

2009年 家暴條例修改的爭議

〈政府立場〉

LC Paper No. CB(2)2132/05-06(01)

The Administration's Review on Domestic Violence Ordinance - Preliminary Proposed Amendments

(I) The Administration's Preliminary Proposed Amendments to the Domestic Violence Ordinance (DVO)

	Details of Proposals	Justifications of the Administration's Proposed Amendments
1.	Expand the scope of the DVO to include former spouses and former co-habitees so that they can make application for an injunction order under the DVO.	At present, section 3 of the DVO states that the court may grant an injunction on an application by a party to a marriage, if it is satisfied that the applicant or a child living with the applicant has been molested by the other party to the marriage. An injunction order may contain any or all of the following provisions- (a) a provision restraining that other party from molesting the applicant; (b) a provision restraining that other party from molesting any child living with the applicant; (c) a provision excluding that other party from the matrimonial home, or from a specified part of the matrimonial home, or from a specified area; (d) a provision requiring that other party to permit the applicant to enter and remain in the matrimonial home or in a specified part of the matrimonial home According to section 2(2) of the DVO, the provisions also apply to the cohabitation of a man and a woman. However, the court should make reference to section 6(3) by taking into account the permanence of that relationship if it grants an injunction containing

	Details of Proposals	Justifications of the Administration's Proposed Amendments
		a provision mentioned in section 3(1)(c) or (d). Having regard to the fact that most of the reported domestic violence cases are related to former spousal and former co-habitation relationships and making reference to comments of concerned groups and overseas legislation, we propose to extend the scope of the DVO to include former spouses and former co-habitees so as to strengthen the protection for victims of domestic violence.
2.	Amend the DVO to enable a next friend of a child under the age of 18 to make application for an injunction order on behalf of the child under the DVO and remove the requirement that the child has to be living together with the applicant.	In accordance with Order 80 rule 2 of the Rules of the High Court (Cap 4A) and the Rules of the District Council (Cap 336H), a child under 18 is required to bring legal action by a next friend and defended by a guardian ad litem. To render better protection to children under the age of 18, we suggest amending the law so that a next friend of the child may apply for an injunction order on behalf of the child under the DVO. This proposal will on the one hand render better protection to children, and on the other hand it is also compatible with the existing legal system and principles. According to legal advice, a next friend usually includes the family members or relatives of the child concerned, such as parents, elder brothers and sisters, grandparents, uncles and aunts etc. We also propose to remove the requirement that the child has to be living together with the applicant.

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3.	Amend the DVO to the effect that when the court makes an order to exclude the abuser from the matrimonial home or from a specified area in accordance to section 3(1)(c), it can also vary any existing custody/access order in respect of the child concerned.	At present, the court may make a custody or access order in respect of a child by his/her parent(s) in a divorce proceeding or under other circumstances as provided in various matrimonial related legislation. Under section 3(1)(c) of the DVO, the court may make an exclusion order, excluding the abuser from the matrimonial home or from a specified area. As mentioned in Item 1 above, we will extend the scope of DVO to cover former spousal relationship. This may result in a scenario whereby the court may make an order under the DVO to exclude an abusing parent from getting near a child from his/her former marriage, whilst at the same time, the court might have in an earlier proceeding granted a custody or access order in respect of that child and that abusing parent. This may give rise to a question as to whether the exclusion order made under the DVO or the existing custody or access order will prevail. To avoid confusion, we propose to enable the court to vary any existing custody/access order in respect of the child concerned when making an exclusion order under section 3(1)(c) of the DVO.
4.	Amend the DVO to empower the Court to attach a power of arrest	Under section 5(1) of the DVO, the court is empowered to attach a power of arrest to an injunction order, if it is satisfied that the other party has caused actual bodily harm to the applicant or the child concerned.

	Details of Proposals	Justifications of the Administration's Proposed Amendments
		To render better protection to victims of domestic violence and to prevent further abuses on the victims, as well as to provide for greater deterrence against the abuser, we suggest enabling the court to attach a power of arrest if it reasonably believes that there is likelihood that the respondent will cause any bodily harm to the applicant or the child concerned. According to section 5(2) of the DVO, if a power of arrest is attached to an injunction order, a police officer may arrest without warrant any person whom he reasonably suspects of being in breach of the injunction by reason of that person's use of violence or, as the case may be, his entry into any premises or area specified in the injunction. The police officer shall have all necessary powers including the power of entry by the use of reasonable force to effect that arrest. On the other hand, breaches of injunction orders are contempt of court. In accordance with the District Court Ordinance (Cap 336), the court is empowered to impose a fine and imprisonment on the person. This should provide sufficient deterrence and ensure compliance with the injunction order.
5.	Amend the DVO by extending the duration of the injunction order	According to the existing DVO, the court may, under section 3(1)(a) and (b), grant an injunction order restraining the abuser from molesting the applicant and any child living with the applicant. No

