

立法會
Legislative Council

LC Paper No. CB(2)2164/13-14
(These minutes have been seen
by the Administration)

Ref : CB2/BC/2/13

**Bills Committee on
Marriage (Amendment) Bill 2014**

**Minutes of the fourth meeting
held on Tuesday, 20 May 2014, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Hon Dennis KWOK (Deputy Chairman)
Hon James TO Kun-sun
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon YIU Si-wing
Hon Gary FAN Kwok-wai
Hon MA Fung-kuok, SBS, JP
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Hon KWOK Wai-keung
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon Martin LIAO Cheung-kong, JP
Ir Dr Hon LO Wai-kuok, BBS, MH, JP

Members absent : Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Dr Hon LEUNG Ka-lau
Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Hon TANG Ka-piu
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen

**Public Officers : Item I
attending**

Mr LAI Tung-kwok, SBS, IDSM, JP
Secretary for Security

Ms Maggie WONG Siu-chu, JP
Deputy Secretary for Security 3

Mr Billy WOO Tak-ying
Principal Assistant Secretary for Security D

Mr David CHIU Wai-kai, IDSM
Assistant Director (Personal Documentation)
Immigration Department

Mr Alan CHONG Ka-ning
Senior Government Counsel
Department of Justice

Dr Albert YUEN Wai-cheung
Consultant, Department of Surgery
Ruttonjee and Tang Shiu Kin Hospitals

**Clerk in : Ms Amy YU
attendance Chief Council Secretary (2) 6**

**Staff in : Mr Stephen LAM
attendance Senior Assistant Legal Adviser 2**

Miss Josephine SO
Senior Council Secretary (2) 6

Miss Meisy KWOK
Legislative Assistant (2) 6

Action

I. Meeting with the Administration

(LC Paper Nos. CB(2)1491/13-14(01)&(02), CB(3)444/13-14,
LS34/13-14, CB(2)1203/13-14(02)-(06) and File Ref: SB CR 1/3231/13)

The Bills Committee deliberated (index of proceedings attached at
Annex).

Action

2. The Bills Committee received a briefing by Dr Albert YUEN, Consultant, Department of Surgery, Ruttonjee and Tang Shiu Kin Hospitals, on issues relating to sex reassignment surgery.

Follow-up actions arising from the discussion

- Admin
3. The Bills Committee requested the Administration to advise in writing on –
- (a) the legal implications in the event that the scrutiny of the Marriage (Amendment) Bill 2014 ("the Bill") could not be completed before 16 July 2014 (i.e. the expiry date of the 12-month suspension period of the Declarations granted in the Court of Final Appeal's order in the case of *W v the Registrar of Marriages (FACV 4/2012)*);
 - (b) the course of actions to be taken by the Administration in the event that the scrutiny of the Bill could not be completed before 16 July 2014;
 - (c) the legal implications in the event that the Bill was vetoed by the Legislative Council ("LegCo"); and
 - (d) the course of actions to be taken by the Administration in the event that the Bill was vetoed by LegCo.

II. Any other business

Date of next meeting

4. The Bills Committee agreed that the next meeting be held on Monday, 26 May 2014, at 10:45 am in Conference Room 3 of the LegCo Complex.

