

For Information on  
10 January 2009

## **LEGCO PANEL ON WELFARE SERVICES**

### **Proposed Amendments to the Domestic Violence Ordinance**

This paper seeks to elucidate the current legislative framework for tackling domestic violence, the policy intent of the Domestic Violence Ordinance (DVO) (Cap. 189) and the policy considerations underpinning the Administration's proposal to extend the scope of the DVO from covering only heterosexual cohabitation relationship to include also same-sex cohabitation relationship.

#### **The Current Legislative Framework**

2. The current legislative framework for tackling domestic violence comprises criminal sanctions against acts of violence and civil remedies for victims of domestic violence.

3. The **criminal legislative framework** targets **acts of violence**. In other words, the enforcement authorities may, irrespective of the relationships, if any, between the abusers and the victims, and independent of where the acts of violence occur, hold the abusers liable for criminal sanctions under the Offences against the Person Ordinance (Cap. 212) or the Crimes Ordinance (Cap. 200).

4. As regards the civil legislative framework, the Protection of Children and Juveniles Ordinance (Cap. 213), the Mental Health Ordinance (Cap. 136) and the DVO provide victims of domestic violence, including children or juveniles, mentally incapacitated persons, as well as individuals in specific relationships and their children living with them respectively, with additional civil protection. The **civil legislative framework** provides additional civil remedies for **specific groups of individuals in light of their special circumstances and needs**.

## The Domestic Violence Ordinance

### **Background**

5. The DVO seeks to empower individuals in certain specific relationships and their children living with them to apply to the court for an injunction order against molestation by the other parties in such relationships. The DVO aims to provide additional civil remedies for the victims on top of the current criminal legislative framework. Since its enactment in 1986, the DVO has been applicable only to a party to a marriage, and a party to a cohabitation relationship between a man and a woman as in a marriage, and their children living with them.

6. The DVO was enacted at a time when the upsurge of spousal abuse cases had given rise to great public concern, especially among the women's groups as most were battered wives cases. The aim of the 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 the DVO were tailored to the circumstances pertaining to such spouses, or heterosexual cohabitants with intimate quasi-spousal relationships. For instance, the remedies seek to prohibit an abuser from entering or remaining in the matrimonial home or common residence, thereby allowing the couple a period to "cool off" from continued tension and decide on the way forward with their relationship; or require the abuser with estate or beneficial interests in the matrimonial home or common residence to permit the other party to return and remain therein.

### **Policy Intent**

7. The policy intent of the DVO is premised on the consideration of the special power interface, dynamics and risk factors arising from the intimate relationships between such spouses or between a man and a woman in cohabitation, whose intricate emotional and sexual relationships, concerns for their children's feeling or fear of losing family's financial support may render the victims reluctant to report to the Police the abusers' acts of violence and to seek redress under the criminal legislative framework. In view of these special considerations, the DVO serves to provide additional civil remedies for these victims on top of the current criminal legislative framework. The DVO is **tailored to deal with acts of molestation which occurred between individuals in a specific relationship**, enabling the victim to be temporarily segregated from the

abuser and freed from molestation under the protection of an injunction order, and allowing both parties the time and space to cool down and solve their problems.

8. In 2007, the Administration introduced the Domestic Violence (Amendment) Bill 2007 (the 2007 Bill) into the Legislative Council (LegCo) to enhance protection for victims of domestic violence. In response to public concern, the Administration proposed in the 2007 Bill to extend the scope of the DVO to include former spouses and former cohabitants of opposite sex – obviously these persons no longer live together under the same roof, but the acts of violence might not stop by virtue of the former relationships. The public generally supported that these persons should be provided with the additional civil protection under the DVO. After considering that similar special power interface, dynamics and risk factors might exist among relatives (such as parents and sons/daughters or mothers-in-law and daughters-in-law), and having regard to the strong request of the community to provide civil protection for victims of domestic violence in relationships other than spouses or heterosexual cohabitants, we proposed to further extend the scope of the DVO to cover persons in other immediate and extended familial relationships so as to enhance the legal protection for victims of domestic violence such as abused elders.