福利事務委員會特別會議

日期：2009年1月23日(星期五)

時間：下午3時開始(或於內務委員會會議結束後立即舉行，以較遲者為準)

地點：立法會會議廳

修訂議程

(截至2009年1月19日)

* I. 〈家庭暴力條例〉的修訂建議

立法會 CB(2)341/08-09(03) 及 —— 政府當局提供的文件
CB(2)559/08-09(01)號文件
(已於2008年12月2日及2009年1月5日發出)

與團體/個別人士及政府當局會晤

第一部分(下午3時至4時30分)

團體

- ✓ 1. 基恩之家
- ✓ 2. 香港公教婚姻輔導會
- ✓ 3. 民主黨婦女委員會
- ✓ 4. 天平文化教育發展基金
- ✓ 5. 幼兒教育關注組
- ✓ 6. 青年專業論壇
- ✓ 7. 童心社
- ✓ 8. 康體專業關注健康家庭同盟
- ✓ 9. 平等機會婦女聯席
- ✓ 10. 香港婦女基督徒協會
- 11. 蕚欣(聯盟)
- 12. 中產新希望論壇

13. 博華思

14. 香港基督徒學生運動
15. 北角區社關網絡
16. UFIRE
17. 青年基督徒學會
18. 香港政治研究學會
19. 香港婦女中心協會
20. 香港青年學生聯合會
21. 價值核心行動組
22. 香港扶青協會
23. 教育評議會教育基金
24. 關注家庭暴力受害人法權會
25. 思考學園
26. 香港嬰兒及兒童產品工商協會
27. 灣仔家長關注子女成長會
28. 屯門家長關注子女教育協會
29. 新界東家長關注子女成長聯會
30. 葵涌家長關注子女成長小組
31. 關注孩子同盟
32. Kingdom Ministries
33. 五餅二魚有限公司
34. 恩信有限公司
35. 律師基督徒團契
36. Grapes Group

37. 還我本色

38. 彩虹之家

39. 健康體適能專業聯盟

40. 社會公義協會

41. 基督教會活石堂九龍堂

42. 男人關注暴力小組

43. 新一代家長會

44. 香港關懷弱勢社羣青年聯席

45. 油尖旺家長網絡

46. 反對居所暴力大聯盟

休會(下午4時30分至4時35分)

第二部分(下午4時35分至6時)

個別人士

47. 廖文廣先生

48. 余嘉韻先生

✓ 49. 梁松輝先生 (45, 40)

50. 蘇康明先生

✓ 51. 石玉瓊女士 (Mama)

52. 蔡偉先生

53. 周綺霞女士

54. 吳釁敏先生

✓ 55. 黃偉亮先生 (主成)

56. 秦民德先生

57. 駱家欣小姐

58. 周佩琪小姐

59. 許偉冠先生
60. 黃主儀小姐
61. 洪子雲先生
62. 王浩勃先生
- ✓ 63. 彭巧齡小姐 (36 B) confirmed
- ✓ 64. 羅靜文小姐 (36 B) confirmed
65. 張國進先生
66. 余蓮娜小姐
67. 許偉嫻女士
68. 關浩然先生
69. Ariel WONG
70. 趙潔貞女士
- ✓ 71. 陳寶珠女士 (36 B) confirmed
- ✓ 72. 陳漢源先生 (36 B)
- ✓ 73. 倪立賢先生 ✓
- ✓ 74. 曾月明女士 (Mama)
75. 盧永全先生
76. 朱鳳美女士 & confirmed 唔係我地個美國
77. 黃子翔先生
78. 劉志偉先生
79. 高胡秀清女士
80. 梁慧明女士
81. 楊月明女士
82. 羅偉光先生

83. 楊玉明先生

84. 郭聞俊先生

✓ 85. 程文煒先生 (梁國)

86. 陳燕芬女士

87. 雷威恒先生

✓ 88. 黃志成先生 (王成) confirmed 身份

✓ 89. 石淑華女士 (王成)

✓ 90. 陳嘉文先生 (王成)

