

Legislative Council (LegCo)
Bills Committee on Domestic Violence (Amendment) Bill 2007

**Coverage of Cohabitation Relationships in
Domestic Violence Ordinance**

Purpose

This paper informs Members of the Administration's proposal to introduce amendments to the Domestic Violence Ordinance (DVO) through a separate legislative exercise in the next legislative session to include cohabitation between persons of the same sex in its coverage.

Background

2. The DVO seeks to provide additional protection in the form of civil injunctive orders to individuals in certain specific relationships and to their children. Since its enactment in 1986, it has been applicable only to parties to a marriage and to a cohabitation relationship between a man and a woman as in a marriage and their children. The DVO was never intended to apply to all categories of person who may, for one reason or another, decide to live in the same household, or to violence generally, which takes place in a domestic setting.

3. In expanding the scope of the DVO under the Domestic Violence (Amendment) Bill 2007 (the Bill) to cover, inter alia, persons formerly in cohabitation relationship, the Administration did not propose to include same sex cohabitation in the scope of the DVO. Our reasons are:

- (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 position, 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 the society. Any change to this policy stance would have substantial implications on society and should not be introduced unless 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 relationship are afforded the same level of protection as those in heterosexual relationship under our existing criminal legislative framework; 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.

Views of the Bills Committee

4. During scrutiny of the Bill, some Members of the Bills Committee urged the Administration to revisit its position of not covering same sex cohabitants under the DVO. They commented that extending the protection under the 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.

The Administration's Response and Proposed Way Forward

5. Having regard to Members' views, the Administration has very carefully re-examined the matter and come to the view that the protection under the DVO should be extended to cover cohabitation between persons of the same sex. However, we need to emphasise that the proposed extension of the scope of the DVO to cover such cohabitation is only introduced in response to the distinct and unique context of domestic violence. It remains the Administration's clear policy not to recognise same sex relationships. Any change to this policy stance should not be introduced unless a consensus or a majority view is reached within our society.

6. The proposed amendment to the DVO to include cohabitation between persons of the same sex in its coverage will have to be effected by way of a separate amendment bill, because the proposed amendment would fall outside the scope of the current Bill. Accordingly, the Secretary for Labour and Welfare will, in moving the resumption of Second Reading Debate of the Bill at the relevant LegCo sitting, undertake that the Administration will introduce amendments to the DVO to include

cohabitation between persons of the same sex in its coverage at the earliest possible time in the next legislative session. This two-stage pragmatic approach seeks to ensure that the additional protection conferred by the Bill could be implemented as soon as practicable and without undue delay arising from the latest proposal.

Labour and Welfare Bureau
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