

WOMEN'S COMMISSION

Domestic Violence (Amendment) Bill 2007

Introduction

The former Health, Welfare and Food Bureau (HWFB) consulted the Women's Commission (WoC) in June 2006 on the preliminary proposed amendments to the Domestic Violence Ordinance (DVO) to enhance protection for victims of domestic violence. Since then, the Government has consulted the Legislative Council Panel on Welfare Services and the Subcommittee established thereunder, various advisory boards as well as concerned stakeholders. Taken into account the views expressed, the Government has finalised the proposals and introduced the Domestic Violence (Amendment) Bill on 27 June 2007. This paper informs Members of the major changes proposed in the Bill.

Background

2. In January 2006, the WoC published a report on "Women Safety in Hong Kong: Eliminating Domestic Violence". In the report, WoC recommended the Government to consider amending the DVO by:

- (a) extending the scope of "protected person" to cover former spouses or co-habitees;
- (b) exploring extension of scope of "protected person" in the longer term to cover persons of in-law relationship and persons living in the same household;
- (c) extending power of arrest to cover violence in a form other than actual bodily harm through attachment of power of arrest to molestation order;
- (d) taking forward the proposed anti-stalking legislation;

- (e) encouraging the courts to refer Batterer Intervention Programmes (BIPs);
and
 - (f) enhancing promotion of BIPs.
3. At present, the DVO enables a party to a marriage, or a man and a woman in cohabitation, to obtain quick and temporary 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 from molesting the applicant or any child living with the applicant (a non-molestation order);
 - (b) a provision excluding the other party from the matrimonial home or from a specified part of the matrimonial home, 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 the matrimonial home or in a specified part of the matrimonial home (an entry order).

The DVO also empowers the court to attach a power of arrest to a non-molestation order or an exclusion order, if it is satisfied that the other party has caused actual bodily harm to the applicant or the child concerned.

Major Areas of Improvement under the Bill

4. Following a comprehensive review of the current legislation and taken into account the views of WoC and other stakeholders, the Government has introduced under the amendment bill improvements in four broad areas.

5. Firstly, the scope of protected persons will be considerably expanded. Not only will former spouses or former cohabitants of opposite sex be covered under the amendment bill, the DVO, once amended, will also extend protection to persons who have been molested by their immediate and extended family members including parents, grandparents, children, grandchildren, brothers, sisters, uncles, aunts, nephews, nieces or cousins, or by the spouses of such relatives, or such relatives of their spouses. Also, all the protected persons, irrespective of whether they are residing with their abusive spouses or relatives, will enjoy the same protection under the new law.

6. Secondly, protection for minors who are under the age of 18 will be much enhanced. Minors will be allowed to apply for an injunction in their own right by their “next friends”, against molestation by their parents, or such relatives as set out above, whether or not they are residing with the abusive parents or relatives. In addition, the court will be empowered to vary or suspend a custody or access order relating to a minor when it grants an injunction excluding the abuser from certain places.

7. Thirdly, to better protect domestic violence victims in general, the court can in future attach a power of arrest, or to be renamed as an authorisation of arrest under the bill, to an injunction order if it reasonably believes that the abuser will likely cause bodily harm to the applicant or the minor concerned. At present, the court can only do so if the abuser has caused actual bodily harm to the applicant or the minor. Also, the court may also extend the injunction order or the authorisation of arrest for as many times as necessary, with the overall validity period extended from six months at present to two years in future.

8. Fourthly, the court may, in future, in granting a non-molestation order under the DVO, require the abuser to attend an anti-violence programme as approved by the Director of Social Welfare, seeking to change the attitude and behaviour of the abuser that lead to the granting of the injunction order. Such an arrangement can facilitate rehabilitation of the abusers which will be conducive to the better prevention of recurrence of domestic violence.

9. The above amendments, if enacted, will greatly enhance the protection for victims of domestic violence. The LegCo is now scrutinising the bill and we hope that the bill can be enacted and come into operation as early as possible.

Other Developments

10. In respect of stalking, Members were last updated by the Home Affairs Bureau (HAB) at the WoC meeting held on 8 November 2006 of the progress on its review on the recommendation of the Law Reform Commission. The review is in progress and the Constitutional and Mainland Affairs Bureau (CMAB)¹ will be invited to update the WoC of the further developments.

¹ The subject on protection of privacy has been transferred from HAB to CMAB after the re-organisation of the Government Secretariat in July 2007.

11. Proposing amendments to the DVO is only one of the many measures of the Government in combating domestic violence. In the past few years, the Government has put in place a series of preventive, supportive and specialised services to enhance support for victims of domestic violence and families in need. A total of HK\$1.4 billion has been allocated for this purpose this year. We will continue to strengthen multi-disciplinary collaboration, promote family education and the building of community support networks, and reach out to vulnerable families to help them address their problems early. The Government will also continue to disseminate via different channels to help the public as well as frontline workers understand the existing legislative framework, and services rendered to victims of domestic violence and families in need.

12. In addition to the above, the SWD has since January 2006 introduced a pilot project on BIP, providing treatment to batterers joining the programme on a voluntary basis, and batterers on probation by the Court. As at end June 2007, 27 counseling groups have been conducted with the participation of a total of 212 batterers. To further promote the service, SWD and the Hong Kong Family Welfare Society have conducted briefings for potential service referral agencies including SWD service units and NGOs at both central and district levels to promote the service and encourage referrals. In early December 2006, SWD has also arranged a briefing session with the Judiciary to introduce the pilot, so that the court may refer batterers under probation orders to attend BIP if it considers appropriate. A total of 32 judges and judicial officers attended the briefing and had a useful exchange with SWD. SWD will continue to promote participation in the BIP through different channels.

Labour and Welfare Bureau
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