91. 黎藹茵小姐

✓ 92. 羅丹星先生 (王成) confirmed

相關文件

立法會 CB(2)2289/07-08 號文件 —— 《2007 年家庭暴力
(已於 2008 年 6 月 13 日發出) (修訂) 條例草案》委
員會報告

立法會 CB(2)341/08-09(04) 號文件 —— 立法會秘書處擬備的
(已於 2008 年 12 月 2 日發出) 背景資料簡介

(先前發出的相關文件及意見書可於立法會網站瀏覽，網址為
http://www.legco.gov.hk/yr11-12/chinese/panels/ws/papers/ws_e3.htm。)

II. 其他事項

(由下午 6 時起)

* 立法會所有其他議員獲邀參與討論這個屬立法建議的項目。

立法會秘書處

議會事務部 2

2009 年 1 月 19 日

求大同 存小異

8/6/09 明
談家暴條例修訂

張建宗

《2009年家庭暴力（修訂）條例草案》今日（6月5日）在憲報刊登，建議進一步將《家庭暴力條例》（《家暴條例》）的涵蓋範圍擴大至同性同居人士。

過去半年，社會人士就這議題積極發表意見，討論的焦點圍繞在修訂會否衝擊現時的婚姻制度和家庭價值。

開宗明義，根據《婚姻條例》締結的婚姻在法律上是指不容他人介入的一男一女自願終身結合。讓我重申，政府在法律地位和政策立場上不承認同性婚姻、公民伴侶關係或任何同性關係；這個立場不會因這次修訂而改變，有關修訂亦不涉及或影響其他現行法例。

《家暴條例》的精神是為有特定親密或親屬關係的人士在刑事法律的框架之上提供額外的民事保障。

一般來說，任何人受到暴力威嚇或騷擾，可以根據刑事條例向警方舉報，將施虐者繩之於法。然而，現實情況是，一些有特定親密關係的人士每每因感情上或財政上的瓜葛千絲萬縷而多所顧忌，不願向警方舉報，繼而造成傷害，甚至悲劇。考慮到人命攸關，我們認為有必要為這類人士提供額外的民事保障，讓他們可以引用法例向法院申請強制令，避免受到進一步的騷擾。

由此可見，《家暴條例》的關鍵是受害人與施虐者之間的親密或親屬「關係」，立法原意並不是為保障居於同一屋簷下的一般人士，或涵蓋在家居環境下發生的暴力事件；這些人士如上文所說受到刑事條例保障，亦可根據民事侵權法或法院的固有司法管轄權尋求保護。

《家暴條例》在1986年制定，原適用於婚姻的一方、同居男女的一方，和同住的未成年子女。至去

年6月，立法會通過把前配偶、前同居男女、其他直系和延伸家庭成員，如婆媳、祖孫等也納入保障範圍，同時刪除「同住」的條件。

採「三條腿走路」方式制定草案

審議期間，法案委員會內不同政黨一致支持把同性同居人士納入保障範圍；為回應議員的要求，我們遂同意進一步修例，把這類人士也包括在內。

我們在全面和深入地考慮過議員和各界人士的意見後，決定採取「三條腿走路」的靈活方式制定《2009年家庭暴力（修訂）條例草案》：

首先，刪除現行條例只針對異性同居關係的條文，並加入新的「同居關係」定義——即「指作為情侶在親密關係下共同生活的兩名人士之間的關係」，和已終結的該等關係。這種關係不涉任何關於「婚姻」、「配偶」或「夫妻」的提述或聯繫；

第二，清楚劃定不同類別的受保護人士，即配偶、前配偶及其子女；直系或延伸家庭關係人士；有親密關係的同居人士、前同居人士及其子女等三類，各以不同的條文處理；

第三，將《家暴條例》的簡稱修訂為《家庭及同居關係暴力條例》（Domestic and Cohabitation Relationships Violence Ordinance），以清楚反映「家庭」和「同居關係」屬不同類別，互不干連。

有社會人士認為應另立條例處理有親密同居關係人士之間的暴力行為，這樣做並無政策理據，亦不符合香港以同一法例處理相同或類似政策事宜的一貫做法。再者，另立條例需時，修例相對便捷，可以讓同性同居人士盡早得到保障。

總括來說，大家對保障同性同居人士的建議是認同的，只是對如何達至這目標有不同看法。「求大同、存小異」，修訂法案是本着存異求同的原則，合理務實地平衡各方關注後作出的最佳可行方案。

作者是勞工及福利局長