

**The Administration's Response to the Comments
Made by the Law Society of Hong Kong on 11 September 2009
On the Domestic Violence (Amendment) Bill 2009**

Purpose

The Law Society of Hong Kong (the Law Society) made a submission to the Bills Committee on the Domestic Violence (Amendment) Bill 2009 (the Bill) on 11 September 2009, putting forward two recommendations pertaining to (a) the definition of "cohabitation relationship" proposed in the Bill, and (b) the proposed amendments to the short title of the Domestic Violence Ordinance (DVO).

2. The Administration has considered the Law Society's submission. For reasons explained at the Bills Committee meeting held on 12 October 2009, we do not find the two recommendations acceptable. This note recapitulates the Administration's position on the issues raised by the Law Society, as per the request of the Bills Committee.

The Administration's Position

The interpretation of "cohabitation relationship"

3. The *ejusdem generis* rule as cited by the Law Society in supporting its recommendation concerning the proposed definition of "cohabitation relationship" in the Bill is a rule of interpretation that the court may apply in the construction of the legal effect of a particular provision in a statute or a legal document. According to Halsbury's Laws of England¹, the rule of *ejusdem generis* refers to a rule –

"where in a statute there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified, although this, as a rule of construction, must be applied with caution, and subject to the primary rule that statutes are to be constructed in accordance with the intention of Parliament.

¹ 4th Edition, volumn 44, page 535

For the ejusdem generis rule to apply, the specific words must constitute a category, class or genus and the general words must not by their nature exclude themselves from the category, class or genus, so that, for example a superior thing will not be held to be within a class of inferior things. If the particular works exhaust the whole genus, the general works must be constructed as referring to some larger genus.”
(emphasis added)

4. We note that the Law Society has in its submission applied the rule of *ejusdem generis* to the *dictionary meaning* of the word “couple”, rather than the proposed definition of “cohabitation relationship” in the Bill.

5. Even if the *ejusdem generis* rule were applied to the proposed definition of “cohabitation relationship” in the Bill, the precise meaning of the word “couple” under the amended DVO should, and can only be, determined when read in context and in accordance with the legislative intent. In this connection, the legislative intent of the Bill is set out clearly in its long title, viz,

“Amend the Domestic Violence Ordinance so that the Ordinance applies to a cohabitation relationship between 2 persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship;”
(emphasis added)

The legislative intent of the Bill to extend protection to cohabitants of the same sex is recapitulated in its Explanatory Memorandum. In the Legislative Council Brief we issued to Members on 3 June 2009 as well as in the speech made by the Secretary for Labour and Welfare during the Second Reading of the Bill in the Legislative Council on 17 June 2009, the Administration has stated in unequivocal terms that the coverage of the DVO would be extended to same sex cohabitants under the amended DVO. All these serve to put beyond doubt the legislative intent of the Bill – to extend protection under the DVO to same-sex cohabitants.

6. It should also be noted that the proposed definition of “cohabitation relationship” does not actually involve a linear arrangement

of general words followed by the particular and specific words. In this respect, it appears that there is no direct relevance between the definition in question and the *ejusdem generis* rule.

7. For the foregoing reasons, the Administration has concluded that it does not see the need for amending the said definition as per the Law Society's recommendation. We note that in response to a Member's enquiry at the Bills Committee meeting on 12 October, the Assistant Legal Advisor of the Bills Committee affirmed his concurrence with the arguments and explanations made by the Administration in respect of the *ejusdem generis* rule and its application to the proposed definition of "cohabitation relationship" as set out in the Bill.

The short title

8. The Law Society recommended no change to the short title of the DVO. It has not elaborated on its reasoning in making this recommendation.

9. The Administration does not find the Law Society's recommendation acceptable. Under the amended DVO, different categories of protected persons will be clearly delineated. They are (a) spouses and former spouses and their children; (b) immediate and extended family members; and (c) cohabitants in an intimate relationship, former cohabitants and their children. Applications for injunction order from these three different categories of protected persons will be dealt with under different provisions in the amended DVO. To reflect the presentational changes made to the structure of the Ordinance, and to highlight that the amended DVO is also applicable to persons in cohabitation relationships, we have proposed in the Bill to amend the short title of the DVO from "Domestic Violence Ordinance" to "Domestic and Cohabitation Relationships Violence Ordinance". The Administration considers that revising the short title of the DVO in this way would help better reflect the delineation of protected persons under the amended DVO.

Labour and Welfare Bureau
October 2009