



## ***Uniting Church* LGBTIQ *Network***

welcoming and celebrating lesbian, gay, bisexual, transgender,  
intersex and queer (LGBTIQ) people, couples and families  
in the life of the Uniting Church in Australia

# **Religious Freedom Review**

## **Submission**

14 February 2018



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14 February 2018

The Hon. P. Ruddock  
Chair  
The Expert Panel on Religious Freedom  
c/o Department of the Prime Minister and Cabinet  
PO Box 6500  
Canberra ACT 2600

Dear Mr Ruddock and Panel Members

### **Introduction to submission**

1. Thank you for the opportunity of make a submission to the Expert Panel on Religious Freedom as established by the Prime Minister on 14 December 2017.
2. We are aware of the importance of protecting the human right to religious freedom for all Australians. This submission is written within the framework of Australians who both participate in a large Christian denomination (the Uniting Church in Australia [UCA]) and are also lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ). As such our particular focus in the first dot point in the statement of Scope for the Review, namely to:

*“Consider the intersections between the enjoyment of the freedom of religion and other human rights”.*

3. We consent to this submission being made public; it is not confidential; and we hope for the opportunity to participate in a public forum or hearing.

4. The Uniting Church LGBTIQ Network (hereafter ‘Uniting Network’) is an independent national network in the Uniting Church in Australia (UCA). We are an officially recognised network of the UCA and work within the structures and various Councils of the UCA, but we do not represent or speak for the UCA.
5. In preparing this submission we have noted the November 2017 Interim Report of the Australian Parliament’s Joint Standing Committee on Foreign Affairs, Defence and Trade, *Legal Foundations of Religious Freedom in Australia*. The Uniting Church’s national justice agency, Uniting Justice Australia (UJA), made a submission to that Parliamentary inquiry.<sup>i</sup>

### **Uniting Church support for human rights including religious freedom**

6. The national Assembly of the Uniting Church in Australia has made a number of statements concerning the dignity and rights of the human person as understood within the Christian tradition.<sup>ii</sup> In 2006 the Assembly affirmed:

*...the Uniting Church believes that every person is precious and entitled to live with dignity because they are God’s children, and that each person’s life and rights need to be protected or the human community (and its reflection of God) and all people are diminished.*<sup>iii</sup>

7. The Christian understanding of human rights is grounded in biblical teaching and the doctrine of God. This doctrine does not provide an automatic movement to or juxtaposition in terms of appropriate policy and legislation in the twenty-first century. But, as articulated by the Uniting Church Assembly, to deny or restrict human rights in any manner, would require the most rigorous analysis and justification. The onus is on the advocates of limiting human rights to establish their case. In the current circumstances, there would need to be robust arguments to defend any further denial of the human rights of LGBTIQ Australians in the name of “religious freedom”.
8. The UCA Assembly has also supported the range of international treaties and Declarations including the Universal Declaration of Human Rights ([UDHR] 1948) which states that “everyone has the right to freedom of thought, conscience and religion”, and this includes freedom to practice religion and to change it.<sup>iv</sup> We note that this right is also reflected in the 1976 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights.

9. The UCA policies are consistent with churches around the world. On the fiftieth anniversary of the passing of the UDHR the World Council of Churches called for defending human rights which is sensitive to different religions, cultures and traditions, and includes:

*...the equal rights of young and old, of women and men, and of all persons irrespective of their origin or condition.<sup>v</sup>*

10. In 1993 the UCA Assembly endorsed the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, and endorsed the actions of the then Commonwealth Government to amending Section 47 of the Human Rights and Equal Opportunity Act.<sup>vi</sup> Whether this is a sufficient protection is a matter that raises the issue of the need for explicit statutory protection for religious (and non-religious) belief and how best to achieve that, such as in a national bill or charter of rights.

11. In 2008 the Standing Committee of the UCA national Assembly declared its support for:

*...a national human rights charter that is born from widespread and effective community and stakeholder consultation.<sup>vii</sup>*

12. A key clause in the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief is number three in Article 1 which states:

*Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.*

13. This submission will now focus on number of details which are under discussion in the balancing of laws which protect religious freedom and those which protect the fundamental human rights of LGBTIQ people.

