

Submission on the Chief Executive's 2024 Policy Address

MAKING HONG KONG A FORWARD-THINKING, INCLUSIVE AND WELCOMING CITY OPEN FOR BUSINESS

Executive Summary

1. On 5 September 2023, the Court of Final Appeal in *Sham Tsz Kit v Secretary for Justice* held that the Government has a positive duty to legally recognize same-sex committed relationships under Article 14 of the Hong Kong Bill of Rights.¹ It also ordered the Government to come up with an alternative framework for the legal recognition of committed same-sex relationships by 27 October 2025 – a framework that could take the form of some new partnership legislation or, preferably, simply ending the exclusion of same-sex couples from marriage itself.
2. While the Court held that the inclusion of same-sex couples in marriage is not mandated under the Basic Law, the Chief Justice remarked that “it is up to the government and the legislature to decide whether to allow or recognize same-sex marriage under Hong Kong’s marriage and matrimonial legislation.”²
3. There is a proven, simple and cost-effective solution that the Government can easily implement. We can end the discrimination against same-sex couples by changing the current civil definition of marriage to “the lawful union of two persons to the exclusion of all others.”
4. Around the world, nearly 40 jurisdictions have ended the exclusion of same-sex couples from marriage – a number that increases every year. Many of these jurisdictions – including Brazil, Cuba, Greece, Nepal and Thailand – are traditional and religious. This suggests that traditional and religious values are compatible with marriage equality.
5. All major common law jurisdictions have already ended marriage discrimination.³ From a legal standpoint, Hong Kong can benefit from the experiences of these jurisdictions and more easily enact legislation that ends the exclusion of same-sex couples from marriage.
6. Marriage equality fosters social cohesion, reduces discrimination, improves the mental health of LGBT+ people, protects families and strengthens the institution of marriage. Furthermore, there is widespread public support; according to a

¹ *Sham Tsz Kit v Secretary for Justice* (05/09/2023, FACV14/2022) (2023) 26 HKCFAR 385, [2023] HKCFA 28 (https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=154774&currpage=T)

² *Sham Tsz Kit v Secretary for Justice* (05/09/2023, FACV14/2022) (2023) 26 HKCFAR 385, [2023] HKCFA 28, para. 4 (https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=154774&loc=p4)

³ Wolfson, Evan. “20 Years of Marriage Equality: A Mountain of Evidence, Expertise, and Experience.” *European Human Rights Review*, 2021, s3-us-west-2.amazonaws.com/ftm-assets/ftm/EHRLR_-_Wolfson_-_Issue_1_March_2021.pdf.

2023 survey, 60% of the population supports including same-sex couples within marriage, a record high.

7. Marriage equality benefits the economy by boosting tourism through destination weddings, attracting international talent and generating business through wedding-related services.
8. Creating a non-marriage marital status is a cumbersome process and does not offer complete protection. Furthermore, it will complicate matters for couples, businesses and society. “Every additional day of inconsistent marriage laws will cost the private sector [US]\$3.5 million,” according to a research report.⁴
9. Including committed same-sex couples in civil marriage will send a strong message to the world that Hong Kong is a stable, welcoming city that values social inclusion. As a result, Hong Kong’s international image and economic appeal will improve.
10. Therefore, Hong Kong Marriage Equality (HKME) strongly urges the Government to seize the opportunity to end the exclusion of same-sex couples from marriage.

The Social Case for Marriage Equality

11. The level of public support for marriage equality has steadily increased over the last decade. According to a report published in May 2023 by The University of Hong Kong, The Chinese University of Hong Kong and The University of North Carolina at Chapel Hill, “60% of Hong Kong people said they supported same-sex marriage, while only 17% said they were not supportive, and 23% were neutral. In comparison, 50.4% supported same-sex marriage in 2017, and 38% did so in 2013.”⁵ There are two notable facts: societal support for ending the denial of marriage increased by 22 percentage points over 10 years, while opposition remained below 20%. This suggests that including committed same-sex couples in civil marriage is not as controversial in society as some may claim.
12. The exclusion of same-sex couples from marriage causes significant harm and social disharmony. According to the World Health Organization, “the adoption of the 2030 Agenda for Sustainable Development...has reinforced the need to understand and improve the health and well-being of [LGBT+] people.”⁶ International research indicates that ending the exclusion of same-sex couples from marriage has improved the mental well-being of LGBT+ people. For instance, researchers found that marriage equality “significantly improved mental health of sexual minorities and substantially reduced the sexual orientation gap of

⁴ Kopansky, Katie, and Jerry Cacciotti. *The Cost of Inconsistency: Quantifying the Economic Burden to American Business from the Patchwork Quilt of Marriage Laws*. Marsh and McLennan Companies, Oct. 2014, [s3-us-west-2.amazonaws.com/ftm-assets/ftm/archive/files/Business_Case_-_Cost_of_Inconsistency_2014_\(1\).pdf](https://s3-us-west-2.amazonaws.com/ftm-assets/ftm/archive/files/Business_Case_-_Cost_of_Inconsistency_2014_(1).pdf).

