

## 家庭議會 有關性別承認議題的公眾諮詢

### 目的

律政司使用投影片簡報講解有關性別承認議題的公眾諮詢工作，而本文件旨在提供背景資料，讓委員就該簡報進行討論。律政司所提交的投影片簡報副本載於附件A。

### 背景

2. 目前，香港並無法例訂明，為任何法律目的承認某人重置的、後天取得的或屬意的性別。法律亦沒有規定政府部門和私人機構，必須接納某人的香港身分證上所註明的性別為該人的法律性別。現時並無任何機制可讓人修改其出生證明書上的性別，以反映其重置的、後天取得的或屬意的性別。鑑於終審法院在二零一三年五月就 **W** 訴婚姻登記官一案<sup>1</sup>作出的判決和觀察所得，性別承認跨部門工作小組(工作小組)於二零一四年一月成立，由律政司司長擔任主席，研究在全面保障變性人士的法律權利方面所需的法例和相關行政措施，並作出合適的改革建議<sup>2</sup>。

3. 工作小組的研究範圍分為兩部分：第一，是否需要在香港設立性別承認制度和倘有此需要，申請在法律上承認某人性別的程序為何(性別承認的事宜)；以及第二，在法律上承認某人性別所涉及的後續問題(性別承認後的事宜)。工作小組發現，世界各地並無劃一的申請性別承認程序。由於有關議題相當複雜(一方面，確診患有性別不安的人在醫學、社會和法律方面所面對的重要問題有待解決；另一方面，有團體和個別人士關注，在這方面進行立

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<sup>1</sup> 此案關乎已接受整項性別重置手術的變性人士有權與性別異於其重置性別的人結婚。

<sup>2</sup> 由於在現階段尚未決定可能設立的性別承認制度的適用範圍，因此，工作小組的研究有需要從更廣闊的角度(即包括跨性別人士)探討有關議題。惟須注意的是，其他事宜，例如同性婚姻、民事伴侶關係和針對小眾的歧視行為，並不包括在工作小組的研究範圍之內。

法所帶來的影響，以及在法律上承認性別改變會為社會帶來更廣泛的後果)，而且世界各地不同的司法管轄區所採用的做法不一，因此工作小組展開公眾諮詢，以收集有關各方和市民大眾對在法律上承認某人性別的議題的意見，包括是否需要在香港設立性別承認制度和倘有此需要，有關制度的內容為何。

4. 二零一七年六月二十三日發表的諮詢文件已上載至互聯網 [www.iwggr.gov.hk](http://www.iwggr.gov.hk)，而諮詢文件摘要則載於**附件 B**以供委員參閱。工作小組現正就多個重要議題諮詢公眾，當中包括：

- (a) 應否在香港設立性別承認制度；
- (b) 決定申請性別承認的人是否符合資格的準則(這可能包括醫學規定、居港規定、年齡下限、婚姻狀況、該人以重置的、後天取得的或屬意的性別生活的年期等規定)；以及
- (c) 性別承認的程序(包括證據方面的規定、哪類型的主管當局有權就性別承認的申請作出決定，以及應否承認外國就性別承認的事宜所作出的決定)。

5. 諮詢期將於二零一七年十月三十一日結束。鑑於所涉議題頗具爭議，工作小組目前對於如何處理有關性別承認的各項議題持開放態度，未有偏向任何看法或立場。工作小組在研究公眾諮詢的結果後，會就有關性別承認的各項議題制訂建議。倘工作小組認為應在香港設立性別承認制度，便會進行第二部分的研究，探討有關事宜會對現行法例和措施帶來什麼影響(性別承認後的事宜)。

## 徵詢意見

6. 請委員備悉律政司匯報的內容，並提出意見。

家庭議會秘書處  
二零一七年九月

Inter-departmental Working Group on Gender Recognition (IWG)  
性別承認跨部門工作小組（“工作小組”）

## Consultation Paper: Part 1: Gender Recognition 諮詢文件：第1部分：性別承認

Secretariat, IWG on Gender Recognition  
性別承認跨部門工作小組秘書處

### Background

- ***W v Registrar of Marriages***  
[2013] 3 HKLRD 90; FACV 4/2012 (13 May 2013)
- **Ruling:**  
A transsexual person who had undergone full sex reassignment surgery (“SRS”) should be entitled to marry a person of the sex opposite to his or her reassigned gender

### 背景

- ***W 訴 婚姻登記官***  
[2013] 3 HKLRD 90 (終院民事上訴2012年第4號，2013年5月13日)
- **裁定：**  
已接受整項性別重置手術的變性人士有權與性別異於其重置性別的人結婚

## Background

- Recognition issues:  
The need to establish a gender recognition scheme and the contents of such a scheme, if any
- Post-recognition issues:  
Issues arising in consequence of legal gender recognition, should such a scheme be introduced
- **Issues outside the scope of IWG's study**
  - Same sex marriage
  - Civil partnership
  - Discrimination against sexual minorities

## 背景

- 性別承認：  
設立性別承認制度的需要及該制度（如有的話）的內容
- 性別承認後：  
因性別承認制度產生的的問題（若香港設立性別承認制度的話）
- **工作小組研究範圍之外的事宜**
  - 同性婚姻
  - 民事伴侶關係
  - 針對性小眾的歧視行為

## Consultation Paper: Part 1: Gender Recognition

- Released on 23 June 2017
- Seek public views on:
  - 1) Whether a gender recognition scheme should be established in HK
  - 2) If so, possible criteria and procedure
- Available online at IWG's website: [www.iwggr.gov.hk](http://www.iwggr.gov.hk)
- Consultation period runs until [31 October 2017](#)

## 諮詢文件： 第1部分：性別承認

- 於2017年6月23日發布
- 向公眾諮詢以下事宜：
  - 1) 應否於香港設立性別承認制度
  - 2) 如設立的話，該制度的準則及程序的可能方案為何
- 諮詢文件可於工作小組網頁下載：[www.iwggr.gov.hk](http://www.iwggr.gov.hk)
- 諮詢期至[2017年10月31日](#)

## Current situation in Hong Kong

## 香港現況

- **Services by Hospital Authority:**
  - Psychiatric assessment
  - Real life experience
  - Hormonal treatment
  - Sex reassignment surgery (“SRS”)
- **醫院管理局的服務：**
  - 精神科評估
  - 實際生活體驗
  - 賀爾蒙治療
  - 性別重置手術

## Current situation in Hong Kong

## 香港現況

- **Administrative measures:**  
Changing the sex entry on HKID Card: requiring removal of original genital organs and construction of some form of genital organs of the opposite sex
- **行政措施：**  
更改香港身分證上的性別標記：  
要求申請人切除原有生殖器官及構建某種形式的異性生殖器官
- Currently no legislation for recognition of the reassigned, acquired or preferred gender of a person for all legal purpose
- 目前並無法例讓一個人就所有法律目的而言，承認其重置的、後天取得的或屬意的性別

## Scope of the Consultation Paper

- Study on the condition known as **gender identity disorder** or **gender dysphoria**
- Comparative studies on over 100 overseas jurisdictions
- Focusing on **issues relating to operation** of a gender recognition scheme

## 諮詢文件的研究範圍

- 研究稱為**性別認同障礙**或**性別不安**的情況
- 對超過**100**個海外司法管轄區的相關制度進行比較研究
- 着重於有關性別承認制度**運作**所涉的事宜

## Gender recognition scheme in the UK

- **Gender Recognition Act 2004** came into effect in April 2005
- **Gender Recognition Certificate** can be issued by a judicial Gender Recognition Panel
- Requirement of applicant:
  - has, or has had, **gender dysphoria**;
  - has **lived in the acquired gender** throughout the preceding **two years**; and
  - **intends to continue** to live in the acquired gender until death
- Issuance of a Certificate means that the applicant's new gender is **officially recognised for all purposes**

## 英國的性別承認制度

- 英國《**2004年性別承認法令**》於**2005年4月**生效
- 性別承認審裁小組可以發出**性別承認證書**
- 申請人必須：
  - 患有或曾經患有**性別不安**；
  - 在提出申請前兩年一直以後天取得的性別生活；以及
  - **有意繼續**以後天取得的性別生活，直至離世
- 性別承認證書一經發出，即表明申請人的新性別**就所有目的獲正式承認**

## Gender recognition schemes in overseas jurisdictions

- **Self-declaration model**
  - E.g. Argentina, Denmark, Malta and Ireland
- **Surgery-free but otherwise detailed model requiring medical evidence**
  - E.g. the UK, Iceland, Germany, Spain and New York State (US)
- **Surgery-requiring model, but with fewer other medical evidence requirements**
  - E.g. New South Wales (Australia), Queensland (Australia), Liechtenstein and New Brunswick (Canada)
- **Model which includes a wide range of requirements**
  - E.g. Japan, Mainland China and Finland

## 海外司法管轄區的性別承認制度

- **自我聲明模式**
  - 例如阿根廷、丹麥、馬耳他和愛爾蘭
- **無須接受手術但需較多醫學證據的模式**
  - 例如英國、冰島、德國、西班牙和美國紐約州
- **須接受手術但較少其他醫學證據規定的模式**
  - 例如澳洲新南威爾士州、澳洲昆士蘭州、列支敦士登和加拿大新不倫瑞克省
- **含有較多限制的模式**
  - 例如日本、中國內地和芬蘭

## Gender recognition schemes in overseas jurisdictions

- **No single uniform approach** around the world to the type of scheme, requirements and procedures for legal gender recognition

## 海外司法管轄區的性別承認制度

- 對於法律上的性別承認的制度類型、要求及程序，世界各地並無一致的處理模式

## Issues for consultation

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

## 諮詢議題

- a) 應否在香港設立性別承認制度
- b) 決定申請人是否符合性別承認資格的準則
  - 例如醫學規定、居港年期、年齡下限、婚姻狀況、該人以重置的、後天取得的或屬意的性別生活的年期等規定
- c) 性別承認的程序
  - 例如證據方面的規定、哪類型的主管當局有權決定性別承認的申請，應否承認外國就性別承認的申請所作出的決定

## Issues for consultation

- IWG remains open-minded, not yet arrived at any confirmed views or position
- **Possible arguments in support of and against** a number of issues (Chapters 5 to 9)
  - Solely for purpose of consultation
  - **Non-exhaustive** list of arguments

