

**Meeting of Bills Committee on Marriage (Amendment) Bill 2014  
on 29 April 2014 (11:10 am to 12:10 pm)**

**ELABORATION ON WORK OF  
INTER-DEPARTMENTAL WORKING GROUP ON  
GENDER RECOGNITION (IWG)**

**SPEAKING NOTES BY SECRETARY, IWG**

**OPENING**

Thank you, Mr Chairman.

- The Inter-departmental Working Group on Gender Recognition (the IWG) is pleased to have this opportunity to brief the Committee about its work. I am the Secretary of the IWG and my colleague, Mr Kan, works with me in the Secretariat.
- I would like to touch on **the following** main areas:
  - (i) first, the **role** of the IWG;
  - (ii) secondly, the **scope of its work**; and
  - (iii) thirdly, the **work-plan** that the IWG is adopting.

**1. ROLE OF THE IWG**

- (a) **Background.** The legislative measures comprised in the Marriage (Amendment) Bill, which the Administration has introduced to implement the terms of the orders of the Court of Final Appeal (CFA) in *W's* case, are limited in scope and confined to the right of a transsexual person who has undergone full sex reassignment surgery (SRS) to marry in his or her reassigned gender.

- (b) The **CFA** left open questions regarding transsexual persons who had undergone less extensive treatment, and made further observations that the Administration should consider how best to address problems facing transsexual persons in all areas of the law, by drawing reference to overseas practice such as the enactment in the United Kingdom of the Gender Recognition Act in 2004.
- (c) In response, the **Administration established the IWG** in mid January of this year to follow up on the observations of the CFA.
- (d) The **Terms of Reference** of the IWG are to consider legislation and incidental administrative measures that may be required to protect the rights of transsexual persons<sup>1</sup> in all legal contexts, and to make such recommendations for reform as may be appropriate.
- (e) **Composition.** The IWG is chaired by the Secretary for Justice and comprises representatives from relevant policy bureaux (including Constitutional and Mainland Affairs Bureau, Security Bureau, and Food and Health Bureau), as well as two non-official members from the legal sector. Such a composition is needed, as the scope of the IWG's work involves wide-ranging legal, health and social issues cutting across the portfolios of different bureaux and departments of Government, as well as detailed international legal and social research.
- (f) The law on gender identity, and the standards of care for the health of transsexual people, are fast developing and are influenced by the developments in various overseas jurisdictions, including Australia, Germany, Ireland, the United Kingdom, the United States, as well as the Council of Europe and other international bodies.

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1 *"The World Health Organisation classifies transsexualism as a species of gender identity disorder involving: 'a desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one's anatomical sex, and a wish to have surgery and hormonal treatment to make one's body as congruent as possible with one's preferred sex.'"*: see Court of Final Appeal judgment in *W v Registrar of Marriages* [2013] HKCFA 39; FACV 4/2012 (13 May 2013), at para 5, quoting The World Health Organisation, *International Statistical Classification of Disease and Related Health Problems* (version 10), F64.

- (g) It is evident from the research undertaken so far that overseas jurisdictions adopt a range of approaches on the issue of gender recognition, including on the extent to which full SRS may or may not be required, and the implications that flow from this. (For example, Asian countries, like Japan and Singapore, require SRS for recognition of changed gender; however, in South Korea, SRS is not required. In Europe, a number of EU countries require SRS; however, others do not. In the US, at least 30 out of 50 states require SRS, and in Canada, 8 out of 10 states do.)
- (h) It is also evident that this is a sensitive issue in Hong Kong, with a wide spectrum of views being expressed, as indicated by the many deputations which have presented views to this Committee in relation to the Marriage (Amendment) Bill.
- (i) Therefore, a careful and detailed study of these issues needs to be undertaken, in order that the issues in this area may be addressed by the Administration in a coherent and comprehensive way.
- (j) In this light, the Marriage (Amendment) Bill may be seen as an interim measure by the Administration, pending the outcome of the detailed recommendations to be made by the IWG following its study on gender recognition.