## Marriage equality and religious freedom

14. Prior to the introduction of the Marriage Amendment Bill in late 2017, a Senate inquiry had been held, including public submissions. The Uniting Network made a submission and appeared before that Senate inquiry. It is our understanding that the Marriage Act in no way undermines protections for religions to conduct marriages in accord with their own doctrines, policies and procedures.
15. In the case of the Uniting Church in Australia, following the passage of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* the General Secretary of the UCA wrote to all UCA marriage celebrants advising them that, at this point in time, they are not able to officiate at same-sex marriages. That is the case even though numbers of ordained Ministers have been asked to and would wish to officiate at same-sex marriages.
16. Since the early 1980s the Uniting Church has been engaged in new understandings of human sexuality in general and homosexuality in particular.<sup>viii</sup> For example, the polity of the UCA permits openly LGBTIQ people, including those living in same-sex relationships to be ordained as Ministers and to be appointed to the full range of UCA ministry positions. UCA Ministers in congregations with a particular ministry with LGBTIQ people regularly conduct services of prayers and blessings for same-sex couples. This is permitted under UCA polity but is not a marriage service.<sup>ix</sup>
17. During 2018 there will be further discussions concerning the UCA understanding of marriage. The current policy might be changed or it might be subject to further consultation and discernment. Uniting Network members will participate in those discussion on the basis of biblical and theological principles. The change to the status to civil marriage is a relevant though not determining consideration.
18. For the purposes of the Panel's deliberations this example from the Uniting Church illustrates the fact that the changes to the Marriage Act in 2017 have not infringed on religious freedom protections with regard to religious marriage. Therefore we can see no argument for the creation or extension of any laws which discriminate against LGBTIQ Australians in employment or the delivery of goods and services such as education, housing, social welfare and healthcare. It further underlines the important point that within different religious groupings and denominations, there can be the same diversity of opinion on matters to do with minority groups and various policies as there is in the wider community.

19. More generally, in 2017 more than 60% of Australians who voted in the same-sex marriage postal survey voted for marriage equality. It would seem to be a perverse outcome and poor reflection of the community survey, if the Australian Parliament enacted legal equality in the area of marriage, and then introduced forms of discrimination against LGBTIQ people which do not currently exist. This raises the more general area of human rights and freedom of religion. Where does freedom of religion end and 'freedom' to discriminate solely on the grounds of sexual orientation, gender identity and intersex (SOGII) status commence? As suggested above, the onus should always be on those who wish to discriminate and exclude.

### **LGBTIQ human rights and religious exemptions**

20. The Uniting Church was represented at the November 2015 Australian Human Rights Commission Religious Freedom Roundtable, at which 25 different belief communities were represented.<sup>x</sup> There are a number of points which emerged from that Roundtable which have particular relevance in balancing religious freedom protections and human rights protections for LGBTIQ people.

21. As noted at the Roundtable and in various international Declarations, the right to religious freedom intersects with other human rights, particularly the rights to freedom of expression, freedom of association and freedom of assembly. If religions and religious practices can interconnect, intersect and be in tension with ethnicity and culture and racial discrimination then the same is true for sexual orientation, gender identity and intersex (SOGII) status.

22. In balancing individuals and collective rights we should not force people to act against their conscience. The role of government and legislation should be to establish clear boundaries for legally enforceable behaviour and not to exacerbate social disharmony.<sup>xi</sup> It does not seem helpful, respectful or harmonious, to suggest that there could be a hierarchy of rights, with LGBTIQ people being denied some human rights in order to protect a suggested more fundamental right such as freedom of religion.

23. There are already a large number of exemptions for faith-based organisations in the provision of education, healthcare, housing and other services, even though the overwhelming majority of those services receive substantial taxpayer funds. In the overwhelming majority of cases it is very difficult to see the link between a discriminatory practice and what is described as 'religious freedom'.