## 諮詢議題

- 工作小組目前仍持開放態度，未有既定立場
- 關於各種議題的潛在正反論點（第5至9章）
  - 僅作諮詢之用
  - 所論及的潛在論點並非詳盡無遺



## E.g. (1): Should HK have a gender recognition scheme? (Ch. 5)

### Arguments for

- Legal recognition of **innate gender identity**
  - relieves transgender person's **distress** arisen from inconsistency between gender identity and physical anatomy; and
  - prevents and lessens the **stigma, discrimination, harassment and abuse**
- Human rights implications
- Legal certainty

## 例子一：香港應否設立性別承認制度？（第5章）

### 贊成的論點

- 天生的性別認同須予以法律承認
  - 緩解變性人因性別認同與生理結構不一致造成的**困擾**
  - 防止及減少**偏見、歧視、騷擾和侮辱**等情況
- 人權問題
- 法律確定性

## E.g. (1): Should HK have a gender recognition scheme? (Ch. 5)

### Arguments against

- Lack of **social acceptance**
- Possibility of causing **social confusion** and **social costs**
- Purely **medical problem**
- Potential **unintended consequences**

## 例子一：香港應否設立性別承認制度？（第5章）

### 反對的論點

- 缺乏**社會認受性**
- 可能造成**社會混亂**和帶來**社會代價**
- 純屬**醫學問題**
- 潛在**難以預料的後果**

## E.g. (2): Requirement for the applicant to have undergone partial/full SRS?

### Arguments for

- **Incongruence** between the expressed gender and legal gender of a person who has not completed SRS
- Issues related to the use of **sex-segregated** public facilities
- SRS is arguably a **medical necessity**
- **Public security** concerns

例子二：申請人需要接受部分／整項性別重置手術？

### 贊成的論點

- 未完成性別重置手術人士所表現的性別與其法律上的性別**不符**
- **指明性別**的公共設施的使用問題
- 有意見指性別重置手術是**必要醫療手段**
- **公眾安全**問題

## E.g. (2): Requirement for the applicant to have undergone partial/full SRS?

### Arguments against

- **Global trend**
- International **human rights** standard
- Unnecessary, undesirable or not medically possible for some transgender persons

例子二：申請人需要接受部分／整項性別重置手術？

### 反對的論點

- **國際趨勢**
- 國際**人權標準**
- 對某些跨性別人士而言是非必要、不合宜或在醫學上不可能執行

## Annexes

- **Annex A:**  
Table showing the features of the gender recognition schemes in over 100 overseas jurisdictions
- **Annex B:**  
Table setting out summaries of the gender recognition schemes in over 100 overseas jurisdictions
- **Annex C:**  
Summary of some recent overseas case-law on the requirements for transgender persons to undergo SRS and/or other sterilisation

## 附件

- **附件A：**  
以列表方式比較超過100個海外司法管轄區的性別承認制度的特點
- **附件B：**  
概述超過100個海外司法管轄區的性別承認制度
- **附件C：**  
撮述部分近期關於變性人接受性別重置手術及／或絕育的規定的海外案例

## Next stage of the IWG's work

- Study on the [impact of gender recognition on existing laws and practice](#) in the event that a gender recognition scheme is to be established in HK
- Continue to consult widely

## 工作小組下一階段的工作

- 研究若香港將設立性別承認制度，該制度對現有法律及措施的影響
- 繼續廣泛諮詢

## Conclusion

- 1) Important legal, medical, social and human rights issues and wide-ranging policy implications involved
- 2) No single uniform approach around the world to the procedure for legal gender recognition and the complex issues that it raises
- 3) Consultation paper seeks public views on various issues
- 4) IWG maintains an open mind and does not have any preferred position at this moment

## 總結

- 1) 性別承認議題涉及重要的法律、醫療、社會和人權問題，以及廣泛的政策影響
- 2) 對於法律上的性別承認的程序及所引致的複雜議題，世界各地並無一致的處理模式
- 3) 諮詢文件就多項議題徵詢公眾的意見
- 4) 工作小組目前仍持開放態度，未有既定立場

**Thank you!**  
**謝謝！**

Q&A session  
答問環節

**INTER-DEPARTMENTAL WORKING GROUP  
ON GENDER RECOGNITION**

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**CONSULTATION PAPER: PART 1**

**GENDER RECOGNITION**

**EXECUTIVE SUMMARY**

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*June 2017*

# INTER-DEPARTMENTAL WORKING GROUP ON GENDER RECOGNITION

## CONSULTATION PAPER: PART 1

### GENDER RECOGNITION

#### EXECUTIVE SUMMARY

*The Inter-departmental Working Group on Gender Recognition (IWG) was set up in January 2014 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.*

*This Executive Summary is an outline of the IWG's Consultation Paper on the first part of its study. 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 solicit views from the community.*

*Copies of the Consultation Paper can be obtained from the internet at <http://www.iwggr.gov.hk>.*

*The Consultation Paper includes a summary of issues for consultation, which is also appended to this Executive Summary, to seek the views of the public on a range of matters. The IWG would also welcome any views, comments or suggestions on any of the other relevant issues discussed in the Consultation Paper. The consultation period will last until 31 October 2017.*

#### Introduction

1. There are people in society who have the feeling that they were born into the wrong body, because the gender<sup>1</sup> they identify with is incompatible with the gender they were assigned at birth. The Court of Final Appeal (“CFA”) in the case of *W v Registrar of Marriages* (“W’s case”)<sup>2</sup> observed that:

*“[P]eople who have the misfortune of suffering from the gender identity disorder or gender dysphoria of transsexualism possess the chromosomal and other biological features of one sex but*

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1 The terms “gender” and “sex” are sometimes used interchangeably, or may be specific to certain contexts. For further discussion of the definitions of these terms, see Chapter 1 of the Consultation Paper.

2 *W v Registrar of Marriages* [2013] 3 HKLRD 90; FACV 4/2012 (13 May 2013) (CFA). The CFA judgment was handed down on 13 May 2013. The CFA’s final orders in the case were made on 16 July 2013.

*profoundly and unshakeably perceive themselves to be members of the opposite sex. They may persistently experience acute emotional distress, feeling themselves trapped in a body which does not correspond with what they firmly believe to be their ‘real’ sex’.*<sup>3</sup>

2. 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”) (ie, the surgical treatment which is targeted at bringing a transsexual person’s physical appearance or characteristics into conformity with his or her gender identity).<sup>4</sup>

3. As well as emotional and physical issues, people with gender identity disorder or gender dysphoria might face complex social and legal issues:

*“Gender underpins most of our societal arrangements and statutes. It is an essential quality, concerning our sense of who we are and what sort of people we identify with. The process of transition - of recognising and acting on the desire to ‘come out’ in the opposite gender - is a very significant step to take and one which may have profound effects on relationships - with families, employers and workmates, friends and acquaintances.”*<sup>5</sup>

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3 *W v Registrar of Marriages* [2013] 3 HKLRD 90; FACV 4/2012 (13 May 2013) (CFA), at paragraph 7.

4 In 2014, a retrospective analysis was conducted of all gender identity disorder or gender dysphoria patients who had been under treatment at the Hospital Authority’s Psychiatric Clinics from 1 January 2010 to 31 December 2011. Under the analysis, 80 patients’ clinical notes were reviewed. Of these 80 patients, 62 indicated a preference for undergoing SRS of different forms, in respect of 11 there was no record of SRS preference and 7 indicated they preferred not to undergo SRS. For the 7 patients preferring not to undergo SRS, it was felt that psychotherapy only was needed to manage their distress. Of the 62 patients indicating a preference for SRS, 50 have received or will receive SRS in different forms. These 50 patients experienced the “severe” form of gender identity disorder or gender dysphoria, ie, transsexualism, in that they have a strong desire to undergo transition to a sex other than that assigned at birth, typically through hormones and surgery. The Hospital Authority has estimated that around 30 new cases per year would be referred for psychiatric assessment for gender identity disorder or gender dysphoria, and that around one in 10 of these would require assessment for SRS.

5 See Department for Constitutional Affairs (UK), “Government Policy concerning

4. For those who are living in their acquired<sup>6</sup> gender, privacy and possible discrimination are likely to be key concerns. They may want to keep their birth gender private and be legally recognised in their new gender for all purposes. Legal gender recognition generally refers to the official recognition of a person's gender identity (self-perception of being male or female) in law, and as reflected in public registries and key identification documents. It means that in the eyes of the law, a person is seen to be of his or her acquired gender, as opposed to the gender that he or she was assigned at birth, and usually leads to significant legal consequences.<sup>7</sup>

5. In certain circumstances, a change of gender is recognised in Hong Kong where the issue is one of identification rather than legal status, and a transsexual person who has undergone full SRS (ie, the removal of the original genital organs and construction of some form of genital organs of the opposite sex) may apply for a change in the sex entry on their Hong Kong Identity Card ("*HKIC*") and, if successful, will be issued with a replacement HKIC reflecting their reassigned gender.<sup>8</sup> A successful applicant may also separately apply to make corresponding changes to other documents (eg, travel documents, driving licences, bank accounts and educational certificates) as necessary.

6. 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 bodies are not required by law to accept the sex entry on a person's HKIC 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.<sup>9</sup>

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Transsexual People" (Archived Content), available at:

<http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/constitution/transsexual/policy>.

6 The terms "*reassigned*" and "*preferred*" are sometimes used interchangeably with the term "*acquired*" in this context. Also, where appropriate, the terms "*they*" and "*their*" are used in place of "*he/she*" and "*his/her*" in the Consultation Paper.

7 Eg, in the United Kingdom, section 9(1) of the Gender Recognition Act 2004 provides that once a full gender recognition certificate is issued to an applicant, the person's gender becomes for all purposes the acquired gender.

8 Pursuant to Regulations 14 and 18 of the Registration of Persons Regulations (Cap 177A). The existing procedures and required evidence for amendment of sex entry on the HKIC are set out in the administrative guidelines of the Immigration Department: see guidelines on the procedures and supporting documents for applications to change the sex entry on identity cards, which are available at the website of the Immigration Department: [http://www.immd.gov.hk/eng/faq/faq\\_hkic.html](http://www.immd.gov.hk/eng/faq/faq_hkic.html). (Such guidelines have been formulated in consultation with the Hospital Authority and the medical sector.)

