

WOMEN'S COMMISSION

Government's Preliminary Responses to the Recommendations of the Consultancy Study on Child Abuse and Spouse Battering

Purpose

This paper sets out the Government's preliminary responses to the recommendations of the consultancy study on child abuse and spouse battering, which was commissioned by the Social Welfare Department (SWD).

Background

2. In April 2003, SWD commissioned the Department of Social Work and Social Administration of the University of Hong Kong (the Consultant) to conduct a Study on Child Abuse and Spouse Battering. Part One of the Study aims to estimate the prevalence rate of child abuse and spouse battering in Hong Kong, to analyze the demographic, social, psychological and family profile of perpetrators and victims, as well as to identify elements contributing to effective prevention and intervention, including studying the feasibility and implications of adopting mandatory treatment of perpetrators in Hong Kong and examining the existing legislative measures.

3. Part One of the Study was completed in June this year and the results were presented to the Women's Commission at its meeting held on 14 July 2005. Among others, the Consultant has made a total of 21 recommendations on the social and legal measures for prevention and intervention of domestic violence in Hong Kong. The Government has undertaken to consider the recommendations and keep the Commission informed of progress.

Government's Preliminary Responses to the Recommendations

4. The Health, Welfare and Food Bureau has convened an inter-departmental

working group with related government bureaux and departments to examine the recommendations in more details. The preliminary responses of the Government to these recommendations are detailed in Annex.

Way Forward

5. As noted in the preliminary responses, some of the recommendations still require more in-depth study before a policy decision can be made. The Government will continue to examine these proposals and keep the Commission informed of further developments.

Health, Welfare and Food Bureau
November 2005

Consultancy Study on Child Abuse and Spouse Battering Commissioned by the Social Welfare Department

Government's Preliminary Responses to the Consultants' Recommendations

	Consultant's Recommendations	Government's Preliminary Responses
1	<p>The batterer intervention programmes (BIPs) could be launched under the existing systems.</p> <p>(a) Voluntary participation enhanced by the coordinated referral system and public publicity of the programmes;</p> <p>(b) A sentencing condition attached to a probation order enhanced by the coordination with the court and the probation officers; and</p> <p>(c) Prison-based BIPs enhanced by the coordination with the Correctional Services Department in providing the structured treatment programmes to the domestic violence offenders.</p> <p><i>(Chapter 6 of the Study Report entitled "Peace at Home: Report on the Review of the Social and Legal Measures in the Prevention and Intervention of Domestic Violence in Hong Kong)</i></p>	<p>As the Consultants have noted in the Report, the Social Welfare Department (SWD) and some non-governmental organizations (NGOs) have been offering BIPs on voluntary participation basis. But the development of treatment programmes for batterers in Hong Kong is still in its early stage, and this is shared by the Consultants (para. 6.24 of the Report). In order to further promote the development of effective BIPs in Hong Kong to better address the treatment needs of the batterers, SWD has planned to launch two pilot projects of BIP from January 2006 to March 2008. The two projects will be run by SWD and an NGO respectively.</p> <p>Under the pilot projects, treatment will be provided to batterers joining the programmes on a voluntary basis, as well as batterers put on probation through a condition stipulated in the probation order. SWD and the operator concerned will seek to further strengthen publicity and liaison with related parties to invite more referrals and more participation of batterers in such programmes on a voluntary basis.</p>

