



Submission to the Legislative Council
[Bills Committee on Marriage (Amendment) Bill 2014]

Position Statement on Marriage (Amendment) Bill 2014

We are concerned about the negative impact the Marriage (Amendment) Bill (“Bill”) would have on members of the transgender community in Hong Kong, as it would codify sex reassignment surgery (SRS) as a statutory requirement for transgender persons to be able to marry their partners in their acquired gender.

While on the surface the proposed amendment is to bring the law in line with the Court of Final Appeal (CFA)’s order in the judicial review case of *W v Registrar of Marriages* (FACV 4/2012) (the *W Case*) made on 16 July 2013, it is also important to note that the judgment has cited a comment by Lord Nicholls that “drawing the line at the point where full SRS has been undertaken may have an undesirable coercive effect on persons who would not otherwise be inclined to undergo the surgery.”

The judgment has also pointed to Gender Recognition Act (GRA) in the UK as “a compelling model” to follow. Created in 2004, GRA has put in place a process to enable transsexual people to get their UK birth certificates and legal gender changed. It requires applicants to have transitioned two years before a certificate is issued but it makes no requirement for sex reassignment surgery to have taken place.

The reason for that is simple: gender is primarily a psychological state and not mere physical attributes.

Legally required SRS amounts to forced sterilization, and is an affront to international human rights norms. It is important to point out that in the “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment” to the United Nations Human Rights Council, the Special Rapporteur stated clearly that “the involuntary sterilization requirement clearly runs counter to the respect for the physical integrity of the person.” He also called on national governments “to repeal any law allowing intrusive and irreversible treatments, including ... involuntary sterilization, [and] outlaw forced or coerced sterilization in all circumstances.”

In addition, the World Professional Association for Transgender Health (WPATH) has stated that “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, [and that] 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.”

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If the proposed amendment is passed without changes, it will officially sanction a human rights violation. It might very well open the law up to more judicial challenges.

We also strongly believe that the inclusion of SRS in the amendment would complicate the work undertaken by the Inter-departmental Working Group on Gender Recognition, chaired by Secretary for Justice Rimsky Yuen, which is to come up with a long-term gender recognition policy that is scientific and humane.

We need you to act now and take out the clause respecting SRS. Leaving SRS out, in our view, will not have any negative impact on the integrity of the Bill. We recognize that the current administrative guidelines will continue to be in place, pending the review on gender recognition.

As legislators, you have the duty to consider the ramifications of the amendment and exercise your power to prevent injustice from being written into law.