

向法案委員會提交對「2014 婚姻(修訂)條例草案」之回應

28 Mar 2014

跨性別資源中心是香港現時最活躍及最俱代表性的跨性別團體，服務本地跨性別會員超過三千多名。本組織與本地跨性別有關的法律、學術、研究、醫療及服務之專業人士及權威均一直密切留意及介入各項有跨跨性別人士之權益議題。

剛於 2014 年 3 月 17 日，本組織主席梁詠恩 Joanne Leung 收到由國際跨性別權威組織 The World Professional Association for Transgender Health, Inc. (WPATH) 之信函表達對香港跨性別權益及立法的關注，並促請政府在跨性別人士身份確認上除去不必要及傷害性的醫療條件。

本組織對「2014 婚姻(修訂)條例草案」中的內容及方向感到失望！該草案並未完善地處理婚姻條例當中對變性人的不公平及不適切對待之漏洞，更將仍需討討的一些過時及不適切的醫療行政指引及程序，放在婚姻法例條文當中，迫使政府新近成立的跨部門工作小組沒可能有更大的空間，依照 W 婚姻案之終審建議，予以制定一條全面且適切於跨性別人士身份確認之的性別承認法案。

本組織跟據該草案中的內容，提出以下一些疑問：

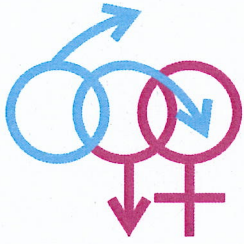
- 1) 草案中提到的性別重置手術的醫學步驟，對接受變性手術的人士來說，絕對並非「必要程序」，亦絕對並非「廣為醫學界所接納」對變性人士身份確認的條件！詳細情況請參考附件之信函，及國際權威 The World Professional Association for Transgender Health (WPATH) 的網站。聯合國酷刑問題特派專員亦於去年指出：「要求變性人進行如草案中的強制絕育醫學步驟並不必要」，更要求各國廢除這些強制規定。
- 2) 政府由 W 婚姻案件一直引用的所謂本地於此議題的權威跟本沒有根據，而本組織亦曾向政府部門提交本地及國際認可的權威資訊，可惜政府只根據本地其中一位為變性人士進行性別重置手術的醫生，其個人觀點而妄下判斷。
- 3) 如何定義「某種形式的陰莖」？
- 4) 如果性器官（如陰道或陰莖）的建造手術最終失敗，是否意味該等人士無法取得新的身份證明文件及與異性結婚？
- 5) 新的第 40A 條，「已接受整項性別重置手術的人在手術完成後的重置性別，須視為該人的性別」，而就不需要跟據身份證明文件嗎？
 - A. 實例 1：某人在國外完成了整項性別重置手術，由於其原國籍在其國家不能

更改性別，來港後雖已提供醫學證明給入境處，但入境處因其護照性別沒有更改，拒絕在其身份證上使用手術完成後的重置性別。如果他/她要結婚，是跟據那個性別？

- B. 實例 2：某人在國外完成了部份性別重置手術，其原國籍護照已更加成為新的性別，在港亦取得新的身份證明文件。如果他/她要結婚，是跟據那個性別？
- 6) 政府已成立了一個由律政司司長擔任主席的高層跨部門工作小組，負責就涉及性別承認的議題進行詳細研究。終審法院認為，當局應參考外國做法，例如英國的「2004 年性別承認法令」，以決定該如何妥善地解決變性人士在所有法律範疇內所面對的困難。但此婚姻(修訂)條例草案在此前提下極有可能與新的性別承認法做成矛盾及不兼容，到時後唯有再一次更改婚姻法例，或甚至有機會迫使「性別承認法案研究小組」無法制定出真正能夠切合需要及全面的一條新法案。
- 7) 此草案內容的修訂，比原先沒有修訂的法案對大部份變性人士更不利，而即使不對《婚姻條例》作出任何修改，案中上訴人 W 及其他與她同一處境的人士，仍有權在十二個月限期後以重置的性別結婚。
- 8) 上述提及「W 及其他與她同一處境的人士」，到底同一處境有否包括「女變男」的變性人士？是誰有這句含義的解釋權？

跨性別資源中心，促請政府以 W 婚姻終審之建議及精神、國際權威組織的勸喻、與及跨性別人權的基本人權為依歸，對婚姻條例之修訂重新考慮，否則本組織將會邀請聯合國及其他國際組織介入，否決此法案之修訂。

主席
跨性別資源中心



Bean Robinson, PhD
Executive Director

Jeffrey Whitman, BS
Business Manager/Event
Manager

Andrea Martin
Executive Administrator

Lauren Husting, MM
Office Assistant

1300 South 2nd Street, Suite
180
Minneapolis, MN 55454 USA
Phone: 1+ (612) 624-9397
Fax: 1 + (612) 624-9541
Email: wpath@wpath.org
Web Page: www.wpath.org