5. There being no other business, the meeting ended at 1:00 pm.

**Proceedings of the fourth meeting of the
Bills Committee on Marriage (Amendment) Bill 2014
on Tuesday, 20 May 2014, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000638 – 000930	Chairman	Opening remarks	
000931 – 002505	Chairman Admin Dr Albert YUEN	Briefing by Dr Albert YUEN, Consultant, Department of Surgery, Ruttonjee and Tang Shiu Kin Hospitals, on issues relating to sex re-assignment surgery ("SRS") [LC Paper No. CB(2)1567/13-14(01)].	
002506 – 003134	Chairman Dr Fernando CHEUNG Dr Albert YUEN	Dr Fernando CHEUNG's enquiry and Dr Albert YUEN's explanation on the causes of gender identity disorder ("GID") and the relevant treatment.	
003135 – 003840	Chairman Ms Cyd HO Dr Albert YUEN	<p>Ms Cyd HO expressed the view that if it was expressly provided in legislation that a full SRS was the requirement for gender change, it would constitute a form of torture.</p> <p>Ms Cyd HO's enquiry and Dr Albert YUEN's explanation on medical conditions involving disorders of sex development; and considerations to be taken into account in assessing whether a transsexual person had successfully gone through real-life experience living in the opposite sex, including wearing clothes of the opposite sex, with a view to evaluating his/her suitability for undergoing SRS.</p>	
003841 – 004422	Chairman Mr CHAN Chi-chuen Dr Albert YUEN	<p>Mr CHAN Chi-chuen made the following enquiries –</p> <p>(a) the meaning of "constructing some form of a penis" in the proposed new section 40A(2)(b)(ii);</p> <p>(b) how long did it take for a transsexual person to complete the whole process of sex re-assignment (including receiving psychiatric/psychological treatment and hormonal treatment; going through real-life experience in the opposite sex; and undergoing SRS); and</p> <p>(c) whether there were cases where transsexual persons had given up completing the whole process of sex re-assignment for reasons such as unsuccessful surgeries, and unable to cope with the painful process of the surgery.</p> <p>Dr Albert YUEN explained that –</p> <p>(a) the construction of a functional penis involved complex and difficult surgical procedures. The</p>	

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		<p>proposed section 40A(2)(b)(ii) as presently drafted could provide the needed flexibility;</p> <p>(b) it normally took two to three years for a transsexual person to complete the whole process of sex re-assignment including completion of SRS; and</p> <p>(c) among the 50-odd cases he had handled, two patients originally seeking to re-assign their sex from female to male had not subsequently gone through full SRS after having had their breasts removed. These two patients felt satisfied and decided not to complete full SRS out of their own accord.</p>	
004423 – 005012	Chairman Dr Priscilla LEUNG Dr Albert YUEN	<p>Dr Priscilla LEUNG expressed objection to broadening the scope of the Bill to the effect that transsexual persons who had not received full or any SRS were qualified as persons in the re-assigned sex for the purpose of marriage.</p> <p>In response to Dr Priscilla LEUNG, Dr Albert YUEN advised that he had handled a few cases where the persons seeking to undergo SRS were married or had divorced.</p> <p>Dr Priscilla LEUNG expressed concern about the impact of sex re-assignment of a married person on his/her children. She held the view that the psychological impact of sex re-assignment on the family members of the transsexual persons, in particular their children, should also be taken into account when assessing their suitability for undergoing SRS.</p>	
005013 – 005522	Chairman Mr MA Fung-kwok Dr Albert YUEN	<p>Mr MA Fung-kwok sought elaboration from Dr Albert YUEN on how he considered the view that the full SRS requirement was a form of torture.</p> <p>Dr Albert YUEN stressed that SRS was carried out at the request of patients with GID and out of their own accord so as to relieve themselves from their psychiatric distress.</p>	
005523 – 010114	Chairman Mr KWOK Wai-keung Dr Albert YUEN	<p>Mr KWOK Wai-keung's enquiry and Dr Albert YUEN's explanation on –</p> <p>(a) the difference between the two concepts of GID and sex orientation;</p> <p>(b) the procedures that a transsexual person had to go through before he/she would be granted a medical certificate certifying that he/she had changed his/her gender; and</p>	

