

**For discussion on
8 May 2017**

Legislative Council Panel on Welfare Services

**Proposed Legislation to Implement
The Recommendations of the Law Reform Commission Report on
Child Custody and Access and Relevant Support Measures**

Purpose

This paper briefs Members on the outcome of the public consultation conducted between November 2015 and March 2016 on the proposed legislation to implement the recommendations of the Law Reform Commission Report on Child Custody and Access (the proposed legislation) and relevant support measures, as well as the current development.

Public Consultation Result

2. During the four-month public consultation conducted between November 2015 and March 2016, the Labour and Welfare Bureau, together with the Department of Justice (DoJ), the Home Affairs Bureau and the Social Welfare Department (SWD), attended various engagement sessions to gauge the views of relevant stakeholders and the general public on the proposed legislation and related support measures. A list of public engagement activities held during the consultation period is at **Annex**.

3. A total of about 150 written submissions were received from about 50 associations/groups and about 90 individuals. Among these submissions, 34.5% supported the implementation of the proposed legislation at this stage, 20% supported the proposed legislation in principle but requested for additional support measures and resources before implementing the proposed legislation, 34.5% objected the proposed legislation and doubted the practicality of the parental responsibility model (the Model), while the remaining 11% did not indicate their views clearly on the proposed legislation and support measures.

4. A summary of the views/comments collected is set out below:
- (a) Those who supported implementation of the proposed legislation at this stage
- i. Hong Kong's existing family law defines parent-child relationship in terms of the "rights and authority" that parents have over their children. The Model, with the underlying principle that "the best interests of children should guide all proceedings concerning children", is more child-focused, and promotes the continued involvement of both parents in their children's lives even after divorce. The proposed legislation, which aims to introduce the Model into Hong Kong's family law, could help shift the legal focus from parental rights towards parental responsibilities. Some stakeholders, including non-governmental organisations (NGOs) and professional bodies supported the implementation of the Model by legislative means.
- ii. Some respondents considered that the proposed legislation could serve "educational" purpose to help change the mindset of the community. In their view, without initiating any legislative reform to set out the relevant principles and court powers, the concept of the Model could not be effectively promoted.
- iii. With the proposed legislation, children would be given a better opportunity to express views in the legal proceedings relating to them, so that their views could be considered by judges; children would also have the opportunity to be separately represented where appropriate. A number of children's rights concern groups/NGOs supported such change, given that a child being capable and willing to express his/her views should have a say in his/her own arrangements.
- iv. The legal profession emphasised that, while the Government should initiate further support services (such as provision of a mandatory parenting course for attendance prior to the filing of an application or petition for separation or divorce, parenting co-ordination service for high conflict cases, meaningful methods of enforcement of maintenance orders etc.) and enhance public education, the proposed

legislation should be implemented at once without further delay.

(b) Those who supported the proposed legislation but requested for additional support measures and resources before implementing the proposed legislation

- i. While the proposed legislation follows the international practices to promote the child's best interests and should hence be supported, there is concern about its implementation.
- ii. The Government should provide more appropriate support services to assist divorced families in handling child care matters, e.g. setting up more than one children contact centre under the Pilot Project on Children Contact Service, strengthening pre-marital and divorce counselling/mediation services for divorced families, establishing a one-stop specialised service for divorced families, setting up a maintenance board.
- iii. Some welfare NGOs and individual social workers expressed that there must first be a thorough and well-designed plan of support measures and resources as a prerequisite to bring about the legislative reforms. Without adequate support measures and resources, the legislative reform could create more family problems and adversely affect children's development.

(c) Those who objected the proposed legislation

- i. The implementation of the Model by legislative means could not solve all conflicts between divorced parents, particularly those divorced parents who could no longer cooperate with each other, or those families with history of domestic violence. The concept of the Model was "easier said than done", and could only apply to reasonable parents.
- ii. The courts already have the power to make either sole custody order or joint custody order, based on the facts and circumstances of individual cases. Granting a sole custody order to a "better" parent would be for the best interests of the child, and this is particularly so when the other parent is

considered to be irresponsible or reluctant to be contacted. Some single parents groups expressed that the other parent should be deprived of access to their children if he/she could not make maintenance payment properly. They also doubted if the proposed legislation could “educate” parents to become more responsible.

