers to take the necessary and proper actions at the scene of a domestic violence incident. To assist frontline officers to better document all actions at the scene for future reference, an enhancement to the Police electronic documentation system has been sought to upload the information on the Emergency Referral Questionnaire and Action Checklist to the CDVD. Besides allowing easy retrieval and reference of the information, this will enhance monitoring by supervisory officers.

59. Members share the view that to ensure that the Emergency Referral Questionnaire and Action Checklist can achieve the desired effect to assist the handling officers in making a more informed decision on whether any emergency referral to the outreaching teams of SWD is required, the Police should let the concern groups have sight of these risk assessment tools.

60. The Hong Kong Police Force has explained that being internal documents for frontline Police officers to follow, the Police has no intention to make public the Emergency Referral Questionnaire and Action Checklist as a matter of principle. It has however pointed out that the Questionnaire contains questions surrounding high risk factors within the family, such as recent assault and dispute history, injuries inflicted, history of abuse on children within the family, tendency and position regarding divorce, and aggravating factors including suicidal tendency and parties' history of violent behaviour and alcoholism. As regards the Action Checklist, it contains items checking the parties against the CDVD, checking of status of any injunction orders, serving of a Domestic Incident Notice and a Family Support Services Information Card on both parties, completion of the Emergency Referral Questionnaire, interview of victims separately, gathering of evidence including medical for proper classification of the case, and taking arrest actions based on prevailing evidence, etc.

61. Members welcome the deployment of an officer of the rank of Sergeant or above to the scene of a reported domestic violence case to take charge of the investigation as from April 2006. Given that the victim of domestic violence is likely to be a female in the majority of cases, members hope that deploying a female officer to the scene can be made a standing practice. Members have also urged that women's perspectives be incorporated in the Police training on the handling of family violence.

62. The Hong Kong Police Force has advised that it is stipulated in the Police's internal guidelines that a female officer should be deployed to the scene of domestic violence reports where necessary. At present, the female ratio of Police officers stands at around 12%. Women's perspectives and gender issues have been incorporated into the training of Police officers and work will be continued along this line.

63. Members share the view that specialised units should be set up by the Police to handle domestic violence cases, having regard to the complexity of such cases.

64. After considering members' view, the Police has established a three-tiered structure to provide a graded investigative response to domestic violence reports by investigation units at different levels, taking into account the seriousness of the cases as well as taking into consideration the existence of high risk facts in the family. Designated domestic violence investigation units, comprising specially trained officers with strong investigative background, are set up at District level to investigate serious domestic violence reports. The accumulation of expertise within the units and the strengthened collaboration between the domestic violence investigation units and the local welfare units would assist in the handling of serious cases. In addition to assigning the investigation of serious cases to the domestic violence investigation units, repeated miscellaneous (non-crime) case previously handled by the Uniform Branch are being taken up by Divisional crime investigation teams so as to enhance the early identification and management of risk factors. The Uniform Branch officers will only handle non-repetitive miscellaneous cases. To overcome the complications arising from different investigation units handling different cases involving the same family, the "One Family One Team" approach has been adopted. The same investigation unit, be it the domestic violence investigation units or other crime investigation teams, will take over all subsequent cases involving the same family so as to provide a more coordinated approach as familiarity with the background of the family would enhance the unit's ability in identifying risk factors for early intervention and facilitate closer collaborative efforts with the social welfare units.

65. In addition to tightening up frontline supervision, an alert mechanism will be installed into the CDVD to automatically generate alert messages on repeated cases occurring within 12 months or less for the attention of the Divisional supervisory officers.

66. In preparation for the full implementation of the Emergency Referral Questionnaire and an Action Checklist, a new training package was rolled out to all frontline Police officers between July and October 2006 in conjunction with social workers and clinical psychologists. Apart from equipping officers with the skills in conducting risk assessments, the training also placed particular focus on raising awareness of victim's psychology, need for sensitivity and cross-disciplinary collaborations. Specialised training was also tailor-made for designated domestic violence investigation units in the handling of high risk cases. The Child Protection Policy Unit in conjunction with SWD and the Police Psychological Services Group has completed a training programme run between June and August 2007 specially designed for all officers from the domestic violence investigation units to enhance their capability in the early identification of high risk factors and the effective handling of serious cases. The training

focused on the dynamics of domestic violence, psychology and behavioural patterns of the parties involved as well as service interface with the social welfare units.

