

天主教香港教區

秘書長辦公處

香港堅道十六號

電話：(852) 2523-2487, 2525-8021 (內線 441, 669)

傳真：(852) 2521-8781 電郵：chancery@pacific.net.hk  
chancery@catholic.org.hk

立法會CB(2)1384/13-14(05)號文件

LC Paper No. CB(2)1384/13-14(05)

CATHOLIC DIOCESE OF HONG KONG

CHANCERY OFFICE

16, CAINE ROAD, HONG KONG

TEL: (852) 2523-2487, 2525-8021 (EXT. 441, 669)

FAX: (852) 2521-8781 EMAIL: chancery@pacific.net.hk  
chancery@catholic.org.hk

**BY HAND**

15 April 2014

Hon IP Kwok-him, GBS, JP  
Chairman  
Bills Committee on Marriage (Amendment) Bill 2014  
Legislative Council  
of Hong Kong Special Administrative Region  
of the People's Republic of China  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Mr. Chairman,

I am directed by His Eminence Cardinal John Tong to write to you in response to the invitation for public views by the Bills Committee on Marriage (Amendment) Bill 2014. By way of background, I should inform you that following the controversial majority judgment of the Court of Final Appeal ("the CFA") in *W v Registrar of Marriages*, (the "W" case), we have asked a multi-disciplinary advisory body to study its implications. The advisory body comprises clerics and lay people engaged in the pastoral ministry as well as others from the legal, educational, social work, counselling and psychiatric professions.

The views which I am presenting below on behalf of the Catholic Church in Hong Kong ("the Catholic Church") are reached after fully taking into account, *inter alia*, the results of the study and deliberations of the aforementioned advisory body:

1. The Catholic Church has considerable compassion for and sympathy with the plight of those like W who have the great misfortune of suffering from gender dysphoria. Nor was such compassion and sympathy lacking for W in the Hon Patrick Chan, PJ (as he then was) who strongly dissented from the majority in the CFA, nor in the judges in the High Court and in the Court of Appeal who had dealt with the case and had dismissed W's application. However, their compassion and sympathy did not prevent them from seeing that any proposed solution requiring departure from the established biological criteria for the purposes of determining sexual identity in marriage would raise very serious issues and grave problems (including medical, legal, moral, ethical and social) that could greatly impact on the good not only of individuals and families but also of the community as a whole. Hard cases, as the saying goes, make bad law.

天主教香港教區

秘書長辦公處

香港堅道十六號

電話：(852) 2523-2487, 2525-8021 (內線 441, 669)

傳真：(852) 2521-8781 電郵：chancery@pacifile.net.hk  
chancery@catholic.org.hk

CATHOLIC DIOCESE OF HONG KONG  
CHANCERY OFFICE

16, CAINE ROAD, HONG KONG

TEL: (852) 2523-2487, 2525-8021 (EXT. 441, 669)

FAX: (852) 2521-8781 EMAIL: chancery@pacifile.net.hk  
chancery@catholic.org.hk

2. We maintain that civil legislation, being an instrument to advance the “common good”, should always be construed and formulated accordingly. The “common good” encompasses the whole of society and people from every walk of life. From this perspective, the basis for introducing any new legislation or public policy should not be solely personal feelings or subjective convictions, however deep-seated in people’s mentality or socially wide-spread they may be.
3. The Catholic Church is committed to upholding and promoting the common good.
4. The Catholic Church believes and acknowledges that the natural heterosexual form of marriage is the best guarantee of the essential sustainability, stability and well-being of society, and therefore it must be fully upheld and duly protected. Likewise, the natural family is entitled to protection under Article 19 of the **Hong Kong Bill of Rights Ordinance** which mirrors Art. 23 of the **International Covenant on Civil and Political Rights (“ICCPR”)** and recognizes the family as the natural and fundamental group unit of society. Section 40(1) of the **Marriage Ordinance** speaks of marriage in terms of a “*Christian marriage*” as well as the “*civil equivalent of a Christian marriage*”, making it quite clear that it is a union between a man and a woman to the exclusion of all others and intended to be for life.
5. The Catholic Church believes and teaches that the complementarity of male and female is part of the essence of marriage and that marriage is not just a legal construct or mere contract but a biotic as well as moral reality that cannot simply be changed by some purported re-definition of what is male and female, however well-intentioned that may be. There are certain objective facts affecting the human condition that cannot simply be “willed” away or altered by mere judicial or legal *fiat*. It is a scientific fact, recognized in the **W** case itself, that whilst a sex re-assignment surgery may superficially modify the external appearance of a person, it cannot alter his or her biological traits (i.e. genes, reproductive functions etc).
6. It follows therefore that even though Clause 40A of the **Amendment Bill** seeks to provide that “*a person [who] has received a full sex re-assignment surgery... is... for the purposes of this Ordinance, to be treated as being of the sex to which the person is re-assigned after surgery*”, such “deeming” by law if enacted will not alter the fact that the transsexual’s biological sex does not change even after a so-called “full sex re-assignment surgery”. Therefore to permit such a person who is biologically male or female to marry another person of the same biological sex is, as noted in the **W** case by the trial judge, a form of same-sex marriage and would be against the Catholic Church’s religious beliefs, moral teaching and conscience. The Catholic Church is of course not the only religious body that takes such a stance.