- iii. In some cases, co-parenting would cause nuisance and inconvenience to the parties concerned, for instance, the new consent and notification requirements could be used by trouble-making or hostile parents to obstruct and harass ex-spouses, or to purposely delay the making of major decisions relating to the child, thus causing distress to and adversely affecting the well-being of the child. Quite a number of single parents expressed that this would prolong the hostility between divorced parents and lead to continuous legal disputes over issues concerning the child’s arrangements, which could be a heavy burden to grassroots parents.
- iv. Hong Kong is a Chinese society and has a different culture from other western common law jurisdictions (such as Australia and England). Hence, Hong Kong may not be ready for such a paradigm shift in the concept of “parenting”. The concept of the Model should first be promoted through education and publicity without initiating any legislative reforms.

5. There are also a number of public submissions suggesting amendments to specific provisions of the proposed legislation, including those provisions on the short title of the legislation, the statutory checklist for considering the “best interests” of children, the meaning of parental responsibility, as well as consent and notification required for certain acts relating to children.

Support Measures

6. While the majority of views received from the public consultation supported in principle the implementation of the Model by legislative means, there was strong public demand that more enhanced support services should be in place for the separated/divorced families. While we are preparing the way forward, in the meantime, to promote the concept of continuing parental responsibility towards children even after divorce,

SWD has been strengthening support measures and public education to enhance the services for separated/divorced families.

Pilot Project on Children Contact Service

7. In response to the suggestion made by the legal profession and some NGOs, SWD has launched a two-year Pilot Project on Children Contact Service (the Pilot Project) with funding from the Lotteries Fund to assist the separated/divorced parents to rebuild and maintain healthy communication and contact with their children who can also have safe, conflict-free contact with their non-residing parent. The Pilot Project, commissioned to the Hong Kong Family Welfare Society (HKFWS), commenced operation on 21 September 2016. HKFWS is required to take up cases and formulate service plans agreeable to both parents concerned upon receipt of referrals or self-approach by both or either parent(s). SWD will conduct evaluation to examine the Pilot Project's effectiveness and efficacy with a view to developing a feasible and effective model to address the needs of the separated/divorced parents and their children.

Psycho-educational programme

8. Given that children's adjustment to parental separation/divorce is closely related to the quality of the parent-child relationship and the parents' ability to work cooperatively, SWD has tailor-made a psycho-educational programme for separated/divorced parents to instill the concept of continuing parental responsibility and to facilitate them to co-operate with their ex-partners in carrying out their parental responsibility continuously. The programme has been trial run in some Family and Child Protective Services Units (FCPSUs) and an Integrated Family Service Centre (IFSC) of SWD. Having regard to the positive feedbacks of the participants, the programme will be further promoted to other service units.

Training for social work professionals

9. To enrich frontline social workers' knowledge and understanding on co-parenting/parenting coordination as well as mediation service, SWD organises related trainings for social workers in IFSCs/Integrated Services Centres (ISCs) and FCPSUs. Besides, the co-parenting/parenting coordination concepts are incorporated into the induction courses for staff newly posted to FCPSUs and IFSCs/ISCs.

Public education and publicity

10. SWD has launched publicity campaign to widely promote the concept of parental responsibility. A set of television and radio Announcements in the Public Interest promoting continuing parental responsibility was broadcast in major television stations and radio stations while posters echoing the theme have been displayed at the Mass Transit Railway stations and public bus shelters throughout Hong Kong from late 2015 to early 2016. SWD has also produced a set of handbooks for parents and children respectively to provide useful information and guidelines on co-parenting for divorced parents and help their children understand the divorce. The handbooks were distributed to Government departments, NGOs concerned, service units, lawyers, etc. in September 2015. To facilitate separated/divorced parents and the concerned parties to obtain relevant information on continuing parental responsibility, SWD has rolled out a thematic website under SWD homepage to promote the concept of parental responsibility. The thematic website provides a publicity platform for district units to promote the groups/programmes in respective districts and keep periodic updating.

