

15 April 2014

Clerk to Bills Committee on Marriage (Amendment) Bill 2014
Legislative Council Secretariat
Room 619, Legislative Council Complex,
1 Legislative Council Road, Central, Hong Kong

Dear Sir,

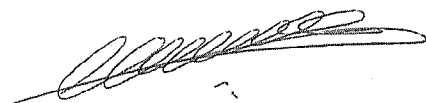
Re: Submission on Marriage (Amendment) Bill 2014

We enclose our submission on the Marriage (Amendment) Bill 2014 addressed to the Chairman of the Bills Committee. The submission represents the views and proposals of the Deacons Board of the Hong Kong Baptist Church.

We should be grateful if you would put this to the Bills Committee for the submission to be given full and proper consideration.

Thank you for your kind attention.

Yours sincerely,
For and on behalf of
The Deacons Board
Hong Kong Baptist Church



Dr. Walter Chen

15 April 2014

Hon IP Kwok-him, GBS, JP
Chairman, Bills Committee on Marriage (Amendment) Bill 2014
Room 619, Legislative Council Complex,
1 Legislative Council Road, Central, Hong Kong

Dear Sir,

Re: Marriage (Amendment) Bill 2014

We are the deacons of Hong Kong Baptist Church.

We treasure and uphold the family values that marriage is an exclusive, voluntary and life-long commitment between a man and a woman. It has enjoyed a long and privileged status in societies because of the unique social benefits that it offers. The strength of marriage lies in the complementarian relationship of a man and a woman, and how they support, encourage and complete one another. It offers children two natural parents committed to each other for life, as well as a male and female role model. There is no better environment for bringing forth and nurturing children, and gives children the best environment for reaching their potential, which benefits the whole society.

We understand that the Court of Final Appeal (CFA) ruled in the W Case that as a matter of statutory construction, it is correct in construing section 40 of the Marriage Ordinance and section 20(1)(d) of the Matrimonial Causes Ordinance that biological factors were the only appropriate criteria for assessing the sex of an individual for the purposes of marriage. The CFA made it clear that nothing in the W Case judgment was intended to address the question of same sex marriage. The legislative proposal above, which is intended to implement the CFA's Order made in the W Case, will not affect the existing heterosexual nature of marriage in Hong Kong. However, the CFA might not be aware of the fact that its judgment may result in same sex marriage.

For instance, a male undergoes a full sex re-assignment surgery (SRS) to become a woman. Then "She" marries a man and they become a legally married heterosexual couple. What happens if the man, after marriage, also undergoes SRS and becomes a woman? Then the marriage would have become a same sex marriage. It seems that the CFA has failed to consider its judgment may result in

same sex marriage which was not its original intention. Although we are sympathetic to the problems transsexuals face, we oppose the Marriage (Amendment) Bill 2014 which is being considered by the Legislative Council based on the following reasons:-

1. **The Marriage (Amendment) Bill 2014 will have wide ranging unforeseeable consequences that require a wider debate on the values of society in Hong Kong. For example, it may result in same sex marriage happening for the reasons stated in the foregoing paragraph.**
2. **Gender Dysphonia will commence a whole new range of sexual identities (asexual, transsexual); and with incomplete surgery, men are now having babies (as in the United States of America and the United Kingdom). Experts will be needed, but we understand there is growing body of evidence of individuals seeking reversals of surgery.**
3. **We would advocate careful study of the experiences of other countries which is of vital importance and the above bill must not be rushed through.**
4. **Legislative changes for the redefinition of marriages will not improve the situation for a balance of human rights in our society but would result in serious reverse discrimination according to the experiences in some western countries. Please visit the following link to read the booklet "Religious Freedom" produced by Christian Concern in the UK which tells how freedoms of religion, speech, education and conscience have been undermined in the UK in recent years due to enactment of the aforesaid legislative changes:-
<http://www.christianconcern.com/sites/default/files/Religious%20Freedom-proof.pdf>**
5. **We agree with the Dissenting judgment of Chan PJ of the CFA:-
Chan PJ held that recognition of transsexual marriages is a radical change of the traditional concept of marriage and marriage is an important social institution which has its basis in the social attitudes of the community. Changes in the laws of overseas jurisdictions to allow transsexuals to marry in their post-operative sex have been informed by social consultation which indicated changes in social attitudes towards marriage. There is no evidence whether social attitudes in Hong Kong have changed to the extent of abandoning or fundamentally altering the traditional concept of marriage. The Court should not invoke its power of constitutional interpretation to recognize transsexual marriages in the absence of such evidence. To do so would amount to making a new policy on a social issue which has far-reaching ramifications and which can only be made after public consultation. This is not the business of the Court.**