67. Members have asked about the measures taken by the Police to equip its frontline officers with the knowledge on advising the victims of the protection they can seek under the existing legislation.

68. The Hong Kong Police Force has advised that all new recruits have to undergo basic training on domestic violence which includes the application of an injunction order under the Domestic Violence Ordinance (Cap. 189) (DVO). Examinations are put in place to test officers' proficiency in law and police procedures. It is also stipulated in the Police guidelines for handling family violence that officers attending the scene of a family violence incident should check whether an injunction order is in existence in respect of the involved parties. There is no cause for concern that frontline officers are unable to identify whether a particular case of domestic violence is crime-related, as the training content of the Police places heavy emphasis on equipping all officers with the knowledge and skill to identify acts that are liable to criminal offence since their six months basic training at the Police College and their subsequent continuation training.

69. On the suggestion made by the Law Society of Hong Kong that Police stations should have available a list of solicitors who can provide legal advice to the victims of domestic violence, the Police's response is that it will be happy to act accordingly once such a list is available.

Handling of high risk cases by SWD

70. Members are of the view that one-stop service should be provided to better help victims of domestic violence and prevent domestic violence.

71. The Administration has advised that the FCPSUs, which are specialised units under SWD manned by experienced social workers, provide a coordinated package of one-stop service and arrangement of various services for victims, their families and batterers in domestic violence cases. A multi-disciplinary approach is adopted to provide necessary support for the victims and children to help them tide over the difficult period, lessen trauma associated with violence and live a new life. Social workers of FCPSUs perform the role of a case manager to coordinate a wide range of services and assistance including crisis intervention, short-term accommodation at refuge centres or Family Crisis and Support Centre, counselling, clinical psychological services, medical treatment, housing assistance, financial assistance, etc. FCPSUs also serve as the contact points for referrals and initial screening of domestic violence referred by the Police. High risk domestic violence cases will be handled by social workers of FCPSUs. To ensure service quality and strengthen clinical support for frontline social workers in FCPSUs, additional resources have been allocated to strengthen the manpower

of FCPSUs and expand the number of FCPSUs from five in 2004-2005 to eight in 2006-2007 and 11 in 2007-2008.

72. The Administration has further advised that a referral mechanism has also been established between the Police and SWD since 2003 through which the Police, having obtained the consent from victims and/or alleged batterers, will refer their cases to SWD for follow-up service. Through the mechanism, non-consensual referrals will also be made if the case is assessed as high risk and a Superintendent of Police, having personally reviewed the case, decides such referral is warranted so as to mitigate the risk of the situation deteriorating. An acknowledgement system is also put in place to strengthen the communication between frontline Police officers and social workers of SWD during the case referral process. On receiving a Police referral, SWD will acknowledge receipt and inform the Police of the contact details of the responsible social worker, and whether or not the victims and/or abusers have accepted the follow-up service. To facilitate the Police in seeking urgent professional advice and/or immediate social work support in handling urgent and high risk cases, a 24-hour Direct Referral Line has been set up since October 2006 between SWD and the Police. In case of need, social workers will offer professional advice and/or perform outreaching duties to assist the Police in handling crisis situations.

73. One of the recommendations made by Coroner's Court in respect of the death inquest into the cause of death of four family members in the TSW incident for SWD is that social workers shall consider providing their pager numbers to clients so that they can be reached directly in emergency situation.

74. The Administration considers it not practical to provide every social worker with pager or mobile phone to respond directly to emergency calls from his/her clients, as the case workers concerned may not be available all the time for various reasons, such as coming down with illness, away from Hong Kong or engaged in other duties. This, however, does not mean that there is at present no emergency intervention by social workers. In fact, a 24-hour emergency service is currently available to families facing crisis. During office hours, social workers of FCPSUs, IFSCs and Medical Social Service Units (MSSUs) will respond to requests for emergency services and provide immediate outreaching and crisis intervention service as necessary. After office hours, two hotlines operated by SWD and Caritas - Hong Kong supported by SWD's duty social workers on the respective Child Abuse/Battered Spouse or Psychiatric Emergency duty roster has been put in place to meet with the need for emergency social work support.