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		(c) whether SRS would bring about any severe long-term side effects on the health conditions of transsexual persons.	
010115 – 010633	Chairman Mr LEUNG Kwok-hung	Mr LEUNG Kwok-hung stressed that the rights of transsexual persons should be respected. He held the view that if transsexual persons were forced to go through a full SRS against their will in order to be eligible to marry in their preferred gender, it would constitute a form of torture.	
010634 – 011147	Chairman Mr Martin LIAO Dr Albert YUEN	Mr Martin LIAO's enquiry and Dr Albert YUEN's response on – (a) whether GID was curable; (b) whether a person who had undergone a full SRS was no different, both psychologically and physically, from a person of his/her preferred gender, apart from the fact that they would be rendered infertile as a result of the surgery; and (c) whether the transformation resultant from SRS was permanent and medically irreversible.	
011148 – 011759	Chairman Dr Helena WONG Dr Albert YUEN	Dr Helena WONG's enquiry and Mr Albert CHAN's response on the rationale for defining "full SRS" under the proposed new section 40A(2) as involving both the surgical removal <u>and</u> construction of genital organs (i.e. for male to female, removal of the penis and testes and construction of a vagina; for female to male, removal of the uterus and ovaries and construction of some form of a penis).	
011800 – 012150	Chairman Deputy Chairman Admin	The Deputy Chairman made the following enquiries – (a) given the controversies over the Bill and the study currently being undertaken by the inter-departmental working group on gender recognition ("IWG"), whether consideration would be given to including in the Bill a sunset clause to the effect that the Administration would review the legislation upon IWG's finalization of its recommendations; and (b) in the event that the scrutiny of the Bill could not be completed before 16 July 2014 (i.e. the expiry date of the 12-month suspension period of the Declarations granted in the CFA's order in the W case), whether the Administration would make an application for an extension of the suspension period. The Administration made the following response –	

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		<p>(a) the Administration hoped that the Bill would be passed by the Legislative Council ("LegCo") before 16 July 2014 to implement what had been conclusively decided by CFA in its order made in the W case in respect of the full SRS requirement, so as to ensure clarity in statute law;</p> <p>(b) CFA's order would automatically come into effect upon expiry of the 12-month suspension period. If the Bill had yet to be passed by then, the Administration would handle relevant cases in accordance with the principles laid down in the CFA judgment. The Administration had no plan to apply for an extension of the suspension period; and</p> <p>(c) The Administration considered it inappropriate to include a sunset clause in the Bill, as it would render the statute law incongruous with the CFA's order on the W case after the expiry date specified in the sunset clause.</p>	
012151 – 012500	Chairman Dr Albert YUEN	The Chairman's enquiry and Dr Albert YUEN's response on the primary aim of transsexual persons in undergoing SRS.	
012501 – 013607	Chairman Dr Fernando CHEUNG Dr Albert YUEN Ms Cyd HO Dr Priscilla LEUNG	Discussion on medical and surgical procedures that transsexual persons had to go through before they were eligible to marry in the re-assigned sex; the view taken by the World Professional Association for Transgender Health that full SRS should not be a pre-requisite to the right of transsexual persons to marry; cases in which transsexual persons had not completed full SRS or sought to revert to their biological sex after SRS.	
013608 – 013844	Chairman Mr CHAN Chi-chuen Admin Dr Albert YUEN	<p>Mr CHAN Chi-chuen enquired whether SRS performed outside Hong Kong and medical proof issued by overseas medical authorities would be recognized for the purpose of applying for a change of the sex entry on Hong Kong Identity Card.</p> <p>The Administration responded that –</p> <p>(a) the medical proof issued by overseas medical authorities/doctors would be accepted for the purpose of the application if it contained the relevant information supporting the application including the doctor's medical qualification, place where the medical qualification was obtained, other contact information of the doctor and the surgical procedures performed; and</p> <p>(b) where there were doubts about the medical proof issued by overseas medical authorities/doctors, the applicant might be referred to a Hong Kong registered doctor for assessment of SRS that had been undergone.</p>	