⁵ “A Growing Share of Hong Kong People Support Same-Sex Couples’ Rights 60 Percent Support Same-Sex Marriage.” *HKU*, www.hku.hk/press/press-releases/detail/26113.html. <https://www.hku.hk/press/press-releases/detail/26113.html>.

⁶ “Improving LGBTIQ+ health and well-being with consideration for SOGIESC.” *WHO*, www.who.int/activities/improving-lgbtqi-health-and-well-being-with-consideration-for-sogiesc.

mental health. The beneficial effects were present for both married and non-married sexual minorities.”⁷ Furthermore, a new study published in June 2024 discovered that “when compared to unmarried couples, individuals in married same-sex relationships reported higher life satisfaction (+17%) and lower incidence of anxiety and depression symptoms (-8%) [in the United States].”⁸ The mental health of LGBT+ people in Hong Kong is well documented to be poor due to stigma and discrimination. As a result, it is reasonable to expect that if same-sex couples are able to marry in Hong Kong, it will have a positive impact on the mental health of LGBT+ people by sending a clear signal to society that discrimination against LGBT+ people is not acceptable.

13. Hong Kong is a diverse, multi-faith, secular society. The inclusion of committed same-sex couples in civil marriage is compatible with respect for religious freedom. Legislation for marriage equality could easily include appropriate exemptions so that churches and religious groups are not forced to perform religious marriages for same-sex couples if they choose not to (though those faiths that do wish to should be able to). In short, all citizens should be treated equally under the law, and nobody should use the law to impose their religious views on everyone else.
14. Historically, in Chinese culture, marriage was polygamous in nature. This aspect of the definition of marriage persisted in Hong Kong until 1971, when legislation was passed to outlaw the recognition of Chinese customary marriages. This law reform was done to protect the equality of women. As such, it is deceptive to claim that the definition of marriage in Hong Kong has always been the voluntary union of one man and one woman to the exclusion of others or that this definition was imposed to exclude same-sex couples. Our society is fully capable of accepting marriage for civil purposes as “the lawful union of two persons to the exclusion of all others.”
15. There is no evidence that including committed same-sex couples in civil marriage would disrupt social order. All of the evidence from other jurisdictions demonstrates the reverse is true. Since the Netherlands became the first country in the world to end the exclusion of same-sex couples from marriage in 2021, nearly 40 other countries and territories have followed suit. In every jurisdiction that has ended the exclusion, the institution of marriage remains strong and the sky has not fallen. According to a report by RAND and The University of California, Los Angeles, “over the 20 years that same-sex couples have been able to marry in the United States, there have been no negative effects on marriage, divorce or cohabitation among different-sex couples.”⁹ As a result, there is unrefuted evidence that ending the exclusion of same-sex couples from

⁷ Chen, Shuai and Jan C. Van Ours. “Mental Health Effects of Same-sex Marriage Legalization.” *Health Economics*, vol. 31, no. 1, Oct. 2021, pp. 42–56. <https://doi.org/10.1002/hec.4441>.

⁸ “New BCG Research Highlights How Marriage Equality Bolsters Wealth and Well-Being.” *Boston Consulting Group*, www.bcg.com/publications/2024/new-bcg-research-suggests-marriage-equality-bolsters-wealth-and-well-being.

⁹ “After 20 Years of Same-Sex Marriage, Research Finds No Harms to Different-Sex Couples; Growth for Overall Support of Marriage.” *RAND*, 13 May 2024, www.rand.org/news/press/2024/05/13/index1.html.

marriage in Hong Kong will promote social cohesion, which is consistent with the Government's policies and priorities.