75. Members have pointed out that if the Administration cannot even agree to the recommendation of providing pager or mobile phone numbers of social workers to clients so that the latter can get immediate help outside office hours, the sincerity of the Administration in fully implementing the "zero tolerance" policy against family violence is doubtful. If providing pager or mobile phone numbers of social workers to clients will greatly increase the work pressure of

these frontline staff, consideration should be given to allocating more resources to improve the manpower situation.

76. The Administration considers that the two hotlines operated by SWD and Caritas - Hong Kong supported by SWD's duty social workers on the respective Child Abuse/Battered Spouse or Psychiatric Emergency duty roster, together with the "999" hotline operated by the Police, can address the main concern of the coroner that there should be emergency intervention by social workers after office hours. Despite such, SWD will continue to review the after office hours emergency service to strengthen service provision and emergency contact as necessary. The possibility of developing a mechanism for contact with caseworkers outside office hours by staff of women refuge centres in case their known cases request to leave the refuge centres outside office hour will be explored.

77. The Administration has also advised that in case outreaching duty by a social worker outside normal office hours is required, the hotline staff of SWD or FCSC of Caritas - Hong Kong can enlist support from the duty social workers of SWD on the respective Child Abuse, Battered Spouse or Psychiatric Emergency duty roster. In 2004-2005, a total of 56 outreaching visits were conducted by social workers on the above duty rosters after office hours. Besides, FCSC hotline of Caritas - Hong Kong is answered by social workers 24 hours a day. To promote the service users' accessibility to services, all IFSCs provide regular extended hours service during some weekday evenings and Saturday and they also adopt flexibility in arranging interviews and home visits outside normal office hours. The MSSUs operated by SWD at six major hospitals with Accident and Emergency Departments have also extended their service hours to 8 pm (on weekdays) and 3 pm (on Saturdays) starting from 1 April 2003. In 2005-2006, additional resources have been allocated to strengthen the social work support to the women refuge centres after office hours, and to improve the manpower to man the hotline of FCSC of Caritas - Hong Kong particularly during night time. Apart from these, the contact with Wai On Home for Women by residents has also been strengthened through the provision of an additional mobile phone.

78. Members are of the view that at the very least, social workers of FCPSUs should be provided with pagers or mobile phones to respond to emergency calls from their clients as the cases they handle are all high-risk ones. The Administration considers that the existing 24-hour emergency service is adequate in providing emergency intervention by social workers. Nevertheless, SWD will continue to review the after office hour emergency service to strengthen service provision and emergency contact as necessary.

Review of the DVO

79. The DVO empowers 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 -

- (a) a provision restraining the other party from molesting the applicant or any child living with the applicant (a non-molestation order);
- (b) 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
- (c) 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.

80. In reviewing the DVO, the Administration has drawn up the following criteria -

- (a) the statistics collected and the anecdotal experience of the Police and SWD in handling domestic violence cases;
- (b) the existence of criminal and civil remedies under the current legislative framework to deal with the problem;
- (c) whether further legislation is strictly necessary and whether it is an appropriate means to address the problem;
- (d) the implications on other legislation, the legal system and other policies; and
- (e) the impact on family relations in Hong Kong.

81. Adopting these criteria, the Administration has identified the following areas where improvements are called for -

- (a) only persons in current spousal or co-habitation relationships can apply for an injunction order under the DVO for himself/herself or any child living together with him/her,

despite the report of cases of violence that involve former spouses and former co-habitants;

- (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 only 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 for the first instance, and that the order may be extended only once, for a maximum of another three months; and
- (g) similar restrictions imposed as regards the power of arrest attached.

