

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2202/13-14  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/2/13

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

**Minutes of the seventh meeting  
held on Tuesday, 10 June 2014, at 4:30 pm  
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 Emily LAU Wai-hing, JP  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Cyd HO Sau-lan  
Hon Starry LEE Wai-king, JP  
Hon CHAN Kin-por, BBS, JP  
Dr Hon LEUNG Ka-lau  
Hon Paul TSE Wai-chun, JP  
Hon YIU Si-wing  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK  
Hon CHAN Chi-chuen  
Hon KWOK Wai-keung  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

**Members absent** : Hon Ronny TONG Ka-wah, SC  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon LEUNG Kwok-hung  
Hon Gary FAN Kwok-wai  
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

**Public Officers attending** : Items I and II

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

**Attendance** : Item I  
**by invitation**

Medical professionals

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

Dr HO Pui-tat  
Associate Consultant  
Kwai Chung Hospital

Dr Greg MAK Kai-lok  
Associate Consultant  
Castle Peak Hospital

Dr NG Man-lun  
Clinical Co-Director  
Academy of Family Therapy

Dr HONG Kwai-wah  
Specialist in Psychiatry

**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

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**I. Meeting with the Administration and relevant medical professionals**

(File Ref: SB CR 1/3231/13)

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

2. The Bills Committee continued discussion with the Administration and relevant medical professionals on issues relating to gender identity disorder/gender dysphoria and the treatment concerned.

**II. Meeting with the Administration**

(LC Paper Nos. CB(2)1692/13-14(01)&(02), CB(3)444/13-14, CB(2)1203/13-14(02)-(06), CB(2)1590/13-14(03), CB(2)1684/13-14(01), CB(2)1692/13-14(02) and CB(2)1708/13-14(01))

Admin

3. Members noted the concern expressed by some religious bodies that, upon passage of the Marriage (Amendment) Bill 2014 ("the Bill"), if a minister refused to celebrate a marriage when the minister reasonably believed that one of the parties to the marriage was a post-operative transsexual, such act might be considered to be discriminatory under the Disability Discrimination Ordinance (Cap. 487) ("DDO") and/or the Sex Discrimination Ordinance (Cap. 480) ("SDO"). These religious bodies had requested that an exemption provision be added to the Bill to the effect that religious bodies would not be obliged to celebrate marriage for a post-operative transsexual if they did not wish to do so. The Administration was requested to clarify whether refusal by religious bodies and civil celebrants of marriages to celebrate a marriage involving post-operative transsexuals on the ground of religious beliefs would be considered to be discriminatory act under DDO and/or SDO, and whether the Administration would consider including an exemption provision in the Bill as requested by the religious bodies.

**III. Any other business**

Dates of future meetings

4. The Bills Committee agreed to hold meetings on the following dates -

(a) 16 June 2014 (Monday), from 4:30 pm to 6:30 pm; and

(b) 17 June 2014 (Tuesday), from 10:45 am to 12:45 pm.

Action

5. The Chairman asked members to forward their Committee stage amendments ("CSAs"), if any, to the Clerk before the next meeting, should they intend to propose CSAs and wish their CSAs to be considered by the Bills Committee.

6. There being no other business, the meeting ended at 7:02 pm.

Council Business Division 2  
Legislative Council Secretariat  
19 August 2014

**Proceedings of the seventh meeting of the  
Bills Committee on Marriage (Amendment) Bill 2014  
on Tuesday, 10 June 2014, at 4:30 pm  
in Conference Room 1 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
<i>Agenda Item I - Meeting with the Administration and relevant medical professionals</i>			
000633 – 001943	Chairman Dr Fernando CHEUNG Mr Tommy CHEUNG Mr CHAN Kin-por Mr CHAN Chi-chuen Mr YIU Si-wing Mr KWOK Wai-keung	Scheduling of the next two meetings on 16 and 17 June 2014 in the light of the results of the survey on members' views as to whether the Bills Committee should aim to complete the scrutiny of the Marriage (Amendment) Bill 2014 ("the Bill") for resumption of the Second Reading debate on the Bill before 16 July 2014.	
001944 – 002534	Chairman Dr NG Man-lun	Dr NG Man-lun further elaborated his views and responded to issues raised at the last meeting on 5 June 2014.	
002535 – 003114	Chairman Dr HONG Kwai-wah	Dr HONG Kwai-wah further elaborated his views on the Bill (LC Paper No. CB(2)1770/13-14(02)).	
003115 – 003818	Chairman Dr LEUNG Ka-lau Dr HONG Kwai-wah Dr Albert YUEN Admin	Dr LEUNG Ka-lau sought the views of the medical professionals on whether the existing law and the Bill, as presently drafted, could address issues relating to intersex persons whose congenital sexual characteristics were not distinct.	
003819 – 004305	Chairman Mr KWOK Wai-keung Dr Greg MAK	Mr KWOK-Wai-keung's enquiry and Dr Greg MAK's advice on whether the psychological treatment provided to transsexual persons included equipping them to cope with problems they might face in marriage/building a family after they had undergone sex re-assignment surgery ("SRS").	
004306 – 004830	Chairman Mr MA Fung-kwok Dr Albert YUEN Dr HO Pui-tat Dr HONG Kwai-wah	Mr MA Fung-kwok pointed out that while some people considered that the full SRS requirement had the effect of coercing transsexual persons to undergo SRS and therefore constituted a form of torture; on the other hand, there were views that some transsexual persons were forced not to undergo full SRS because of the difficult surgical procedures involved and that patients with severe form of gender identity disorder ("GID")/gender dysphoria ("GD") had a strong desire to undergo SRS and were not coerced to do so. Mr MA sought the views of the medical professionals on how they considered such views.	
004831 – 005618	Chairman Deputy Chairman Dr Greg MAK Dr Albert YUEN Admin	The Deputy Chairman sought the views of the medical professionals on the impact on an existing marriage when one of the parties to the marriage had subsequently received full SRS.	

