

# CHAPTER 5

## Discussion and Conclusion

5.1 This chapter discusses two issues raised through the inquiry: possible steps to more consistently recognise same sex relationships nationally, and the Government's policy of declining to issue certificates of non-impediment to same sex couples attempting to marry overseas. It concludes with the committee's recommendation in relation to the Bill.

### **Consistency of recognition for same sex relationships**

5.2 One issue which was raised with the committee, particularly by proponents of the Bill, was the inconsistency in recognition of relationships between jurisdictions within Australia. This inconsistency extended not only to the official status of relationships, but also to the benefits which attached to them, such as a means of accessing relationship entitlements and of proving the existence of a relationship if challenged.

5.3 The committee sees merit in developing and implementing a nationally consistent framework so that same sex couples who so desire can expect their relationship to be recognised on an equal footing to other couples in different jurisdictions. To the maximum extent possible, recognised relationships between jurisdictions should enjoy not only the same official status, but also identical practical benefits and entitlements. Such a reform should synthesise and harmonise with the Government's 2008 amendment of 84 pieces of legislation to remove discrimination against same sex couples.

### **Recommendation 1**

**5.4 The committee recommends that the Government review (by reference to the Australian Law Reform Commission, or some other appropriate mechanism) relationship recognition arrangements with the aim of developing a nationally consistent framework to provide official recognition for same sex couples and equal rights under federal and state laws.**

### **Certificates of Non-Impediment to Marriage**

5.5 As discussed in chapter 3, Government policy apparently favours declining to issue a certificate of non-impediment (CNI) to same-sex couples seeking to marry overseas.<sup>1</sup>

5.6 The Smartraveller website, administered by the Department of Foreign Affairs and Trade (the Department), in respect of marrying overseas, states that:

Certificates of No Impediment to Marriage are issued by the Department of Foreign Affairs and Trade through overseas missions and state and territory offices to Australian citizens seeking to marry overseas. Certificates of No

---

1 See, for example, evidence from Australian Marriage Equality, *submission m90*, p. 51.

Impediment to Marriage are not a requirement of Australian law. They are issued purely at the request of overseas countries seeking to ensure that a marriage involving one or two Australian citizens, celebrated in that overseas country, will also be recognised as a valid marriage by Australian authorities.<sup>2</sup>

5.7 However, Australian Marriage Equality submits that:

...our understanding is that 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 documentation publicly available. For example, the application form for an Australian CNI asks the applicant to confirm they are not already married to another person in Australia. It does not ask if they seek to enter a same-sex marriage. It asks if they are already in 'a prohibited relationship'. But this cannot be construed to include a same-sex marriage because (a) they are not yet in a married relationship, and (b) same-sex marriages are not prohibited in Australia, simply not recognised. Our understanding of the role of CNIs is also supported by the international experience. Other governments request CNIs from Australia to ascertain whether there are impediments to them solemnising marriages involving Australian citizens. Chief amongst such impediments are whether the Australian citizens in question are already married in Australia and are of marriageable age.<sup>3</sup>

5.8 Notwithstanding the Department's injunctions to the contrary, it remains far from settled for the committee that the usual purpose of a CNI is to establish recognition of an impending marriage in a person's home country. Indeed, it seems to the committee that a CNI is most likely to be used by a foreign country to establish that two people are not currently married to other people, are of marriageable age, and are not closely related. Furthermore, 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.

5.9 Put simply, absent circumstances such as those listed above, 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.

## **Recommendation 2**

**5.10 The committee recommends that the Department of Foreign Affairs and Trade issue Certificates of Non-Impediment to couples of the same sex on the same basis as they are issued for couples of different sexes.**

---

2 See: [www.smartraveller.gov.au/marriage\\_os.html](http://www.smartraveller.gov.au/marriage_os.html) (accessed 26 November 2009)

3 Australian Marriage Equality, *submission m90*, p. 51.

## **Conclusion**

5.11 The committee has been overwhelmed with public enquiries and submissions to this inquiry. The changes canvassed by the Bill are highly emotive, and extremely controversial. Both those in favour of the Bill and those who oppose it have argued their positions passionately and compellingly.

5.12 The committee has much sympathy with the views put by those in support of the Bill, and in particular the importance of supporting same sex attracted people, who have suffered considerable inequality over many years, to prosper on an equal footing with heterosexual Australians. The committee hopes that its recommendation to review relationship recognition arrangements, and implement a nationally consistent framework for relationships, will promote this outcome.

5.13 Furthermore, the committee considers the current policy in relation to Certificates of Non-Impediment to Marriage to be inappropriate in all the circumstances, and to warrant reversal. All other things being equal, same sex couples proposing to legally marry overseas should not face administrative hurdles imposed by Australia.

5.14 While the committee agrees that the current definition of ‘marriage’ in the *Marriage Act 1961* is appropriate, other types of relationships play an important part in Australian society and deserve recognition. For this reason, the committee’s recommendation not to alter the definition of marriage should not be taken as a lack of support for same-sex couples. However, the committee considers that the current definition is a clear and well-recognised legal term which should be preserved. The committee recommends that the Bill not be passed.

## **Recommendation 3**

**5.15 The committee recommends that the Bill not be passed.**

**Senator Trish Crossin**

**Chair**