82. Against the above, in May 2006 the Administration has proposed the following preliminary amendments to the DVO for consultation with the Subcommittee -

- (a) enable also former spouses, and a man and a woman in former co-habitation relationship, to apply for an injunction order under the DVO;
- (b) remove the requirement that the child has to be living together with the applicant for him/her to be entitled the protection under the DVO;
- (c) extend protection under the DVO to a child of the applicant or the respondent, whether biological, adopted or step child;
- (d) enable a "next friend" of a child under the age of 18 to apply for an injunction order on behalf of the child;
- (e) enable the court to vary any existing custody/access order in

respect of the child concerned when the court makes an exclusion order under the DVO;

- (f) empower the court to also attach a power of arrest if it reasonably believes that it is likely that the respondent will cause bodily harm to the applicant and the child concerned;
- (g) remove the three-month cap on the validity of the injunction order and permit extension of the injunction order for more than one time provided that the total period does not exceed a maximum of 24 months (to dovetail with the corresponding matrimonial or custody proceedings, which normally take about 18 to 24 months); and
- (h) remove the three-month cap on the validity of the power of arrest and permit extension of the power of arrest for more than one time provided that the total period does not exceed a maximum of 24 months.

83. Hon CHAN Yuen-han is of the view that it should best be left to the discretion of the court to decide the duration of the injunction order and the power of arrest attached, as some matrimonial or custody proceedings may take more than 24 months to conclude.

84. The Administration has explained that setting 24 months as the maximum duration of the injunction order and the power of arrest attached is made having regard to the time generally required of a matrimonial or custody proceedings and the need to provide legal clarity and certainty. Although some matrimonial or custody proceedings may take more than 24 months to conclude, the applicant can always apply for another injunction order afresh and the power of arrest attached from the court should there be such a need. In general, the Court may grant an injunction order for one month in the first instance, which can be extended by a further three months if deemed necessary. Upon the expiry of the six-month maximum period, the applicant can make a fresh application for an injunction order from the court should he/she or a child living with him/her be again molested by the abuser.

85. Dr Hon Fernando CHEUNG is of the view that members living in the same household, such as elderly parents and parents-in-law, should be covered under the scope of the DVO as "protected persons".

86. The Administration has advised that it has not ruled out the possibility of extending the scope of the DVO to include parents-adult son/daughter and parents-in-law relationships under the scope of the DVO. More in-depth studies will have to be conducted to ascertain whether such extension is necessary, having regard to the fact that most elders are reluctant to seek legal action against their

adult children or children-in-law for abusing them. There is also the concern about the impact of such extension on family relations. Even if the elderly is not covered under the scope of the DVO as "protected persons", other legislative means will be considered to protect the elderly from being abused by their family members or caregivers on the condition that these means will not impact adversely on family relations.

87. Members have urged the introduction of court-ordered batterers intervention programme (BIP) without further delay, as the existing arrangements of putting batterers on probation order to join the counselling programme under the arrangement of the probation officers are far from effective, as evidenced by only a handful of such probation orders made by the court in a year. While agreeing that court-ordered BIP is crucial for combating domestic violence, Hon Mrs Sophie LEUNG hopes that more efforts can be made by the Administration to make the BIP more accessible by, say, training up more people with the skills to provide counselling to actual and potential batterers.

88. The Administration has advised that more careful and in-depth examination is needed before it can decide on whether and, if so, how court-ordered BIP should be introduced. For instance, there is a need to consider carefully whether court-ordered BIP should be one of the sentencing options for the court; whether participation in BIP should be in place of imprisonment penalty; and whether batterers serving sentence in jail should be required to attend BIP concurrently. In addition, legal advice has also suggested that the relevant provision should be sufficiently precise and adequately accessible to the abusers to be able to foresee with a reasonable degree of certainty the circumstances in which and the conditions on which the authorities might effect the court-ordered treatment.

89. The Administration has also advised that upon the completion of two pilot projects of BIP conducted by SWD from January 2006 to March 2008, the projects would be evaluated with a view to identifying effective treatment modalities for batterers of various backgrounds. The experience drawn from these projects would provide useful reference for defining the goals, contents and standards of BIP, as well as for considering whether BIP should be stated explicitly as a sentencing option. In the meantime, SWD will arrange sharing sessions with judges and enforcement agencies upon completion of the first phase of the pilot projects in June 2006, with a view to encouraging the court to make more referrals to BIP.

90. In response to members' request to introduce a definition of "domestic violence" in the DVO to include physical abuse, sexual abuse and psychological abuse, the Administration's legal advice is that the term "molest" under the DVO covers any conduct which can properly be regarded as such a degree of harassment as to call for the intervention of the court. Information gathered from the Judiciary also reveals that the court has granted injunction on application under section 3 of the DVO on the ground of psychological abuse. To help the public to understand that the term "molest" under the DVO included psychological abuse,

such information will be included in the information kits/leaflets for victims of family violence.