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		<p>Upon completion of the pilot scheme, the projects will be evaluated with a view to identifying effective treatment modalities for batterers of various backgrounds. The experience drawn will provide useful reference for defining the goals, contents and standards of BIPs.</p> <p>In respect of the suggestion of introducing prison-based treatment programmes, the Consultants have suggested in para. 6.5 of the Report that SWD and Correctional Services Department (CSD) should coordinate to standardise the approach, content and evaluation of the BIPs. We believe the pilot scheme of BIPs as mentioned above will serve the purpose of identifying effective treatment modalities. Separately, whilst supporting the provision of BIP for offenders in prisons, CSD considers that the implementation of the programme should have legislative backup and additional resources for staffing the programme would be required. The issue of court-ordered BIPs will be discussed in item 3 below.</p>
2	<p>The Court can make mandatory counselling order for the batterers to attend a BIP by the following ways:</p> <ul style="list-style-type: none"> (a) As a condition attached to the non-molestation order under the DVO (Cap. 189); (b) As a condition attached to a bind-over order; and (c) Placing a counselling order separately in criminal proceedings. <p><i>(Chapter 6)</i></p>	<p>Legal advice has confirmed that both the Magistrates Ordinance (Cap. 227) and the Criminal Procedure Ordinance (Cap. 221) do not stipulate any power for the court to attach specific conditions in an order binding a person over to keep peace or to be of good behaviour. Whether the law should be amended to empower the court to attach condition to a bind-over order will require careful examination, having regard to the nature of cases that would pursue bind-over order and the original intention of the bind-over regime.</p>

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		Likewise, the DVO (Cap. 189) has not provided for a power for the court to attach conditions to a non-molestation order, nor are there any criminal provisions empowering the court to make a counselling order. Legislative amendments are therefore necessary if the recommendations are to be adopted. The issue of legislative amendment to provide for court-ordered BIPs is discussed in item 3 below.
3	<p>To make BIP an order issued by the Court, the laws to be amended include the DVO (Cap. 189), the Section 109I of the Criminal Procedure Ordinance (Cap. 221), the Section 41 of the Offences Against The Person Ordinance (Cap. 212), and the Section 61(1) of the Magistrates Ordinance (Cap. 227).</p> <p><i>(Chapter 6)</i></p>	<p>According to legal advice, the imposition of a requirement on a person to attend BIP on mandatory basis may amount to a restraint of liberty and right of movement of the person concerned and have human rights implication. Besides, the proposed amendments to the various legislation as suggested by the Consultants may have read-across implication for other legislation. The Consultants have not elaborated on the implications of these proposed legislative amendments (para. 6.10 of the Report). Careful and more in-depth examination is therefore necessary before we can decide on whether and if so, how, the court-ordered BIP can be introduced. For instance, there may be significant human rights implication if the order to attend BIP is given without a conviction of a crime, as some quarters have suggested.</p> <p>Legal advice also suggests that the relevant provision should be sufficiently precise and adequately accessible to the abusers to be able to foresee with a reasonable degree of certainty the circumstances in which and the conditions on which the authorities may effect the mandatory treatment. The pilot scheme of BIP mentioned above is</p>

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		aimed exactly to develop systematic, standardized and evaluated batterer intervention programmes. Although the development of intervention programmes and whether such programmes should be used in a court-ordered treatment context are separate issues, the outcome of the pilot scheme will provide useful reference for our consideration of the way forward.
4	<p>The content of the counselling order in legislation shall include the order for the offender to participate in and successfully complete a BIP, standards for BIPs and the punishment for the breaching of order.</p> <p><i>(Chapter 6)</i></p>	<p>The Consultants have suggested that the content of the counselling order in legislation shall include the order for the offender to participate in and successfully complete a BIP, standards for BIPs and the punishment for the breaching of order (para. 6.11 of the Report). It may not be practicable to list all those details in the law, but we will defer to the advice of the Law Draftsman in due course, if it is eventually decided to amend the law to introduce such a counselling order.</p> <p>In para. 6.11(d), the Consultants have suggested leaving the duration of the counselling order open so that offenders who are less responsive to the BIP can be required to undergo treatment for a longer period. This is against the principle of legal certainty and is, in our view, not appropriate. Our comments on item 3 would be relevant and further consideration will be necessary.</p>
5	<p>To launch a time-limited pilot project to implement the court-mandatory BIP in Hong Kong. The following strategies are recommended:</p> <p>(a) A group including the police, medical practitioners,</p>	As explained in items 2 and 3 above, the existing legislation does not provide the court with the power to make orders requiring offenders to attend BIP.