9 Pursuant to section 27 of the Births and Deaths Registration Ordinance (Cap 174), a birth certificate cannot be amended unless there is any clerical error, or an error of fact or substance with the production of proof. Any correction of errors of fact or substance is done in the margin of the birth certificate without any alteration of the original entry.



## Establishment of the IWG on Gender Recognition

### **Background**

7. In May 2013, the CFA ruled in *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 gender.<sup>10</sup>

8. While the focus of *W*'s case was on the law of marriage, 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.

9. In response, the Government established the Inter-departmental Working Group on Gender Recognition ("*IWG*") on 13 January 2014 to follow up on the said observations of the CFA. For the avoidance of doubt, it should be noted from the outset that same-sex marriage or civil partnership is outside the scope of the *IWG*'s study.

### **Terms of reference**

10. The terms of reference of the *IWG* are:

- “1. To consider legislation and incidental administrative measures that may be required to protect the rights of transsexual persons<sup>11</sup> in all legal contexts, and to make such recommendations for reform as may be appropriate.
2. For the aforesaid purpose, to conduct consultations and to engage the assistance of such experts or professionals as may be appropriate.”

### **Membership**

11. The *IWG* is chaired by the Secretary for Justice, with members from the legal community and representatives of relevant bureaux. The members are:

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10 A more detailed discussion of *W*'s case is set out in Chapter 2 of the Consultation Paper.

11 “The World Health Organisation classifies transsexualism as a species of gender identity disorder involving: ‘a desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one’s anatomical sex, and a wish to have surgery and hormonal treatment to make one’s body as congruent as possible with one’s preferred sex.’”: see Court of Final Appeal judgment in *W v The Registrar of Marriages*, [2013] 3 HKLRD 90; FACV 4/2012 (13 May 2013), at para 5, quoting The World Health Organisation, *International Statistical Classification of Disease and Related Health Problems* (version 10), F64.

Mr Rimsky Yuen, SC, Secretary for Justice (Chairman)

Mr Stewart Wong, SC

Mr Eric Cheung, Principal Lecturer, University of Hong Kong

Miss Rosanna Law, JP, Deputy Secretary for Constitutional and Mainland Affairs<sup>12</sup>

Miss Amy Yuen, Deputy Secretary for Food and Health (Health)<sup>13</sup>

Ms Maggie Wong, JP, Deputy Secretary for Security.

12. Such a composition is needed because the scope of the IWG's work involves broad-ranging legal, health and social issues cutting across the portfolios of different bureaux and departments of Government, as well as detailed international legal and social research.<sup>14</sup> (The CFA observed in *W's* case that in addressing potential problems which might arise in certain areas, it was necessary to strike a balance between the rights of transsexual persons on the one hand and the rights of others who might be affected by recognition of the gender change on the other.<sup>15</sup> In the circumstances, a comprehensive and objective review of the relevant issues is necessary when considering the need for appropriate legal measures to address the problems facing transgender or transsexual people.)

## **Methodology adopted for the IWG's study**

### ***Meetings***

13. The IWG commenced its work at the end of January 2014 and has held 27 meetings to-date, including 9 informal meetings to receive briefings from relevant experts and a range of stakeholders.

### ***Scope of the overall study***

14. The scope of the IWG's study covers a consideration of both recognition and post-recognition issues. For the first part of its study, the IWG has focused on recognition issues, which cover mainly overseas experiences and legal issues which would underlie the operation of a formal gender

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12 Since September 2016. Miss Law was preceded by Mr Gordon Leung, JP, from January 2014 to September 2016, (then) Deputy Secretary for Constitutional and Mainland Affairs.

13 Since November 2016. Miss Yuen was preceded by Mr Davey Chung, from January 2014 to November 2015, (then) Deputy Secretary for Food and Health (Health), and Ms Wendy Au, (then) acting Deputy Secretary for Food and Health (Health) from November 2015 to May 2016.

14 The IWG's Secretary is Ms Michelle Ainsworth, Principal Government Counsel, assisted by Mr Godfrey Kan, Deputy Principal Government Counsel, Ms Jenny Law, Senior Government Counsel and Mr Winson So, Government Counsel.

15 *W v Registrar of Marriages* [2013] 3 HKLRD 90; FACV 4/2012 (13 May 2013), at paragraphs 127 and 128.

recognition scheme in Hong Kong, if established.

15. The second part of the IWG's study will focus on post-recognition issues which will become relevant in the event that the IWG takes the view that a gender recognition scheme should be established in Hong Kong. In this connection, the IWG will review all the existing legislative provisions and administrative measures in Hong Kong which may be affected by a gender recognition scheme, so that any required legislative or administrative reform can be followed up by the Government.

16. As the scope of a possible gender recognition scheme has yet to be determined at this stage, the IWG's study has necessarily included looking at the broader position of transgender persons.<sup>16</sup> However, for the avoidance of doubt, 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.<sup>17</sup>

## **The Consultation Paper: Recognition issues**

### ***Scope of this part of the IWG's study***

17. The Consultation Paper sets out the IWG's observations following its detailed study on recognition issues. For this study, the IWG has conducted research on matters relating to transgender or transsexual persons, both in Hong Kong and internationally, including the condition known as gender identity disorder, or gender dysphoria. The IWG has also undertaken a comparative study of the legislation, schemes and case law on gender recognition in other jurisdictions, as well as the standards of international bodies in this area.

18. Issues which the IWG has been considering in this context

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16 The IWG acknowledges that the terminology used in this area is evolving, with different authors, organisations and jurisdictions adopting different terms, such as "*transsexual*", "*transgender*" and "*trans*", to describe groups of persons including transsexual persons. Without prejudice to the different meanings of the terms, the terms "*transsexual*" and "*transsexual person*" are the generic terms used in this Consultation Paper (unless the specific context indicates otherwise) to describe a person having "*transsexualism*" issues as defined by the World Health Organisation, and as applied in the CFA decision in *W's* case. In contrast, and unless the specific context appears otherwise, the terms "*transgender*" and "*transgender person*" are used in this Consultation Paper in a generic sense to refer to a broader range of people who live, or desire to live, in the role of a gender which is not the one assigned to that person at birth, with or without the intention to undergo any medical interventions to bring their physical selves into alignment with their gender identity. For detailed discussion of the terminology used in this area, see Chapter 1 of the Consultation Paper.

17 Matters relating to concerns about discrimination faced by sexual minorities in Hong Kong were considered by the Advisory Group on Eliminating Discrimination against Sexual Minorities which was established in 2013 by the Government. More details about the work of the Advisory Group are set out in Chapter 5 of the Consultation Paper.

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).

19. As a matter of clarification, the possible arguments set out in the Consultation Paper and this Executive Summary regarding the various issues above are solely for the purpose of consultation and do not necessarily represent the IWG's stance on any of the issues raised. Therefore, no conclusion as to the IWG's stance should be drawn from the wording and mode of presentation of the Consultation Paper and this Executive Summary, nor from the citing or referring to the comments or arguments made by individuals or organisations which may be included in the discussion. It is also acknowledged that the list of possible arguments discussed in the Consultation Paper and this Executive Summary is by no means exhaustive.

### ***Summary of gender recognition schemes in other jurisdictions***

20. As part of its study, the IWG has reviewed the legislation, schemes and case law in over 100 overseas jurisdictions, as well as standards of international bodies. This comparative research is presented in Chapters 3 and 4 and Annexes A and B of the Consultation Paper.

21. It is apparent from the research that the issue of legal gender recognition has been gaining increased attention across the international stage, and there is an accelerating trend towards establishing formal mechanisms to recognise a transgender or transsexual person's acquired gender. Although there appears to be no single uniform approach in overseas jurisdictions to gender recognition and the issues it raises, it is evident that there is a growing emphasis on human rights norms to be applied and a trend towards more liberalisation, both in terms of the scope of the recognition of gender change and the prerequisites for it.

#### ***The United Kingdom (UK) gender recognition scheme***

22. The gender recognition scheme which applies in the UK was described as a "*compelling model*" by the CFA in *W's* case. The legislation underpinning the UK's gender recognition scheme is the Gender Recognition Act 2004 which came into effect in April 2005. Under the Act, legal

recognition follows from the issue of a Gender Recognition Certificate by a judicial Gender Recognition Panel comprising qualified members from the legal and medical fields. Based on specified evidence which the applicant must submit, the Gender Recognition Panel is required to be satisfied that the applicant:

- has, or has had, gender dysphoria;
- has lived in the acquired gender throughout the preceding two years; and
- intends to continue to live in the acquired gender until death.<sup>18</sup>

23. The issuing of the Gender Recognition Certificate signifies that the applicant's new gender is officially recognised for all purposes; thus a male-to-female transsexual person will be legally recognised as a woman in English law, and a female-to-male transsexual person will be legally recognised as a man. Further, if a UK birth register entry already exists for the applicant, he or she is also entitled to a new birth certificate reflecting the acquired gender.

#### *Examples of other overseas gender recognition schemes*

24. There are different approaches taken 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.

- 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<sup>19</sup> or any procedural complexity (examples of jurisdictions adopting this model are Argentina, Denmark, Malta and Ireland).
- 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 (examples of jurisdictions adopting this model are the UK, Iceland, Germany, Spain and New York State (US)).
- A surgery-requiring model, but with fewer other medical evidence requirements (or ambiguous as to whether such requirements

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18 Section 2(1), Gender Recognition Act 2004.

19 There are still certain restrictions other than the medical and personal status restrictions in those jurisdictions. For example, Argentina, Denmark and Ireland impose a minimum age restriction of 18 years. Denmark also requires a six months' waiting time since the application for confirmation of an application for legal change of gender.

exist), though including certain other restrictions, such as marital status exclusion (examples of jurisdictions adopting this model are New South Wales (Australia), Queensland (Australia), Liechtenstein and New Brunswick (Canada)).

- A model which includes a wide range of requirements like surgery, medical diagnosis of gender dysphoria, marital status exclusion, etc (examples of jurisdictions adopting this type of model are Japan, Mainland China and Finland).

