

香港特別行政區政府  
保安局



The Government of  
The Hong Kong Special Administrative Region  
Security Bureau

香港添馬添美道 2 號

2 Tim Mei Avenue, Tamar, Hong Kong

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31 March 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 25 March 2014 with further questions in relation to the Bill. Our responses are as follows.

#### **Questions 1 to 3**

The proposed new section 40B in the Bill provides that, in the absence of evidence to the contrary, the sex of a party to a marriage as shown on an identification document of the party at the time of the marriage is presumed to be the sex of the party.

For a person who has received full sex re-assignment surgery (SRS), currently, he or she would submit the medical certificate certifying the surgeries that he or she has received to the Commissioner of Registration to apply for a change of the sex entry on his or her Hong Kong Identity Card (HKIC). The Commissioner of Registration requires that such certificate be issued by a qualified medical professional either in Hong Kong or overseas. Since the sex on a person's HKIC would have been changed to reflect his or her re-assigned sex if he/she has received full SRS, the need for him or her to present the medical certificate to the Registrar of Marriages again when he or she subsequently wishes to marry under the Marriage Ordinance (Cap. 181) (MO) in Hong Kong is obviated by the presumption in the proposed new section 40B.

In any event, if in doubt, the Registrar of Marriages will request a party to an intended marriage to provide suitable medical proof issued by qualified medical professional certifying the surgeries that he or she has received for the purpose of the proposed new subsections 40A(1) and (2) in the Bill.

#### **Questions 4 to 6**

As explained in the Explanatory Memorandum of the Bill, as well as the Administration's paper for discussion at the Security Panel on 7 January 2014, the Legislative Council Brief issued on 28 February 2014, and the Secretary for Security's speech moving the Second Reading of the Bill on 19 March 2014, the purpose of the Bill is to implement the order of the CFA in the case of *W v Registrar of Marriages* (FACV 4/2012). In such order, the CFA has conclusively decided that the Appellant, a transsexual who has received full SRS, and others in the same situation, should qualify as a person of the post-operative re-assigned sex under section 40 of the MO (and section 20(d) of the Matrimonial Causes Ordinance, Cap. 179).

As regards treatment of transsexuals who have not (yet) received full SRS, the question was, amongst other issues relating to gender recognition, left open in the CFA judgment. To follow up on these issues left open by the CFA, the Administration, as previously indicated, has already set up an inter-departmental working group (IWG) on gender recognition, chaired by the Secretary for Justice, which has commenced work since January 2014 to conduct a comprehensive review of the legal issues concerning the rights of transsexual persons in Hong Kong, including a comparative study of the

relevant legislation, case-law and schemes in other jurisdictions, with a view to making recommendations to the Administration on possible legislation and incidental administrative measures that may be required to protect the rights of transsexual persons in all legal contexts. Whether or not legislation taking reference from the Gender Recognition Action 2004 of the United Kingdom is suitable for Hong Kong will be considered in this context.

The Administration understands that whether to receive full or any SRS is ultimately a personal choice to be made by individuals taking into account all relevant considerations pertinent to his or her own circumstances. The position of individuals who would otherwise prefer not to receive full or any SRS, whose treatment under the MO and other laws has been left open in the CFA judgment and is currently under study by the IWG on gender recognition as part of its wider review, is not affected by the Bill, which seeks to implement what has been conclusively decided by the CFA so far, ie, including reflecting the full SRS requirement.

The legal requirements for a transsexual person to qualify as a person in the re-assigned sex for the purpose of marriage vary widely among other jurisdictions. The Administration considers that the approach it has adopted, i.e. to introduce as soon as practicable necessary legislative amendments to the MO to bring it up to date with what has been conclusively decided by the CFA, and in parallel, to set up an IWG on gender recognition to conduct an in-depth study on other matters which were left open in the judgment, is a prudent and pragmatic way forward to follow up on the CFA judgment in the W Case in a holistic manner.

### **Other issues**

The Bill seeks to implement the CFA order in the W Case by adding new subsections 40A and 40B in the MO, which relates to how the terms “man” and “woman” in subsection 40(2) of the MO are being construed for the purposes of the MO, which provides for matters connected with marriage registration only. Matters which take place after a marriage is registered in accordance with the provisions and requirements under the MO fall outside the scope of the MO and the Bill (and the CFA order). As explained in our letter dated 13 March 2014, according to the legal advice we have obtained so far, a marriage should not automatically become invalid solely on the ground that one of the parties to the marriage had subsequently (i.e. after registration in accordance with all requirements under the MO) received full SRS.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Billy Woo', with a small horizontal line above the first letter 'B'.

(Billy Woo)  
for Secretary for Security

c.c. Secretary for Justice

(Attn: Mr Alan Chong  
Ms Mary Ho  
Ms Michelle Ainsworth)

Secretary for Home Affairs

(Attn: Ms Aubrey Fung)