

香港特別行政區政府
保安局



The Government of
The Hong Kong Special Administrative Region
Security Bureau

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4 June 2014

Legal Service Division
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn: Mr Stephen Lam)

Dear Mr Lam,

Marriage (Amendment) Bill 2014

Thank you for your letter of 3 June 2014.

The Court of Final Appeal (CFA) in the case of *W v Registrar of Marriages* (FACV 4/2012) (the W Case) declared, among other things, that section 20(1)(d) of the Matrimonial Causes Ordinance (MCO) and section 40 of the Marriage Ordinance (MO) 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 re-assignment surgery (SRS). In paragraph 125 of the judgment, the CFA held that a transsexual person, who has been issued with a certificate that **his or her** gender has been changed on the basis that the original genital organs have been removed and some form of the genital organs of the opposite sex have been constructed, ought in any event to qualify as a person entitled to marry in **his or her acquired gender**. In paragraph 210, Mr Justice Bokhary NPJ indicated that “Since the sex reassignment surgery which W underwent was male-to-female, the foregoing way is the one in which the question has been

put in argument. But the answer would of course be the same whether the sex reassignment surgery is of the male-to-female kind or the female-to-male kind." Similarly, the CFA held in paragraph 225 that "the right to marry guaranteed by our constitution extends to the right of a post-operative transsexual to marry in the reassigned capacity. This means... that the legislation concerned would be unconstitutional unless the words of gender therein are read to include gender acquired by sex reassignment surgery."

The main object of the captioned Bill is to amend the Marriage Ordinance (Cap. 181) to implement the above declaration made by the CFA to clearly reflect the right to marry under the Basic Law and the Hong Kong Bill of Rights enjoyed by post-operative transsexual persons who have gone through full SRS as in the case of W. It is thus considered necessary and appropriate for the Bill to cover the situation of the female-to-male transsexual person, following the principles laid down in the W Case.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Billy Woo', written in a cursive style.

(Billy Woo)
for Secretary for Security

c.c.
Secretary for Justice

(Attn: Mr Alan Chong
Ms Mary Ho)