

**RESPONSE OF THE AUSTRALIAN GOVERNMENT TO THE VIEWS OF THE
HUMAN RIGHTS COMMITTEE IN COMMUNICATION NO 2216/2012
(C 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 2216/2012 (C v Australia), transmitted to Australia on 4 August 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 there was a violation of article 26 of the International Covenant on Civil and Political Rights in relation to access to divorce proceedings in Australia for same-sex couples who had married outside Australia. The basis for this conclusion was the difference in the way Australia's divorce system at the time of the author's communication to the Committee dealt with certain types of foreign marriage, none of which Australian law then recognised as valid.
5. Australia is pleased to advise the Committee that on 7 December 2017, the Australian Parliament legislated to permit same-sex couples, including those in the author's circumstances, to marry and divorce in Australia. The legislation came into force on 9 December 2017. These amendments, explained in more detail in the following paragraphs, directly address the Committee's views.
6. On 9 December 2017 the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) (Marriage Amendment Act) amended the *Marriage Act 1961* (Cth) (Marriage Act) to provide marriage equality in Australia. The ability to marry in Australia is no longer determined by sex or gender. The Marriage Act now recognises same-sex marriages and enables divorce from such marriages, including those entered

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

into overseas. The Act also made consequential amendments to various other Commonwealth legislation, including the *Family Law Act 1975* (Cth) (Family Law Act),² and introduced transitional provisions relating to same-sex couples who were married in an overseas jurisdiction prior to 9 December 2017.³ As a result of these legislative amendments and transitional provisions, people who entered into a foreign same-sex marriage before 9 December 2017 are now able to divorce in Australia provided that the relevant requirements for divorce under the Family Law Act are met. Likewise, people who enter into a same-sex marriage after 9 December 2017 will also be able to access divorce in Australia, provided they meet the relevant requirements.

7. The sex or gender of the parties to the marriage no longer affects access to divorce in Australia from a marriage entered into overseas. The requirements for access to divorce,⁴ including for marriages entered into overseas, are the same for both opposite-sex and same-sex marriages.
8. In relation to the requirements for divorce from a foreign marriage, the Family Law Act requires that the parties to the marriage have lived separately and apart for at least twelve months prior to filing the application for divorce and that there be no reasonable likelihood of reconciliation between the parties.⁵ For a divorce from a foreign same-sex marriage entered into prior to 9 December 2017 (that is, prior to commencement of the legislative amendments), it is intended that periods of separation before 9 December 2017 can be included when calculating the twelve-month separation period, provided that the period of separation is of the kind that, had it occurred after 9 December 2017, would be able to be included when calculating the twelve-month separation period.
9. Australia notes that, based on the information the author provided in her communication to the Committee regarding the cessation of her relationship with her spouse, the author will likely satisfy the requirements for access to divorce in Australia (summarised above), enabling the author to apply to the court for a divorce in Australia if she chooses to do so.

² Sections 4, 43, 55A, 60E, 60F, 98A and 100.

³ Schedule 4 to the Marriage Amendment Act.

⁴ Set out in Part VI of the Family Law Act.

⁵ Subsections 48(2) and 48(3) and section 50 of the Family Law Act.

10. Australia therefore considers the changes to its laws referred to above have provided the author with access to divorce proceedings in Australia. The changes have removed wholly the difference in Australian law upon which the Committee's finding of violation is based. As the changes apply to same-sex couples who entered into foreign marriages before 9 December 2017 as well as those who do so after that date,⁶ they have also ensured that a similar situation will not recur. That is, in future a person in comparable circumstances to those of the author will be able to obtain a divorce in Australia upon satisfying the requirements under the Family Law Act, applicable to all married couples.
11. The changes have therefore addressed the Committee's views not only in respect of the author personally, but also in relation to the recurrence of a similar situation in the future.
12. Australia avails itself of this opportunity to renew to the Human Rights Committee the assurances of its highest consideration.

⁶ Subsection 70(2) of the Marriage Amendment Act.