

立法會 *Legislative Council*

LC Paper No. CB(2)1982/08-09(02)

Ref : CB2/BC/6/08

Bills Committee on Domestic Violence (Amendment) Bill 2009

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper sets out the background of the Domestic Violence (Amendment) Bill 2009 (the Amendment Bill) and gives a brief account of the past discussions by the Panel on Welfare Services (the Panel) on the legislative proposal.

Background

The Domestic Violence Ordinance (DVO) (Cap. 189)

2. DVO, enacted in 1986, enables a party to a marriage, or a man and woman in cohabitation, to apply to the court for an injunction order against molestation by the other party. According to the Administration, the legislation was enacted at a time when the increase in spousal abuse cases had given rise to great public concern, especially among the women's groups as most were battered wife cases. The aim of DVO then was to provide quick and simple relief to persons who could not or did not wish to take divorce proceedings. The remedies available under DVO were tailored for the circumstances pertaining to such spousal or quasi-spousal relationships.

The Domestic Violence (Amendment) Bill 2007 (the 2007 Bill)

3. The Administration proposed in 2007 to extend the scope of DVO through the 2007 Bill to enhance protection for victims of domestic violence in the following ways –

- (a) extend its coverage to include persons formerly in spousal/cohabitation relationships and their children; parent-son/daughter, parent-son/daughter-in-law, and grandparent-grandson/granddaughter relationships; and 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) enable a "next friend" of a child under the age of 18 to apply for an injunction order on behalf of the child;
- (c) remove the requirement for the child to be living together with the applicant to be entitled to protection under DVO;
- (d) 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 DVO;
- (e) empower the court to also attach a power of arrest if it reasonably believes that the respondent will likely cause bodily harm to the applicant or the child concerned; and
- (f) extend the maximum duration of the injunction order and the related power of arrest from a maximum of six months to two years.

4. In addition to the above proposals, to facilitate rehabilitation of the abusers which would be conducive to the better prevention of recurrence of domestic violence, the Administration also proposed that the court might, in granting a non-molestation order under DVO, require the abuser to attend an anti-violence programme as approved by the Director of Social Welfare, seeking to change his/her attitude and behaviour that lead to the granting of the injunction order.

5. The Bills Committee formed to study the 2007 Bill made a report on its deliberations to the House Committee on 30 May 2008. The Bill was passed at the Council meeting of 18 June 2008. With the commencement of the Domestic Violence (Amendment) Ordinance on 1 August 2008, the scope of DVO has been expanded, from covering molestation between married couples and heterosexual cohabitants, to cover also former spouse/cohabitants, as well as immediate and extended family members.

6. In the course of the scrutiny of the 2007 Bill, members of the Bills Committee were of the view that the scope of DVO should be extended to cover same-sex cohabitants and urged the Administration to re-visit its position of not covering same sex cohabitants under DVO. They were of the view that extending the protection under 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.

7. Having regard to members' views, the Administration had re-examined the matter and came to the view that the protection under DVO should be extended to cover cohabitation between persons of the same sex. It however emphasized that the proposed extension of the scope of DVO to cover such cohabitation was only introduced in response to the distinct and unique context of domestic violence. It

remained the Administration's clear policy not to recognize same sex relationships. Any change to this policy stance should not be introduced unless a consensus or a majority view was reached within the society.

8. The Administration further advised that as the proposed amendment to DVO to include cohabitation between persons of the same sex in its coverage would fall outside the scope of the Bill, the proposed amendment would have to be effected by way of a separate amendment bill. Accordingly, during the resumption of Second Reading debate on the Bill at the Council meeting of 18 June 2008, the Secretary for Labour and Welfare gave an undertaking to further amend DVO to extend its scope to cover same sex cohabitants at the earliest possible time in the 2008-2009 session.

Views and concerns of members and deputations

Meeting with the Administration

9. At the Panel meeting on 8 December 2008, the Administration briefed the Panel on the proposed amendments to DVO to include in the coverage of DVO cohabitation between persons of the same sex. The amendments, if enacted, would enable a party to a current or former same-sex cohabitation relationship to obtain relief from molestation by applying to the court for an injunction order containing any or all of the following provisions -

- (a) a provision restraining the other party to the cohabitation relationship from molesting the applicant or a specified minor¹ (a non-molestation order);
- (b) a provision excluding the other party from their common residence or from a specified part of their common residence, 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 their common residence or in a specified part of their common residence (an entry order).