11. To further promote the Model, SWD will produce public promotion and education materials, e.g. roll-up banners on parental responsibility and online materials on marriage, family life, co-parenting/parenting coordination, handling of divorce, etc. The roll-up banners will be distributed to the FCPSUs/IFSCs for educational and publicity activities in the districts. Programme/activities on family life, marriage and domestic violence will also be organised to promote harmonious family relationship. SWD is also collaborating with The Open University of Hong Kong, which is the coordinator of the Capacity Building Mileage Programme of the Women's Commission, in updating its course contents to incorporate the concepts of co-parenting/parenting coordination in relevant courses offered to the public.

Current Development

12. In consultation with DoJ and other relevant bureaux and departments, we are in the progress of revising the proposed legislation with reference to the comments received during the public consultation. The proposed legislation could be introduced to the Legislative Council in early 2018 at the earliest. Apart from implementing the support measures and public education for separated/divorced families as mentioned above, SWD will continue to explore possible ways to enhance the support

measures, taking into account the views received during the public consultation and resources consideration.

Advice Sought

13. Members are invited to note the contents of this paper.

**Labour and Welfare Bureau
Social Welfare Department
May 2017**

Annex

Public Consultation on the Proposed Legislation to Implement the Recommendations of the Law Reform Commission Report on Child Custody and Access and Relevant Support Measures

List of relevant meetings, consultation activities and media interviews attended during the consultation period (25 November 2015 – 25 March 2016)

Date	Relevant meetings / consultation activities / media interviews
2015	
13 November*	The Third Children's Issues Forum co-organised by The Law Society of Hong Kong, the Hong Kong Family Law Association, Faculty of Law of the University of Hong Kong and Faculty of Law of the Chinese University of Hong Kong
26 November	Meeting of Family Council
27 November	Interview of the Radio Television Hong Kong Radio 3 programme “Backchat”
2 December	Interview of the Commercial Radio Hong Kong Radio 1 programme “On a Clear Day”
3 December	Interview of the Phoenix Hong Kong Channel programme “News Decoder”
5 December	Interview of the Commercial Radio Hong Kong Radio 1 programme “Saturday Forum”
14 December	Meeting of the Legislative Council (LegCo) Panel on Welfare Services
16 December	Special meeting of Women’s Commission
17 December	Meeting of Social Welfare Advisory Committee

2016	
7 January	Consultation session for the welfare sector
16 January	Seminar by the Women Affairs Committee, Democratic Alliance for the Betterment and Progress of Hong Kong (DAB)
21 January	Children's Rights Forum
23 January	The first focus group organised by the Social Welfare Department (SWD) for children/youth from divorced families
27 January	Consultation session for women's groups
29 January	The second focus group organised by SWD for children/youth from divorced families
1 February	Consultation session for members of the public
2 February	Meeting of Committee on Home-School Co-operation
3 February	The third focus group organised by SWD for children/youth from divorced families
16 February	Seminar by the Hong Kong Family Law Association
18 February	Meeting with Chairmen and Vice-chairmen of 18 District Councils
20 February	Seminar by the Professional Affairs Committee, DAB
22 February	Special Meeting of the LegCo Panel on Welfare Services
27 February	Seminar co-organised by the Hong Kong Federation of Women's Centres and the Gender Research Centre of the Chinese University of Hong Kong
3 March	Meeting of Family Council

7 March	Seminar by the Small and Medium Law Firms Association of Hong Kong
9 March	Focus group organised by the Hong Kong Council of Social Service (HKCSS) for single-parent service users
14 March	Launching ceremony of the “Jockey Club Promoting Child-Focused Co-Parenting in the Community Project” by HKCSS
16 March	Focus group organised by HKCSS for children/youth service users
18 March	Seminar by the Hong Kong Social Workers and Welfare Employees Union
21 March	Meeting with the Women Affairs Committee, DAB

* The Third Children’s Issues Forum was held before the commencement of the public consultation exercise.