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		<p>The Administration advised that based on the legal advice it had received, a marriage should not automatically become invalid solely on the ground that one of the parties to the marriage had subsequently (i.e. after celebration in accordance with all requirements under the Marriage Ordinance ("MO") (Cap. 181)) received full SRS. However, a married person who had subsequently undergone full SRS after marriage (or the other party to the marriage or on joint application by both parties) could apply for dissolving the marriage if he/she or they wished to do so.</p> <p>The Deputy Chairman pointed out that the Hong Kong Bar Association had taken a different view in its submission to the Bills Committee on the effect of gender change on an existing marriage (paragraph 11 of LC Paper No. CB(2)1587/13-14(01)).</p>	
005619 – 010050	Chairman Mr CHAN Chi-chuen Dr NG Man-lun	Mr CHAN Chi-chuen considered that the effect of a gender change on the subsisting marriage was an important issue which needed to be dealt with. He queried the appropriateness of making full SRS a statutory requirement for consideration of applications for gender change.	
010051 – 010937	Chairman Mr Tommy CHEUNG Admin Mr Christopher CHUNG	<p>Mr Tommy CHEUNG and Mr Christopher CHUNG expressed concern that if an existing marriage remained valid when one of the parties to the marriage had subsequently completed full SRS, the marriage would in effect become one between two males or two females, i.e. a same sex marriage.</p> <p>The Administration responded that -</p> <p>(a) the Bill sought to deal only with the recognition of the gender identity of an unmarried post-operative transsexual person at the point of marriage registration for the purposes of MO, which provided for matters connected with marriage registration only. Matters which took place after a marriage was registered fell outside the scope of MO and the Bill (and the CFA's order); and</p> <p>(b) the legal impact of a married person receiving SRS and problems facing transsexuals in other areas of law were issues to be considered by the Inter-departmental Working Group on Gender Recognition ("IWG") among other gender recognition issues.</p>	
010938 – 012020	Chairman Ms Cyd HO Dr HONG Kwai-wah Dr HO Pui-tat	Ms Cyd HO's enquiry and the medical professionals' explanation on considerations to be taken into account in assessing whether a transsexual person had successfully gone through real-life experience living in	

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	Dr Albert YUEN Dr Greg MAK Mr CHAN Kin-por	the opposite sex, including wearing clothes of the opposite sex, with a view to evaluating his/her suitability for undergoing SRS.	
012021 – 012555	Chairman Mr Paul TSE Dr NG Man-lun Dr HONG Kwai-wah	Mr Paul TSE's enquiries and the medical professionals' views on where the line should be drawn in respect of the qualification criteria for recognition for gender change, and how to gauge the level of social acceptance of transsexual persons in Hong Kong.	
012556 – 013128	Chairman Mr CHAN Chi-chuen Dr HO Pui-tat Dr NG Man-lun Dr Greg MAK	Mr CHAN Chi-chuen's enquiries and the medical professionals' elaboration on the treatment goals and options provided for patients suffering from GID/GD, and the respective rates of male-to-female and female-to-male transsexual persons who chose to receive full SRS.	
013129 – 013806	Chairman Ms Cyd HO Dr Greg MAK	<p>Ms Cyd HO sought the views of the medical professionals on whether patients with GID/GD would be subject to social pressure in considering whether to go through full SRS.</p> <p>Ms Cyd HO was concerned that the full SRS requirement proposed in the Bill would put pressure on transsexual persons to undergo full SRS against their will.</p>	
013807 – 014553	Chairman Mr Paul TSE Dr NG Man-lun Dr HONG Kwai-wah Dr HO Pui-tat	Mr Paul TSE reiterated his concern about where the line should be drawn in respect of the qualification criteria for recognition for gender change.	
<i>Agenda Item II - Meeting with the Administration</i>			
014554 – 020021	Chairman Admin Mr Tommy CHEUNG SALA2	<p>Mr Tommy CHEUNG expressed concern as to whether the passage or otherwise of the Bill would impact on IWG's studies/recommendations on issues relating to gender recognition.</p> <p>Mr Tommy CHEUNG considered it necessary for the Administration to address the concern raised by religious bodies, i.e. if a minister refused to celebrate a marriage when the minister reasonably believed that one of the parties to the marriage was a post-operative transsexual, whether such act might be considered to be discriminatory under the Disability Discrimination Ordinance (Cap. 487) ("DDO") and/or the Sex Discrimination Ordinance (Cap. 480) ("SDO"), and the request of the religious bodies for adding an exemption provision to the Bill to the effect that religious bodies would not be obliged to celebrate marriage for a post-operative transsexual if they did not wish to do so.</p>	