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	<p>social service practitioners, probation officers, prosecutors, judges and academia should be formed in preparing, monitoring and evaluating the pilot project;</p> <p>(b) The steering group will work out standards for the BIP and consult service providers;</p> <p>(c) The steering group will certify a list of piloted BIPs; and</p> <p>(d) The steering group will prepare the formation of the Batterers' Intervention Programme Authority.</p> <p><i>(Chapter 6)</i></p>	<p>That said, as mentioned in item 1 above, SWD is planning to launch two pilot projects of BIPs with a view to identifying effective treatment modalities for batterers of various backgrounds. For batterers put on probation, the Court may stipulate the treatment as a condition in the probation order. This can be done within the existing legal framework.</p> <p>In taking forward the pilot scheme, SWD will set up a small advisory group to monitor and evaluate the projects, with membership from relevant stakeholders. The outcome of the pilot scheme and the experience drawn will provide useful reference for defining the goals, contents and standards of BIPs.</p>
6	<p>A set of strategies required for the implementation of BIP:</p> <p>(a) All BIPs should share common goals of reducing the re-offending rate, increasing victims' safety, holding batterers accountable for the violence used and stopping their abusive behaviour.</p> <p>(b) Pre-intervention risk assessment and the psycho-social assessment of the batterers is recommended to inform the specific designs of the BIPs.</p> <p>(c) The BIPs should have written policies and strategies to secure the safety of victims.</p> <p>(d) The BIPs could last from 24 to 52 weeks, with a 1.5 hour session each week. Evaluation of the</p>	<p>The pilot scheme of BIP to be launched by SWD will help identify effective treatment modalities for batterers of various backgrounds, and provide useful reference for defining the goals, contents, duration and standards of BIPs.</p> <p>Among others, the Consultants have suggested in para. 6.20 of the Report that the criteria of success should be defined as ending violence as reported by victims, reducing the re-offence/recidivism rate, increasing victim safety and reducing drop out or the attrition rate. We consider that the criteria for measuring success of BIP should also included attitudinal changes, increased self-control, and ability to empathize with the victims etc., which are equally important. Also, as these are programmes for the batterers, the focus will inevitably be on the batterers, though the outcome will help</p>

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	<p>effectiveness of programmes with different durations should be conducted to provide empirical support for the programme duration.</p> <p>(e) Programme evaluation of the effectiveness of the programmes should be conducted, with the criteria of success defined as ending violence as reported by victims, reducing the re-offence/recidivism rate, increasing victim safety, and reducing drop out or the attrition rate.</p> <p>(f) Programme standards should be explicitly stated, with the collaborative effort of service providers and the SWD.</p> <p><i>(Chapter 6)</i></p>	<p>enhance victim safety.</p>
7	<p>A governmental domestic violence policy is made to state clearly the commitment of the government to tackle domestic violence, philosophy in combating domestic violence, and the strategies in fighting against and preventing the domestic violence.</p> <p><i>(Chapter 7)</i></p>	<p>In the 2005/06 Policy Address unveiled on 12 October 2005, the Chief Executive has reiterated that the Government does not tolerate domestic violence. The Government provides protection to victims of domestic violence, in particular women and children, and also pursue the perpetrators of violence and bring them to justice. A paper outlining the Government's policy to tackle family violence has been submitted to the Subcommittee of Strategy and Measures to Tackle Family Violence established under the Welfare Services Panel of the Legislative Council for its meeting held on 18 January 2005.</p>

