

Panel on Welfare Services
Legislative Council
8 Jackson Road
Central

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5th February 2009

Dear Chairperson and Members of the Panel:

SUBMISSION TO THE PANEL OF WELFARE SERVICES ON THE PROPOSED INCLUSION OF SAME-SEX COHABITANT RELATIONS TO THE AMENDMENT OF DOMESTIC VIOLENCE ORDINANCE

1. I welcome the Administration's proposal to include **same-sex cohabitants** into the Domestic Violence Ordinance ("DVO"). Indeed the exclusion of such citizens would appear to be a violation of the Basic Law and contravenes UN Human Rights legislation.
2. The DVO, enacted in 1986, is based on the idea that there are a number of various factors within intimate relationships between spouses, or between a man and a woman in cohabitation, that may make victims of violence within those relationships reluctant to report the abusers to the police and seek redress under the law. In the Domestic Violence (Amendment) Bill 2007 ("the 2007 Bill"), the Administration further expanded the coverage of protection to include former spouses, former cohabitants of opposite sex, and persons in other immediate and extended familial relationships.
3. Initially, the inclusion of same-sex cohabitants into the 2007 Bill was turned down, citing that Hong Kong law "does not recognize same-sex marriage, civil partnership or any same-sex relationship"¹ and that persons in same-sex cohabitation relationships are afforded protection under the existing criminal legislative framework.
4. Same-sex cohabitant relationships exist whether they are recognised under Hong Kong law or not, and therefore must be afforded the same protections as their heterosexual counterparts. A party in same-sex cohabitation **may face additional risks** compared to opposite-sex couples. For example, one may be threatened into staying in an abusive relationship for fear of having one's sexual orientation exposed, a phenomenon arising, paradoxically, from the very same discrimination that might wish to preclude this protection. Existing criminal legislative framework alone simply is inadequate when dealing with such intimate violence. The exclusion of persons in same-sex cohabitant relationships may further constitute a discrimination based purely on their sexual orientation, a possible violation of the Basic Law and the Bill of Rights Ordinance.
5. In re-examining its position, the Administration has rightly noted that violence between the same-sex cohabitants might also entail similar risks and concerns as in relationships between heterosexual cohabitants or former cohabitants. The Administration conceded that while "upholding its policy stance of not recognising any same-sex relationship as a matter of legal status... exceptional consideration [could be given] to, and for specific purpose of dealing with violence between individuals in specific relationships"². The Administration promised in the previous legislative year to extend the scope of DVO from heterosexual cohabitation relationships already covered therein to include also victims of violence in same-sex relationships.
6. The Administration has stated clearly that the expansion will not lead to the recognition of same-sex unions or marriage, whilst recognising the importance that "lives may be at stake"³.

¹ "LC Paper No. CB(2)559/08-09(01)", January 10, 2009, para. 4

² *Ibid.*, para.12

³ *Ibid.*



7. **Hong Kong prides itself on its diverse society**, in which many religions and beliefs are practiced and tolerated. Whilst freedom of religious exercise should be upheld, I would like to remind the Panel that under the principle of separation of church and state, any public or legal policy made shall be free from religious considerations, in order to maintain the secularity of the Government of Hong Kong.

8. I also wish to draw your attention to **Amnesty International's** Legco Paper No. CB(2)559/08-09(04), which correctly asserts that Government's failure to include same-sex couples in this legislation would constitute a violation of **internationally agreed standards of equal protection under the law**. It should be self-evident that Hong Kong does not wish to be on the wrong side of such global human rights standards.

9. I respectfully urge your Panel and your able members to request the Administration to come up with a proposed amendment bill that duly extends protections to same-sex cohabitants into the DVO, which will allow for a more concrete and productive discussion.

10. Thank you for your consideration.

Yours sincerely,

Greg Pearce