### ***Should Hong Kong have a gender recognition scheme? (Chapter 5)***

25. Chapter 5 of the Consultation Paper examines, from various different perspectives, the divergent considerations for having a gender recognition scheme; including, but not limited to, legal, medical, political and sociological considerations.<sup>20</sup> In the interests of clarity, the IWG reiterates paragraph 19 above as its position regarding the arguments presented in Chapter 5, which are summarised below.

#### *Arguments in support*

26. The arguments in support of having a gender recognition scheme in Hong Kong which are discussed in Chapter 5 are set out in brief below.

##### *(1) Recognition of innate gender identities<sup>21</sup>*

27. Some people's innate sense of gender identity may differ from their sex assigned at birth, resulting in them living with a conviction that their physical anatomy is incompatible with their true gender role. In many cases, the inconsistency between their innate gender identity and their physical anatomy may give rise to acute distress. Arguments have been made that congruent biological factors should not be decisive for the purposes of legal recognition of a person's gender identity. Accordingly, it is argued that a gender recognition scheme should be introduced to provide legal recognition of a person's innate gender identity if that is inconsistent with his or her biological sex.

##### *(2) Elimination of discrimination<sup>22</sup>*

28. It has been argued that the lack of recognition of the gender identities of transgender persons would be a major contributing factor to the marginalisation of these people in society, who may experience harassment and abuse in their daily lives. Some people contend that gender recognition policies and laws, coupled with anti-discrimination laws, can help prevent and/or lessen the stigma, discrimination, harassment and abuse transgender

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20 As to the types of gender recognition schemes which might be adopted (eg, whether a legislative, administrative or judicial scheme, or a mixture of these models), see discussion in Chapter 8 of the Consultation Paper, and below at paras 92 to 104.

21 See Chapter 5 of the Consultation Paper, at paras 5.5 to 5.12.

22 See Chapter 5 of the Consultation Paper, at paras 5.13 to 5.17.

people often experience.

(3) *Human rights implications*<sup>23</sup>

29. The absence of gender recognition mechanisms or the imposition of highly restrictive laws or regulations for gender recognition may have implications in the context of a transgender person's enjoyment of the right to privacy and their right to recognition as a person before the law. In a growing number of overseas countries or jurisdictions, the lack of arrangements for granting legal recognition of transgender persons' identities has been found to have infringed their human rights.

(4) *Growing international trend*<sup>24</sup>

30. Legal gender recognition of transgender persons has now been granted in many overseas jurisdictions, including Europe and the Asia Pacific region, under their new or amended legislation, administrative measures or judicial decisions. It has been argued that Hong Kong should consider introducing a legal gender recognition scheme so as to keep up with international developments.

(5) *Legal certainty*<sup>25</sup>

31. In the absence of a gender recognition scheme, the authorities' policies and legislation affecting transgender persons may be subject to challenge by way of judicial review. Legislation for gender recognition is arguably the only way to provide legal certainty in addressing the relevant rights and obligations of transgender persons. The prompt introduction of such legislation would provide more comprehensive coverage of the issues affecting them than can be achieved in the courts, by judges considering such issues on a case by case basis.

*Arguments against*

32. Below are the arguments against having a gender recognition scheme in Hong Kong which are discussed in Chapter 5.

(1) *Birth sex being the law of nature*<sup>26</sup>

33. Medically speaking, the genetic sex of a person cannot be changed by way of surgery. Whilst transsexuality or transgenderism is regarded by some people as a purely medical problem with a medical solution, some people may regard transsexuality or transgenderism as a moral problem or even a deviation from the norm of the creation of two "*opposite*" sexes by God. Under what might be called the "*order of creation*" argument, it has been argued that the law should not countenance a definition of "*male or*

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23 See Chapter 5 of the Consultation Paper, at paras 5.18 to 5.27.

24 See Chapter 5 of the Consultation Paper, at paras 5.28 to 5.30.

25 See Chapter 5 of the Consultation Paper, at paras 5.31 to 5.32.

26 See Chapter 5 of the Consultation Paper, at paras 5.33 to 5.37.

*female*” which depends upon how a particular person views his or her own gender.

(2) *Lack of social acceptance*<sup>27</sup>

34. There is no extensive study on the degree of social acceptance of transsexualism in Hong Kong. Some people consider that gender recognition is too controversial to be accepted by the society as a whole. It has also been argued that any change to the laws and policies that determine one’s sex based on biological sex would lead to social confusion and social costs, and thus public consensus should be sought.

(3) *A fully-fledged gender recognition scheme is unnecessary*<sup>28</sup>

35. Some people may argue that the current administrative practice for amendment of the sex entry on the HKIC is already sufficient to protect transgender persons’ rights and interests. On the other hand, some transgender persons may consider that an anti-discrimination law which protects them from discrimination on the grounds of gender identity, and additional measures to raise public awareness and understanding of transgender persons’ issues, are more practical in addressing their issues than a fully-fledged gender recognition scheme.

(4) *Potential unintended consequences*<sup>29</sup>

36. There have been concerns expressed that legal gender recognition may have unintended consequences, including, for example, misuse of the gender change mechanism to conceal a person’s identity, the deconstruction of the concept of gender within society, the emergence of *de facto* same sex marriage, and increased demand for sex reassignment treatments, especially for young children.

(5) *The “slippery slope” argument*<sup>30</sup>

37. It has been suggested that, since *W*’s case, activists have been seeking an expansion of rights so that *pre-operative* transgender persons could also have the right to marry in their preferred gender, and have their preferred gender legally recognised. Some people have expressed concern that the scope, strength and frequency of such lobbying might continue to increase in the future, and might lead to severe social and family problems arising out of, what some may consider to be, excessive and undue freedoms given under the law.

*Views being sought in the current consultation*

38. In light of the divergent views in this area illustrated above, the

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27 See Chapter 5 of the Consultation Paper, at paras 5.38 to 5.39.

28 See Chapter 5 of the Consultation Paper, at paras 5.40 to 5.44.

29 See Chapter 5 of the Consultation Paper, at paras 5.45 to 5.46.

30 See Chapter 5 of the Consultation Paper, at paras 5.47 to 5.49.



IWG would welcome views from the public on whether a gender recognition scheme should be introduced in Hong Kong to enable a person to acquire a legally recognised gender other than his or her birth gender.<sup>31</sup>

### ***Medical requirements for gender recognition (Chapter 6)***

39. Chapter 6 discusses the possible arguments both in support of and against various medical requirements for a gender recognition scheme, should one be introduced. In the interests of clarity, the IWG reiterates paragraph 19 above as its position regarding the various arguments presented in Chapter 6, which are summarised below.

#### *Requirement of a medical diagnosis*

##### *Arguments in support*

40. The arguments in support of having a requirement of a medical diagnosis for gender recognition, which are discussed more fully in Chapter 6, are set out below.

##### *(1) Recognised medical condition*<sup>32</sup>

41. In many jurisdictions including Hong Kong, the medical diagnosis of gender dysphoria, gender identity disorder or transsexualism is a pre-condition for accessing the medical interventions or treatments for transgender persons, and thus arguably it would be a practical means to distinguish transgender people from other minority groups if it is decided that a gender recognition scheme is intended to address the problems facing transgender persons.

##### *(2) Diagnosis being the “gatekeeper”*<sup>33</sup>

42. Medical diagnosis is usually the very first step in legally or administratively determining whether a person belongs to a gender other than his or her sex assigned at birth. Moreover, medical diagnosis is arguably a reliable determinant of one’s gender identity with the use of international classification standards, such as ICD and DSM guidelines. It has been argued that setting a pre-condition of medical diagnosis for gender recognition would likely reduce the risks of fraud or misuse of the scheme by people who should not be entitled to the protection under it.

##### *(3) Prevalence of overseas models*<sup>34</sup>

43. A requirement that an applicant for gender recognition has to

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31 Issue for Consultation 1: see Chapter 5 of the Consultation Paper, following para 5.49; Chapter 10 of the Consultation Paper, at 245; and the Annex to this Executive Summary, at 29.

32 See Chapter 6 of the Consultation Paper, at paras 6.3 to 6.5.

33 See Chapter 6 of the Consultation Paper, at paras 6.6 to 6.7.

34 See Chapter 6 of the Consultation Paper, at para 6.8.

prove that he or she has, or has had, gender dysphoria, gender identity disorder or transsexualism has been expressly adopted in many jurisdictions. In some jurisdictions, the regime requires proof by psychiatrists and/or psychologists as regards the applicant's gender identity or an irreversible conviction of belonging to another gender.

### Arguments against

44. The arguments against having a requirement of a medical diagnosis, discussed in Chapter 6, are set out below.

#### *(1) Possibility of misdiagnosis<sup>35</sup>*

45. The requirement of a medical diagnosis for gender recognition relies heavily on the decisions of psychologists or psychiatrists. There have been studies which have demonstrated that some people, especially children, originally diagnosed as having gender dysphoria or gender identity disorder might later turn out to be gay or lesbian persons instead. Psychological or psychiatric misdiagnosis in this context may occur for various reasons, and some people argue that relying on a medical diagnosis for gender recognition may lead to a flawed or discredited system.

#### *(2) Self-determination being a human right<sup>36</sup>*

46. It has been argued that proof of medical diagnosis should not be a pre-condition for gender recognition because persons of diverse gender identities should enjoy the rights to autonomy and self-determination. Under this argument, a self-declaration scheme without any requirement of medical diagnosis and intervention is therefore considered a good example, as showing respect for an individual's autonomy, self-determination and human dignity.

#### *(3) Growing trend of de-psychopathologisation of transsexualism and transgenderism<sup>37</sup>*

47. A growing number of people have been advocating for "*de-psychopathologisation*" of transsexualism and transgenderism in order to remove the stigma attached to a person whose gender identity is different from his or her birth sex. It has been argued that diagnosis requirements may have similar stigmatising effects.

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35 See Chapter 6 of the Consultation Paper, at paras 6.9 to 6.11.

