

Domestic Violence (Amendment) Bill 2009

The Law Society welcomes the Government's decision to introduce the Domestic Violence (Amendment) Bill 2009 as it advocated a thorough review of the Domestic Violence Ordinance in its Report on Domestic Violence published in December 2005, including extending protection to same sex couples.

The Law Society has the following comments on Clause 5 “**Interpretation and application**”, in particular on the new Section 2(1) which states:

- (2) Section 2(1) is amended by adding –
- “cohabitation relationship” (同居關係) –
- (a) means a relationship between 2 persons who live together as a couple in an intimate relationship; and
 - (b) includes such a relationship that has come to an end;

“party to a cohabitation relationship” (同居關係一方) does not include a person who is or was the spouse of the other party to that relationship;

The purpose of the Bill is to extend protection to persons who are co-habiting or were formerly co-habiting as a same sex couple.

A review of the *New Oxford Dictionary of English* shows the word “*couple*” can mean:

“two people who are married, engaged, or otherwise closely associated romantically or sexually”.

If we apply the rule of *ejusdem generis* to assist with this interpretation, the phrase “*or otherwise closely associated romantically or sexually*” could arguably refer to two persons of the opposite sex but not otherwise.

Hong Kong only recognizes marriages of the opposite sex and the definition of “*marriage*” being “*a voluntary union for life of one man and one woman to the exclusion of all others*” still applies to Hong Kong.

We therefore express our reservations on the definition of “*cohabitation relationship*” as it is arguable this may not cover same sex couples.

We appreciate the sensitivities of religious groups but as the proposed amendments to the Ordinance have been introduced as a result of community pressure it appears the Bill was drafted with the express intention of avoiding any reference to “same sex couples” whatsoever.

We recommend:

- 1. A clear and unambiguous reference be made that the Ordinance covers “same sex couples” as the gazetted Bill cannot assist the public, especially litigants in person.**
- 2. There is no need to change the “Long title” of the Bill from “Domestic Violence” to “Domestic and Cohabitation Relationships Violence Ordinance”.**

The Law Society of Hong Kong
The Family Law Committee
9 September 2009
128339