## **2. SCOPE OF WORK, METHODOLOGY AND WORKPLAN OF THE IWG**

- (a) The IWG commenced its work at the end of January 2014. It has held three meetings so far, and another six meetings are already scheduled for the coming months.
- (b) The IWG has a heavy workload ahead. It plans to focus its study first on Recognition Issues, then on Post-Recognition Issues if the IWG agrees that Hong Kong should establish a gender recognition scheme:

## **Part A: Recognition issues:**

- (i) In **the first part of its study** on Recognition Issues, the IWG will research generally on matters relating to transsexual persons, both in Hong Kong and internationally, including the condition known as gender identity disorder, or gender dysphoria.
- (ii) As **the second part of its study** on Recognition Issues, the IWG will undertake a comparative study of the legislation, schemes and case-law on gender recognition in other jurisdictions, as well as the standards of international bodies in this area.
- (iii) Issues the IWG may need to consider in this context include:
  - (a) the **qualification criteria** for applicants for gender recognition (which may include medical and evidential requirements, residential requirements, minimum age, marital status and the number of years the applicant has lived in the acquired gender).
  - (b) Secondly, the IWG may need to consider the **procedure** for gender recognition (including what type of authority should determine applications for gender recognition, whether there should be a right of appeal, the form of gender recognition certificate, and whether foreign gender recognition decisions should be recognised).

- Turning to **Part B** of the IWG's work, on **Post-recognition issues:**

- (iv) With regard to the impact of gender recognition on *existing* laws, it is anticipated that a major part of the work for the IWG will involve conducting a review of all the legislative provisions and administrative measures in Hong Kong which may be affected by the recognition of a change of gender, so

that any required legislative or procedural reform can be followed up by the Administration.

- (v) The subject of gender recognition may touch on a wide range of legal areas, including administrative law, constitutional law, criminal law, data protection law, discrimination law, family law, human rights law, medical law, mental health law, property law and other areas.
- (vi) Based on the information we have gathered so far, the number of statutory provisions potentially affected appears to be very large (in the hundreds), with possibly many complicated consequential legal issues to be addressed. For example, the IWG may need to consider the effect of a recognised change of gender on:
  - (a) **immigration matters** (such as the birth certificate, Hong Kong Identity Card, HKSAR passport and other identity document of the applicant);
  - (b) **privacy and related matters** (such as the need for legal protection of data about a person's gender history);
  - (c) **family and parenthood matters** (such as the subsisting marriage to which the applicant is a party and the applicant's parental rights and responsibilities);
  - (d) **criminal law, procedure and evidence matters** (such as gender specific offences);
  - (e) **property and succession matters** (such as the right of succession to property, including the small house policy and lawful traditional rights of indigenous inhabitants);
  - (f) **compensation and benefits matters** (such as the right to receive social welfare benefits and pensions); and

- (g) **tax related matters** (such as entitlement to a married person's allowance).
- (e) **Consultation.** In terms of consultation, the IWG plans to consult widely with medical and mental health experts, leading academics, transsexual groups and other stakeholders. In fact, the first round of consultation with medical experts has already been arranged. It will also issue one or more consultation papers to gather the views of interested parties and the public generally, in order to gauge what the overall consensus may be, if any, before finalising its recommendations to the Administration.
- (f) **Timing.** The IWG hopes to be able to produce an initial report of its work in about two years' time. (This time is about the same as the time spent by the United Kingdom in conducting a similar study.)

## **CONCLUDING REMARKS**

Thank you once again for the opportunity to brief the Committee. In concluding the presentation, may I just reiterate the following key points:

- (i) First, as noted earlier, the subject of gender recognition involves difficult legal, medical, social and moral issues which are complicated and controversial, and may have wide-ranging policy implications.
- (ii) It is evident from developments overseas that different jurisdictions have adopted different approaches to these issues. Given the complexity of the issues, the IWG will need to consider the matter from both a legal and a multidisciplinary perspective.
- (iii) In the context of Hong Kong, gender recognition is a highly controversial issue, and the IWG fully appreciates that it will have to consider very different views in coming to a conclusion on what should be recommended.

- (iv) The Administration will formulate its policy having regard to the recommendations of the IWG. As the IWG is at the very early stage of its work, it has no stance yet on the matters it is to address, including the question of whether a transsexual person who has not yet completed full sex re-assignment surgery should be allowed to change his or her sex. We understand that the Administration also is adopting an open mind on the issue of a gender recognition scheme for Hong Kong pending the outcome of the IWG's study.
  
- (v) The IWG will carry out extensive consultations with related experts, stakeholders and the community before finalising its recommendations to the Administration on possible legislative and administrative measures to address issues faced by transsexual persons.

Secretariat  
Inter-departmental Working Group  
on Gender Recognition  
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