



Long Road to Equality

A series of legal challenges regarding the rights of same-sex couples in Hong Kong has placed the issue firmly at the top of the equal opportunities agenda. But a new report outlines continued differential treatment in areas of Hong Kong law and government policy. – By Matt Bower

Differential treatment on the basis of relationship status is widespread in Hong Kong. In areas as diverse as taxation, anti-discrimination and criminal matters, the law does not recognise civil partnerships and same-sex marriages formed in jurisdictions outside Hong Kong. Although individuals in these relationships may share the same emotional, financial and social bonds as opposite-sex spouses, they often lack the same rights, benefits and obligations.

These are the findings of Allen & Overy's report "The Recognition and Treatment of Relationships under Hong Kong Law", commissioned by Hong Kong's Equal Opportunities Commission. The report identifies over 100 instances of differential treatment according to relationship status across 21 separate areas of Hong Kong law and government policy.

As social views change in Hong Kong, people increasingly accept the legitimacy of relationships other than opposite-sex marriage. There is greater acceptance of couples who choose to live together without being married. Support is also growing

for anti-discrimination protections for lesbian, gay, bisexual, transgender, and intersex (LGBTI+) people. Yet opposite-sex marriage remains the only broadly legally recognised voluntary personal relationship in Hong Kong.

According to the report, couples in alternative relationships, such as cohabitation relationships, civil partnerships and same-sex marriages, are denied the right to:

- jointly adopt children;
- apply for public housing as an ordinary family;
- access reproductive technology;
- receive immediate notification if a partner dies in prison;
- inherit a deceased partner's estate if that partner dies without a will;

- object to the removal of a deceased partner's body parts for medical research or education; or
- apply for certain allowances and deductions that can lower a couple's tax burden, such as the married person's allowance, which is only available to opposite-sex spouses and not same-sex married couples.

But while differential treatment impinges on the rights of individuals in alternative relationships, its repercussions do not end there. The Hong Kong Government's failure to recognise alternative relationships also hampers effective law enforcement. Market misconduct laws, to give one example, are designed to prosecute individuals who disclose certain information to their close associates. These laws only recognise opposite-sex spouses and cohabitants living as each other's "reputed spouse" as close associates, making it more challenging to punish offenders who are in a same-sex relationship. In another situation, individuals with an interest in 5% of the voting shares of listed corporations in Hong Kong must publicly disclose their opposite-sex spouse's interests and short positions in those shares. But there is no such obligation to disclose a non-marital partner's interests and short positions (whether same or opposite-sex). The public therefore risks being less informed about shareholders', directors', and chief executive officers' interests in listed corporations when those individuals are in alternative relationships.

Current actions

In recent years, individuals in alternative relationships have launched a series of legal challenges against differential legal treatment. In November 2018, one applicant filed a judicial review to quash the Hong

Kong Housing Authority's decision that the applicant and his same-sex spouse were ineligible to apply for public rental housing as an ordinary family. Earlier that year, a woman launched a judicial review into the unavailability of marriage and civil partnerships for same-sex couples. In November 2018, two men launched separate legal challenges against Hong Kong's restriction of marriage to opposite-sex couples and its refusal to recognise same-sex marriages from overseas.

Some challengers have met success. In July 2018, the Court of Final Appeal found the Director of Immigration had acted unlawfully in deciding that the same-sex civil partner of an eligible sponsor

was not entitled to apply for a dependant visa. The court rejected the director's argument that same-sex couples cannot be compared to opposite-sex spouses for the purposes of the director's immigration policy and found that the difference in treatment was not justified.

More recently, a civil servant successfully appealed against a decision of the Secretary of the Civil Service not to provide medical and dental benefits to his same-sex spouse, and against a decision of the Commissioner of Inland Revenue that the couple were ineligible for joint assessment for salaries tax.

We hope the report will allow local stakeholder groups and other institutions to engage in discussions about whether particular areas of the law may benefit from reform and, if so, how such reforms may be pursued. Please visit www.allenoverly.com/EOC for the full report or access it via the QR code. 

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