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8	<p>(a) Education for professionals like physicians, nurses, lawyers, teachers, social workers, psychologists etc. on the risk assessment of suspected cases is needed. Appropriate and prompt referral should be made; and</p> <p>(b) More empirical studies on the reporting practice are needed. With the empirical support, strategies in improving reporting from professionals, including mandatory measures, should be examined.</p> <p><i>(Chapter 7)</i></p>	<p>SWD has been providing on-going training to the related professionals. To further enhance the scope and depth of training on family violence, SWD is developing a training package comprising three levels on the core subjects of family violence. The first level consists of training on basic awareness of family violence. A tertiary institute has been commissioned to conduct a series of mass seminars on basic awareness of domestic violence organised on regional/cluster basis for over 2 000 related professionals (e.g. social workers, police officers, medical personnel, teachers, etc.) and district personnel (e.g. district council members) in late 2005. SWD's training centre will plan and conduct the second and third levels of the training programme, which will respectively focused on risk assessment and intervention skills on various family problems targeted for social workers and other frontline practitioners, and on advanced skills and refresher training on specialised issues in family violence. Trainers of the programmes include local and overseas experienced practitioners/specialists. Most of these programmes will be open to social workers of NGOs.</p> <p>Other stakeholders such as the Police, the Education and Manpower Bureau (EMB) and the Hospital Authority (HA) have also been providing on-going training programmes for the frontline officers. The Police have been providing training on the handling of domestic violence for police officers throughout various stages of their career including basic and on-the-job training during their first five years of service, refresher training upon promotion, and other on-going training programmes and seminars. Seminars have also been held</p>

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		<p>from time to time to heighten awareness amongst district supervisory officers. The EMB has organised seminars and workshops for schools to increase their awareness, knowledge and skills in early identification and referral of suspected child abuse cases. In the HA, guidelines on management of spouse battering, sexual assault and child abuse is available and staff can have access through the HA intranet. Training on family and sexual violence is also included in the core training programmes for specialist paediatricians and emergency physicians and emergency nursing.</p> <p>In respect of the reporting practice, the Consultants have noted in para. 7.22 of the Report that to make the reporting of suspected spouse battering or child abuse cases to the Police on a mandatory basis would be premature at this stage. It is suggested that more empirical studies on the reporting practice are needed.</p> <p>As noted in para. 7.21 of the Report, overseas experience have suggested that the effectiveness of mandatory reporting practice might be arguable. Mandatory reporting might discourage some victims from seeking help. More studies will be necessary. That said, there are measures in place to encourage early identification and referral of cases by frontline professionals. For instance, for early identification of the varied needs of children and other families so that appropriate service can be provided in a timely manner, a pilot Comprehensive Child Development Service for children aged from 0 to 5 and their families has been launched in Sham Shui Po since July 2005, to be followed by pilot implementation in several other districts in early</p>

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		<p>2006. Besides, as announced in the 2005/06 Policy Address, a Family Support Programme will be launched to proactively identify families who are either socially isolated or unwilling to contact welfare units. The ultimate goal is to connect them to various support services available and motivate them to receive appropriate services to prevent further deterioration in their problems. As for facilitation of referrals, the Procedural Guidelines for Handling Battered Spouse Cases (2004) and the Procedures for Handling Child Abuse Cases (Revised 1998) have been in place to facilitate multi-disciplinary collaboration and referral in handling spouse battering and child abuse cases. The latter is now under review by a task group under the Committee on Child Abuse and the reporting practice is also discussed.</p>
9	<p>Improvement on the arrest practice is enhanced by providing clear policy and practice guidelines on arresting domestic violence crime. Including:</p> <ul style="list-style-type: none"> (a) Evidence gathering; (b) Investigation; (c) The report of the case investigation should be filed to the Department of Justice for the consideration of prosecution; (d) Providing support to victims; (e) Information system; and (f) Training. <p><i>(Chapter 7)</i></p>	<p>In very brief terms, the Consultants have suggested that all domestic incident calls should be recorded in a detailed domestic incident report form and reported to the superior; the Police should adopt a more active role in evidence gathering; investigation should be independent of the victim's consent; a special unit of the Police, like the Child Abuse Investigation Unit (CAIU), should be set up to handle domestic violence cases or the CAIU should be extended to cover domestic violence cases; and all police investigation reports should be filed with the Department of Justice for advice of possible prosecution.</p> <p>It is already the current Police practice for all domestic violence reports to be comprehensively recorded and properly investigated. Clear guidelines, as well as the required training provided and updated</p>

