

Public consultation on gender recognition launched today

The Inter-departmental Working Group (IWG) on Gender Recognition today (June 23) released a consultation paper on gender recognition following its detailed study on recognition issues and invited views from the community on the issues.

A spokesman for the IWG said, "The subject of gender recognition involves legal, medical, social and human rights issues which are complicated and controversial, and may have wide-ranging policy implications. It is evident from developments overseas that different jurisdictions have adopted different approaches to deal with these issues."

The Consultation Paper: Part 1 on Gender Recognition seeks the views of the community on a number of issues concerning legal gender recognition, including whether a gender recognition scheme should be established in Hong Kong and, if so, the contents of the scheme.

"Given the controversial nature of the issues involved, the IWG maintains an open mind and does not have any preferred position at this moment. Accordingly, the consultation paper seeks to discuss the relevant issues as objectively as possible so as to invite views from the community," he added.

There is currently no legislation in Hong Kong which provides for the recognition of the reassigned, acquired or preferred gender of a person for all legal purposes. Government departments and private institutions are not required by law to accept the sex entry on a person's Hong Kong identity card as that person's legal gender. Neither is there any mechanism to have the sex entry on a person's birth certificate amended to reflect his or her reassigned, acquired or preferred gender.

At present, through services provided by the Hospital Authority, there are a range of treatment options available in Hong Kong for people having gender identity disorder or gender dysphoria. These include:

- initial psychiatric assessment of the condition of gender identity disorder or gender dysphoria;
- ongoing assessment of the person's ability to live in the preferred gender role (commonly referred to as the "real life experience");
- prescribed hormonal treatment of the opposite sex; and
- sex reassignment surgery (SRS) (i.e., the surgical treatment which is targeted at bringing a transsexual person's physical appearance or characteristics into conformity with his or her gender identity).

In May 2013, the Court of Final Appeal (CFA) ruled in *W v Registrar of Marriages* (W's case) that a transsexual person who had undergone full SRS should be entitled to marry a person of the sex opposite to his or her reassigned sex. The CFA also commented on the problems facing transsexual persons in other areas of law, as well as the treatment of persons who have not undertaken any SRS or have not fully completed SRS. The CFA observed that the Government should consider how to address problems facing transsexual persons in all areas of law by drawing reference to overseas law and practice, such as the United Kingdom's Gender Recognition Act 2004.

In response, the IWG was set up in January 2014 to follow up on the observations of the CFA. It is tasked to consider legislation and incidental administrative measures that may be required to protect the rights of transsexual persons in Hong Kong in all legal contexts and to make such recommendations for reform as may be appropriate.

Chaired by the Secretary for Justice, the IWG comprises

representatives from relevant policy bureaux including the Constitutional and Mainland Affairs Bureau, the Security Bureau and the Food and Health Bureau, as well as two non-official members from the legal sector.

The work of the IWG has been divided into two parts - Recognition and Post-recognition. For Part 1 on Gender Recognition, the subject of the current consultation paper, the IWG has conducted research on matters relating to transgender or transsexual persons, both in Hong Kong and internationally.

The IWG has also undertaken a comparative study of the legislation, schemes and case law on gender recognition in over 100 jurisdictions, as well as the standards of international bodies in this area. This study has found that there are different approaches adopted in other jurisdictions regarding gender recognition, including whether the recognition scheme is statutory, administrative or judicial; the pre-conditions for granting recognition in some form; and the legal implications once recognition is granted. Examples of such models include, but are not limited to, the following:

- (1) a model which includes a wide range of requirements like SRS, medical diagnosis of gender dysphoria, marital status exclusion, etc;
- (2) a surgery-requiring model, but with fewer other medical evidence requirements, though including certain other restrictions, such as marital status exclusion;
- (3) a surgery-free but otherwise detailed model requiring medical evidence, such as proof of diagnosis of gender dysphoria or transsexualism and proof of real life test; and
- (4) a self-declaration model, which allows change of gender identity by means of the applicant submitting a specific declaration self-identifying in a particular gender without any medical intervention requirements, personal status restrictions or any procedural complexity.

It should be noted that other issues - such as same-sex marriage, civil partnership and discrimination against sexual minorities - are outside the scope of the IWG's study.

Specifically, views of the public are invited on a number of issues which include:

- (a) whether a gender recognition scheme should be established in Hong Kong;
- (b) the criteria for determining whether a person is eligible for gender recognition (which may include residential requirements, minimum age, marital status and the number of years the person has lived in the reassigned, acquired or preferred gender); and
- (c) the procedure for gender recognition (including the medical and evidential requirements, what type of authority should be given the power to determine applications for gender recognition and whether foreign gender recognition decisions should be recognised).

After studying the results of the public consultation, the IWG will proceed to the second part of the study concerning the impact of gender recognition on existing laws and practice in the event that a gender recognition scheme is to be established in Hong Kong.

The public consultation exercise will close on October 31, 2017. Members of the public may send in their views to the Secretary, Inter-departmental Working Group on Gender Recognition (5/F, East Wing, Justice Place, 18 Lower Albert Road, Central) by mail, by fax (3918 4799) or by email (iwggr@doj.gov.hk).

The consultation paper can be obtained from the Internet at www.iwggr.gov.hk.

Ends/Friday, June 23, 2017