36 See Chapter 6 of the Consultation Paper, at paras 6.12 to 6.13.

37 See Chapter 6 of the Consultation Paper, at paras 6.14 to 6.18.

## Requirement of real life test<sup>38</sup>

### Arguments in support

#### (1) *Helps confirm the applicant really has gender dysphoria*<sup>39</sup>

48. An argument in support of having a “*real life test*” requirement is that a reasonable period of real life experience of living in the preferred gender may help an applicant for gender recognition to identify whether they are really experiencing gender dysphoria or whether they may experience other psychiatric disorders or be experiencing other gender-related issues. (Currently, a two-year real life test is a precondition to assess whether a patient could undergo SRS in Hong Kong.)

#### (2) *Helps confirm that the applicant will remain living in the preferred gender*<sup>40</sup>

49. It has also been argued that a requirement of a real life test may serve as strong evidence to show that an applicant for gender recognition is unlikely to change his or her decision to live in the preferred gender.

### Arguments against

#### (1) *Difficulties with long-term observation*<sup>41</sup>

50. On the other hand, the arguments against having a requirement of a “*real life test*” include the contention that the test could be inaccurate and/or biased, given the difficulties in observing the behaviour of a person undergoing the test over a long period of time.

#### (2) *May appear to require accentuated version of preferred gender*<sup>42</sup>

51. Such a requirement may also cause transgender persons to feel obliged to express an accentuated version of their preferred gender prior to obtaining official recognition. It may be the case that they would prefer to change their appearance more gradually, in order not to jeopardise their employment situation, etc.

#### (3) *May presuppose validity and necessity of medical intervention requirements*<sup>43</sup>

52. Further, it has been argued that imposing a real life test requirement may presuppose the validity and necessity of medical intervention

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38 See Chapter 6 of the Consultation Paper, at paras 6.19 to 6.25.

39 See Chapter 6 of the Consultation Paper, at paras 6.19 to 6.20.

40 See Chapter 6 of the Consultation Paper, at para 6.21.

41 See Chapter 6 of the Consultation Paper, at para 6.22.

42 See Chapter 6 of the Consultation Paper, at para 6.24.

43 See Chapter 6 of the Consultation Paper, at para 6.25.

requirements which are regarded by some people as a violation of the fundamental rights of the persons concerned.

Requirement for hormonal treatment<sup>44</sup>

Arguments in support

(1) *Usually part of treatment for gender dysphoria*<sup>45</sup>

53. The arguments in support of having a requirement for hormonal treatment include the contention that hormonal therapy is usually medically necessary to alleviate gender identity disorder or gender dysphoria, and is normally part of the procedures for treating persons with these conditions, and thus having hormonal treatment as a requirement for gender recognition is considered natural and reasonable.

(2) *May be “halfway house solution” if SRS not required*<sup>46</sup>

54. Some people might find requiring hormonal treatment as a minimum to be a “*halfway house solution*” between a self-determination scheme and a scheme based upon full SRS. In case SRS is not required under a gender recognition scheme, a requirement for hormonal treatment may arguably provide an additional ‘safeguard’ to prevent an applicant from reverting back from their affirmed gender identity once changed.

Arguments against

(1) *May not be preferred or medically necessary*<sup>47</sup>

55. On the other hand, the arguments against having a hormonal treatment requirement for gender recognition include the contention that not all transgender persons need or wish to receive hormonal treatment.

(2) *Can have serious side-effects*<sup>48</sup>

56. Hormone therapy may involve side-effects, aggravating effects and contraindications which may prejudice the health of the person concerned.

(3) *May be violation of human rights*<sup>49</sup>

57. Further, it has been argued that any requirement of unwanted medical intervention in order to obtain recognition of preferred gender is a violation of the fundamental human rights of the persons concerned, particularly their right to physical integrity and private autonomy.

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44 See Chapter 6 of the Consultation Paper, at paras 6.26 to 6.32.

45 See Chapter 6 of the Consultation Paper, at para 6.26.

46 See Chapter 6 of the Consultation Paper, at paras 6.27 to 6.28.

47 See Chapter 6 of the Consultation Paper, at paras 6.29 to 6.31.

48 See Chapter 6 of the Consultation Paper, at paras 6.29 to 6.31.

49 See Chapter 6 of the Consultation Paper, at para 6.32.

### Requirement of SRS

58. SRS generally refers to the surgical treatment undertaken by transsexual or transgender persons, usually with the effect of reconstructing and/or reassigning a person's body into the gender which they desire or prefer.

#### Arguments in support

59. The arguments in support of having a requirement for an applicant to have undergone SRS for gender recognition, as discussed in Chapter 6, are set out below.

##### *(1) Traditional values of parenthood and family<sup>50</sup>*

60. People who favour a SRS requirement for gender recognition may argue that any incongruence between a person's expressed gender (physical appearance) and his or her legal gender might cause anxiety to the general public, and a balance should be struck between individual rights and the public interest. Further, it has been argued that a scheme that does not impose a mandatory SRS requirement would cause confusion about the borderline for gender identity of "male" and "female" which would bring about multifarious social problems. Some people may also argue that the confusion of gender identity would adversely affect the development of children and traditional family values in the community.

##### *(2) Concerns about sex-specific facilities and situations<sup>51</sup>*

61. Concerns have been expressed regarding the use of sex-segregated public facilities (such as toilets and locker rooms in gyms) by pre-operative transgender persons according to their preferred gender. It has been argued further that sex-segregated institutions would need to ensure the privacy of other people and the prevention of possible sexual abuses and assaults.

##### *(3) SRS being a medical necessity<sup>52</sup>*

62. Some people contend that SRS is a medical necessity to treat gender dysphoria or gender identity disorder, and transgender people consciously agree to undergo SRS on the advice of their doctors and are not forced by anyone to do so. Therefore, some people take the view that the assertion that a SRS requirement for gender recognition would constitute torture or cruel, inhuman or degrading treatment is misconceived.

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50 See Chapter 6 of the Consultation Paper, at paras 6.36 to 6.40.

51 See Chapter 6 of the Consultation Paper, at paras 6.41 to 6.45.

52 See Chapter 6 of the Consultation Paper, at paras 6.46 to 6.48.

(4) *Permanence of the transition*<sup>53</sup>

63. It has been argued that a SRS requirement for gender recognition would ensure permanence or irreversibility of the transition, so that the applicants would not easily switch back to their original sex after legally changing their gender identity under the gender recognition scheme.

(5) *Concerns about possible fraud or security*<sup>54</sup>

64. A gender recognition scheme without a SRS requirement may give rise to fraudulent or dishonest changes of identity, and cause public security concerns or social chaos, as people may easily disguise their gender.

(6) *Overseas approaches*<sup>55</sup>

65. Requirements of surgery and sterilisation for gender recognition remain commonplace in many countries. Some people may argue that the SRS-based models adopted by Asian countries such as Singapore and Japan would have more reference value than the regimes of the European countries when considering a gender recognition scheme in Hong Kong.

Arguments against

66. Below are arguments discussed in Chapter 6 against a requirement for an applicant to have undergone SRS for gender recognition.

(1) *International trend towards a surgery-free model*<sup>56</sup>

67. In the past decade, there has been an emerging trend globally towards the elimination of surgical and sterilisation requirements for gender recognition. The courts in a number of jurisdictions have subjected medical intervention conditions to increasingly strict scrutiny, or have abolished the mandatory SRS requirements for legal gender recognition altogether on the grounds that such requirements are incompatible with the concept of physical integrity enshrined in the relevant national constitution or international human rights standards.

(2) *Human rights implications*<sup>57</sup>

68. In the view of various international human rights bodies and experts, the requirement of SRS as a precondition for legal gender recognition may constitute torture or cruel, inhuman or degrading treatment. It has been argued that involuntary, coerced and forced sterilisation should not be made a condition for access to social benefits including recognition of gender identity. Further, the SRS requirement has been challenged before courts and tribunals

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53 See Chapter 6 of the Consultation Paper, at paras 6.49 to 6.50.

54 See Chapter 6 of the Consultation Paper, at paras 6.51 to 6.52.

55 See Chapter 6 of the Consultation Paper, at paras 6.53 to 6.54.

56 See Chapter 6 of the Consultation Paper, at paras 6.55 to 6.57.

57 See Chapter 6 of the Consultation Paper, at paras 6.58 to 6.68.

in at least ten jurisdictions based on the right to personal or physical integrity of transgender persons, the right to private and family life, the right to non-discrimination, the right to recognition as a person before the law, and/or the right to the enjoyment of the highest attainable standard of physical and mental health.<sup>58</sup>

(3) *Psychiatric diagnosis which leads to SRS could be inaccurate*<sup>59</sup>

69. A surgical requirement for gender recognition would mean that transgender persons must undergo SRS in order to obtain legal gender recognition. If they were originally misdiagnosed to have experienced gender identity disorder or gender dysphoria, or they subsequently regretted having undergone SRS, there might not be any possibility for them to change back to their biological sex under the scheme, as SRS already performed is in most cases irreversible.

(4) *SRS not a medical necessity*<sup>60</sup>

70. For some transgender persons, SRS is only one of a range of possible treatment options, and some may find it unnecessary or undesirable, or even not medically possible due to various medical, personal or practical reasons. A gender recognition scheme which imposes a SRS prerequisite may compel these transgender persons to decide between honouring their personal preference and undergoing unwanted surgery to obtain legal gender recognition.

(5) *Fraud or security concerns not evidentially supported*<sup>61</sup>

71. Regarding the concerns about security or privacy in sex-segregated public facilities, some may observe that there is little evidence that transgender individuals present a security risk to other users in public bathrooms and changing rooms. It has been argued that on a daily basis and in almost all social situations, a person's genitals remain entirely private, even inside sex-segregated facilities or in work situations where a person is performing gender-specific duties. The existence of a gender recognition law would not make it legal to commit sexual assault or other sexually related crimes in public facilities. It has been argued that potential abuse of legal gender recognition simply needs to be monitored like all other potential abuses.

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58 A summary of some recent case-law is set out in Annex C of the Consultation Paper for reference purposes only.