9. The legislative intent of the 2007 Bill was to focus on persons in specific relationships, irrespective of whether they were living together. The Bill was passed by LegCo on 18 June 2008 and the amended DVO has come into operation on 1 August 2008. In other words, the civil protection provided under the DVO does not hinge on whether the victims and the abusers are living under the same roof. For instance, former spouses or heterosexual cohabitants as well as immediate and extended family members who are not living together are also afforded the same protection under the DVO. This **legislative principle, which focuses on relationships rather than on whether the victim and the abuser are living under the same roof**, has been widely accepted by the LegCo.

### **Extending the scope of the DVO to cover same-sex cohabitants**

10. In extending the scope of the DVO under the 2007 Bill to cover, inter alia, former spouses or former heterosexual cohabitants, the Administration had not initially proposed to further extend the scope of the

DVO from covering heterosexual cohabitants to also include same-sex cohabitants. Our considerations then were:

- (a) in Hong Kong, a marriage contracted under the Marriage Ordinance (Cap. 181) is, in law, the voluntary union for life of one man and one woman to the exclusion of all others. **Our law, which reflects the Administration's policy stance, does not recognise same-sex marriage, civil partnership or any same-sex relationship. Recognising same-sex relationship is an issue concerning ethics and morality of society. Any change to this policy stance would have substantial implications on society and should not be introduced unless a consensus or a majority view is reached by society;**
- (b) any acts of violence are liable to criminal sanctions under the relevant ordinances, irrespective of the relationship between the abuser and the victim. Persons in same-sex cohabitation relationship are afforded the same level of protection as those in heterosexual cohabitation relationship under our existing criminal legislative framework, which comprises the Offences Against the Person Ordinance (Cap. 212) and the Crimes Ordinance (Cap. 200) and;
- (c) persons who fall outside the scope of the DVO may continue to seek protection under the law of tort or inherent jurisdiction of the court.

11. During the scrutiny of the 2007 Bill, Legco Members from various political parties urged the Administration to re-examine the feasibility of further extending the scope of the DVO from covering heterosexual cohabitants to also include same-sex cohabitants. A number of Members maintained that extending the protection under the DVO to include same-sex cohabitants 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. At the Bills Committee meeting held on 28 September 2007, the majority of the deputations attending the meeting also expressed the view that the scope of DVO should be extended to cover same-sex cohabitants.

12. Having regard to the strong views expressed by LegCo Members and the community's concern about the acts of violence between same-sex cohabitants, the Administration had very carefully re-examined the matter. We noted that the intimate relationship between same-sex cohabitants might also entail similar special power interface, dynamics and risk factors as in the relationship between heterosexual cohabitants. Violence incidents could quickly escalate into life-threatening situations or even fatality. Since lives might be at stake, the Administration agreed that, **while upholding its policy stance of not recognising any same-sex relationship as a matter of legal status**, we could give exceptional consideration to, and for the specific purpose of dealing with violence between individuals in specific relationship, extending the scope of the DVO from heterosexual cohabitation relationship already covered therein to include also victims of violence in same-sex cohabitation relationship.

13. The above proposal was unanimously supported by Bills Committee Members from various political parties, who had also strongly requested the Administration to undertake to introduce the further legislative amendments as soon as practicable. Accordingly, in moving the resumption of Second Reading Debate on the 2007 Bill on 18 June 2008, the Secretary for Labour and Welfare (SLW), in response to LegCo Members' request, undertook to introduce a bill in the 2008-09 legislative session to further amend the DVO to extend its scope from only covering heterosexual cohabitants to also include same-sex cohabitants. For details, please refer to the Hansard of the LegCo sitting on 18 June 2008<sup>1</sup>.

