

**RESPONSE OF THE AUSTRALIAN GOVERNMENT TO THE VIEWS OF THE
HUMAN RIGHTS COMMITTEE IN COMMUNICATION NO 2172/2012
(G V AUSTRALIA)**

1. The Australian Government (Australia) presents its compliments to the members of the Human Rights Committee.
2. Australia has given careful consideration to the views of the Committee expressed in Communication No 2172/2012 (G v Australia), transmitted to Australia on 15 June 2017. In accordance with the Committee's request, these views will be published on the website of the Australian Attorney-General's Department.¹
3. Australia makes the following comments regarding certain aspects of the Committee's views.
4. The Committee concluded that Australia had violated articles 17 and 26 of the International Covenant on Civil and Political Rights in relation to denying transgender persons the ability to amend their sex on their birth certificate while married. The basis for the conclusion that there was a violation of article 17 was that the requirement that a person be unmarried at the time of their application to register a change of sex and to have a new birth certificate issued was an arbitrary interference with the author's right to privacy and family. The basis for the conclusion that there was a violation of article 26 was that the differential treatment between married and unmarried persons who have undergone a sex affirmation procedure and seek to amend the sex marker on their birth certificate was not based on reasonable and objective criteria, and therefore constituted discrimination on the basis of marital and transgender status.
5. Australia is pleased to advise the Committee that on 7 December 2017, the Australian Parliament legislated to permit same-sex couples to marry in Australia. The legislation came into force on 9 December 2017. These amendments, explained in more detail below, address in part the Committee's views with respect to the author. Australia anticipates that it will be in a position to fully address the Committee's views before the end of 2018.

¹ Human Rights Communications, Australian Attorney-General's Department website:
<https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Humanrightscommunications.aspx>.

6. On 9 December 2017, the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) (the Marriage Amendment Act) amended the *Marriage Act 1961* (Cth) (the Marriage Act) to provide marriage equality in Australia. The Marriage Amendment Act amended the definition of marriage in section 5(1) of the Marriage Act so that the right to marry in Australia is no longer determined by sex or gender.
7. The Marriage Amendment Act also made consequential amendments to various other Commonwealth statutes, including amendments to the *Sex Discrimination Act 1984* (Cth) (the Sex Discrimination Act). Schedule 2 of the Marriage Amendment Act included amendments which will repeal the exemption in subsection 40(5) of the Sex Discrimination Act. The consequence of this repeal is that refusals to make, issue and alter official records of a person's sex (such as a birth certificate) on the basis that the person is married, even if the refusal is required to be made under state or territory legislation, will no longer be exempt from protections against discrimination in Division 2 of the Sex Discrimination Act. As a result, such refusals will be unlawful and could be the subject of a complaint of discrimination under the Sex Discrimination Act.
8. Repealing subsection 40(5) is intended to provide a catalyst for states and territories to amend laws that require a person to be unmarried in order to alter the record of their sex (which includes all states and territories other than the Australian Capital Territory and South Australia). Schedule 2 of the Marriage Amendment Act will not enter into force until 9 December 2018. Commencement has been delayed for 12 months in order to provide states and territories with such laws with the opportunity to amend their legislation, and associated policies and procedures, to allow people who are married to change the sex marker on their official records.
9. It is anticipated that, prior to the commencement of the amendments to the Sex Discrimination Act, all Australian states and territories will repeal laws requiring officials to refuse to make, issue or alter an official record of a person's sex because the person is married.
10. With respect to the author's particular circumstances, on 6 June 2018 the New South Wales Parliament passed the Miscellaneous Acts Amendment (Marriages) Bill 2018, which makes amendments to Part 5A of the *Births, Deaths and Marriages Registration Act 1995* (NSW). The Bill removes the requirement for a person to be unmarried in order to alter the record of that person's sex. On commencement of the Bill, the author will be

able to apply to alter the register of her sex notwithstanding her marriage status, provided she meets the requirements in Part 5A of the BDMR Act.

11. Australia considers that the changes to its laws referred to above would address the Committee's views not only with respect to the author personally, but also by taking steps to prevent a similar situation occurring in the future.

12. Australia avails itself of this opportunity to renew to the Human Rights Committee the assurances of its highest consideration.