Submission on the Marriage (Amendment) Bill 2014

Stephen John ('Sam') Winter, B.Sc., P.G.D.E., M.Ed., Ph.D.,
University of Hong Kong

14th April 2014

I am a psychologist working at the University of Hong. My specialist area is the health and wellbeing of transsexual and other gender variant people. I teach on this topic, as well as researching, publishing, and working with local and international organisations and agencies in this area. I also provide clinical services for transsexual clients. For further information on my work see a biographical endnote at the rear of this paper.

This short submission provides guidance to members of the Bills Committee in the area of transsexualism. It should be noted from the outset that transsexual people (or more precisely the subgroup thereof who have undergone full sex reassignment surgery) are the subject of the Government's current Marriage (Amendment) Bill (MAB).

I provide guidance in the form of short answers to seven questions relevant to the work of this Committee. They are:

1. What is transsexualism?
2. What is the medical view of transsexualism?
3. What is the importance of gender recognition in HK transsexual people's lives?
4. What is the role of medical procedures for transsexuals?
5. What then is the problem with the MAB?
6. Would the same view be taken elsewhere?
7. In view of all the above, what is the way forward?

I would be happy to answer questions on any of these or related topics.

1. What is transsexualism?

Transsexual people all experience *a desire to live and be accepted as members of their experienced gender*.[1] Their experienced gender does not match the one assigned to them at birth. *All* transsexual people deeply need to be recognised as members of their experienced gender. They almost invariably experience distress when others around them do not recognise them as members of their experienced gender.

[1] This passage is adapted from the diagnostic description for the medical condition 'transsexualism' in the World Health Organisation Classification of Diseases and Related Health Conditions: Edition 10 (ICD-10)

It is worth noting that transsexual people are sometimes referred to by others as transgender.[2] Indeed, some transsexual people also use this label themselves, in doing so simply preferring to employ a term sometimes used by a somewhat broader group.

2. What is the medical view of transsexualism?

Transsexualism is a well recognised medical condition.[3] There is growing evidence for biological factors predisposing some people to become transsexual.[4] Being transsexual is ***not*** a lifestyle choice. It cannot be 'cured' by way of psychotherapy aimed at making people comfortable with their assigned gender, and such attempts are nowadays considered unethical within the healthcare professions.[5]

3. What is the importance of gender recognition in HK transsexual people's lives?

Across the world transsexual people are a stigmatized group, and many experience discrimination, harassment, and abuse, as well as a social, economic and legal marginalisation.[6]

In contemporary Hong Kong too, transsexual people remain a stigmatised group.[7] They commonly do not enjoy the same life opportunities as other citizens, with consequent impact on their health and wellbeing.[8] Access to the job market is a

---

[2] For example, see the recent article by York Chow, Chairman of the Equal Opportunities Commission, in a recent article in the *South China Morning Post* ('Don't deny transgender people the right to marry' (28th March 2014).

[3] World Health Organisation. ICD-10 (earlier footnote)

[4] See for example Besser, M., Carr, S., Cohen-Kettenis,P., Connolloy,P., de Sutter,P., Diamond,M., Di Ceglie,D., Higashi,Y., Jones, L., Kruijver,F., Martin,J., Playdon,ZJ, Ralph,D., Reed,T., Reid,R., Reiner,W., Swaab,D, Terry,T., Wilson,P., Wylie,K. (2006). Atypical Gender Development: a review, *International Journal of Transgenderism*, 9, 1, pp29-44.

[5] See for example the Seventh Edition of the Standards of Care for the Treatment of Transgender, Transsexual and Gender Non-Conforming People (SOC_7) published by the World Professional Association for Transgender Health (WPATH).

[6] For an Asia-Pacific perspective see Winter, S. (2012). *Lost in Transition: Transgender People, Rights and HIV Vulnerability in the Asia-Pacific Region*. Bangkok: United Nations Development Programme. For a global perspective see Byrne, J. (2013). *Transgender Health and Human rRghts.* . New York: United Nations Development Programme.

[7] For more on this see an analysis of data from the Community Business 'Climate Survey' reported in Winter (2014). 'Identity Recognition without the Knife: Towards a Gender Recognition Ordinance for Hong Kong's Transsexual People', to be published next month (May 2014) in the *Hong Kong Law Journal*.