14. In light of the above, the Labour and Welfare Bureau consulted the LegCo Panel on Welfare Services on the relevant proposed amendments on 8 December 2008. As clearly stated in the Administration's paper submitted to the Bills Committee, and as SLW stressed in moving the resumption of Second Reading Debate, and reiterated at the meeting of the LegCo Panel on Welfare Services mentioned above, the Administration proposed the extension of the protection under the DVO to cover same-sex cohabitants only in view of the distinct and unique context of domestic violence. **It remains the Administration's established and clear policy not to recognise same-sex relationship as a matter of legal status.** The above proposal is only

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<sup>1</sup> The relevant record can be accessed at <http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0618-confirm-ec.pdf> (p. 186-222)

**relevant to the DVO and the policy area of combating domestic violence, which enables same-sex cohabitants to apply under the DVO to the court for an injunction order against molestation by their cohabiting partners. This amendment is confined to the policy area of domestic violence only and does not affect other existing legislation.**

15. Despite the fact that the above proposal is based on the unanimous consensus reached by Members of the last LegCo term, we understand that some Members of the current LegCo term have different views and various groups in the community also have dissenting opinions. The LegCo Panel on Welfare Services will convene a special meeting on 10 January 2009 and invite deputations concerned with this subject to attend and express their views. The Administration will thoroughly consider the views put forward by all sectors.

**Extending the scope of the DVO to cover persons living under the same roof?**

16. It has been suggested that the Administration might consider amending the DVO to further extend its scope to cover all persons living under the same roof.

17. As mentioned above, the DVO has since its enactment in 1986 been applicable only to individuals in specific relationships and their children. The civil remedies provided under the DVO are tailored to the unique context of such relationships. It is never the legislative intent of the DVO to cover all categories of person who may, for one reason or another, decide to live under the same roof, or to all violence cases taking place in a domestic setting.

18. In proposing in 2007 the extension of the scope of the DVO to cover former spouses, former cohabitants of opposite sex and other immediate and extended familial relationships, the Administration has removed the “living-with” requirement originally provided for under the DVO. Accordingly, the only eligibility criteria for protection under the DVO is whether the victim and the abuser have a spousal, intimate or familial “relationship” as set out in the legislation. In other words, whether the victim is living with the abuser under the same roof is no longer a factor in deciding if the victim is entitled to the protection under the DVO.

19. In addition, for persons who are unrelated but living under the same roof for reasons such as landlords and tenants, tenants sharing the same flat, employers and employees (e.g. domestic helpers), roommates in boarding schools, residents in residential homes for the elderly or for children etc., the acts of violence among these people are never regarded as “domestic violence”. And there is no intimate relationship or risk factor between them that may render the victim reluctant to hold the abuser liable for his acts of violence by resorting to the usual criminal sanctions. Besides, the community does not seem to be particularly concerned or have a strong request for providing additional civil protection for the persons mentioned above. Moreover, civil remedies provided for under the DVO are tailored to the specific context arising from the intimate relationships between the abusers and the victims. If the DVO were to be extended to cover such persons above, this may give rise to some unreasonable scenarios. For instance, a domestic helper may apply to the court for an injunction order to prohibit his/her employer from entering the latter’s own residence; or a boarding school student may expel his/her roommate from the dormitory, or even a tenant may prohibit his/her landlord from entering the latter’s own premises, etc.

20. Since the issue of violent acts between persons who are unrelated but living under the same roof is different from that between persons in intimate relationships; the DVO is not intended to cover all violence incidents in the domestic context; the community has not raised any concern about the acts of violence between persons living under the same roof; and the civil remedies provided under the DVO do not cater for such persons, the Administration sees no policy justification to further extend the scope of the DVO to cover persons living under the same roof. Persons who fall outside the scope of the DVO may continue to seek protection under the law of tort or inherent jurisdiction of the court.

**Labour and Welfare Bureau**  
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