

(By Fax Only: 2869-6794)

15th April 2014

The Hon. Mr. IP Kwok Him, GBS, JP
Chairman, Bills Committee on
Marriage (Amendment) Bill 2014
Legislative Council Secretariat
1 Legislative Council Road
Central, Hong Kong

Dear Sir,

**Re: Submission to the Bills Committee
on the Marriage (Amendment) Bill 2014**

I refer to the Marriage (Amendment) Bill 2014 (“**the Bill**”) and would like to make my submission as set out below.

According to the Legislative Council Brief submitted by the Security Bureau and dated 26 February 2014, the Bill is supposed to implement the Court of Final Appeal’s Order made on 16 July 2013 pertaining to its decision in *W v the Registrar of Marriages* (FACV 4/2012) (“**the CFA Order**”). However, it is noted that the amendments proposed in Clause 3 of the Bill are **of a much wider scope than the CFA Order**.

Firstly, in allowing the appeal in the W case, the CFA made, inter alia, the following Orders:

- (b) That a Declaration be granted that, consistently with Article 37 of the Basic Law and Article 19(2) of the Hong Kong Bill of Rights, section 20(1)(d) of the Matrimonial Causes Ordinance and section 40 of the Marriage Ordinance must be read and given effect so as to include within the meaning of the words “woman” and “female” a post-

operative male-to-female transsexual person whose gender has been certified by an appropriate medical authority to have changed as a result of sex reassignment surgery;

- (c) That a Declaration be granted that the appellant is in law entitled to be included as “a woman” within the meaning of section 20(1)(d) of the Matrimonial Causes Ordinance and section 40 of the Marriage Ordinance and is accordingly eligible to marry a man;
- (d) That the Declarations in paragraphs (b) and (c) shall not come into effect until the expiry of 12 months from the date of this Order; and
- (e) That the parties have liberty to apply in relation to the period of suspension of the Declarations referred to in the preceding paragraph.

The provisions under the proposed Section 40A are obviously of a much wider scope than paragraphs (b) and (c) in the CFA Order.

Similarly, the statutory presumption provided for in the proposed Section 40B is also much broader than paragraphs (b) and (c) in the CFA Order. The meaning of “identification document” as defined in section 40B(2) is particularly problematic. Under the proposed Section 40A(1), a person is to be treated as having a re-assigned sex status only if that person has received a full sex re-assignment surgery (“FSRS”) as defined in the proposed Section 40A(2). However, there is no control on how a person’s sex is identified on a valid travel document issued by other countries or territories. Other countries may adopt a different definition which may or may not require a person to receive a FSRS before they can acquire a re-assigned sex. If such person come to Hong Kong with a valid travel document showing a re-assigned sex but that person has not received a FSRS, that person can lawfully marry a person of the opposite sex to his/her re-assigned sex in Hong Kong under the

legislative proposals in the Bill. In the premises, such a marriage would in effect be a **same sex marriage**. **This would be contrary to the CFA Judgment** which explicitly stated at paragraph 2 that “nothing in this Judgment is intended to address the question of same sex marriage”.

The legislative proposals in the Bill would have serious implications on the social institution of marriage and the traditional concept of marriage. I respectfully concur with the Honourable Mr. Justice Chan PJ (as he then was) that there was a strong case for a comprehensive review of the relevant legislation.

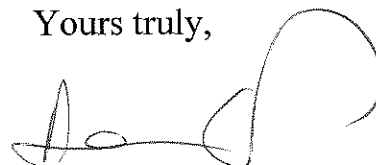
The Legislative Council is respectfully urged to postpone the consideration of the Bill until a proper consultation with the Hong Kong community has been conducted by the Administration and a comprehensive review of the relevant legislation has been completed. To pass the Bill hastily without such comprehensive public consultation and legislative review would have serious repercussions on the whole of Hong Kong, both domestically and internationally.

As admitted by Security Bureau in the afore-mentioned Legislative Council Brief, even if the Marriage Ordinance is not amended, the Appellant W (and others in the exact same position as she is) will still be entitled to marry in her re-assigned sex after the 12-month period. Thus, the postponement of the consideration of the Bill will not affect the legal right of W and others in the exact same position as she is.

However, if the Bill is passed now as proposed, its implications on the social institution of marriage and the traditional concept of marriage would be enormous and the whole of the Hong Kong community would be affected.

Your kind attention would be much appreciated.

Yours truly,

A handwritten signature in black ink, appearing to be 'Anna Chow', with a large, stylized flourish at the end.

Anna Chow