天主教香港教區

秘書長辦公室

香港堅道十六號

電話：(852) 2523-2487, 2525-8021 (內線 441, 669)

傳真：(852) 2521-8781 電郵：chancery@pacific.net.hk  
chancery@catholic.org.hk

CATHOLIC DIOCESE OF HONG KONG

CHANCERY OFFICE

16, CAINE ROAD, HONG KONG

TEL : (852) 2523-2487, 2525-8021 (EXT. 441, 669)

FAX : (852) 2521-8781 EMAIL : chancery@pacific.net.hk  
chancery@catholic.org.hk

7. To compel by force of law, whether directly or indirectly, the Catholic Church, or indeed any other religious body whether Christian or non-Christian to perform or celebrate such a wedding against their teachings and beliefs would be to act contrary to the freedom of religion and of conscience and belief guaranteed by the Basic Law, the ICCPR as applied to Hong Kong and the Bill of Rights. Indeed, speaking more generally, to compel anyone to act contrary to his or her conscience is *prima facie* a violation of that person's human right.
8. If the Marriage (Amendment) Bill 2014, is enacted in its present form without addressing the issues raised in this letter, a post-operative transsexual (falling within the relevant provisions in the Bill) may ask for his or her marriage to be celebrated pursuant to Section 19 of the Marriage Ordinance Cap. 181 (which makes provision for celebration of marriages in licensed places of worship). It would put the Catholic Church and other bodies sharing the same view on the sex re-assignment surgery in a serious dilemma: either to comply with the civil legislation by performing, on request, weddings for transsexuals and thereby act against their own conscience, beliefs or moral codes, or else refuse to perform weddings for transsexuals and be considered as breaking the law. There is also the risk of being accused of breaching section 28(1) of the Sex Discrimination Ordinance Cap 480 and/or Section 26 of the Disability Discrimination Ordinance Cap. 187.
9. To resolve the above dilemmas, we deem it imperative to add a clause in the Marriage (Amendment) Bill 2014 to the effect that nothing in the Ordinance as amended places an obligation, directly or indirectly, on religious bodies (such as the Catholic and other Christian Churches or indeed any other religious body) to perform weddings for transsexuals falling within the ambit of the Amendment Ordinance *if they do not wish to do so*. In other words, religious bodies can freely decide to "opt-in" and perform such weddings if they wish but they are not obliged to do so. They should be free from any risks or threats of being prosecuted for not performing weddings for transsexuals. We hereby urge every member of the Bills Committee to uphold the freedoms of conscience and religion, as being lawfully protected according to the Article 15 of the Hong Kong Bill of Rights Ordinance and Article 141 of the Basic Law. There are precedents for the UK for such opt-in clauses for "religious organizations". See, for example, Section 202(4) of the Equality Act 2010, inserting Section 6A(3A) into the Civil Partnership Act 2004. There is also precedent for a simple straightforward "no obligation to celebrate" provision if the religious organization reasonably believes that the person has received a sex-reassignment surgery. See Section 5B of the Gender Recognition Act 2004.

天主教香港教區

秘書長辦公處

香港堅道十六號

電話：(852) 2523-2487, 2525-8021 (內線 441, 669)

傳真：(852) 2521-8781 電郵：chancery@pacific-net.hk  
chancery@catholic.org.hk

CATHOLIC DIOCESE OF HONG KONG  
CHANCERY OFFICE

16, CAINE ROAD, HONG KONG

TEL : (852) 2523-2487, 2525-8021 (EXT. 441, 669)

FAX : (852) 2521-8781 EMAIL : chancery@pacific-net.hk  
chancery@catholic.org.hk

10. Lastly, it is our view that when an issue involves the common good and every member of society, it would be best if it were tackled with prudence, taking all the possible long-term consequences affecting all stakeholders into due consideration. Such stakeholders, we should stress, are not confined to religious organizations. With regard for the **Marriage (Amendment) Bill 2014**, it would be gravely detrimental to society to discuss it by merely adhering to one or two principles which appear to be very valid only from the standpoint of those who have their own interests in mind. Without a careful and balanced assessment beforehand, a hasty enactment of the **Bill** might lead to serious consequences that jeopardize the common good and the well-being of Hong Kong society. An issue as the **Marriage (Amendment) Bill 2014**, that touches on the very core values of marriage and of the family, is of such importance and with such far-reaching consequences that it must be examined with great care and thorough study. A hasty decision must be avoided by all means, however appealing and justifiable its aims might appear to be.

Thank you very much for your kind attention.

Respectfully submitted,

Yours truly,



Rev. Lawrence Lee  
Chancellor  
Catholic Diocese of Hong Kong