59 See Chapter 6 of the Consultation Paper, at paras 6.69 to 6.73.

60 See Chapter 6 of the Consultation Paper, at paras 6.74 to 6.82.

61 See Chapter 6 of the Consultation Paper, at paras 6.83 to 6.88.

Recognising SRS performed overseas<sup>62</sup>

Arguments for

72. If SRS were to be adopted as a pre-condition for gender recognition, a question arises as to whether SRS performed overseas should be recognised. For transgender applicants who would like to go through, or have already gone through, relevant surgical procedures overseas during gender transition, and who plan to obtain gender recognition at a later date, the acceptance in Hong Kong of evidence of SRS undertaken overseas could arguably provide more flexibility.

Arguments against

73. On the other hand, a counter-argument is that it may be difficult to ascertain the degree of completion of SRS performed abroad without a reassessment by a local Hong Kong medical practitioner, which might be deemed an undue intrusion into privacy by the applicant concerned.

Views being sought in the current consultation

74. Given the broad-ranging and different views in this area, the IWG welcomes feedback from the public on matters relating to having all or any of requirements discussed, including requirements of a medical diagnosis,<sup>63</sup> “real life test”,<sup>64</sup> hormonal treatment,<sup>65</sup> SRS<sup>66</sup> and other medical requirements<sup>67</sup> (eg, psychotherapy<sup>68</sup>) for gender recognition. (These issues for consultation are set out in Chapter 6 and summarised in Chapter 10 of the Consultation Paper, as well as in the Annex to this Executive Summary.<sup>69</sup>)

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62 See Chapter 6 of the Consultation Paper, at paras 6.89 to 6.92.

63 Issue for Consultation 2: see Chapter 6 of the Consultation Paper, following para 6.18; Chapter 10 of the Consultation Paper, at 245; and Annex to this Executive Summary, at 29.

64 Issue for Consultation 3: see Chapter 6 of the Consultation Paper, following para 6.25; Chapter 10 of the Consultation Paper, at 245; and Annex to this Executive Summary, at 29.

65 Issue for Consultation 4: see Chapter 6 of the Consultation Paper, following para 6.34; Chapter 10 of the Consultation Paper, at 246; and Annex to this Executive Summary, at 30.

66 Issue for Consultation 5: see Chapter 6 of the Consultation Paper, following para 6.93; Chapter 10 of the Consultation Paper, at 246; and Annex to this Executive Summary, at 30.

67 Issue for Consultation 6: see Chapter 6 of the Consultation Paper, following para 6.94; Chapter 10 of the Consultation Paper, at 247; and Annex to this Executive Summary, at 31.

68 See Issues for Consultation 4 and 6. See Chapter 6 of the Consultation Paper, following paras 6.34 and 6.94, respectively; Chapter 10 of the Consultation Paper, at 246 and 247; and Annex to this Executive Summary, at 30 and 31. (We understand that psychotherapy is considered as a mainstay of care for adult patients diagnosed with gender dysphoria or gender identity disorder. While we have not elaborated in this Consultation Paper on arguments in support or against requirements for this type of treatment should a gender recognition scheme be introduced in Hong Kong, we would welcome views on this also.)

69 Issues for Consultation 2 to 6: see Chapter 6 of the Consultation Paper, following



## ***Non-medical requirements for gender recognition (Chapter 7)***

75. Chapter 7 discusses arguments both in support of and against various possible non-medical requirements for a gender recognition scheme, should one be introduced. These include requirements as to: nationality, citizenship, residency or domicile; minimum age; marital status; and parental status. In the interests of clarity, the IWG reiterates paragraph 19 above as its position regarding the arguments presented in Chapter 7, which are summarised below.

### *Requirements relating to nationality, citizenship, residency or domicile*<sup>70</sup>

76. If a gender recognition scheme were to be introduced in Hong Kong, one consideration would be whether the scheme should impose requirements on the applicants with regard to their legal position or civil status such as nationality, citizenship, residency, domicile, etc. In this context, there is no unified approach adopted by overseas jurisdictions.

77. In order to determine which requirement(s) (nationality, citizenship, residence or domicile) should apply under a gender recognition scheme, the rules of conflict of laws (an area of the law which deals with cases having a foreign element) should be taken into account. Based on our research so far, there appears to be little reference to the subject of gender recognition in this context.

78. Nationality, citizenship, residency and domicile are examples of “*connecting factors*”, a technical term frequently used in the conflict of laws context denoting the circumstances that create linkage between, *inter alia*, a person and a country. If a gender recognition scheme were to be introduced, it is arguable that Hong Kong would be entitled to determine which of these connecting factors should be applicable under its scheme, if any such factors were deemed necessary.

79. Chapter 7 sets out the general principles relating to the different types of connecting factors and their applicability under various Hong Kong laws, with a view to help determine which connecting factor(s), if any, may be the most suitable for a gender recognition scheme in Hong Kong.<sup>71</sup>

### *Minimum age requirement*<sup>72</sup>

#### *Arguments in support*

80. The arguments in support of having a minimum age requirement for gender recognition which are canvassed in Chapter 7 include: (i) medical interventions for legal gender recognition procedures are usually age-sensitive;

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paras 6.18, 6.25, 6.34, 6.93 and 6.94, respectively; Chapter 10 of the Consultation Paper, at 290 to 292; and Annex to this Executive Summary, at 29 to 31.

70 See Chapter 7 of the Consultation Paper, at paras 7.3 to 7.34.

71 See Chapter 7 of the Consultation Paper, at paras 7.17 to 7.34.

72 See Chapter 7 of the Consultation Paper, at paras 7.35 to 7.45.

(ii) gender recognition is an important decision that a person has to be mature enough to make independently; and (iii) there are medical observations that gender dysphoria during childhood does not inevitably continue into adulthood.

#### Arguments against

81. On the other hand, counter-arguments include: (i) any age limit for gender recognition would be an arbitrary one, which may have implications on the applicant's right to non-discrimination on the grounds of age; (ii) children should have the right to preserve their identity as recognised by law without unlawful interference; and (iii) transgender children are able to express a consistent gender identity.

#### Requirement related to marital status<sup>73</sup>

##### Arguments in support

82. A key argument made in support of having a requirement that an applicant for gender recognition should be unmarried or divorced is that such a requirement is necessary to avoid the situation where the transition of a spouse converts a heterosexual marriage into a same-sex marriage.

##### Arguments against

83. Counter-arguments against having such a requirement include: (i) as persons are permitted undergo SRS in Hong Kong while married, it would be illogical to then require them to divorce in order to obtain gender recognition; (ii) a marital status requirement for gender recognition might constitute an infringement of an applicant's rights to marry and to found a family, and to respect for private and family life, and their right to recognition before the law; and (iii) forced divorce might lead to other hardships on family life (eg, issues concerning custody of children of the family).

#### Requirement related to parental status<sup>74</sup>

84. A requirement concerning parental status for gender recognition is not very common around the globe, and a stricter requirement, that an applicant must be "childless", is rarer.

##### Arguments in support

85. The main argument which has been put forward in support of this requirement is that granting gender recognition to a person who has a child might disturb the family order and the traditional concept of "family", and/or have an adverse impact on the child's welfare and his or her relationship with the parents.

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73 See Chapter 7 of the Consultation Paper, at paras 7.46 to 7.63.

74 See Chapter 7 of the Consultation Paper, at paras 7.64 to 7.73.

### Arguments against

86. On the other hand, the “childless” requirement has been criticised for being based on negative and stereotypical attitudes toward transgender people. This requirement might also have implications for a person’s right to respect for private life.

87. If, rather than requiring the applicant to be childless, the requirement is that the applicant has no child below a certain age, this is arguably more acceptable from the standpoint of striking a balance between child welfare and the self-determination of transgender persons. Nonetheless, the requirement of the absence of minor children is still considered as excessively strict by some, on the basis that it restricts the right to self-determination, and does not respect the individual dignity of, transgender persons.

### Recognition of foreign gender change<sup>75</sup>

88. As observed in Chapter 7, domestic recognition of a change of gender which has been legally recognised in a foreign jurisdiction is an issue within the context of conflict of laws, and as such, it is arguable that domestic recognition of the foreign gender change should be allowed when it is not inconsistent with the fundamental public policy of the domestic law and does not represent a serious infringement of human rights. To not provide this type of recognition might lead to cross-border administrative confusion due to different gender identities being stated on a transgender person’s identity documents issued by different jurisdictions.

89. If recognition of foreign gender change is to be allowed in Hong Kong, the next question is whether the foreign countries and territories to which this would apply should be limited to those which have certain requirements for gender recognition. This issue would hinge upon how a gender recognition scheme for Hong Kong is formulated, and what pre-conditions for gender recognition may be provided under the scheme.

### Views being sought in the current consultation

90. In light of the discussion on the various issues above, the IWG welcomes views from the public on possible non-medical requirements for gender recognition, including those related to: nationality, citizenship, residency or domicile;<sup>76</sup> minimum age;<sup>77</sup> marital status;<sup>78</sup> parental status;<sup>79</sup>

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75 See Chapter 7 of the Consultation Paper, at paras 7.74 to 7.87.

76 Issue for Consultation 7: see Chapter 7 of the Consultation Paper, following para 7.34; Chapter 10 of the Consultation Paper, at 247; and Annex to this Executive Summary, at 31.

77 Issue for Consultation 8: see Chapter 7 of the Consultation Paper, following para 7.45; Chapter 10 of the Consultation Paper, at 248; and Annex to this Executive Summary, at 31.

78 Issue for Consultation 9: see Chapter 7 of the Consultation Paper, following para 7.63; Chapter 10 of the Consultation Paper, at 248; and Annex to this Executive Summary, at 31.

and recognition of foreign gender recognition in Hong Kong.<sup>80</sup> Views are also sought on whether any other non-medical requirements would be appropriate.<sup>81</sup> (These issues for consultation are set out in Chapter 7 and summarised in Chapter 10 of the Consultation Paper, as well as in the Annex to this Executive Summary.<sup>82</sup>)

### ***Options for a gender recognition scheme (Chapter 8)***

91. Chapter 8 discusses different types of gender recognition schemes and examines the possible arguments for and against the adoption of any of these models for Hong Kong. In the interest of clarity, the IWG reiterates paragraph 19 above as its position regarding the arguments presented in Chapter 8, which are summarised below.

#### *An administrative scheme vs a legislative scheme*<sup>83</sup>

92. The first part of the discussion in Chapter 8 contrasts the possible advantages and disadvantages of an administrative scheme model with a legislative scheme model for gender recognition.