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		The Administration's response as detailed in paragraphs 18 and 19 of the Administration's paper (LC Paper No. CB(2)1692/13-14(01)).	
020022 – 020706	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen stressed that CFA had indicated in its judgment that the question of whether transsexual persons who had undergone less extensive treatment should also be qualified as persons in the re-assigned sex for the purpose of marriage was to be dealt with by the Government and the Legislature. He queried whether the Bill which adopted full SRS as the requirement for gender change would be subject to legal challenge of non-compliance with relevant human rights laws.</p> <p>Mr CHAN Chi-chuen was of the view that as the existing administrative guidelines for considering applications to change the sex entry on Hong Kong Identity Cards ("administrative guidelines") had been working effectively, the Administration should continue to adopt such administrative guidelines as requirements for gender change instead of stipulating the full SRS requirement in legislation, so as to afford greater flexibility to any future changes to the requirement for gender change in the light of medical advice.</p>	
020707 – 021242	Chairman Mr Paul TSE Admin	Referring to paragraph 124 of the CFA's judgment, Mr Paul TSE expressed concern that the proposed new section 40A(1) as currently worded might have the effect of limiting the right of transsexual persons to marry in their preferred gender to only those who have completed full SRS. In Mr TSE's view, it was outside the terms of the CFA's judgment and might open up further legal challenges.	
021243 – 021714	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO considered it necessary for the Administration to clarify to the public as to where the line would be drawn in respect of exemption, if any, granted to religious bodies in their provision of services for transsexual persons.</p> <p>Ms HO indicated her intention to move Committee stage amendments ("CSAs") to the Bill and provide the draft CSAs for the consideration of the Bills Committee at its next meeting.</p>	
021715 – 022418	Chairman Mr Tommy CHEUNG Admin SALA2	Mr Tommy CHEUNG reiterated his view that he did not see the need to enact the Bill in haste, given the complexity of issues relating to gender recognition and the fact that the CFA's Order would come into effect after 16 July 2014 regardless of whether the Bill was passed within the current legislative session.	



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		<p>The Administration was requested to clarify whether refusal by religious bodies and civil celebrants of marriages to celebrate a marriage to which one of the parties was a post-operative transsexual on the ground of religious beliefs would be considered to be discriminatory act under DDO and/or SDO should the Bill be passed, and whether the Administration would consider including an exemption provision into the Bill as requested by religious bodies.</p>	<p><b>Admin</b></p>
<p>022419 – 023022</p>	<p>Chairman Mr CHAN Chi-chuen Admin</p>	<p>Mr CHAN Chi-chuen sought the Administration's view on the recommendation made by the Equal Opportunities Commission ("EOC") that the Administration should continue to adopt the administrative guidelines as requirement for gender change.</p> <p>The Administration advised that –</p> <ul style="list-style-type: none"> <li>(a) EOC had proposed not only to provide for the current administrative requirements in the Bill, but also that those requirements be changed to no longer require full SRS;</li> <li>(b) the CFA's Order in the W Case only applied to transsexuals who had received full SRS, as made clear in paragraph 125 of the CFA's judgment;</li> <li>(c) whether persons who had not received full SRS could marry in their preferred sex was a gender recognition issue on which CFA did not decide in the W case. IWG would consider, among other things, the question of qualification criteria for a suitable gender recognition system for Hong Kong; and</li> <li>(d) the Bill, as it was currently drafted, would provide clear legal protection to the marriage right of transsexual persons who had received full SRS.</li> </ul>	
<p>023023 – 023253</p>	<p>Chairman</p>	<p>Closing remarks</p> <p>The Chairman asked members to forward their CSAs, if any, to the Clerk before the next meeting, should they intend to propose CSAs to the Bill and wish their CSAs to be considered by the Bills Committee.</p>	