91. Hon CHAN Yuen-han considers that the amendments to the DVO proposed by the Administration still fall short of providing adequate protection to victims of domestic violence. Miss CHAN requested the Administration to set up a dedicated working group comprising all relevant stakeholders and Legislative Council Members to review the DVO. The Administration does not consider there to be a need for a separate working group to review the DVO, as there are established channels to collect and consult the views of stakeholders and the general public on issues of public concern.

92. Subsequently, following a comprehensive review of the current legislation and taken into account also the views of the Panel on Welfare Services, various advisory boards and concerned stakeholders, the Administration has introduced the Domestic Violence (Amendment) Bill 2007 (the Bill) into the Legislative Council (LegCo) on 27 June 2007.

93. Apart from the proposed amendments in paragraph 82 above, the Administration has considerably expanded the scope of protected persons to also cover persons who have been molested by their parents, grandparents, children, grandchildren, brothers, sisters, uncles, aunts, nephews, nieces or cousins, or by the spouse of such relatives, or such relatives of their spouses. In granting a non-molestation order under the DVO, the court is also empowered to require the abuser to attend an anti-violence programme as approved by DSW, seeking to change the attitude and behaviour of the abuser that lead to the granting of the injunction order.

94. The Bill was passed by the LegCo on 18 June 2008 and the new legislation will come into operation on 1 August 2008. The Administration has also undertaken to introduce further amendments to the DVO to extend its coverage to include same sex cohabitants in the 2008-2009 legislative session.

Pilot Project on Child Fatality Review

95. Despite the concerted effort to safeguard the welfare of children, there are from time to time tragic incidents involving child death, which arouse concerns on the effectiveness of the services provided and operating mechanism for child protection. There have been calls for the Administration to set up a child fatality review mechanism to identify ways to prevent re-occurrence of similar tragedies. The Report of the Review Panel on Family Services in TSW released in November 2004 also recommended SWD to explore the feasibility of setting up such a mechanism.

96. The Administration subsequently launched the Pilot Project for Child Fatality Review in February 2008. The purpose of the review is to facilitate the

examination of and improvement to the current system in respect of child protection and child welfare. It is not intended to be the mechanism to identify the causes leading to the child's death nor to attribute responsibility to individuals. An evaluation of the review mechanism would be conducted at the end of the two-year pilot period with a view to throwing light on how the review mechanism could be improved. In early February 2008, DSW appointed 14 members from different professions and sectors to form the Review Panel on the Pilot Project for Child Fatality Review (RP).

97. Members are of the view that the RP should report to the Family Council chaired by CS, so as to ensure that the recommendations made by the RP would be followed up by relevant parties and organisations. Members also consider that the RP should have statutory backing so as to ensure the provision of complete and accurate information by organisations that had rendered services to the deceased child or his/her family and that the scope of work of the RP should be expanded in the long run to cover all domestic violence cases which have caused deaths or serious injuries.

98. The Administration has advised that similar to other non-statutory bodies set up by the Administration, the RP operates independently from the Government, albeit with secretariat support from SWD. There is no reason to doubt that the recommendations made by the RP would not be followed up by relevant parties and organisations where practicable, as the review findings and recommendations of the RP will be published in annual reports for public scrutiny. The Administration has further advised that organisations that had rendered services to the deceased child or his/her family have thus far been very co-operative in providing information to the RP on a voluntary basis. There is no reason to doubt that these organisations would withhold information from the RP. Subject to the experience gained and outcome of the review of the child fatality review mechanism after the two-year pilot period, the Administration will not rule out the possibility of making it a statutory mechanism and to expand its scope of work in the long run to cover all domestic violence cases which have caused deaths or serious injuries.

99. Members share the view that one way to encourage organisations that had rendered services to the deceased child or his/her family to provide all necessary information to the RP is to provide them with legal protection against being sued by family of the deceased child.