[8] Recent research conducted at one of the Government gender clinics reveals levels of lifetime depression double the background rate (C.C.C.Chan. (2013). 'Prevalence of Psychiatric Morbidity in Chinese Subjects with Gender Identity Disorder in Hong Kong'. Unpublished thesis, fellowship examination, HK College of Psychiatrists). This research echoes findings in numerous studies worldwide.

particularly key issue.[9] Gender recognition is important for making possible such opportunities.[10] Absence of gender recognition inevitably adds to Hong Kong transsexual people's difficulties.[11]

4. What is the role of medical procedures for transsexuals?

Some transsexual people are distressed by their bodies. For them hormonal treatment and/or surgical procedures may be life enhancing (perhaps even life saving), and are therefore *medically necessary*.[12]

However, such procedures are not an easy panacea. Surgical procedures such as sterilisation and genital reconstruction are highly invasive and complex. Patients commonly experience complications, may need corrective surgical work, and may finally experience outcomes that are less than fully satisfactory (in terms of either appearance or function). For some transsexual people these and other medical procedures may be inadvisable on health grounds.[13]

Finally, hormonal therapy and/or surgery are *not* key to the adjustment and wellbeing of substantial numbers of transsexual people, who therefore do not express a desire for some or all of these procedures. For these transsexual people they therefore do *not* constitute a medical necessity.[14]

5. What then is the problem with the MAB?

To its credit, the MAB extends gender recognition, at least in the area of marriage, to some transsexual people. But in withholding recognition from those who have *not* undergone (or *cannot* undergo) specific surgical procedures (sterilization and genital reconstruction) the MAB would deprive many people with a transsexualism diagnosis of fundamental rights enjoyed by others who have received exactly the same diagnosis.

To withhold a right from one group of diagnosed individuals purely on the basis of whether they have received a specific medical treatment appears particularly arbitrary. Moreover the MAB, in making an important right conditional on medical procedures, would (if enacted) undermine transsexual people's bodily integrity,

---

[9] The Chan study (see previous footnote) reports an unemployment rate for transsexual people that is four times the background rate, with unemployed transsexual people showing a rate of depression four times the rate for those transsexual people lucky enough to have a job. Again, this research echoes findings in numerous studies worldwide.

[10] See WPATH Standards of Care (earlier footnote) and WPATH Statement on Medical Necessity (on WPATH website).

[11] See for example four case studies in Appendix at rear of Winter (2014) 'Identity Recognition without the Knife' (see earlier footnote).

[12] The same point can be made about hormones.

[13] See for example WPATH SOC-7 (see earlier footnote)

[14] The Chan study (see earlier footnote) revealed that around one in ten individuals diagnosed as having gender issues did not express a need for surgery, while two in ten did not express a need for hormonal treatment..

undermine their ability to freely give (or withhold) consent to surgical procedures, and therefore constitute coercive medical treatment.

6. Would the same view be taken elsewhere?

At least four international conventions to which HK is a party (CAT,[15] CEDAW,[16] ICESCR, [17] and ICCPR, [18] the latter with provisions enshrined in domestic legislation) appear to protect transsexual persons against the surgical provisions in this Bill.

Internationally, a wide range of authoritative voices in human rights (including Navi Pillay, UN High Commissioner for Human Rights, and Juan Mendes, the UN Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment) have spoken out against procedures such as those contained in this Bill.[19] So have authoritative voices in the world of health, [20] including the World Professional Association for Transgender Health (WPATH), a letter from which forms part of the Professional Commons submission to this Committee. These rights and health voices are discussed in much greater detail elsewhere, in an article to be published next month (May 2014) in the Hong Kong Law Journal, [21] a copy of which article (I believe) also forms part of the Professional Commons submission.

More locally, the Chairman of the Equal Opportunities Commission has also recently spoken out against the surgical provisions in this Bill.[22] The EOC may have by now made a submission to you along similar lines.

7. In view of all the above, what is the way forward?

I urge members of the Bills Committee to press for the removal of surgery provisions from the MAB, or, failing such changes, for the withdrawal of this Bill.

It is apparent that there are broader gender recognition issues that need to be addressed in areas beyond marriage.[23] I therefore also urge members to press

---

[15] Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.
[16] Convention on the Elimination of all forms of Discrimination against Women.
[17] International Convention on Economic, Social and Cultural Rights.
[18] International Convention on Civil and Political Rights.
[19] Others include the UN Committee on Elimination of Discrimination against Women; the Council of Europe Commissioner for Human Rights; the Council of the European Union; senior Courts in several European jurisdictions; and Amnesty International (London).
[20] For example: the World Professional Association for Transgender Health (WPATH); Global Commission on HIV and the Law; World Health Organisation Western Pacific Regional Office; World Association of Sexual Health (WAS); International Planned Parenthood Federation (IPPF); Fourth World Conference on Women (Beijing) (1995).
[21] Winter (2014). 'Identity Recognition without the Knife'. (see earlier footnote).
[22] See York Chow's article in SCMP (referred to in earlier footnote).
[23] For example: registration, parenthood, social welfare benefits and pensions, discrimination law, inheritance law, gender specific offences.