24. In healthcare, for example, if a patient presents with a medical condition (eg diabetes) at a faith-based facility, first principles would suggest the individual be treated for the presenting medical condition. Refusing to treat a person with diabetes solely on the grounds that they are LGBTIQ would seem to be highly objectionable and contrary to widely held medical ethics. There are a very small number of medical procedures, notably the termination of pregnancy, where some faith-based institutions could reasonably argue that the procedure is specifically contrary to the authoritative teachings of their religion.
25. The Uniting Church's national agency, Uniting Justice Australia (UJA), supported the 2013 amendments to the Sex Discrimination Act to include sexual orientation, gender identity and intersex (SOGII) status.<sup>xii</sup> The same Church agency expressed reservations about the scope of the exemptions for religious bodies. The UJA submission allowed limited areas where exemptions might be maintained: the ordained ministry and significant leadership positions.<sup>xiii</sup>
26. In most, though not all cases, these positions are funded by the Church (not the taxpayer) and are for purposes which are directly related to a specifically religious purpose: for example, the conduct or worship or hospital chaplaincy. They are, thus, intrinsically and categorically different to a general purpose (teaching mathematics or providing social housing) even if the mathematics is being taught within a faith-based school or the social housing is owned and managed by a religious organisation.
27. To state the same position differently, if a particular religion or denomination wishes to exclude women (or indigenous or LGBTIQ people) from the priesthood or the ordained ministry, there is nothing in Australian law which prevents the religion or denomination from exercising that particular religious freedom. But the delivery of services, the majority of which are publicly funded, is in a different category. In the latter case, community norms of respect for universal human rights override the particularities of the religion or denomination.
28. A different and improved balance was achieved in 2013 in one aspect of changes to the Sex Discrimination Act with regard to SOGII status. Some discriminatory exemptions were reduced for areas of service delivery in aged care. The idea that an ageing Australian could be refused essential caring services solely for being LGBTI was rejected in the legislation, at the same time as LGBTI people were added as a special needs category for national aged care funding.

29. Rather than introducing additional exemptions solely on the basis of SOGII, a more inclusive approach to public policy and administration, and social cohesiveness, would be to restrict exemptions to special circumstances where there is an intrinsic connection between service provision and the authoritative, normative or ontological observance, practice or teachings of a religion. Whereas the conduct of prayer and worship services, and the engagement of clergy would be automatically exempt, any further exemptions would only be possible on application to and approval by the appropriate authorities.

30. Such an approach is fully consistent with Uniting Church policies and submissions, and, with regard to LGBTIQ Australians, is supported by the Uniting Church LGBTIQ Network.

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We wish the Panel well in your deliberations; and hope that your report will confirm and support the appropriate balance of human rights for all Australians.

Yours sincerely



Warren Talbot  
National Secretary

Uniting Church LGBTIQ Network

cc Mr Stuart McMillan, National President, the Uniting Church in Australia  
Ms Colleen Geyer, General Secretary, national Assembly, the Uniting Church in Australia  
Uniting Church LGBTIQ Network, National Executive

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<sup>i</sup> [www.unitingjustice.org.au/human-rights/submissions/item/1229-freedom-of-religion](http://www.unitingjustice.org.au/human-rights/submissions/item/1229-freedom-of-religion)  
[accessed 12 Feb.2018]

<sup>ii</sup> The most comprehensive statement was made in 2006 in a document titled “Dignity in Humanity: Recognising Christ in Every person”. In Cynthia Coghill and Elenie Poulos, (Eds), *For a World Reconciled*, Uniting Church in Australia Assembly, Sydney, 2016, pp 127-131. Many of the documents and policies re also seen at [www.unitingjustice.org.au](http://www.unitingjustice.org.au)

<sup>iii</sup> Ibid, p 127.

<sup>iv</sup> Ibid.

<sup>v</sup> Ibid., p.130.

<sup>vi</sup> Ibid., p.104, p.134.

<sup>vii</sup> Ibid., p.134.

<sup>viii</sup> Avril M. Hannah-Jones, *Divided We Stand: The Sexuality Debate in the Uniting Church in Australia 1977-2000*, unpub. PhD thesis, History Department, University of Melbourne, 2003.

<sup>ix</sup> Jensi, L., Stringer, R. Talbot, W. and Wickham, S., *Sacred Union Ceremony: towards pastoral and liturgical recognition for gay and lesbian couples in the Uniting Church in Australia*, 2010, Uniting Network Australia, Sydney.

<sup>x</sup> [www.unitingjustice.org.au/human-rights/submissions/item/1229-freedom-of-religion](http://www.unitingjustice.org.au/human-rights/submissions/item/1229-freedom-of-religion)  
[accessed 12 Feb.2018]

<sup>xi</sup> Quakers Australia, submission to Joint Standing Committee on Foreign Affairs, Defence and Trade, *Legal Foundations of Religious Freedom in Australia*, Jan.2017.

<sup>xii</sup> [www.unitingjustice.org.au/human-rights/submissions/item/1229-freedom-of-religion](http://www.unitingjustice.org.au/human-rights/submissions/item/1229-freedom-of-religion)  
[accessed 12 Feb.2018]

<sup>xiii</sup> Cited in Marion Maddox, “Uniting Church Schools” in William W. Emilsen (Ed.), *An Informed Faith: The Uniting Church at the Beginning of the 21<sup>st</sup> Century*, Preston, Mosaic Press, 2014, 172-174.