



FACT SHEET: HOW THE AUSTRALIAN GOVERNMENT BLOCKS OVERSEAS SAME-SEX MARRIAGES

What is the issue?

The Australian Government tries to block same-sex couples from marrying overseas by not providing them with the key document they need to marry.

Denial of this documentation cause severe problems for some same-sex couples.

The Government's policy was condemned by a tri-partisan Senate Committee in 2009 but no action has been taken.

What is a CNI

In some other countries Australians can only marry if they provide the authorities with a document called a Certificate of No-Impediment to Marriage or CNI.

A CNI shows the partner intending to enter an overseas marriage is not already married in Australia, is of marriageable age and isn't closely related to their intended spouse

The Australian Government provides CNIs to Australians entering opposite-sex marriages but not same-sex marriages.

This policy has been in place since 2004.

What problems does this cause?

Inconvenience:

Many same-sex partners find out about the CNI problem at the last minute and either have to call off their wedding or go through with the kind of unofficial commitment ceremony they wanted to avoid.

Insecurity:

In many of the countries that allow same-sex marriages, marriage brings rights and entitlements not available to cohabiting couples.

This leaves Australians whose same-sex marriages the Australian Government has blocked without recognition or protection in areas like health care, pensions and immigration.

Indignity:

It's painful to be denied the same rights other Australians take for granted. [According to Chris Murray](#), whose legal marriage to his Portuguese partner, Victor, could not take place because the Government would not give him a CNI,

"As much as I appreciated the support of friends and family, no amount of "don't worry – it's only a piece of paper" or "but it's your love that counts" made up for the fact that my country was saying that my relationship was not only not worthy of recognition, but I had to be prohibited from having this relationship recognised elsewhere in the world."

What is the Government's rationale and why is it wrong?

The Government says that CNIs are not issued to same-sex couples because their marriages are not recognised in Australia.

However, this deliberately mis-represents the purpose of CNIs. CNIs are issued to establish that there is no impediment to an Australian marrying overseas, not to establish there is no impediment to the recognition in Australia of the marriage they intend entering.

This is confirmed by the fact that the CNI application form does not ask applicants if they are in a same or opposite-sex relationship.

It is also confirmed by legal academics like senior ANU law lecturer, Wayne Morgan:

"There is nothing in Australian law that would prevent a Certificate of No Impediment to Marriage being issued to a same-sex couple marrying under the laws of another country. This is an internationally accepted document that has nothing to do with the validity of the marriage back in the couple's own country."

Having taken all this into consideration a 2009 Senate Committee inquiry into same-sex marriage recommended same-sex couples be allowed access to CNIs. It found:

"...the committee can see no necessary connection between the issuance of a CNI and an implied undertaking by the Australian Government to recognise a marriage conducted overseas."

"A decision by a sovereign nation to allow marriage between a couple of the same sex should be a matter for that nation, and not a matter against which Australia should throw up bureaucratic barriers."

Why denying CNIs has become increasingly absurd

In 2010 Tasmania became the first Australian state or territory to acknowledge overseas same-sex marriages as state civil partnerships, giving them all the same rights as married couples in state AND federal law. This creates an absurd situation where the Australian Government is giving full marriage entitlements to legal unions it has tried to block on the basis that they are not recognised in Australia.

How have other countries responded?

The Netherlands gives Australians an exemption from its CNI requirement (we understand the only other country in this category is Zimbabweans). Norway criticised Australia's policy against same-sex marriage at a recent review of Australia's human rights record at the UN. Portugal has requested written verification of the Australian Government's policy before it considers an exemption for Australians.