

LCQ7: Protecting rights of transsexuals

Following is a question by the Hon Alvin Yeung and a written reply by the Secretary for Justice, Mr Rimsky Yuen, SC, in the Legislative Council today (July 6):

Question:

The Court of Final Appeal (CFA) made an order on the W case in July 2013, holding that a person in a situation same as that of Ms W, the applicant, (i.e. male by birth, but changed to female after undergoing full sex reassignment surgery (SRS)) was qualified as a "woman" under the relevant legislation and was therefore entitled to marry a man. CFA decided at the same time to suspend the order for 12 months to allow the Government and this Council sufficient time for discussion and carrying out work to amend legislation. Subsequently, the Government introduced the Marriage (Amendment) Bill 2014 into this Council on March 19, 2014, but the bill was negated by this Council. On the other hand, the Government set up an Inter-departmental Working Group on Gender Recognition (IWG) in January 2014 to consider legislation and administrative measures that were required to protect the rights of transsexuals in all legal contexts, and to make reform recommendations. In this connection, will the Government inform this Council:

- (1) of the work progress of IWG;
- (2) of the legislation and administrative measures being studied by IWG;
- (3) whether IWG has finalised the drafting of reform recommendations; if IWG has, of the details;
- (4) as one of the tasks of IWG is to study other jurisdictions' legislation, case-law and systems concerning gender

recognition, of the details and progress of the task;

(5) as CFA mentioned in the W case the gender recognition problems faced by transsexuals (including those who had not fully completed SRS) and hoped that the executive authorities and the legislature would consider how to deal with those problems, whether the authorities have conducted studies in this regard; if they have, of the details, including the legislation and administrative measures that have been/are being studied; if not, the reasons for that; and

(6) when the authorities will introduce a bill to amend the Marriage Ordinance (Cap 181) into this Council again?

Reply:

President,

The consolidated reply to Hon Alvin Yeung's question is as follows:

The Government set up the Inter-departmental Working Group on Gender Recognition (IWG) to consider legislative and incidental administrative measures that may be required to protect the rights of transsexual persons in the legal contexts and to make such recommendations for reform as may be appropriate.

The scope of the IWG's study includes both recognition and post-recognition issues. The IWG is currently studying recognition issues and, upon completion of this study, will move to the next stage of study concerning post-recognition issues.

On recognition issues, the IWG has been reviewing various issues, including the condition known as gender identity disorder or gender dysphoria, whether there should

be a gender recognition scheme, the various options for a gender recognition scheme, and the relevant qualification criteria (including the extent to which sex reassignment surgery (SRS) is required) and the application procedure. In this connection, the IWG has been conducting a review of the legislation, schemes and case law in over 100 overseas jurisdictions, and the standards of international bodies, with a view to making recommendations to the Government on possible legislation that may be necessary to address the issues faced by transsexual persons. The IWG is currently in the course of drafting a consultation paper to seek the views of the public on recognition issues. It will endeavour to publish the paper as early as possible within this year.

As regards post-recognition issues, the IWG will focus on reviewing all the existing legislative provisions and administrative measures in Hong Kong which may be affected by legal gender recognition, so that any required legislative or procedural reform may be followed up by the Government.

The IWG will continue to consult widely in the course of its work before finalising its recommendations to the Government. Upon receipt of the final recommendations of the IWG, the Government will consider them carefully before determining the way forward for the relevant reform. At this moment, since public consultation is yet to be done, it is not possible at this stage to set any time table for introducing legislation to implement the proposals to be put forward by the IWG. For the same reason, it is premature to comment on whether, and if so, when the Government will introduce a bill to amend the Marriage Ordinance (Cap 181) into the Legislative Council.

Ends/Wednesday, July 6, 2016