In the unfortunate situation that the Marriage (Amendment) Bill 2014 should become law, the CFA's Order must be followed that such a marriage law should only apply to a person who has received a full sex re-assignment surgery. Further, it is our grave concern that if a church finds itself unable to accept and celebrate the marriage of a transgendered person on its premises because of its religious doctrines or belief, it may be accused of having contravened section 28(1) of the Sex Discrimination Ordinance or section 26 of the Disability Discrimination Ordinance. We would draw your attention to section 202(4) of the **Equality Act 2010 of the United Kingdom which has a provision for religious bodies not to "host civil partnerships" if they do not wish to do so. Link to the Equality Act 2010 section 202(4) can be seen below:-**
<http://www.legislation.gov.uk/ukpga/2010/15/section/202>

We would request that a provision for a **sub-section (3)** be inserted into section 40 of the Marriage Ordinance as follows:

"For the avoidance of doubt, (i) nothing in this Ordinance places an obligation on religious organisations to celebrate marriage for a person who has received sex re-assignment surgery if they do not wish to do so. (ii) it is not unlawful discrimination for a religious organisation or its representative to refuse to marry a person who has received sex re-assignment surgery if they do not wish to do so."

Violation of individual conscience in the private sphere has presented major liberty issues in the United Kingdom following the enactment of their gay rights laws, there is also the need for a conscience clause to be included to protect the freedom of people such as photographers, B&B hotel owners by way of introducing new **sub-section (4)** and **sub-section (5)** to the Marriage Ordinance.

sub-section (4) shall provide to the effect that "A person or religious organisation does not contravene this Ordinance, or any other relevant provision of anti-discrimination laws, whether Ordinance or non-statutory by refusing to provide a service to a person in a marriage for post-operative transsexuals, or varying the terms upon which the service is provided to a person in a marriage for post-operative transsexuals if:-

- a. The person or religious organisation who denies, or varies the terms upon which the service is provided acts in pursuance of a sincerely held religious belief; and
- b. The service is provided by virtue of the marriage for post-operative transsexuals,



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sub-section (5) shall provide to the effect that "Subsection 4 above applies, in particular, to:-

- a. The provisions of ancillary services in relation to the marriage for post-operative transsexuals;
- b. The provision of premises in a religious organisation, a double bed in a hotel, hostel or similar business;
- c. The provision of any service provide by virtue of the marriage for post-operative transsexuals (for example, printing leaflets supporting the causes contrary to sincerely held religious belief, but not business cards for an individual who is in a marriage for post-operative transsexuals but the business card has no bearing on this fact).

We take the view that Christian doctrines should be respected and Churches should not be forced to do an act against their doctrines or belief. Such coercion will breach Article 141 of the Basic Law of the Hong Kong SAR.

Thank you very much for your kind consideration in this matter. We hope that you would take our views seriously and we look forward to your reply.

Yours sincerely,
For and on behalf of
The Deacons Board
Hong Kong Baptist Church

Dr. Walter Chen

c.c. Hon T. K. Lai (Secretary for Security)
Hon Raymond C. Y. Tam (Secretary for Constitutional and Mainland Affairs)