Government to act promptly through its Interdepartmental Working Group to develop legislative proposals to address the issue of gender recognition more comprehensively and inclusively than is the case in the MAB.

I would ask that in doing so the Committee bears in mind that a large number of jurisdictions internationally, across several continents, and including in strongly Christian societies, have already enacted such legislation, and that the number of such jurisdictions grows year by year.[24]

I would also ask members to press Government to take account of the view of the Court of Final Appeal in the 'W' case that the UK Gender Recognition Act is a 'compelling model' for Hong Kong.[25] A detailed case for a Gender Recognition Ordinance is made elsewhere.[26] It should be noted that such an ordinance has already been drafted by a small group of lawyers and others working under the auspices of Pink Alliance, the most prominent of a number of LGBT organisations in Hong Kong.

---

[24] Worldwide an increasing number offer transsexual people comprehensive legal gender recognition without imposing gonadal / genital surgery as a precondition. In Europe, for example, these countries include the United Kingdom, Netherlands, Sweden, Iceland, Portugal, Spain, Germany, Austria, Hungary, Poland and Belarus. In some countries, for example the United Kingdom, Portugal and the Netherlands, preconditions specifying hormone therapy have also been dropped. Similar developments (removing the requirement for surgeries, and sometimes going further in removing requirements for hormones) have recently taken place in the Canadian provinces of Ontario and Quebec, parts of Australia and the United States, and parts of the South Asian sub-continent. Proposals for legislative reforms are under way in Denmark, Malta, Ireland, Albania and Taiwan. The most liberal legislation is currently found in Argentina, a predominantly Catholic country, where it is possible to change one's legal gender status by way of a purely administrative procedure, without undergoing any medical assessment or treatment.

[25] Under the provisions of the UK GRA an applicant for gender recognition needs to demonstrate to a Gender Recognition Panel: (i) gender dysphoria (past or present) (ii) lived experience in affirmed gender for at least two years, and (iii) intention to continue living in that gender until death.

[26] See again Winter (2014). 'Identity Recognition without the Knife' (to be published May 2014 in the *Hong Kong Law Journal*)

Biographical endnote: a summary of my work in the area of transsexualism.

I have published over 40 papers on this subject in refereed journals, and have spoken at a large number of international conferences, including as invited keynote speaker.

I have worked extensively with UN agencies in this area. I was appointed by WHO (the World Health Organisation) as a member of a Working Group developing diagnostic revisions in this area (for the forthcoming eleventh edition of their diagnostic manual, the International Classification of Diseases, used worldwide). I was commissioned by UNDP (the United Nations Development Programme) to author their recent report entitled *Lost in Transition,* detailing the impact upon transsexual and other gender variant people of living on the margins of society. I was employed by UNAIDS (the Joint United Nations Programme on HIV/AIDS) to consult on the impact of current diagnostic practices on HIV/AIDS risk.

I have been an invited participant at several experts' meetings convened by the aforementioned UN agencies, as well as by NGOs such as HIVOS (the Dutch-based Humanist Institute for Cooperation), APTN (the Asia-Pacific Transgender Network), and GATE (Global Action for Trans Equality). I am a co-author of the GATE 'Buenos Aires' proposals for alternative diagnostic approaches with gender variant children.

Since 2009 I have been a member of the board of directors of the World Professional Association for Transgender Health (WPATH), and was a co-author of the recent seventh revision of the WPATH *Standards of Care for Transsexual, Transgender and Other Gender Non-Conforming People* (SOC-7), the guidelines very commonly followed by clinicians across the world (including in Hong Kong) in work with transsexual and other patients.

I am commissioned by the medical journal *The Lancet* to act as lead author for a paper in a forthcoming series on global transgender health. I am a co-author for a second*Lancet* paper focusing more specifically on their sexual health. Both papers are planned for publication later this year.

Finally, I should also point out that I am the author of an article to appear in the *Hong Kong Law Journal* next month (May) entitled *Identity Recognition without the Knife: Towards a Gender Recognition Ordinance for Hong Kong's Transsexual People.* This article has been adopted by Professional Commons of Hong Kong, and I believe forms part of their submission to this Committee.

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

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
[redacted]

Ms. Joanne Leung, Chair of Transgender Resource Center
[redacted]

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_menu=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,

Jamison Green, PhD
WPATH President

Bean Robinson, PhD
Executive Director