**EXECUTIVE COMMITTEE - 2014-
2016**

President

Jamison Green, PhD

President-Elect

Gail Knudson, MD, FRCPC

Secretary-Treasurer

Vin Tangpricha, MD, PhD

Past-President

Lin Fraser, EdD

**BOARD OF DIRECTORS - 2014-
2016**

Tamara Adrian, JD

Rebecca Allison, MD

Griet DeCuyper, MD

Randi Ettner, PhD

Dan Karasic, MD

Colt Meier, PhD

Katherine Rachlin, PhD

Sam Winter, PhD

PAST PRESIDENTS

Paul A. Walker, PhD

Donald R. Laub, MD

Milton T. Edgerton, MD

Ira B. Pauly, MD

Aaron T. Billowitz, MD

Jan Walinder, MD

Leah Schaefer, MD

Friedmann Pfaefflin, MD

Richard Green, JD, MD

Alice Webb, DHS

Eli Coleman, PhD

Walter J. Meyer III, MD

The World Professional Association for Transgender Health, Inc.

A Non-Profit Corporation

17 March 2014

Dr. Robin Bradbeer, Chair of Transgender Equality and Acceptance
Movement (TEAM) and of the Professional Commons Task Force on
Transgender Law Reform

[@gmail.com](mailto:bradbeer@tgr.org)

Ms. Joanne Leung, Chair of Transgender Resource Center

[@tgr.org.hk](mailto:joanne@tgr.org)

We are writing in response to your request that we offer our relevant
policy position, derived collectively from combined expertise over
many decades of practice in the field of transgender and transsexual
medicine, health, and law, in response to pending legislative reforms
soon to be discussed in the Legislative Council of Hong Kong.

The World Professional Association for Transgender Health (WPATH) is
an international educational association of professionals devoted to
the understanding and treatment of individuals with gender dysphoria.
Founded in 1979, and currently with over 700 physician, mental
health, social science, and legal professional members, all of whom are
engaged in clinical practice and/or research that affects the lives of
transgender and transsexual people, WPATH is the oldest
interdisciplinary professional association in the world that is
concerned with this specialty, and our expertise is recognized by the
World Health Organization, the American Medical Association,
numerous national Health Ministries, and in courts of law throughout
the world.

As background, we respectfully refer you to the Standards of Care for
the Health of Transsexual, Transgender and Gender-Nonconforming
People, Version 7, available at

http://www.wpath.org/site_page.cfm?pk_association_webpage_men_u=1351&pk_association_webpage=3926

These internationally accepted guidelines describe the current mental
health and medical best practices in the treatment of transsexual
individuals who are undergoing sex reassignment.

Gender variance, or the experience of one's self as having a gender that is different from prevailing cultural norms, or even different from the gender assigned to one at birth, exists in every known culture. In some cultures, for some people, the pressure to conform to assigned gender roles may be intolerable; conversely, for some transgender-identified people, try as they might to conform to roles expected for them, people around them always perceive them as differently-gendered: they may be perceived as homosexual, or as members of another sex category than that to which they were assigned, no matter how hard they try to meet the expectations of others based on assigned birth sex. These conflicts, though relatively rare, can be extremely painful for those who experience them. Because these experiences occur regardless of race, class, or culture, it is reasonable to think of the phenomenon as basic to human existence. Because of this universality, WPATH has urged the avoidance of pathologizing gender variance, that is, we urge authorities to resist viewing gender variance as something wrong, to be treated or corrected, because of historical beliefs or assumptions about gender or sex. For those transgender people who come to realize that their best hope of survival is to live as a member of the sex to which they were not assigned at birth, the decision to transition is not taken lightly; the sacrifices and the risks are many.

Full surgical sex reassignment (SRS) that includes removal of gonads and construction of external genitalia is not medically necessary or economically feasible for all transgender people. Because of the wide diversity in the circumstances of transgender people worldwide, the WPATH Board of Directors, in the interest of the health and well-being of transgender and transsexual people globally, issued the following identity recognition statement 16 June 2010:

No person should have to undergo surgery or accept sterilization as a condition of identity recognition. If a sex marker is required on an identity document, that marker could recognize the person's lived gender, regardless of reproductive capacity. The WPATH Board of Directors urges governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.