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		<p>as necessary, are given to the officers concerned on the handling of domestic violence cases.. In regard to the suggestion of setting up a designated team to handle domestic violence cases, given the large number of domestic violence reports (2 289 in 2004) and the nature of such reports that requires immediate response, the Police believe it will be more cost effective to have all frontline officers trained up to handle the cases, as opposed to having designated teams. Also, it will not be the best utilization of resources for all investigation reports to be submitted to the Department of Justice for advice on prosecution in view of the different nature and circumstances of each case.</p> <p>Information about the training provided to frontline Police officers has been set out in item 8 above.</p>
10	<p>Improvement on the prosecution practice is made by adopting independent/proactive investigation.</p> <p><i>(Chapter 7)</i></p>	<p>The Consultants have suggested that the prosecution practice should be improved by adopting independent/proactive investigation, whereby the investigation is independent of the victim's consent (para. 7.40).</p> <p>It should be noted that the Prosecutions Division of the Department of Justice do not have any investigatory power and hence will not carry out any investigation. Should there be any query the Police will be asked to conduct further enquiries and investigations.</p> <p>Provided there is evidence independent from the victim, investigation can be carried out by the Police regardless of the victim's consent or co-operation although investigation, and prosecution action that may</p>

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		subsequently be taken, will obviously be more difficult in the absence of the victim's co-operation. Should there be sufficient evidence and it is in the public interest to proceed with prosecution, then prosecution action will be initiated and will not be dropped unless there are any exceptional circumstances or factors to show otherwise.
11	<p>To set up a domestic violence court in Hong Kong that would handle all criminal and civil cases involving allegations of domestic violence or a violation of an injunction order.</p> <p><i>(Chapter 7)</i></p>	<p>In para. 7.41-7.51 of the Report, the Consultants briefly outlined the experience of establishment of domestic violence courts in other jurisdictions, including brief description the experience of the Integrated Domestic Violence Court set up in Tompkins County in Rochester, New York of the United States and the pilot Specialist Domestic Violence Courts established in five magistrate's courts in the United Kingdom. On that basis, the Consultants have suggested that a domestic violence court that handle all criminal and civil cases involving allegations of domestic violence or violation of an injunction order can be set up in Hong Kong.</p> <p>To make an informed consideration of this recommendation, we consider it necessary to conduct more thorough studies to assess the current situation in Hong Kong and how the proposed specialist domestic violence court may work, bearing in mind that the proceedings and standard of proof etc. are different in civil and criminal cases. Experience in overseas will provide useful reference and in this regard, we understand that the UK completed an evaluative study in 2004 on the operation of the five pilot models of specialist domestic violence courts to inform the policy debate as to whether and how specialist courts should be developed. We will, in</p>

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		consultation with the Judiciary, conduct further study to examine the feasibility of this recommendation.
12	<p>To set up a Domestic Violence Serious Injury or Fatality Review to conduct a thorough review on domestic violence serious injury and fatality cases with regards to the causes of death, service provision and psycho-social risk factors.</p> <p><i>(Chapter 7)</i></p>	<p>SWD has proposed to develop a mechanism to conduct post-event multi-disciplinary review on fatal child abuse cases with a view to identifying improvement measures for prevention and intervention. It may be extended to cover other fatal family violence cases after experience has been accumulated. The initial proposal has been discussed at the Child Abuse Committee and the Working Group on Combating Violence. SWD is consulting the Police, Department of Justice the Council of the Hong Kong College of Paediatricians and will make necessary revision to the proposal. Special attention will be given to address concerns such as the likely prejudicial effect, the rule of disclosure and potential impediment to criminal investigation if there are other legal proceedings to follow.</p>
13	<p>Education for the public and training for legal actors is needed as a strategy of prevention of domestic violence.</p> <p><i>(Chapter 7)</i></p>	<p>The Consultants have suggested that public education should be strengthened as a strategy to prevent domestic violence (para. 7.67 of the Report) and training on domestic violence awareness should be provided to the legal actors, including lawyers, police, prosecutors and judges (para. 7.69-7.73).</p> <p>As mentioned in item 8 above, on-going training programmes have been organised for frontline personnel involved in handling domestic violence by SWD and the Police, as well as other related departments. Actions are being taken to further strengthen the training programmes. In addition, SWD has maintained liaison with the Judicial Studies</p>

