

For discussion on
8 December 2008

LEGCO PANEL ON WELFARE SERVICES

Proposed amendments to the Domestic Violence Ordinance (Cap. 189)

INTRODUCTION

This paper consults Members on the Administration's proposal to amend the Domestic Violence Ordinance (DVO) to include in its coverage cohabitation between persons of the same sex.

BACKGROUND

The DVO

2. The DVO, enacted in 1986, enabled a party to a marriage, or a man and woman in cohabitation, to apply to the court for an injunction order against molestation by the other party. The legislation was enacted at a time when the increase in spousal abuse cases had given rise to great public concern, especially among the women's groups as most were battered wife cases. The aim of the DVO then was to provide quick and simple relief to persons who could not or did not wish to take divorce proceedings. The remedies available under the DVO were tailored for the circumstances pertaining to such spousal or quasi-spousal relationships.

The Domestic Violence (Amendment) Bill 2007 (The 2007 Bill)

3. Following a comprehensive review of the DVO, the Administration had identified the following areas for improvements:

- (a) only persons in current spousal or cohabitation relationships could apply for an injunction order for himself/herself or any child living together with him/her, despite the report of cases of violence involving former spouses/cohabitants and persons in non-spousal familial relationships;

- (b) only a child living with the applicant was entitled to the injunction protection;
- (c) a child could not on his/her own apply for an injunction order;
- (d) the court had no power to vary an existing custody or access order in respect of a child when granting an exclusion order;
- (e) the court could only attach an authorization of arrest to an injunction order only if it is satisfied that the other party has caused actual bodily harm to the applicant or the child concerned;
- (f) restrictions were imposed on the court's power to grant an exclusion order in that the validity of the order could not exceed 3 months for the first instance, and that the order might be extended only once, for a maximum of another 3 months only; and
- (g) similar restrictions were imposed as regards the authorization of arrest attached.

4. We introduced the 2007 Bill into the Legislative Council (LegCo) on 27 June 2007, seeking to amend the DVO in the following ways to enhance protection for victims of domestic violence :

- (a) extend the coverage of the DVO to include persons formerly in spousal/cohabitation relationships and their children; to parent-son/daughter, parent-son/daughter-in-law, and grandparent-grandson/granddaughter relationships; and to other extended familial relationships including between a person and his/her brother, sister, brother-in-law, sister-in-law, uncle, aunt, nephew, niece and cousin;
- (b) enable a "next friend" of a minor under the age of 18 to apply for an injunction order on behalf of the minor;
- (c) remove the requirement that the minor has to be living together with the applicant to be entitled to protection under the DVO;
- (d) enable the court, in granting a non-molestation order under the DVO, to order the abuser to attend a programme as approved by the Director of Social Welfare, which aims to change his/her

attitude and behaviour that has led to the granting of the injunction order;

- (e) enable the court to vary or suspend an existing custody or access order in respect of the child concerned when the court makes an exclusion order under the DVO;
- (f) empower the court to also attach an authorization of arrest if it reasonably believes that the respondent will likely cause actual bodily harm to the applicant or the child concerned; and
- (g) extend the maximum duration of the injunction order and the related authorization of arrest from a maximum of six months to two years.

5. The Bills Committee on the 2007 Bill supported all of our proposed amendments. In response to views expressed by Members during the Bills Committee's deliberations, the Administration had also agreed to move committee stage amendments to restore the protection under the DVO to "a child living with the applicant"; and to put beyond doubt that in relation to an exclusion order, the respondent would be restrained from "entering and remaining" in the specified area.

Cohabitation between Persons of the Same Sex

6. In expanding the scope of the DVO under the 2007 Bill to cover, inter alia, former spouses/cohabitants, the Administration had not proposed to include cohabitation between persons of the same sex in its coverage. Our considerations 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 cohabitation relationship are afforded the same level of protection as those in heterosexual cohabitation relationship under our existing criminal legislative framework, which comprises the Offences Against the Person Ordinance (Cap. 212)and the Crimes Ordinance (Cap. 200) 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.

7. During scrutiny of the 2007 Bill, some Members of the LegCo Bills Committee urged the Administration to revisit its position of not covering cohabitation of persons of the same sex under the DVO. Members 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.

8. Having regard to Member's views, the Administration had very carefully re-examined the matter. We noted that, in the context of domestic violence, incidents could quickly escalate into life-threatening situations or even fatality. Since lives may be at stake, the Administration accepted the need to extend the protection under the DVO to victims of domestic violence who are in same sex cohabitation relationships. As the Secretary for Labour and Welfare (SLW) stressed in moving the resumption of Second Reading Debate of the 2007 Bill in LegCo on 18 June 2008, the proposed extension of the scope of the DVO in such a direction 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.

9. The proposed amendment to the DVO to include cohabitation between persons of the same sex in its coverage could not be effected by way of a committee stage amendment to the 2007 Bill as it fell outside the scope of that Bill. Accordingly, in moving the resumption of Second Reading Debate of the 2007 Bill, SLW undertook to further amend the DVO in the 2008-09 legislative session to extend its scope to cover cohabitation between persons of the same sex. This two-stage approach would seek to ensure that the protection afforded under the 2007 Bill could be

implemented at the earliest possible opportunity while the Administration proceeded with the additional amendment without delay under a separate amendment bill for introduction into LegCo as soon as practicable in the new LegCo term. Members supported the two-stage approach. The 2007 Bill and all the committee stage amendments were passed by LegCo and the Domestic Violence (Amendment) Ordinance 2008 has come into operation on 1 August 2008.

PROPOSED AMENDMENT TO THE DVO

10. In the light of the undertaking, we are preparing an amendment bill to include in the coverage of the DVO cohabitation between persons of the same sex. The amendment, if enacted, will enable a party to a current or former same-sex cohabitation relationship to obtain relief from molestation by applying to the court for an injunction order containing any or all of the following provisions :

- (a) a provision restraining the other party to the cohabitation relationship from molesting the applicant or a specified minor¹ (a non-molestation order);
- (b) a provision excluding the other party from their common residence or from a specified part of their common residence, or from a specified area (an exclusion order); and
- (c) a provision requiring the other party to permit the applicant to enter and remain in their common residence or in a specified part of their common residence (an entry order).

The power of the court to impose a condition in a non-molestation order requiring the abuser to take part in an anti-violence programme that aims to change his/her attitude and behaviour that has led to the granting of the injunction order; to attach under specified circumstances an authorization of arrest to the injunction order; and to vary or suspend an existing custody or access order in respect of the child concerned when the court makes an exclusion order would also be extended to persons in same-sex cohabitation relationships.

¹ Under section 3(3) of DVO, "specified minor" means a minor who is a child (whether a natural child, adoptive child or step-child) of the applicant or respondent concerned, or who is living with the applicant concerned.

NEXT STEP

11. The Administration aims to introduce the amendment bill into LegCo within the first half of the current legislative session.

ADVICE SOUGHT

12. We welcome Members' views on our proposed amendments to the DVO.

**Labour and Welfare Bureau
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