The power of the court to impose a condition in a non-molestation order requiring the abuser to take part in an anti-violence programme that aimed to change his/her attitude and behaviour that had led to the granting of the injunction order, to attach under specified circumstances an authorization of arrest to the injunction order, and to vary or suspend an existing custody or access order in respect of the child concerned when the

¹ Under section 3(3) of DVO, "specified minor" means a minor who is a child (whether a natural child, adoptive child or step-child) of the applicant or respondent concerned, or who is living with the applicant concerned.

court made an exclusion order, would also be extended to persons in same-sex cohabitation relationships.

10. Some members welcomed the proposed amendments to DVO and urged the Administration to introduce the relevant legislative proposal as soon as possible. They were of the view that same sex cohabitants should not be excluded from the protection of DVO from the human rights perspective. Moreover, seeking civil injunctive orders under DVO would be the fastest, easiest and cheapest means to obtain protection from the court. These members pointed out that they supported the resumption of the Second Reading debate on the 2007 Bill on the understanding that the Administration would further amend DVO in the 2008-2009 session to include the coverage of DVO to cohabitants between persons of the same sex.

11. Some other members were concerned that the proposed amendments would not only undermine the core values of family and marriage, but also move a step forward to recognise same-sex marriage and relationship. While they were not opposed to the proposal of protecting persons of same-sex relationship from molestation, they considered that the eligibility criteria for protection under DVO would be spousal, intimate or familial relationships between the victim and the abuser as specified in the legislation. While expressing understanding of the background for proposing the amendments and the Administration's policy of not recognising same-sex marriage, civil partnership or any same-sex relationship, these members remained concerned that the proposed amendments would give rise to wide public concern about a policy change. They were of the view that the Administration should spell out clearly that the legislation was not confined to the context of "family" and sever any linkage between same-sex cohabitation and "marriage". To this end, some members suggested that the title of DVO should be changed to feature acts of molestation that occur in a domestic setting or a separate legislation should be enacted to deal with same-sex cohabitants.

Meetings with deputations

12. The Panel held two special meetings on 10 and 23 January to receive views from 105 deputations and 44 individuals on the proposed amendments to DVO. The Panel also received over 400 written submissions on the proposal. About two-thirds of those giving views to the Panel objected strongly to the proposed amendments to DVO. These deputations and individuals were concerned that the proposal would cause ambiguity in the meaning of "family" and "marriage", and hence undermine the traditional values on family and marriage as well as the morality of society. They considered that the Chinese title of DVO (家庭暴力條例) aimed to cater for "family" (家庭) violence, and that "family" was constituted from marriage between a man and a woman contracted under the Marriage Ordinance (Cap. 181). In their view, the proposed amendments to DVO would distort the traditional concepts of family and marriage by suggesting that family could comprise same-sex cohabitants. Some of them also expressed concern that the proposed amendments, if enacted, would lead to court challenges for the recognition of same-sex marriages as a matter of legal status.

13. In view of the above concerns, some deputations had put forward a few counter-proposals to protect persons of same-sex relationship from molestation, such as changing the Chinese title of DVO to "家居暴力條例" or "居所暴力條例" to sever the linkage between same-sex relationship and marriage, enacting a separate ordinance to protect same-sex cohabitants from acts of domestic violence, and extending DVO to cover all persons living under the same roof, including same-sex cohabitants.

14. Some other deputations expressed support for the legislative proposal. They were of the view that same-sex cohabitants should be entitled to the same legal protection as heterosexual cohabitants under DVO. The Administration should introduce the legislative proposal expeditiously to honour its undertaking made at the Council meeting on 18 June 2008.

15. As regards the concerns raised by members and deputations, the Administration reiterated that it remained the Administration's established and clear policy not to recognise same-sex relationship as a matter of legal status. The proposed amendments were only relevant to DVO and introduced in response to the distinct and unique context of domestic violence, and this exceptional treatment was applicable only to the policy area of combating domestic violence and did not affect other existing legislation. The Administration would carefully and thoroughly take into account the views and proceed with the drafting of the legislative proposal in consultation with the Department of Justice with a view to extending the scope of DVO to include persons in same-sex cohabitation in the distinct and unique context of domestic violence and spelling out its policy stance clearly.

Relevant papers

16. Members are invited to access the Legislative Council website (<http://www.legco.gov.hk>) to view the Administration's papers and minutes of meetings of 8 December 2008, and 10 and 23 January 2009, as well as the report of the Bills Committee on Domestic Violence (Amendment) Bill 2007.

Council Business Division 2
Legislative Council Secretariat
26 June 2009