

# **Making a world of difference**

Gender recognition  
legislation in Hong Kong



# What is gender identity?

## Gender identity

---

our internal sense of who we are:

- e.g. I am a woman / a man / non-binary etc.

## Sexual orientation

---

who we are attracted to:

- e.g. I am gay / lesbian / bisexual / straight etc.

## Biological / assigned sex

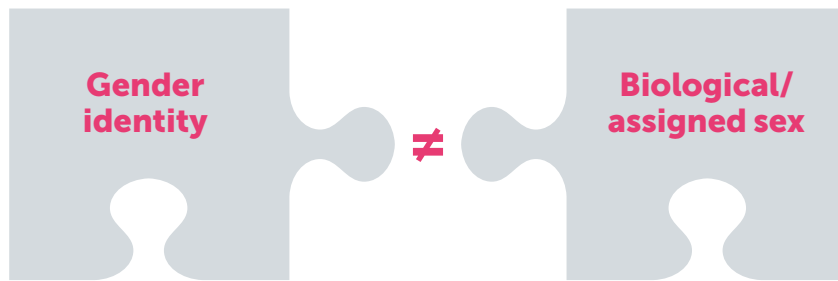
---

the body we were born with and the sex accordingly written (assigned) on our birth certificate:

- e.g. My body has female / male / intersex characteristics etc.



# Who are transgender people?



- gender refers to our **psychological** self and social role, whereas sex describes our **biological** body
- for most of us, our gender matches our sex. Transgender people, identify with a gender that does not match their assigned sex
- discovering gender identity can be a long process. Sometimes, people become aware of mismatches later in life
- intersex people may also be transgender due to incorrect assignment at birth

Intersex people are born with a combination of partial / full male and female sex characteristics. They therefore do not fit in the binary sex stereotypes. They are often subjected to surgery as babies and may be assigned a sex that does not match their chromosomes, genitals or other characteristics of their body.

## Transgender ≠ sexual orientation

Being transgender is independent of sexual orientation.

For example, a trans woman can be straight, lesbian or bisexual, just like everyone else.

## Transgender ≠ transvestite

A transvestite is someone who likes to cross-dress but whose gender identity usually matches with their assigned sex.

A transgender person feels “trapped” in their assigned sex and wants to live their life in their identified gender.

# Why do we need gender recognition legislation?

## De-stigmatising effect of the law

The transgender community is often misunderstood and subject to discrimination and stigmatisation. This causes them daily inconvenience, distress and even harassment. For example:

 <b>Daily Life</b> <ul style="list-style-type: none"><li>– being addressed as “sir” or “mr” while they live and dress as a woman (or vice versa)</li><li>– always being challenged on the authenticity of their gender and even their personal identity due to mismatch between their appearance and gender record</li></ul>	 <b>Education</b> <ul style="list-style-type: none"><li>– difficulty in registering for education courses</li></ul>	 <b>Employment</b> <ul style="list-style-type: none"><li>– risk of getting fired and difficulty in securing employment</li><li>– limited scope of work available (e.g. non-client facing only) due to employers’ prejudice</li></ul>	 <b>Banking</b> <ul style="list-style-type: none"><li>– difficulty in opening bank accounts</li></ul>
 <b>Housing</b> <ul style="list-style-type: none"><li>– difficulty in securing rental leases</li></ul>	 <b>Healthcare</b> <ul style="list-style-type: none"><li>– hospitalised in a ward they do not identify with</li></ul>	 <b>Travel</b> <ul style="list-style-type: none"><li>– difficulty in applying for travel visas</li><li>– being held up at immigration checkpoint</li></ul>	 <b>Police</b> <ul style="list-style-type: none"><li>– explaining to confused officers who stop them in public</li><li>– being searched by officers of a gender they do not identify with</li></ul>

Gender recognition law **affirms transgender persons’ rights, educates the public, and over time could de-stigmatise** this marginalised community.

## Protection of Human Rights



**The Hong Kong Government has legal obligations** towards transgender people under:

- the Basic Law
- Bill of Rights of Hong Kong
- several UN Conventions



Those obligations include protecting their human rights to:

- **privacy**
- **self-determination**
- **bodily integrity**
- **family life**
- **equality on the ground of gender identity**

**Currently, Hong Kong has NO gender recognition laws.**

To make things worse, the government **requires sexual reassignment surgery (SRS)** for changing the gender marker on legal documents, e.g. HKID and passport.

