

立法會
Legislative Council

LC Paper No. CB(2)2200/13-14
(These minutes have been seen
by the Administration)

Ref : CB2/BC/2/13

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

**Minutes of the fifth meeting
held on Monday, 26 May 2014, at 10:45 am
in Conference Room 3 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 Emily LAU Wai-hing, JP
 - Hon Tommy CHEUNG Yu-yan, SBS, JP
 - 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
 - Dr Hon LEUNG Ka-lau
 - Hon Paul TSE Wai-chun, JP
 - Hon LEUNG Kwok-hung
 - Hon YIU Si-wing
 - Hon Gary FAN Kwok-wai
 - Hon MA Fung-kwok, 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
 - Hon TANG Ka-piu
 - Ir Dr Hon LO Wai-kwok, BBS, MH, JP
 - Hon Tony TSE Wai-chuen
- Members absent** :
- Hon Mrs Regina IP LAU Suk-ye, GBS, JP
 - Hon Christopher CHUNG Shu-kun, BBS, MH, JP

**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

**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)1590/13-14(01)-(03), CB(2)1491/13-14(02),
CB(2)1203/13-14(02)-(06) and CB(3)444/13-14)

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

2. The Bills Committee noted the following papers -

- (a) two submissions respectively from the Hong Kong Bar Association and The Hong Kong Chinese Christian Churches Union on the Marriage (Amendment) Bill 2014 ("the Bill") (LC Paper Nos. CB(2)1587/13-14(01) and CB(2)1568/13-14(02)); and

Action

- (b) the Administration's response to issues raised at the meeting on 20 May 2014 (LC Paper No. CB(2)1590/13-14(02)).

Follow-up action arising from the discussion

- Admin 3. The Administration was requested to provide a written response to the issues raised in the submissions provided to the Bills Committee by the Equal Opportunities Commission (LC Paper No. CB(2)1309/13-14(05)), The Law Society of Hong Kong (LC Paper No. CB(2)1545/13-14(01)), the Hong Kong Bar Association (LC Paper No. CB(2)1587/13-14(01)) and religious organizations.

II. Any other business

Date of next meeting

4. The Bills Committee agreed that the next meeting be held on Thursday, 5 June 2014, at 8:30 am in Conference Room 1 of the Legislative Council Complex.
5. The Bills Committee also agreed to invite relevant medical professionals to the next meeting to provide professional advice on issues relating to gender identity disorder and the treatment concerned, including sex re-assignment surgery.
6. There being no other business, the meeting ended at 12:53 pm.

Council Business Division 2
Legislative Council Secretariat
19 August 2014

**Proceedings of the fifth meeting of the
Bills Committee on Marriage (Amendment) Bill 2014
on Monday, 26 May 2014, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000427 – 000625	Chairman	Opening remarks	
000626 – 001425	Chairman Admin	<p>Briefing by the Administration on its response to issues raised at the meeting on 20 May 2014 (LC Paper Nos. CB(2)1590/13-14(01)&(02)).</p> <p>The Administration indicated its aim to resume the Second Reading debate on the Marriage (Amendment) Bill 2014 ("the Bill") 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 ("CFA")'s Order in the case of <i>W v the Registrar of Marriages (FACV 4/2012)</i> ("the W case").</p> <p>The Chairman requested the Administration to provide a written response to the issues raised in the submissions provided to the Bills Committee by the Equal Opportunities Commission ("EOC") (LC Paper No. CB(2)1309/13-14(05)), The Law Society of Hong Kong (LC Paper No. CB(2)1545/13-14(01)), the Hong Kong Bar Association (LC Paper No. CB(2)1587/13-14(01)) and religious organizations.</p>	Admin
001426 – 002238	Chairman Mr Ronny TONG Admin	<p>Mr Ronny TONG considered that given the controversial nature of the Bill, the Administration should address the various concerns raised by members, in particular whether the full sex re-assignment surgery ("SRS") requirement proposed in the Bill was too high a threshold, instead of trying to rush through the Bill before 16 July 2014. He also expressed the view that CFA's judgment did not preclude the Administration from setting a lower threshold for giving recognition to the re-assigned gender for the purpose of marriage under the Bill.</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 after the surgery for the purpose of marriage registration under MO; and</p> <p>(b) as regards the comments made by CFA in its judgment on problems facing transsexuals in other areas of law and treatment of persons who had not</p>	