The Economic Case for Marriage Equality

16. There is a compelling economic case for marriage equality. A major motivation for Thailand to include committed same-sex couples in civil marriage was to establish the country as an LGBT+ tourism hub, capitalizing on the potential economic windfall.¹⁰ According to the World Travel and Tourism Council, the global LGBT+ tourism market is worth over US\$200 billion annually.¹¹ Given that tourism is a major pillar of Hong Kong's economy, there are grounds to believe that ending the exclusion will boost the tourism and hospitality sectors, infusing vitality into the local economy.
17. The economic impact of marriage equality in the United States has been profound, as researchers estimated in May 2020 that "wedding spending by [same-sex] couples and their out-of-state guests has boosted state and local economies by an estimated [US]\$3.8 billion and generated an estimated [US]\$244.1 million in state and local sales tax revenue"¹² since ending the exclusion of same-sex couples from marriage in 2015. While Hong Kong's economy and tax system differ from those of the United States, the potential impact on the Hong Kong economy should not be underestimated, as newlywed couples tend to spend a significant amount of money on wedding-related services. This will benefit service providers, businesses and the entire economy.
18. Other research findings show that open and inclusive societies boost economic growth. According to Open for Business, "stronger financial performance flows from the increased ability of LGBT+ inclusive companies to attract and retain talent, to innovate, and to build customer loyalty and brand strength."¹³ Therefore, marriage equality will strengthen Hong Kong's reputation as an international financial centre that welcomes and embraces LGBT+ talent and their spouses. This is why over 110 leading companies and organizations have pledged to support the inclusion of same-sex couples in marriage in Hong Kong.¹⁴
19. In Hong Kong, there is ample data indicating the link between LGBT+ policies and the economy. For example, a five-year ethnographic case study found that "the legal recognition of same-sex relationships for immigration purposes is a decisive factor in whether same-sex couples decide to come to Hong Kong to

¹⁰ "Thailand Pushes to Become Asia's LGBTQIA+ Wedding Hub." *Khaosod English*, <https://www.khaosodenglish.com/featured/2024/04/25/thailand-pushes-to-become-asias-lgbtqia-wedding-hub>

¹¹ Breedan, Mackenzie. "Travelling With Pride — WTTC Travel Hub." *WTTC Travel Hub*, 8 July 2024, <travelhub.wttc.org/blog/travelling-with-pride>.

¹² The Williams Institute, UCLA School of Law. "The Economic Impact of Marriage Equality Five Years after Obergefell v. Hodges." *The Economic Impact of Marriage Equality Five Years After Obergefell V. Hodges*, May 2020, <williamsinstitute.law.ucla.edu/wp-content/uploads/Economic-Impact-SS-Marriage-May-2020.pdf>.

¹³ "The Economic and Business Case — Open for Business." *Open for Business*, <open-for-business.org/theeconomiccase>.

¹⁴ *Equal Love Hong Kong*. www.equallovehk.org.

work or eventually leave.”¹⁵ In another study published in 2021, it “found that 52.5% had considered leaving because of the lack of LGB-relevant social policies. It was found that more than half of the respondents had considered entering into same-sex marriage (55.0%) in Hong Kong or overseas. Most of the respondents considered same-sex marriage (88.6%) to be important or very important. Almost half of the respondents (48.0%) had considered leaving Hong Kong because same-sex marriage was not legalized or recognized in Hong Kong.”¹⁶

20. Hong Kong has always taken pride in its reputation for simplicity and efficiency. There is no reason why we should create a separate system that will cause confusion and increase compliance and administration costs.

International and Regional Experience

21. As of 31 August 2024, 39 jurisdictions have embraced marriage equality, the latest being Liechtenstein and Thailand. Among them, eight are common law jurisdictions, i.e. Australia, Canada, Ireland, Malta, New Zealand, South Africa, the United Kingdom and the United States. Hong Kong, as a common law jurisdiction, can easily draw on the precedents set by other common law jurisdictions when enacting inclusive marriage legislation.

22. It is frequently asserted that traditional values conflict with marriage equality, but this could not be further from the truth. Many of the 39 jurisdictions that have included committed same-sex couples in civil marriage are traditional and religious, including Brazil, Cuba, Greece, Ireland and Thailand. Hong Kong is a vibrant and cosmopolitan city with a strong sense of openness at its core. Ending the exclusion of same-sex couples from marriage not only strengthens Hong Kong’s position as “Asia’s World City,” but it is also a development that is consistent with the city’s character.