## What is SRS?

**Sex reassignment surgery** refers to the surgical treatment undertaken by some transgender persons to reconstruct their body in order to align with the gender they identify with, often at the cost of sterilisation.

**In Hong Kong, the SRS requirements for changing legal gender involves not only genital reconstruction, but also sterilisation.**

Further, in order to satisfy the “full” SRS requirement in Hong Kong, unlike most other countries, a trans man is not only required to remove the uterus and ovaries, but also required to construct an artificial penis which might not be fully functional.

## COERCIVE SRS is cruel, inhuman and degrading

SRS is a **personal choice**. Some transgender people may want to undergo various levels of SRS to match their body with their gender identity.



However, it is a **human rights violation to private autonomy** if by law SRS is required as a mandatory condition for obtaining legal gender recognition.



**Not ALL** transgender people undergo SRS:

- some cannot due to medical reasons
- at least 1 out of 4 decide not to due to risks or other reasons



Remember: **SRS involves sterilisation**, which is:

- **intrusive**
- **irreversible**
- **high-risk**



Coercive SRS is cruel, inhuman and degrading in forcing transgender people to make an **impossible choice** between

**Gender recognition Vs Bodily integrity and reproduction rights**

Surgery should always be performed with **unconditional and informed consent**.

(By the way, consent is always lacking when surgery is performed on intersex babies and children to assign them to a particular sex.)

These international human rights bodies unanimously oppose coercive SRS requirements:



## Aligning Hong Kong with international standards

A **clear international consensus** towards the elimination of surgical requirement for gender recognition has emerged.

# 47

- Argentina
- Australia
- Austria
- Belgium

### Jurisdictions provide gender recognition without SRS requirement including

- Bolivia
- Canada
- Colombia
- Denmark
- Ecuador
- France
- Germany
- Hungary
- Iceland
- India
- Ireland
- Italy
- Malta
- Mexico
- Netherlands
- New Zealand
- Norway
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom
- United States
- Uruguay

## Litigation is expensive, lengthy and difficult

Without legislation, the only recourse to justice is litigation. The Court of Final Appeal decided Hong Kong's first transgender human rights case in 2013 (*W v Registrar of Marriages*) which concerned the right to marry.

However, the court did not decide on any other rights of transgender people, in particular, the rights of transgender people who have **NOT** undergone full SRS.



- this leaves Hong Kong's current system prone to **multiple, lengthy** judicial challenges
- it is **expensive** to both the applicants and taxpayers at large



A lawsuit against the government has already been filed to **challenge the constitutionality of its coercive SRS requirement** with respect to a change of gender marker on legal documents such as HKID and passport.

It is scheduled to be heard in January 2018.

# MYTH-BUSTERS

## Gender Recognition without SRS enables fraud?

**NO!** : People wishing to legally change their gender face severe hurdles; they need to obtain approval from multiple medical professionals and to go through substantial psychiatric assessments and observations.

## Gender recognition without SRS enables sexual offenses?

**NO!** : Sexual assault or other sex related crimes **would still be illegal**, irrespective of the offender's legal gender status.

Further, in everyday situations, genitals are kept private. This is especially so when it comes to transgender individuals. For them, their genital anatomy is a very private matter. They do not want to reveal their bodies in public, even in gender segregated facilities.

## Gender recognition will take away other people's rights?

**NO!** : Existing laws are based on the interests of the majority and do not take into consideration the rights and needs of transgender people. Therefore, while most of us in the majority take our gender recognition rights for granted, the law has long neglected the same rights for the transgender minority. It's time for change and to pass gender recognition legislation to have respect for all.

Gender recognition protects the privacy and dignity of the minority and in no way infringes upon the rights of the general public.



# How can you help?



The transgender community is small. Their voices may only be heard with solidarity and support from everyone!



In response to the government's public consultation concerning gender recognition, please show your support by:

- signing the **online petition** via the QR code
- sharing this petition on **Twitter**, **Instagram** and **Facebook** with the hashtags:



**#SupportHKGenderRecognition**

**#NoCoerciveSurgery**

**Share this with your family, friends & colleagues!**

We will hand in the online petition as a submission to the public consultation which will end on **31 October 2017**.

*Let's build a society  
where everyone  
can live in freedom  
with equal dignity  
and rights.*



This booklet is brought to you after consultation with:



\* Mr. Henry Tse (Trans man, plaintiff in a pending judicial review application)

\* Ms. Natalie Sin (Clinical Psychologist specialising in Gender Identity Disorder)