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		<p>received any or full SRS in these areas, they involved complicated and controversial legal, medical and social issues which called for comprehensive study and wide public consultation. Apart from introducing the Bill, the Administration had in parallel established a high level inter-departmental working group on gender recognition ("IWG") to consider legislation and incidental administrative measures that might be required to protect the rights of transsexual persons and to make recommendations for reform as might be appropriate.</p>	
002239 – 002937	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen expressed dissatisfaction that the Administration had taken such a long time to introduce the Bill to the Legislative Council ("LegCo") and had attempted to rush through the Bill before 16 July 2014 despite the concerns and objection expressed by many deputations.</p> <p>Referring to the submission from the Law Society of Hong Kong, Mr CHAN Chi-chuen queried whether the Bill as presently drafted, which required that a person had to have gone through a full SRS before his/her sex could be re-assigned for the purpose of marriage, violated the human rights protected under the Basic Law ("BL"), the Hong Kong Bill of Rights ("HKBOR") and international human rights laws.</p> <p>The Administration stressed that the purpose of the Bill was to implement the CFA's Order handed down in the W case, and the recommendations of the Bill had not restricted the existing rights of transgender and transsexual persons who had not received full SRS. In this light, the Bill was in compliance with BL, HKBOR and other international conventions applicable to Hong Kong.</p>	
002938 – 003724	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG pointed out that CFA had not stated in its judgment that only transsexuals who had undergone full SRS should be granted the right to marry in their self-identified gender. He held the view that, given the wide-ranging and controversial nature of the issues involved, the objection expressed by many deputations to the Bill, and having regard to the fact that the CFA's Order would come into effect regardless of whether the Bill was passed by 16 July 2014, the Administration should withdraw the Bill and undertake a comprehensive study and consultation on its proposals. Alternatively, the Administration should consider the suggestion of Mr Dennis KWOK to include in the Bill a sunset clause to the effect that the Administration would review the legislation upon IWG's finalization of recommendations for reform.</p>	

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		<p>The Administration reiterated that CFA's comments that consideration be given to enacting legislation to deal with various issues relating to gender recognition would be followed up by IWG. As the subject went beyond the scope of the CFA's judgment in the W Case and involved complicated legal, medical and social issues, carrying wide-ranging policy implications, it was more appropriate to consider the matter outside the current legislative exercise.</p>	
003725 – 004126	<p>Chairman Mr Martin LIAO Admin</p>	<p>Mr Martin LIAO considered it acceptable that the Bill, as an interim measure, sought to implement what had been conclusively decided by CFA in its Order made in the W case in respect of transsexuals who had completed full SRS, so as to ensure clarity in statute law and compliance of the relevant statutory provisions with BL and HKBOR. Given the controversial and wide ranging nature of the issues involved, he expressed support for the various issues relating to gender recognition, including where to draw the line in the sex re-assignment process at which gender change was recognized, should be carefully considered by IWG with a view to enacting comprehensive legislation on matters concerning transsexual persons. He stressed that it was pivotal that the society should first have a thorough discussion on the complicated legal, medical and social issues involved and strive to forge consensus thereon.</p>	
004127 – 005000	<p>Chairman Dr Helena WONG Admin</p>	<p>Dr Helena WONG queried whether the definition of a "full SRS" as the surgical removal and construction of genital organs under the proposed new section 40A(2) was too stringent and lacked the flexibility to cater for transsexual persons in different situations.</p> <p>The Administration responded that the procedures specified under the proposed new section were generally accepted among the medical profession as essential steps of SRS and were in line with international practices.</p> <p>Dr Helena WONG expressed support for the suggestion of inviting psychiatrists/clinical psychologists who provided treatment services to patients diagnosed as suffering from gender identity disorder to a meeting of the Bills Committee.</p>	
005001 – 005654	<p>Chairman Dr Priscilla LEUNG Admin</p>	<p>Dr Priscilla LEUNG made the following points –</p> <p>(a) CFA had made it clear that nothing in its judgment on the W case was intended to address the question of same sex marriage. The scope of the CFA's Order concerned only transsexual persons in W's situation who had received full SRS. The judgment did not change the existing law on the institution of marriage in Hong Kong, which was based on the monogamous union of one man and one woman; and</p>	

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		<p>(b) she expressed opposition to broadening the scope of the Bill to the effect that transsexual persons who had not received full SRS were qualified as persons in the re-assigned sex for the purposes of marriage. She stressed that the various issues relating to gender recognition, including whether any legislation in this area should be introduced, must be thoroughly discussed by the legislature and the community at large.</p> <p>The Administration reiterated that it would adopt a dual approach, i.e. to amend the Marriage Ordinance (Cap. 181) ("MO") to implement the CFA's Order in the W case and to entrust IWG with the task of undertaking a detailed study on the wide ranging issues relating to gender recognition. The Administration did not have any stance on these issues pending IWG's study.</p>	
005655 – 010227	Chairman Mr Paul TSE Admin	<p>Mr Paul TSE opined that it was not possible for the Administration and LegCo to put in place legislation addressing the complicated and wide ranging issues relating to the rights of transsexual persons within the 12-month suspension period granted by CFA. He enquired whether the Administration would apply for an extension of the suspension period.</p> <p>The Administration responded that it had the constitutional responsibility to promote the passage of the Bill to implement the CFA judgment in a timely manner. Enactment of the Bill would render the law more accessible to all parties concerned and was consistent with the rule of law. It would also afford clear legal protection to the marriage rights enjoyed by post-operative transsexual persons. The Administration would continue to strive for LegCo's support for the timely enactment of the Bill and it did not have any other plan at the present stage.</p>	
010228 – 011317	Chairman Mr TANG Ka-piu Admin Mr YIU Si-wing	<p>Mr TANG Ka-piu opined that the Bill was desirable in that it could provide protection to the marriage rights enjoyed by post-operative transsexual persons under the law.</p> <p>Mr YIU Si-wing considered that the current legislative exercise should focus only on post-operative transsexual persons who were in the exact same situation as W and expressed support for the early enactment of the Bill before 16 July 2014.</p> <p>The enquiries made by Mr TANG Ka-piu and Mr YIU Si-wing and the Administration's response on the consequences and 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 or the Bill was vetoed by LegCo (paragraphs 4 to 8 of LC Paper No. CB(2)1590/13-14(02)).</p>	