100. Members note that the scope of cases to be covered by the review mechanism is all cases involving children under the age of 18 who died of unnatural causes. Review of these cases will only be conducted upon completion of all criminal and judicial processes to avoid prejudicing such processes. Members consider such an arrangement undesirable, as the sooner the RP can conduct its review, the better it can identify gaps and deficiencies in the delivery of services prior to the child's death. Members consider that reviewing the child

fatality cases when the criminal and judicial processes are still ongoing should not prejudice such legal proceedings, as meetings of the RP are closed-doors ones.

101. Members have expressed concern that placing the RP under SWD may confine the selection of cases for review to those relating to the social welfare system. The Administration has pointed out that the Secretariat of RP will, based on the list of cases obtained from the Coroner's Court, prepare a list of children who died of unnatural causes for general review by the RP.

102. Some members have suggested that the RP should preferably be chaired by the Secretary for Justice (SJ) and that people from law enforcement agency and with legal background should also be appointed as RP members, as are practised in many overseas jurisdictions, having regard to the fact that investigation of the child's death is an important element of the review. The Administration has advised that the review mechanism is not intended to identify causes leading to the child's death nor to attribute responsibility to individuals. Instead, the objectives of the review are to examine the practice and service issues pertaining to the child death cases; to identify feasible and practical improvements in these areas; to identify patterns and trends for formulation of prevention strategies; and to promote multi-disciplinary and inter-agency cooperation for prevention of child death. The Administration has also pointed out that although the RP is formed under SWD, SWD has consulted stakeholders from various sectors, such as the Hospital Authority, the then Education and Manpower Bureau (now the Education Bureau) and NGOs, on the scheme details through meetings, briefings and consultation sessions before preparing for the setting up of the child fatality review mechanism. Hon CHAN Yuen-han has pointed out that if SJ could lead the Task Force on Youth Drug Abuse, there is no reason why SJ could not lead the RP to prevent child death.

103. Dr Hon Fernando CHEUNG shares the view that the best way to safeguard the rights and well-being of children is for the Government to set up a statutory Children's Commission, as has been done in many developed economies such as Australia. But as the Administration has previously advised that it has no plan to set up a Children's Commission, such task should be put under the purview of the Family Council.

104. Members have decided to invite CS and SJ to come before the Subcommittee to discuss the proposals of making the Family Council overseeing the operation of the RP, including the implementation of RP's recommendations by parties concerned and having SJ chaired the RP, as well as the suggestion of allowing the RP to review a death child case before the completion of all criminal and judicial processes on the case.

Pilot Project on BIP

105. Although SWD and some NGOs have been offering BIPs on voluntary

participation basis, the development of treatment programmes for batterers in Hong Kong is still at its early stage. To further promote the development of BIPs in Hong Kong and identify effective treatment modalities for batterers with different degrees of battering behaviour, SWD launched a pilot project of BIP from January 2006 to March 2008. The pilot project was divided into two parts and which were conducted concurrently. Part I was conducted by an NGO, the Hong Kong Family Welfare Society (HKFWS), targeting batterers who were involved in "milder" spouse battering cases that might not be known to any existing social service providers. Part II of the pilot project was conducted by SWD, which was characterised by the inclusion of a comparison group and an experimental group to facilitate outcome evaluation. Clients in the comparison group received regular social work intervention, while those in the experimental group participated in the BIP in addition to regular social work intervention. To facilitate further analysis, participants in the experimental group were divided into three sub-groups, viz those joining on a voluntary basis, those subject to a bind over order and those subject to a probation order.

106. Members have urged the Administration not to stop short at conducting briefings or workshops for social workers and other practitioners to share the findings of the pilot project and the development of user manuals for the HKFWS and SWD programmes respectively with a view to standardising the intervention and sharing the experience gained from the pilot project. Members are of the view that the BIP be made a standard provision of SWD, as the findings of the pilot project reveal that there was a general reduction in the violent behaviour of the participants in both HKFWS and SWD programmes.

107. The Administration has advised that providing counselling service to batterers would become part of the standard service provision of FCPSUs. As different types of batterers respond to the BIPs differently, SWD will conduct further study and analysis to develop suitable programmes that cater for different types of batterers.

108. Dr Hon Fernando CHEUNG hopes that a platform to facilitate exchange of views between SWD and NGOs on the development of the BIPs could be put in place.