Identity recognition documents are crucial for all people: the ability to have a birth certificate, passport or other official documents of recognition from one's country of citizenship can facilitate basic processes necessary to daily life. These may be lifesaving documents, as, in some cases, they validate the individual's existence and deflect hostile behaviours toward transgender people. Changes to documentation are important aids to social functioning, and are a necessary component of the pre-surgical process, if surgery is anticipated. Regardless which medical treatments, if any, are to be applied in any individual case, delay of document changes may have a deleterious impact on a patient's social integration and personal safety.

While we view that sex reassignment surgery (SRS) is a medical necessity, we recognize that SRS is not desired by all transgender people. The nature and duration of a transition from male-to-female or female-to-male is variable and individualized. Transgender people may undergo a social transition by living outwardly in their preferred gender role and using their preferred name and pronoun (as linguistically appropriate); or they may undergo a medical transition, which includes feminization or masculinization of the body (as appropriate)

through the use of hormones and other medical procedures including surgery, vocal training, epilation (hair removal), etc. Both the social and medical avenues should be recognized as valid for application for gender marker change in identity documents and public records. Governments of an increasing number of countries, including the United Kingdom, Argentina, South Korea, and the United States of America have issued policies and administrative regulations that permit the issuance of identity documents that recognize the gender in which individuals live without a requirement for surgical intervention. Social gender recognition is not dependent upon an individual's genital configuration, and forced surgery to modify, reconstruct, or otherwise alter intimate body parts should not be a prerequisite for document or record changes.

Likewise, a diagnosis as a prerequisite to gender validation can also serve to marginalize and/or stigmatize transgender people unnecessarily. The WPATH Standards of Care recognize that living with gender variance is not a pathological state, and that many transgender people are perfectly capable of knowing who they are and living full, rewarding lives without having a diagnostic label applied to them. We have asserted that identity recognition should not be withheld from such individuals. It is not reasonable to require that the person has lived in conformance with any gender role for any period of time, or that they have had any specific medical treatment or a particular diagnosis in order to declare their gender identity, or to obtain state recognition of the identity that will facilitate their social integration. As stated earlier, the majority of transgender people worldwide may be precluded from accessing medical transition due to lack of funding or the unavailability of experienced medical providers. Individuals in this position should not be denied identity recognition because the resources necessary for medical transition are not available to them.

Nevertheless, acute gender dysphoria often requires medical intervention, which may include hormone replacement (cross-sex hormone treatment), and various surgical procedures, most typically breast augmentation for transgender women (male-to-female transsexual people), and male chest reconstruction for transgender men (female-to-male transsexual people). In fact, for transgender men, chest reconstruction is typically far more important to social functioning than genital reconstruction. Pinning social validation on a particular medical procedure as a policy matter does not take into account the differing medical needs of the affected population.

Sex reassignment, when properly indicated and performed as provided by the WPATH Standards of Care, has proven to be beneficial and effective in the treatment of individuals with transsexualism and/or gender dysphoria. Since the goal of medical sex reassignment is to assist individuals in achieving lasting personal comfort with their gendered selves in order to maximize their overall health, psychological well-being, and self-fulfillment, it is also important to emphasize that human rights should not be precluded by medical status as a transsexual person. Transsexual and transgender people must be afforded the same human rights as any other person. Identity recognition and the rights of citizenship associated with one's gender identity are crucial to psychological well-being for every human being, including those who may be transsexual, who may have gender dysphoria, or who may be unable constitutionally unable to conform to social expectations prescribed for persons of

their assigned sex. Every individual's gender identity is an important component of their psychological make-up, whether or not it corresponds with the individual's assigned sex at birth.

In May of 2012, legislators in Argentina passed a law permitting transgender people to change their identity documents without requiring surgery or any medical treatment and without certification from physicians or approval from judges. The law also mandated that sex reassignment surgery be available from either public or private providers through the "Obligatory Medical Plan" at no extra cost to patients. This law immediately became the most progressive law on this topic anywhere in the world.

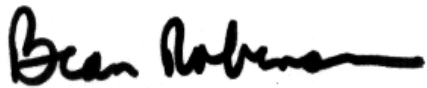
The evolutionary trend in policy is to recognize the lived gender identity of persons regardless of the form of their body. WPATH urges the Hong Kong Government to eliminate barriers to full participation in society for transgender and transsexual citizens, in accordance with their lived gender identity.

We hope you will be able to make use of these recommendations in your dialogue with the Hong Kong Government. If we can be of any assistance to your contacts in the Hong Kong Government in their work with transsexual, transgender, or gender-nonconforming individuals, please invite them to contact our office.

Respectfully,

A handwritten signature in black ink, appearing to read "Jamison Green", with a long, sweeping horizontal stroke extending to the right.

Jamison Green, PhD
WPATH President

A handwritten signature in black ink, appearing to read "Bean Robinson", with a long, sweeping horizontal stroke extending to the right.

Bean Robinson, PhD
Executive Director