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		<p>Board in promoting awareness on domestic violence. For instance, a seminar on domestic violence was organised for judges in February 2005. We will liaise with the Judicial Studies Board to arrange more programmes to arouse awareness on domestic violence and related issues.</p> <p>Public education has been a key area of work in preventing domestic violence by the Administration. Since 2002, SWD has launched a territory-wide publicity campaign on "Strengthening Families and Combating Violence" on an annual basis. The objectives of the campaign are to enhance public awareness of the need to strengthen families, encourage families to seek early assistance and prevent violence. Sub-themes on spouse battering, child abuse, elder abuse, sexual violence and suicide are covered. We will continue our efforts in public education and publicity campaign. As stated in the 2005/06 Policy Address, the Government recognizes the importance of family education and will allocate new resources to strengthen and extend family education.</p>
14	<p>The existing support services for victims and witnesses should be well coordinated with and supported by the legal system.</p> <p><i>(Chapter 7)</i></p>	<p>SWD and NGOs currently provide support services to victims and witnesses. In addition, volunteers and service recipients have been recruited as support persons for victims. As mentioned in item 8 above, a Family Support Programme will be launched to increase connection with vulnerable persons/families so that their problems can be tackled earlier with appropriate services provided. Volunteers and those who have gone through similar problems or crisis before will be recruited as support persons to provide continuous support and contact</p>

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		to those vulnerable persons/families.
15	<p>(a) Violence, defined in the Domestic Violence Ordinance (DVO, Cap 189), includes physical assault, sexual violence, psychological abuse, neglect (for children and elderly), stalking and exposing a child to domestic violence;</p> <p>(b) Psychological abuse involves psychological harm or trauma, caused by physical or sexual violence, or the threat of physical or sexual violence, or coercive tactics;</p> <p>(c) Neglect should be included as a type of violence under the DVO (Cap 189). For the definition of neglect in legal terms, it should be carefully studied and publicly consulted;</p> <p>(d) Stalking in domestic relationships should be criminalized, as recommended by the Law Reform Commission; and</p> <p>(e) The making of a child witnessing domestic violence by a perpetrator of domestic violence should be regarded as a form of criminal child abuse.</p> <p><i>(Chapter 8)</i></p>	<p>At present, section 3 of the DVO provides that a party to a marriage may apply to the Court for an injunction if he/she or a child living with him/her has been molested by the other party to the marriage, and the same applies to a man and a woman in cohabitation. The term “molest” is not defined in the DVO. Legal advice has confirmed that the term used in the DVO may include physical and psychological abuse, and “molestation” covers any conduct which can properly be regarded as such a degree of harassment as to call for the intervention of the court. Information gathered from the Judiciary has confirmed that the court has granted injunction on application under section 3 of DVO on the ground of psychological abuse. In other words, the existing law already applies to psychological abuse.</p> <p>The Consultants have suggested amending the DVO to clarify beyond doubt that the law applies to psychological abuse (para. 8.29 of the Report). Whilst we are in support of adding clarity to the law, we are concerned that the term “psychological abuse” may not be easily defined in precision, a problem also recognised by the Consultants (para. 8.17-8.21), and may add ambiguity rather than clarity to the law. As the existing DVO already applies to psychological abuse, we consider it desirable to maintain the status quo.</p> <p>As the Consultants have elaborated in para. 8.27-8.28 of the Report, neglect of children and mentally incapacitated persons (MIP) is already treated as a crime under existing provisions of the Offences</p>

