



ATTORNEY-GENERAL
THE HON PHILIP RUDDOCK MP

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MARCH
15 MAY 2006

Mr Adam Pickvance
Chief Executive Officer
The ALSO Foundation
1st Floor
6 Claremont Street
SOUTH YARRA VIC 3141

Dear Mr Pickvance

I refer to your letter of 24 January 2006 concerning Certificates of No Impediment to marriage for same sex couples who wish to marry overseas. I apologise for the delay in responding. I hope the information below will answer your queries.

Certificates of No Impediment (to marriage) (CNIs) are issued by the Department of Foreign Affairs and Trade (DFAT) both in Australia and through its Embassies and Consulates abroad to Australians wishing to marry in another country. My Department provides advice to DFAT about what marriages are recognised in Australia under the *Marriage Act 1961* (the Act). DFAT has advised that it is the responsibility of the intending party to a marriage to ascertain from the overseas country concerned whether a CNI is required by that country and what other documents are required.

CNIs are not the same as evidence of single status. Overseas marriage authorities often require evidence that an Australian wishing to marry according to the laws of their country is free to marry. Such evidence may be a statement from one of the Registering Authorities in Australia (a Registry of Births, Deaths and Marriages in a State or Territory) that there is no record of a person having been previously married. This statement is called a single status certificate (or no record result of search certificate).

A CNI, on the other hand, is a document that some countries may seek from the Australian Government when Australians seek to marry in their country. It is a requirement arising under the laws of other countries relating to marriage.

A CNI has two purposes. It certifies that there is no Australian law prohibiting an Australian citizen or person domiciled in Australia from marrying another person in the country requesting the CNI. It also certifies that such a marriage would normally be recognised as valid in Australia. The process of issuing a CNI thus seeks to meet the needs of foreign governments while respecting Australia's own laws.

The CNI issued in Australia and at Embassies and Consulates abroad has always contained the definition of marriage in Australia as part of its wording: 'Marriage according to law in Australia is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life, subject to dissolution by law.'

These words formed part of the wording of a CNI prior to amendments to the Act that took effect in 2004. These amendments defined marriage as 'the union of a man and a woman to the exclusion of all others, voluntarily entered for life' and confirmed existing Australian law. The amendments also provided that a same sex marriage entered into overseas will not be recognised in Australia. These amendments were passed by the Parliament with bi-partisan support and make it clear that a CNI cannot be issued certifying that such marriages would be recognised in Australia.

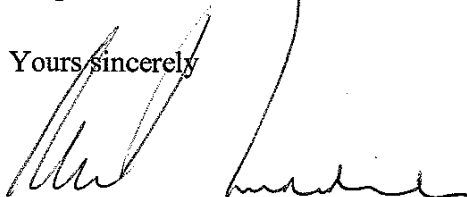
DFAT's instructions to its Embassies and Consulates overseas are that a CNI should not be issued if it appears that the resulting marriage would not be recognised in Australia. A marriage between two people of the same sex is not the only marriage that might occur overseas that would not be recognised in Australia.

Other marriages that would not be recognised in Australia include where a person is already married to someone else, when they are under marriageable age, where they are too closely related or when the consent to the marriage was not a true consent. These mirror the grounds on which a marriage conducted in Australia would not be valid. The 2004 amendment to the Act providing that a same sex marriage entered into overseas would not be recognised in Australia is in addition to these grounds.

There has not been any attempt by the Government to prevent Australian citizens entering into same sex marriages overseas. As should be clear from the information I have provided above, Australian Embassies and Consulates are unable to issue a certificate stating that a same sex marriage entered into overseas will be recognised in Australia when Australian law specifically provides otherwise. I am unable to provide you with documentation or instructions issued to Australian Embassies and Consulates concerning the handling of requests for official documents required by Australians for marriages in overseas jurisdictions. Such instructions are a matter for DFAT and I recommend you approach that Department for further information on this aspect of your inquiry.

I hope this information is of assistance to you.

Yours sincerely



Philip Ruddock