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011318 – 012039	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO supported the proposal for inviting psychiatrists/clinical psychologists to a meeting of the Bills Committee. In her view, given the controversial nature of the Bill, there should be thorough discussions on the various issues involved. She hoped that the Administration would not try to rush through the Bill and might consider applying for an extension of the 12-month suspension period.</p> <p>The Administration reiterated that the purpose of the Bill was to implement what had been conclusively decided by CFA in the W case in respect of the marriage right of post-operative transsexual persons. The subject of gender recognition went beyond the scope of the CFA Order in the W Case and fell outside the scope of the Bill. As gender recognition involved complicated legal, medical and social issues, carrying wide-ranging policy implications, it was more appropriate for the matter to be followed up by IWG and considered outside the current legislative exercise.</p>	
012040 – 012711	Chairman Deputy Chairman Admin	<p>The Deputy Chairman opined that on the one hand, enactment of the Bill would give clear protection under statute law to the marriage rights of post-operative transsexual persons who were in the same position as W and would be consistent with the spirit of rule of law, but on the other hand, there were great controversies over the full SRS requirement. He therefore suggested that consideration should be given to including in the Bill a sunset clause and specifying in the Bill that the Administration should conduct a public consultation on the rights of transsexual persons and submit within three years a report to LegCo on the results of the public consultation and the proposed legislative amendments.</p> <p>The Deputy Chairman's draft proposed Committee stage amendments on the sunset clause (LC Paper No. CB(2)1617/13-14(01)) were tabled at the meeting.</p> <p>The Administration did not consider it appropriate to include a sunset clause in the Bill, as it would render the statute law incongruous with the CFA's Order in the W case after the expiry date specified in the sunset clause. The Administration assured members that IWG would conduct a comprehensive study and consultation on the broad issues involved irrespective of whether the Bill was passed.</p>	
012712 – 013042	Chairman Mr KWOK Wai-keung Admin	<p>Mr KWOK Wai-keung considered that the current legislative exercise should focus on the proposals in the Bill and enactment of the Bill would demonstrate respect to CFA's decision.</p> <p>Mr KWOK Wai-keung asked whether the Administration would make an application for an extension of the 12-month suspension period. The Administration</p>	

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		reiterated that it had no plan to apply for an extension of the suspension period at the present stage.	
013043 – 013636	Chairman Dr LEUNG Ka-lau Admin	Dr LEUNG Ka-lau's enquiry and the Administration's response on whether there was any definition of "man" and "woman" under existing statute law.	
013637 – 014005	Chairman Dr Priscilla LEUNG	Dr Priscilla LEUNG expressed objection to the proposal of incorporating a sunset clause into the Bill. In her view, the Bill should not merely be seen as an interim measure pending further amendments in future. Referring to paragraphs 146 and 148 of CFA's judgment, Dr LEUNG stressed that CFA had made it clear that it was entirely a matter for the legislature to decide whether any gender recognition legislation modelled on that in the United Kingdom should be put in place.	
014006 – 014325	Chairman Mr CHAN Chi-chuen Admin	Mr CHAN Chi-chuen sought the Administration's view on the recommendation made by the Chairman of EOC that the Government should, adopt administrative practices in respect of requirement for gender change rather than stipulating the full SRS requirement in legislation. The Administration reiterated that the Bill was to implement what had been conclusively decided by CFA in its Order made in the W case in respect of the marriage right of post-operative transsexuals.	
014326 – 014629	Chairman Mr Paul TSE	Mr Paul TSE considered that the Administration should make an application for an extension of the suspension period and expedite the study on gender recognition issues.	
014630 – 020908	Chairman Ms Cyd HO Admin Mr CHAN Chi-chuen Dr Priscilla LEUNG Mr Gary FAN Mr Paul TSE Mr YIU Si-wing Mr LEUNG Kwok-hung Ms Emily LAU	Inviting relevant medical professionals, e.g. psychiatrists/clinical psychologists providing treatment services to patients diagnosed as suffering from gender identity disorder, to a meeting of the Bills Committee. As the Administration had indicated its aim to resume the Second Reading debate on the Bill before 16 July 2014, the Chairman advised that, to facilitate his consideration on the scheduling of meetings of the Bills Committee in the next few weeks, members' views would be sought on whether the Bills Committee should aim to complete the scrutiny of the Bill for resumption of the Second Reading debate on the Bill before 16 July 2014.	
<i>Agenda Item II - Any other business</i>			
020909 – 020936	Chairman	Closing remarks and date of next meeting.	