#### *An administrative scheme for gender recognition*

##### *Arguments in support*

93. It is observed that an administrative scheme might involve maintaining or improving on the existing administrative measures for amending the sex entry on the HKIC. An argument in support of this option is that it would be a simpler and less costly approach than a legislative scheme option (discussed below). It might also be more suitable for Hong Kong, given that a HKIC is the major identification document applicable to most people in their daily lives.

##### *Arguments against*

94. However, an argument against an administrative scheme is that it may not have the effect of recognising the applicant's acquired gender for all legal purposes, leading to possible confusion of legal status in some circumstances and further litigation.

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79 Issue for Consultation 10: see Chapter 7 of the Consultation Paper, following para 7.73; Chapter 10 of the Consultation Paper, at 249; and Annex to this Executive Summary, at 32.

80 Issue for Consultation 11: see Chapter 7 of the Consultation Paper, following para 7.87; Chapter 10 of the Consultation Paper, at 249; and Annex to this Executive Summary, at 33.

81 Issue for Consultation 12: see Chapter 7 of the Consultation Paper, following para 7.88; Chapter 10 of the Consultation Paper, at 250; and Annex to this Executive Summary, at 34.

82 See Issues for Consultation 7 to 12. See Chapter 7 of the Consultation Paper, following paras 7.34, 7.45, 7.63, 7.73, 7.87 and 7.88, respectively; Chapter 10 of the Consultation Paper, at 292 to 295; and Annex to this Executive Summary, at 31 to 34.

83 See Chapter 8 of the Consultation Paper, at paras 8.5 to 8.10.

## *A legislative scheme for gender recognition*

### *Arguments in support*

95. A major argument in support of having a legislative scheme (such as a fully-fledged Gender Recognition Ordinance) is that it can provide legal certainty and deal with complex issues concerning the status of transgender persons for all legal purposes without the need to separately amend a substantial number of Hong Kong's gender-specific legislative provisions.

### *Arguments against*

96. On the other hand, possible arguments against having a legislative scheme for gender recognition is that it may take some time to enact and to implement, and, depending on the precise features of the model adopted, may involve the setting up of a panel or a board for determination of gender recognition applications. This would arguably be costly and might be subject to practical problems, such as a shortage of expertise in this area and difficulties in obtaining the services of those with expertise to sit on the panel or board.

## *Possibility of adopting the UK or another jurisdiction's model*<sup>84</sup>

### *Arguments in support*

97. The CFA in *W's* case described the UK gender recognition scheme as a "*compelling model*" for consideration, with its clear and transparent procedures for legal recognition, and its broad scope covering also post-recognition issues. It has been argued that the UK model represents a realistic approach for Hong Kong, given that it is likely to be "*too far-fetched*" to expect the Hong Kong community to accept a self-determination model for gender recognition at this stage.

### *Arguments against*

98. However, on the other hand it has been observed that the laws in the UK and Hong Kong are different in significant respects; in particular, that the UK law has legalised civil unions and same-sex marriage whereas no similar laws have been passed in Hong Kong. Therefore, if legislation along the lines of the UK model were to be adopted in Hong Kong, certain modifications might have to be made (eg, in relation to the provisions relating to marital status of the applicants).

## *The decision-making authority*<sup>85</sup>

99. It has been argued that a specific authority resembling the UK Gender Recognition Panel, which would make an assessment on whether

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84 See Chapter 8 of the Consultation Paper, at paras 8.11 to 8.16.

85 See Chapter 8 of the Consultation Paper, at paras 8.17 to 8.20.

recognition should be granted based on the evidence submitted by the applicants for gender recognition, could serve as a “*gate-keeper*” to safeguard against premature or frivolous applications being made. However, a potential obstacle to establishing this type of authority is the foreseeable difficulty of engaging sufficient medical experts with expertise in the field of transgenderism to sit on such an authority.

#### A “*dual-track*” gender recognition scheme<sup>86</sup>

100. Another possible option to deal with applications for gender recognition is to implement a “*dual-track*” system, providing two different sets of procedures with: (a) different criteria for gender recognition (eg, SRS being a compulsory requirement under one track, while the other allows less stringent qualifications); and/or (b) different legal consequences arising from the different application tracks (eg, gender recognition granted for all or partial legal purposes under one track, or with changes of gender marker on different identification documents under another track). Various hypothetical dual-track models are set out in Chapter 8<sup>87</sup> as examples of how a dual-track model might work. For clarification, the hypothetical models are for illustration only and do not represent the IWG’s stance or preferences regarding any of them.

#### *Arguments in support*

101. Such a system may be able to provide flexibility to applicants with different personal circumstances and needs, and would constitute a “*halfway house*” between liberal and more restrictive approaches to requirements for gender recognition.

#### *Arguments against*

102. In terms of counter-arguments, there may be doubts about the practicality of a halfway house approach, because of the risk of the relatively easier track being overwhelmingly utilised while the more strict track(s) become redundant. Also, because of having different application tracks with different legal outcomes, this may cause more gender confusion in society, and consequential legal issues could arise from this.

#### *Views being sought in the current consultation*

103. The IWG welcomes any comments or views from the public on the various models and related issues discussed, including: the type of gender recognition scheme;<sup>88</sup> possible adoption of the UK or another jurisdiction’s gender recognition model;<sup>89</sup> the authority to determine applications for gender

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86 See Chapter 8 of the Consultation Paper, at paras 8.21 to 8.34.

87 See Chapter 8 of the Consultation Paper, at paras 8.26 to 8.34.

88 Issue for Consultation 13: see Chapter 8 of the Consultation Paper, following para 8.10; Chapter 10 of the Consultation Paper, at 250; and Annex to this Executive Summary, at 34.

89 Issue for Consultation 14: see Chapter 8 of the Consultation Paper, following para

recognition;<sup>90</sup> a possible dual-track gender recognition scheme;<sup>91</sup> and any other form of proposed gender recognition model. (The relevant issues for consultation are set out in Chapter 8 and summarised in Chapter 10 of the Consultation Paper, as well as in the Annex to this Executive Summary.<sup>92</sup>)

### ***Other related matters (Chapter 9)***

104. Chapter 9 provides general information and discussion on two other related issues: (1) the alteration of an applicant's birth certificate following gender recognition; and (2) protection of gender history. As these matters are considered to be "*post-recognition*" issues pertaining to the effect of a recognised change of legal gender, the Consultation Paper does not pose specific questions on these topics for consultation. Nonetheless, the IWG would welcome views from the public on any issues arising from these matters. In the interest of clarity, the IWG reiterates paragraph 19 above as its position regarding the arguments presented in Chapter 9, which are summarised below.

#### *Alteration of birth certificate following gender recognition*<sup>93</sup>

##### *Arguments in support*

105. With regard to the possibility of allowing alteration of a transgender person's birth certificate following recognition, arguments which have been made in support of such a proposal include: (i) the inability of transgender persons to change their birth certificates would cause their biological sex to be revealed against their wishes whenever they are required to produce their birth certificate, which would arguably make them vulnerable to prejudice and discrimination; and (ii) as there is already a mechanism in place under our current law to permit the alteration of birth certificates, the assertion that the function and integrity of the birth record system would be undermined if transgender persons are allowed to alter their birth certificates is misconceived.

##### *Arguments against*

106. On the other hand, the arguments against this proposal which are referred to in Chapter 9 include: (i) allowing changes to the historical record would undermine the function and integrity of the birth record system; (ii)

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8.16; Chapter 10 of the Consultation Paper, at 250; and Annex to this Executive Summary, at 34.

90 Issue for Consultation 15: see Chapter 8 of the Consultation Paper, following para 8.20; Chapter 10 of the Consultation Paper, at 251; and Annex to this Executive Summary, at 35.

91 Issue for Consultation 16: see Chapter 8 of the Consultation Paper, following para 8.35; Chapter 10 of the Consultation Paper, at 251; and Annex to this Executive Summary, at 35.

92 See Issues for Consultation 13 to 16. See Chapter 8 of the Consultation Paper, following paras 8.10, 8.16, 8.20 and 8.35, respectively; Chapter 10 of the Consultation Paper, at 295 to 296; and Annex to this Executive Summary, at 34 to 35.

93 See Chapter 9 of the Consultation Paper, at paras 9.6 to 9.15 and 9.23.

verification of a transgender person's original sex could prevent forgery cases; and (iii) there are medical reasons for keeping the birth gender marker intact.

Protection of gender history<sup>94</sup>

107. The considerations on whether or not to permit history of gender change to be searched and disclosed may have implications on the right to privacy guaranteed under Article 14 of the Hong Kong Bill of Rights. Some people may desire to keep information about their transgender status as private information. On the other hand, there might be situations where disclosure of a transgender person's gender history would be necessary for legal or policy reasons or for the sake of the public interest, even though the consent for disclosure of the person concerned is not obtained.

## **Consultation**

108. It is evident from the research presented in the IWG's Consultation Paper that there is no single uniform approach around the world to the procedure of gender recognition and the complex issues that it raises. On the one hand, there are serious medical, social and legal issues at stake for those diagnosed of having gender dysphoria which need to be tackled; on the other hand, some groups and individuals have expressed concerns about the impact of possible legislation in this area, and the wider consequences for the community of legal recognition of gender change.

109. Before finalising its recommendations in this area, the IWG wishes to invite members of the public to express their views on the issues set out in Chapters 5 to 9, and summarised in Chapter 10, of the Consultation Paper. The summary of issues is also appended to this Executive Summary (see Annex).

110. We would also welcome any views, comments or suggestions on any other matters discussed in the Consultation Paper.

111. The consultation period will last until 31 October 2017.

Secretariat  
Inter-departmental Working Group  
on Gender Recognition  
June 2017

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94 See Chapter 9 of the Consultation Paper, at paras 9.16 to 9.22.



## SUMMARY OF ISSUES FOR CONSULTATION

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### **Issue 1: Whether a gender recognition scheme should be introduced in Hong Kong (see near paragraph 5.49)**

We invite views from the public on whether a gender recognition scheme should be introduced in Hong Kong to enable a person to acquire a legally recognised gender other than his or her birth gender.