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013845 – 014155	Chairman Ms Starry LEE Dr Albert YUEN	<p>Ms Starry LEE enquired about the age groups of patients diagnosed as suffering from GID and whether such disorder was caused by congenital or acquired factors.</p> <p>Dr Albert YUEN responded that the aetiology of GID was uncertain; and transsexuals in Hong Kong seeking surgery for gender change were mostly in their 20s or 30s.</p>	
014156 – 014520	Chairman Dr Helena WONG	<p>In view of the complex and difficult surgical procedures involved in constructing a functional penis, Dr Helena WONG expressed the view that the Administration, in drafting the proposed new section 40A(2) which defined the required surgical procedure for sex re-assignment, should provide a greater degree of flexibility to cater for different situations of transsexual persons, such as by replacing the word "and" with "or"/"and/or" in the proposed new section 40A(2)(a) and (b).</p> <p>Dr Albert YUEN responded that flexibility was already built into the proposed section 40A(2)(b)(ii) with the use of the phrase "constructing some form of a penis".</p>	
014521 – 014837	Chairman Mr LEUNG Kwok-hung Dr Albert YUEN	<p>In response to Mr LEUNG Kwok-hung's enquiry on whether the Administration had any plan to allocate more resources to treatment services for transsexual persons, Dr Albert YUEN advised that it was the plan of the Hospital Authority to improve the psychiatric treatment/services provided for patients diagnosed as suffering from GID. A medical centre for transsexuals would be established at the Prince of Wales Hospital to meet the increasing demand. Two other surgeons were under training to perform SRS.</p>	
014838 – 015739	Chairman Dr Fernando CHEUNG Dr Albert YUEN Mr CHAN Chi-chuen Dr Priscilla LEUNG Ms Cyd HO	<p>Dr Fernando CHEUNG's enquiry and Dr Albert YUEN's response on the concept of gender.</p> <p>Mr CHAN Chi-chuen queried the need to introduce the proposed legislative amendments in the Bill, given that the existing guidelines on SRS adopted by the Hospital Authority had been working effectively.</p> <p>In response to Mr CHAN Chi-chuen and Ms Cyd HO, Dr Albert YUEN advised that he had been consulted by the Administration on the definition of full SRS under the proposed new section 40A(2) and it was his view that the section as currently drafted was appropriate as it provided the needed flexibility.</p> <p>Dr Priscilla LEUNG expressed the view that there should be a high threshold for the surgical requirement to be met for re-assignment of sex under the proposed new section 40A(2).</p>	

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015740 – 020351	Chairman Admin Mr CHAN Chi-chuen	<p>The Chairman enquired about the consequences in case the scrutiny of the Bill could not be completed before 16 July 2014 or the Bill was vetoed by LegCo.</p> <p>The Administration responded that –</p> <p>(a) the objective of the Bill was to give effect to the CFA's order handed down in the W case, which concerned the right of a person who had received full SRS to be treated as being of the sex to which he/she was re-assigned for the purpose of marriage registration; and</p> <p>(b) irrespective of whether the Bill was passed by LegCo by 16 July 2014, the CFA order would come into effect after 16 July 2014 and became part of the laws of Hong Kong, and the Appellant (and others in the same position as she was) would be entitled to marry in her post-operative re-assigned sex.</p> <p>In response to Mr CHAN Chi-chuen's enquiry on the effect of an extension of the suspension period of the Declarations granted in the CFA's order, the Administration advised that –</p> <p>(a) although CFA had, in its order, granted both parties the liberty to apply in relation to the period of suspension, the Court had also made it clear that it must not be assumed that any application for an extension would be viewed favourably in the absence of compelling reasons;</p> <p>(b) an extension of the suspension period, if granted, would mean that the Appellant and others in the same position as she was would still not be able to marry in their re-assigned sex during the extended suspension period; and</p> <p>(c) the Administration had no intention to apply for an extension of the suspension period.</p>	
020352 – 021420	Chairman Admin Dr Priscilla LEUNG Ms Starry LEE Mr KWOK Wai-keung Dr Helena WONG Mr CHAN Chi-chuen	<p>The Administration was requested to advise in writing on –</p> <p>(a) the legal implications in the event that the scrutiny of the Bill could not be completed before 16 July 2014;</p> <p>(b) the course of actions to be taken by the Administration in the event that the scrutiny of the Bill could not be completed before 16 July 2014;</p> <p>(c) the legal implications in the event that the Bill was vetoed by LegCo; and</p>	Admin

Time marker	Speaker	Subject(s)	Action required
		(d) the course of actions to be taken by the Administration in the event that the Bill was vetoed by LegCo.	
021421 – 021622	Chairman	Closing remarks and date of next meeting.	

Council Business Division 2
Legislative Council Secretariat
31 July 2014