109. Members have asked whether additional funding would be provided to SWD for implementing the anti-violence programme (AVP) following the commencement of the Domestic Violence (Amendment) Bill 2007 on 1 August 2008.

110. The Administration has advised that about \$ 1 million has been allocated to SWD to run the AVP through NGOs, which is estimated to serve about 100 participants. Should the demand for the AVP be greater than expected, SWD will meet the demand through internal redeployment of resources in the first instance and seek new resources in due course.

Others

111. The Subcommittee has also received briefings on the consultancy study on child abuse and spouse battering conducted by the University of Hong Kong. The study was commissioned by SWD in 2003.

Advice sought

112. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
27 June 2008

Appendix I

Legislative Council Panel on Welfare Services

Subcommittee on Strategy and Measures to Tackle Family Violence

Terms of Reference

To discuss with the Administration on how to improve the existing strategy and measures to tackle family violence, taking into consideration the views of the non-governmental organisations providing welfare services, other concerned groups and the public.

Panel on Welfare Services

Subcommittee on Strategy and Measures to Tackle Family Violence

Membership list

Chairman	Hon CHAN Yuen-han, SBS, JP (2004 - 2005 session) (2005 - 2006 session) (2007 - 2007 session)
	Dr Hon Fernando CHEUNG Chiu-hung (2006 - 2007 session)
Members	Hon Albert HO Chun-yan (since 23 October 2006) Hon Fred LI Wah-ming, JP (from 7 December 2004 to 17 January 2005) Hon LEE Cheuk-yan Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP Hon TAM Yiu-chung, GBS, JP (since 31 October 2005) Hon LI Fung-ying, BBS, JP Hon Albert CHAN Wai-yip (from 7 December 2004 to 9 October 2005) Hon Alan LEONG Kah-kit, SC (since 31 October 2005) Hon LEUNG Kwok-hung Dr Hon Fernando CHEUNG Chiu-hung Hon Mrs Anson CHAN, GBM, JP (since 2 January 2008)
	Total: 12 Members
Clerk	Miss Mary SO
Legal Adviser	Mr LEE Yu-sung
Date	2 January 2008

Panel on Welfare Services

Subcommittee on Strategy and Measures to Tackle Family Violence

Organisations and individual which/who have given oral representation to the Subcommittee

1. Against Child Abuse
2. Against Domestic Violence-Professional Family Counsellors' & Family Therapists' Concern Group
3. Against Elderly Abuse of Hong Kong
4. Association Concerning Sexual Violence Against Women
5. Association for Concern for Legal Rights of Victims of Domestic Violence
6. Association for the Advancement of Feminism
7. Caritas Family Crisis Support Centre
8. Caritas – Hong Kong
9. Caritas Hong Kong - Family Service
10. Caritas Project for Adult Survivors of Childhood Sexual Abuse
11. Christian Family Service Centre
12. Concern Group on the Rights of New Immigrant Women
13. Government Social Work Officer Association
14. Harmony House
15. Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)
16. Hong Kong Chinese Civil Servants' Association – Social Work Officer Grade Branch
17. Hong Kong Christian Institute
18. Hong Kong College of Paediatricians

19. Hong Kong Committee on Children's Rights
20. Hong Kong Family Welfare Society
21. Hong Kong Federation of Women's Centres
22. Hong Kong Single Parents Association
23. Hong Kong Social Workers Association
24. Hong Kong Women Christian Council
25. Hong Kong Women Coalition on Equal Opportunity
26. Hong Kong Women's Coalition on Equal Opportunities - Anti Domestic Violence Programme
27. International Social Service Hong Kong Branch
28. Medical Coordinators on Child Abuse, Hospital Authority
29. New Women Arrivals League
30. Po Leung Kuk
31. The Hong Kong Council of Social Service
32. The Hong Kong Federation of Trade Unions Women Affairs Committee
33. The Law Society of Hong Kong
34. The Society of Rehabilitation & Crime Prevention, Hong Kong
35. Sau Po Centre on Ageing, The University of Hong Kong
36. Society for Community Organization
37. Women's Hotline
38. Wong Chuk Hang Concern Group for Tenancy Rights
39. 風雨同路熱線
40. Dr CHOW Chun-bong