### **Issue 2: Requirement of medical diagnosis for gender recognition (see near paragraph 6.18)**

We invite views from the public on the following matters:

- (1) In the event that a gender recognition scheme is to be introduced in Hong Kong, whether there should be a requirement of a medical diagnosis of, for example, gender dysphoria or gender identity disorder, for gender recognition, and why.
- (2) If the answer to sub-paragraph (1) is “yes”, what kind of evidence should be provided by an applicant for gender recognition.

### **Issue 3: Requirement of “*real life test*” for gender recognition (see near paragraph 6.25)**

We invite views from the public on the following matters:

- (1) In the event that a gender recognition scheme is to be introduced in Hong Kong, whether there should be a requirement of “*real life test*” for gender recognition, and why.
- (2) If the answer to sub-paragraph (1) is “yes”,
  - (a) what should an applicant for gender recognition have undertaken in order to satisfy a requirement that he or she has undergone a “*real life test*”;
  - (b) what should be the duration of a “*real life test*”; and
  - (c) what kind of evidence should be provided by an applicant for gender recognition to show that he or she has undergone a “*real life test*” for the specified duration.

- (3) In the event that a gender recognition scheme is to be introduced in Hong Kong, whether there should be a requirement of intention on the part of the applicant to live permanently the acquired gender, and why.
- (4) If the answer to sub-paragraph (3) is “yes”, what kind of evidence should be required.

**Issue 4: Requirement of hormonal treatment and psychotherapy for gender recognition (near paragraph 6.34)**

We invite views from the public on the following matters:

- (1) In the event that a gender recognition scheme is to be introduced in Hong Kong, whether there should be a requirement for hormonal treatment and/or other medical treatment(s) (eg, psychotherapy) for gender recognition, and why.
- (2) If the answer to sub-paragraph (1) is “yes”,
  - (a) what kind of treatment(s) should be required and/or to what effect the should the treatment(s) achieve; and
  - (b) what kind of evidence should an applicant for gender recognition provide on this.

**Issue 5: Requirement of SRS and other surgical treatments for gender recognition (near paragraph 6.93)**

We invite views from the public on the following matters:

- (1) Insofar as the practice in Hong Kong is concerned, full sex reassignment surgery requires removal of the original genital organs and construction of some form of genital organs of the opposite sex. In the event that a gender recognition scheme is to be introduced in Hong Kong, should there be a requirement for the applicant to have undergone partial/full sex reassignment surgery, and if so, why?
- (2) If the answer to sub-paragraph (1) is “yes”,
  - (a) regarding the extent of the surgery required, whether there should be a requirement of full sex reassignment surgery as currently adopted in Hong Kong, and why;
  - (b) if the answer to sub-paragraph (a) is “no”, what type of partial sex reassignment surgery (ie the extent of the partial surgery)

would be sufficient, and why;

- (c) other than a partial/full sex reassignment surgery, what kind of surgery should be required (including non-genital surgery such as plastic surgery, reconstruction of chest, etc), and why;
- (d) what kind of evidence in this respect should be provided by an applicant for gender recognition;
- (e) whether sex reassignment surgery carried out in a country or territory outside Hong Kong should be recognised in Hong Kong for the purposes of gender recognition, and why; and
- (f) if the answer to sub-paragraph (e) is “yes”, what kind of evidence should be provided by the applicant.

### **Issue 6: Requirement of other medical treatments for gender recognition (near paragraph 6.94)**

We invite views from the public on the following matters:

- (1) In the event that a gender recognition scheme is to be introduced in Hong Kong, whether there should be any other medical requirements for gender recognition, and why.
- (2) If the answer to sub-paragraph (1) is “yes”, what kind of further evidence in this regard should be required.

### **Issue 7: Residency requirement for gender recognition (near paragraph 7.34)**

We invite views from the public on (in the event that a gender recognition scheme is to be introduced in Hong Kong) whether the scheme should be open to, for example, permanent residents of Hong Kong, non-permanent residents, and/or any other persons (such as visitors), and why.

### **Issue 8: Age requirement for gender recognition (near paragraph 7.45)**

We invite views from the public on the following matters:

- (1) In the event that a gender recognition scheme is to be introduced in Hong Kong, whether there should be a minimum age requirement for applying for gender recognition.
- (2) If the answer to sub-paragraph (1) is “yes”, what should be the

minimum age for the application: 12 years of age, 18 years of age, 21 years of age or another age; and the basis for choosing that age as the minimum age for the application.

- (3) If the answer to sub-paragraph (1) is “no”,
- (a) whether a minor (under the age of 18 years)<sup>95</sup> should not be allowed to make an application unless with the consent of his or her parents and/or legal guardians, and why;
  - (b) whether there should be additional requirements for a minor applicant which would not be required for an adult applicant, and why; and
  - (c) if the answer to sub-paragraph (b) is “yes”, what kind of requirement(s) and evidence should be required.

### **Issue 9: Marital status requirement for gender recognition (near paragraph 7.63)**

We invite views from the public on the following matters:

- (1) In the event that a gender recognition scheme is to be introduced in Hong Kong, whether there should be requirements relating to marital status of the applicant, and why.
- (2) If the answer to sub-paragraph (1) is “yes”,
  - (a) whether an applicant for gender recognition should be unmarried or divorced before making an application, and why;
  - (b) if the answer to sub-paragraph (a) is “no”, whether a married applicant should be granted only an *interim* gender recognition status, which may be a new basis for dissolution of marriage in Hong Kong, and why; and
  - (c) whether a full gender recognition status should be granted to a married applicant only after his or her marriage has been dissolved or his or her spouse dies, and why.

### **Issue 10: Parental status requirement for gender recognition (near paragraph 7.73)**

We invite views from the public on the following matters:

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95 The definition of “*minor*” is provided in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1).

- (1) In the event that a gender recognition scheme is to be introduced in Hong Kong, whether there should be requirements relating to parental status of the applicant, and why.
- (2) If the answer to sub-paragraph (1) is “yes”,
  - (a) whether an applicant for gender recognition should *not* be a father or mother of any child, no matter the age of the child, and why;
  - (b) whether an applicant for gender recognition should not be a father or mother of any child below a certain age limit, and why;
  - (c) if the answer to sub-paragraph (b) is “yes”, what the age limit should be, and why.

**Issue 11: Recognition of foreign gender change (near paragraph 7.87)**

We invite views from the public on the following matters:

- (1) In the event that a gender recognition scheme is to be introduced in Hong Kong, whether a gender change which is recognised under the law of a country or territory outside Hong Kong should be recognised in Hong Kong, and why.
- (2) If the answer to sub-paragraph (1) is “yes”,
  - (a) whether the relevant countries and territories outside Hong Kong should be limited to those having certain requirements for gender recognition, and why;
  - (b) if the answer to sub-paragraph (a) is “yes”, what should those requirements be;
  - (c) what kind of evidence should be required to demonstrate that the applicant has been legally recognised in his or her acquired gender in that particular country or territory; and
  - (d) what kind of connection between the applicant and the foreign country or territory (such as citizenship in the country or territory where the gender change was recognised) should be required.

## **Issue 12: Other possible non-medical requirements for gender recognition (near paragraph 7.88)**

We invite views from the public on the following matters:

- (1) In the event that a gender recognition scheme is to be introduced in Hong Kong, whether there should be any other non-medical requirement for gender recognition, and why.
- (2) If the answer to sub-paragraph (1) is “yes”, what kind of further evidence in this regard should be required.

## **Issue 13: Type of gender recognition scheme, if adopted (near paragraph 8.10)**

We invite views from the public on, in the event that a gender recognition scheme is to be introduced in Hong Kong, whether the scheme should be: (a) a legislative scheme, based on a (new) specific ordinance; (b) a judicial scheme, whereby issues related to gender recognition are considered by the courts on a case by case basis; (c) a scheme involving non-statutory, administrative measures only; or (d) a scheme comprising some combination of these approaches, and why.

## **Issue 14: Adopting a scheme similar to overseas gender recognition scheme (near paragraph 8.16)**

We invite views from the public on the following matters:

- (1) In the event that a gender recognition scheme is to be introduced in Hong Kong, whether the UK Gender Recognition Scheme is a suitable model to be adopted in Hong Kong, and why.
- (2) Whether there are any particular aspects of the UK model that should be adopted, or not adopted, or modified to suit the circumstances of Hong Kong, and why.
- (3) Whether another jurisdiction’s gender recognition scheme (or any particular feature or features of any such scheme) would be more suitable to be adopted in Hong Kong than the UK model, and why.
- (4) Whether there is any particular gender recognition scheme in another jurisdiction (or any particular feature or features of any such scheme) that should not be adopted in Hong Kong, and why.

## **Issue 15: Authority to determine applications for gender recognition (near paragraph 8.20)**

We invite views from the public on the following matters:

- (1) In the event that a gender recognition scheme is to be introduced in Hong Kong, whether the authority to determine applications for gender recognition should be a statutory body performing quasi-judicial or judicial functions (such as the UK's GRP), an administrative body, the courts, or any professional body, and why.
- (2) If an authority other than the courts in sub-paragraph (1) is opted for, whether there are any particular aspects of that type of authority that should be adopted, or *not* adopted, or modified to suit the circumstances of Hong Kong, and why.
- (3) If an authority other than an administrative body and the courts in paragraph (2) is opted for, what type of members should be on the authority (with regard to the composition of the authority to determine gender recognition applications). For example, whether medical experts, such as psychiatrists, psychologists and surgeons, lawyers, other type(s) of members (eg, social workers) and/or overseas experts should be included, and why.

## **Issue 16: Adopting a possible dual-track gender recognition scheme (near paragraph 8.35)**

We invite views from the public on the following matters:

- (1) In the event that a gender recognition scheme is to be introduced in Hong Kong, whether a dual-track gender recognition scheme should be introduced with differing requirements (so that, for example, one person seeking full gender recognition for all legal purposes would have to satisfy stricter medical requirements (eg, gender reassignment surgery), while another person wishing to have only the sex marker changed on their Identity Card could be required to satisfy less stringent requirements (eg, proof of "*real life test*" for a specific period).
- (2) If the answer to sub-paragraph (1) is "yes", what should be the model of the dual-track scheme, and why.
- (3) If the answer to sub-paragraph (1) is "no", why it is so.