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		<p>Against the Person Ordinance (Cap. 212), the Protection of Children and Juveniles Ordinance (Cap. 213) and the Mental Health (Guardianship) Regulations (Cap. 136D). In respect of neglect of elderly people, the Consultants have recognized the controversy and the host of issues that need to be addressed before a decision on legislative amendment could be made (para. 8.29-8.30). That said, there are many supportive services available to protect the elderly if they are willing to be assisted. In the meantime, the Administration will give careful thought on how best it should be addressed.</p> <p>The issue of criminalising stalking behaviour as recommended by the Law Reform Commission is being considered by the Administration under the lead of the Home Affairs Bureau.</p> <p>The Consultants have suggested that making of a child witnessing domestic violence by a perpetrator of domestic violence should be regarded as a form of criminal child abuse. Whilst we fully appreciate the negative impact on the child(ren) witnessing domestic violence, making the exposure of child(ren) to domestic violence a criminal offence is a serious matter that require careful and evidence-based examination on the merit of the proposal itself and the read-across implication. For instance, there may be a need to provide good reasons justifying why other acts of exposing a child (or indeed anyone) to crimes committed outside the home are not punishable by criminal sanctions. We will keep in view further research studies on this subject.</p>

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16	<p>(a) The scope of provision of the protection of the DVO (Cap 189) should include an applicant who is "associated with" the respondent/defendant if: -</p> <ul style="list-style-type: none"> (i) They are or have been married to each other; (including married or divorced couple) (ii) They are cohabitants or former cohabitants; (including heterosexual and same-sex couples (iii) They live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder; (iv) They are relatives; (v) They have agreed to marry one another; (vi) They are parents in relation to any child; or have or have had parental responsibility for the child; (vii) They are parties to the same family proceedings (viii) Relevant child <p>(b) A child should have the right to apply for an order on his or her own with the Court's permission. If the child finds it difficult to work on his or her own, he or she can be represented by the SWD, with his or her consent, to apply for the restraining orders; and</p>	<p>We note that the suggestions made by the Consultants are mainly adopted from the legislation of the UK. Whilst overseas legislation can provide useful reference, we have to take into account the local context and cultural background in determining whether and if so, how, the local legislation should be amended.</p> <p>As noted above, section 3 of the DVO presently provides that a party to a marriage may apply to the Court for an injunction if he/she or a child living with him/her has been molested by the other party to the marriage, and the same applies to a man and a woman in cohabitation. Having regard to the specific dynamics of violence occurred between persons in intimate relationships, we have no in-principle objection to the proposal of extending the scope of coverage of the DVO to cover former spouse or former cohabitee, subject to clear definition in the law.</p> <p>However, we believe it premature to consider the proposal to extend the scope to cover same-sex cohabitants before the public has built up consensus on the social acceptability of this approach. Careful examination of the read-across implications of the proposal on other legislation and government policies also has to be conducted before a policy decision is made.</p> <p>As regards the suggestion of extending the scope of the DVO to cover familial relationships other than those in spousal or cohabital relationships, we believe that the dynamics of these relationships are not identical to those in spousal or cohabital relationships and we do</p>

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	<p>(c) "Cohabiting" in the same household could be used as one of the criteria to identify intimate relationships. However, it should not be the pre-requisite of defining relationships.</p> <p><i>(Chapter 8)</i></p>	<p>not see a strong case for providing protection by way of a civil injunction under the DVO. That said, it should be noted that any violence act that amounts to an assault are subject to criminal liability under the relevant ordinances, regardless of the relationship between the perpetrator and the victim.</p> <p>On the suggestion of enabling a child to apply for an order on his or her own with the Court's permission, our legal system always requires a child to bring legal action by a person of full capacity. According to legal advice, a minor is required to sue by a next friend and defended by a guardian ad litem (Order 80 rule 2 of the Rules of the High Court (Cap 4A) and the Rules of the District Court (Cap 336H)). A child under 18 is deemed a person under disability (Order 80 Rule 1). It is undesirable to allow a person under disability to prosecute actions on his own without the guidance of another person of full capacity. To allow a person under disability (which by definition includes not only a child but also a mentally incapacitated person) to bring legal proceedings on his own could give rise to the possibility of abuse of the process of court. Any such proposal would be out of place with our existing legal regime and is hence not supported.</p>
17	<p>(a) The power of arrest is attached to an injunction if:</p> <ol style="list-style-type: none"> (1) There is actual bodily harm inflicted by the respondent; or (2) Molestation (violent or non-violent) is inflicted by the respondent; or 	<p>Under section 5(1) of the DVO empowers the court, when granting an injunction order, to attach a power of arrest if it is satisfied that the other party has caused actual bodily harm to the applicant or to the child concerned. We would consider amendment to the DVO to the effect that the court may attach a power of arrest to the injunction</p>

