



**D-Dong's Response to the Consultation Paper on
*Child Custody and Access:
Whether to Implement the "Joint Parental Responsibility Model"
by Legislative Means***

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1. Introduction to D-Dong

D-Dong is one of the few non-district-based youth organizations in Hong Kong. It was established by a group of high-calibre young people in 2010.

Our major focuses are issues related to youth culture and policies, and we releases research reports regularly. All research are conducted in the most serious and professional manner. We are eager to increase the public awareness of youth problems and youth issues, and to recommend polices that are beneficial to the young people in Hong Kong.

Moreover, we encourage the young people to contribute to society and participate in various community activities. D-Dong is the ideal place for them to experience the joy of contributing to Hong Kong and China.

D-Dong is an elitist organization. All the members are carefully chosen in order to satisfy the demanding requirement of the organization.

2. Response to the Consultation Paper

Q1 Do you agree that the concept of the joint parental responsibility model has the merits listed out in paragraph 3.3 of the consultation paper? If so, why? If not, why not?

First of all, we fully recognize the advantages of the joint parental responsibility model and are of the opinion that it is the best method to realize the advantages mentioned in paragraph 3.3 in the long run. But we doubt the advantages mentioned in paragraphs 3.3(b) and (c) in the short run, and there are three reasons:

1. The joint parental responsibility model may not change the mindset of devoiced parents, who are used to the model of child custody competition. We predict

that within a decade after the enforcement of the new model, court disputes that are caused by the competition for the residence order will not decrease. We suggest that during the transition stage, economic incentives or barriers, combined with the appropriate counseling, are useful for changing the mindset of parents.

2. We worry that the competition for the residence order will render the new model the same as the current model, which is not child-based.
3. We are aware that divorce does hurt the children, so the purpose of the joint parental responsibility model should minimize the harm of divorce done to the children. Our researchers had conversed with some of the single-parent children and found that among the most hurtful things to the children when their parents divorced were that they were being asked: “Do you want to be with your father or mother?” and the parents behaving resentful to each other. The joint parental responsibility model may not help to lessen the psychological harm done to the children.

Q2 Should the concept of the joint parental responsibility model be promoted in Hong Kong? If so, why? If not, why not?

We want to emphasize that other than the visions and advantages mentioned in paragraphs 3.2 and 3.3, the joint parental responsibility model also contains three important purposes:

1. To be child-based and minimize the harm done to the children;
2. Reduce disputes between parents during and after divorce, including court disputes. In the long run, “divorce” and “court dispute” have to be separated; and
3. Educate the parents and the public.

These three concepts need to be further promoted and it may not be effective if we only promote the new model *per se*.

Q3 If your answer to Q2 above is affirmative, do you agree that we should introduce legislative amendments to support and promote the concept of the joint parental responsibility model in Hong Kong? If so, why? If not, why not?

We agree that we should introduce legislative amendments to support and promote the concept of the joint parental responsibility model. In the long run, we think that legislative amendments can effectively change the mindset of parents and free divorces from court disputes. In short, the joint parental responsibility model does not merely change the arrangements for the children after divorce, it also revolutionizes divorce itself.

Q4 If your answer to Q2 is affirmative and that to Q3 is negative (i.e. you think that the joint parental responsibility model should be promoted in Hong Kong but it should not be done through legislative reforms), how do you think the concept of the model should be promoted in Hong Kong?

(N/A)

Q5 If your answer to Q3 is affirmative, what are your views on the recommendations made in the LRC's Report to implement the joint parental responsibility model which are set out in paragraphs 3.4 to 3.8 of the consultation paper, including the introduction of two statutory lists of important decisions affecting the child (paragraph 3.6(b)), abolition of the custody order and access order currently provided for under the law (paragraph 3.7), introduction of the residence order, contact order, specific issues order and prohibited steps order (paragraph 3.7), and removal of the limitation in section 10 of the Guardianship of Minors Ordinance (Cap. 13) on the right of third parties to apply to the court for orders concerning children (paragraph 3.8(a))?

We are particularly concerned about the “specific issues order” and “prohibited steps order” in paragraph 3.7(b), which may cause more court disputes and do a greater harm to the children. We predict that once the new model is implemented, some parents will have disagreements on issues related to child rearing. In fact, disagreements on child rearing are one of the causes of divorce. When this happens, a lax introduction of the two orders will render the new model similar to the old

model. Therefore, in order to preserve the educational purpose of the joint parental responsibility model, the parents must address their disagreements through discussions first, and should not bring their disputes to court before their discussions are finished.

We foresee that when the new model is implemented some parents will bring disputes to court owing to the two orders. In the short run, the new model should make use of economic incentives or barriers to prevent parents from taking every minor case to court; in the long run, we must rely on education in order to achieve the ultimate goal of the joint parental responsibility model. We are of the opinion that a mere implementation of the new model without any long-term and short-term supportive measures will not lessen the parents' animosities to each other.

We do not oppose the "specific issues order" and "prohibited steps order". Indeed, they are necessary elements of the joint parental responsibility model, but have to be the last resorts to address disagreements. There should be a buffer.

Q6 Do you agree with the views of those in support of reforming Hong Kong's family law to implement the joint parental responsibility model? If so, why? If not, why not?

We are of the opinion that a reform to Hong Kong's family law is essential to effective implementation of the joint parental responsibility model. A law reform will trigger off the education process and fundamentally changes the mindset of parents.

Q7 Do you agree with the view that the concept of the joint parental responsibility model should be promoted through the development of case law and public/ parent education only? If so, why? If not, why not?

We do not agree with this view. Instead, we take the view that the legislation of the joint parental responsibility model is essential to public / parent education. We understand that under the common law framework the development of case law may eventually achieve the same result in the long run, but it takes too long. Seeing that the effect of public / parent education will not be evident within a short period of time, legislative means will trigger off the education process sooner.

Q8 What lessons do you think we can learn from these overseas jurisdictions?

We should learn from the overseas jurisdictions and be well prepared for the short-term problems emanated from the implementation of the joint parental responsibility model, such as failure in changing the mindset of parents, increase in court disputes and abuse by trouble-making parents. The Department should be fully aware of those problems and should not discard the joint parental responsibility model due to those short-term side effects.

Q9 Which jurisdiction(s) do you think can serve as the best reference for Hong Kong in considering our way forward, and why?

The experience of England and Wales and Australia can serve as the best reference for Hong Kong, for those two jurisdictions had thoroughly reviewed their joint parental responsibility models, summarized the problems spring from the new model, and tackled the problems by a new round of legislative reform.

Nevertheless, Australia's experience is a better reference for Hong Kong in addressing disputes. We are of the opinion that under the new model parents must attend family dispute resolution sessions before bringing their case to court, and in light of the immaturity of the joint parental responsibility model in Hong Kong, economic incentives or barriers may be useful to suppress the foreseeable trend to more court disputes.

Q10 Do you have any other views on the concept of the joint parental responsibility model and whether it should be implemented in Hong Kong by legislative means?

The joint parental responsibility model should not be implemented just for its own sake. When the Government implements the new model, it must have the vision to reduce the harm done to the children by divorce, reduce court disputes and trigger off the process of public education, and review and further reform the model if necessary in order to achieve those aims.