23. A woman in mainland China recently won visiting rights in an LGBT+ custody battle.¹⁷ For the first time in history, a Chinese court acknowledged that a child can have two mothers. This suggests that mainland courts may be willing to take progressive steps when dealing with cases involving sexual minorities. Under the “One Country, Two Systems principle,” Hong Kong enjoys a high degree of autonomy in terms of managing its internal affairs. We should make the most of this arrangement and contribute positively to this principle.

¹⁵ Suen, Y. T. (2021). “Sexual minority expatriates as agent of change? How foreign same-sex couples won the recognition of same-sex relationship for immigration purposes in Hong Kong.” *Journal of Ethnic and Migration Studies*, 47(13), 2961–2978.

¹⁶ Suen, Y. T., and Chan, R. C. H. (2021). “‘Gay Brain Drain’: Hong Kong lesbian, gay, and bisexual people’s consideration of emigration because of non-inclusive social policies.” *Sexuality Research and Social Policy*, 18(3), 739–752.

¹⁷ Hawkins, Amy. “Custody Ruling in Same-sex Case Hailed as LGBTQ+ Milestone in China.” *The Guardian*, 14 Aug. 2024, www.theguardian.com/world/article/2024/aug/14/custody-ruling-in-same-sex-case-hailed-as-lgbt-milestone-in-china.

Civil Union and Partnership Alternatives are No Substitute for Marriage

24. Same-sex couples want to marry for the same reasons everyone else does: they love each other, desire to strengthen family ties and want to spend their lives together. Most different-sex couples would not want to trade their marriage for a civil union or partnership, and same-sex couples should not be forced to settle for something lesser or different. A partial recognition of their relationships is unfair and perpetuates discrimination.
25. A civil union or registered partnership scheme is problematic in that it repackages discrimination, rather than eliminates it. A total of 18 jurisdictions that initially enacted civil union or registered partnership legislation rather than simply ending marriage discrimination have since abandoned those alternatives and embraced marriage equality, with Greece being the most recent example.
26. A registered partnership scheme does not offer the same social acceptance or status as marriage – as a separate and lesser status, it actually reinforces stigma and perpetuates discrimination. Legally, such a scheme offers neither protection, clarity, security, nor the same practical benefits as marriage. What is universally understood in two words — “we’re married” — is lost when a separate status is established that frontline emergency personnel, employers, police, businesses and even officials do not understand. In many of the countries that experimented with various registered partnership schemes, couples were denied entry to the hospital room after their loved one was involved in a car accident because no one in the hospital understood what a “civil union” or other separate relationship status meant. Even when partners carried their paperwork and showed it, they were denied the opportunity to care for and protect their spouses.
27. A registered partnership scheme can cause many day-to-day issues, including confusion and outing. For businesses, having a separate system for same-sex couples incurs additional administration costs. Overseas experiences also lead to damning conclusions. The New Jersey Civil Union Review Commission concluded that “the separate categorization established by the Civil Union Act invites and encourages unequal treatment of same-sex couples and their children.”¹⁸ In sum, alternatives like civil unions and registered partnerships are no match for the simple, fair and inclusive solution of recognizing the right to marry for all loving and committed couples.
28. Given these shortcomings and experiences, Hong Kong should not repeat the same mistake of complication and delaying the fair, just and stabilizing solution; rather, the conditions are ripe for including committed same-sex couples in civil marriage. Any solution that falls short of marriage equality will cause problems and possibly more litigation, putting a strain on public funds and not projecting a positive image of Hong Kong.

¹⁸ New Jersey. Civil Union Review Commission. *The Legal, Medical, Economic and Social Consequences of New Jersey’s Civil Union Law : Final Report of the New Jersey Civil Union Review Commission*. 10 Dec. 2008, dspace.njstatelib.org/items/961ee699-d1d5-4e6e-9310-fd95a009730e.

Conclusion

29. HKME applauds the Government for establishing a working group to investigate the issues surrounding the legal recognition of same-sex relationships.
30. HKME appreciates the Government's promise to comply with the Court of Final Appeal decision by the deadline.
31. HKME urges the Government to take the simple and most just approach: introduce legislation that would end the exclusion of same-sex couples from marriage by changing the current definition of marriage for civil purposes to "the lawful union of two persons to the exclusion of all others."
32. HKME supports the inclusion of appropriate exemption clauses in a marriage equality bill for religious groups and institutions.
33. HKME is ready to work with the Government to end the exclusion of same-sex couples from marriage, allowing these couples to live with full dignity in the city.
34. HKME looks forward to collaborating with the Government to reap the benefits of including committed same-sex couples in civil marriage.