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	<p>(3) There is non-physical psychological damage caused by the behaviour of the respondent; or</p> <p>(4) The respondent persistently disobeys injunctions and makes nuisances to the other party and to others concerned.</p> <p>(b) Breach of a non-molestation order and exclusion order is a criminal offence and is punishable by imprisonment.</p> <p><i>(Chapter 8)</i></p>	<p>order if it is satisfied that the other party has caused any physical or psychological harm/damage to the applicant or to the child concerned.</p> <p>Above apart, it may be useful to note that Police officers can in appropriate situations exercise the power of arrest under section 50 of the Police Force Ordinance (Cap. 232). This covers the situation where violence has been committed between spouses or indeed any other persons.</p> <p>In respect of the consequence of a breach of injunction order, it is a contempt of court and the court is empowered under the District Court Ordinance (Cap. 336) to impose punishment including imprisonment or a fine. This provides sufficient deterrence to the respondent for complying with the injunction order.</p>
18	<p>The judge has the discretion to grant restraining orders for a specified period or until further order.</p> <p><i>(Chapter 8)</i></p>	<p>We have no in-principle objection to extending the duration of the injunction orders to dovetail with the corresponding matrimonial or custody proceedings. Considering that a restraining order would affect the liberty of the perpetrator, for the sake of legal certainty and fairness, we consider it desirable that the order granted should be for a defined period. We would hence consider amendment to the DVO to the effect that the court may grant an order for a length of up to 12 months initially, and may extend the order for another 6 months.</p>
19	<p>Support to mentally incapacitated persons, dependent elderly and children should be offered in the application</p>	<p>Support for mentally incapacitated persons and children in legal proceedings are already given under existing ordinances, i.e.</p>

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	of the restraining orders. <i>(Chapter 8)</i>	Protection of Children and Juveniles Ordinance (Cap. 213) and the Mental Health Ordinance (Cap. 136).
20	All relevant ordinances related to domestic violence shall be pulled together to integrate the criminal and civil laws. <i>(Chapter 8)</i>	As the Consultants have noted in para. 8.69-8.72 of the Report, the legal framework in place in dealing with domestic violence includes legal provisions in various pieces of legislation. The DVO (Cap. 189) mainly provides for the remedy for victims of domestic violence to seek injunction from the court, whereas violence acts involving crime element are mainly dealt with by the Crimes Ordinance (Cap. 200 and the Offence Against Persons Ordinance (Cap. 212). The protection of children and juvenile is dealt with under the Protection of Children and Juveniles Ordinance (Cap. 213). Whilst domestic violence is a general term to describe different acts of violence committed within the domestic context, our criminal law in the area is structured based on the criminal acts themselves rather than the context under which such acts take place. To include in the DVO legal provisions dealing with identical criminal acts may give rise to unnecessary duplication and complication in our current law, which will be undesirable and may not have any practical advantages. We hence prefer maintaining the status quo.
21	The restraining orders shall be placed in criminal proceedings. <i>(Chapter 8)</i>	As noted above, section 3 of the DVO empowers the court to grant an injunction on application of a party to a marriage if it is satisfied that the other party to the marriage has molested the applicant or a child living with the applicant (the same applies to a man and a woman in cohabitation). The standard of proof in the civil proceedings is less

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		<p>stringent and the court may grant the order if it on balance of probability believes that the above-said condition is met, as opposed to the standard of "beyond any reasonable doubt" adopted in criminal proceedings. Besides, if the court may grant an injunction in the criminal proceeding without the need for an application by the victim, some information, which would otherwise be available in the civil proceeding when an application is made under DVO, might not be available to the criminal court. This may do injustice to the defendant concerned. We therefore prefer maintaining the status quo.</p>