



Submission to the Human Rights and Equal
Opportunity Commission

SAME SEX: SAME ENTITLEMENTS
**National Inquiry into Discrimination against People in
Same-Sex Relationships**

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BACKGROUND

UnitingJustice Australia is pleased to offer this submission to HREOC's National Inquiry into Discrimination against People in Same-Sex Relationships. UnitingJustice is part of the Uniting Church National Assembly's agency, Uniting Faith and Justice, working in the area of social and ecological justice and peace.

UnitingJustice's submission to this inquiry acknowledges the submission presented to this inquiry by the Uniting Network (NSW Synod). Uniting Network's submission explores the disadvantage suffered by its members, and seeks to present the voice of those marginalised by the inequity of the current legal and regulatory framework. In light of this and of UnitingJustice's place in the life of the Church, this submission seeks to develop an understanding of the Uniting Church's experience of and attitude towards issues of discrimination, human rights and social justice, and our understanding of the issues at stake in this matter.

The Uniting Church in Australia has a strong tradition of working against disadvantage and discrimination in all its forms. In the past, the Assembly has made strong statements on the equality of men and women, multiculturalism and our solidarity with indigenous people. We maintain strong ecumenical relationships with other faith communities and are active in living out our Christian faith through national and international initiatives in support of human rights, reconciliation and peacemaking. We are engaged with Government and the wider community in a variety of contexts in working for an end to the marginalisation of vulnerable people and the recognition of the basic humanity of each person.

The Church's inaugural *Statement to the Nation* envisaged a Church whose social justice mission would be lived out through its work with those most vulnerable in the community, upholding the basic right of all people to live with dignity. It states:

We pledge ourselves to seek the correction of injustices wherever they occur. We will work for the eradication of poverty and racism within our society and beyond. We affirm the rights of all people to equal educational opportunities, adequate health care, freedom of speech, employment or dignity in unemployment if work is not available. We will oppose all forms of discrimination which infringe basic rights and freedoms.¹

Through the Christian tradition, the Uniting Church in Australia believes that all people are created in the image of God. This allows us to understand the truth - that all human beings are precious and entitled to dignity and love, and that the harming of one person injures the heart of the community.

In this spirit, we offer our submission to the Human Rights and Equal Opportunity Commission's *Same Sex: Same Entitlements* inquiry.

¹ *Statement to the Nation*, Uniting Church in Australia Inaugural Assembly, June 1977.

THE UNITING CHURCH COMMITMENT TO HUMAN RIGHTS

The Uniting Church's statements on the primacy and inherent nature of human rights are based in the Christian belief that all people are created in the image of God; human beings are precious and humanity is bound to protect and preserve the ability of human beings to live with dignity. At its most recent triennial gathering, the Eleventh National Assembly of the Uniting Church in Australia adopted the statement *Dignity in Humanity: Recognising Christ in Every Person*, which commits the Uniting Church to respect and promote the standards outlined in the international human rights instruments, and states the Church's understanding of human rights as "indivisible, universal and inalienable":

In the exercise of a person's rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of human dignity and the general welfare of a democratic society.²

Further, the Assembly pledged:

to assess current and future national public policy and practice against international human rights instruments, keeping in mind Christ's call and example to work for justice for the oppressed and vulnerable.³

In addressing the question of equality before the law for same-gender couples, therefore, the Uniting Church is committed to evaluate Government policy against the United Nations' human rights treaties to which Australia is party. It is our understanding that in the current instance, the denial of those financial and work-related benefits to members of committed same-gender relationships, which are available to committed heterosexual couples, does not meet Australia's international commitments in this area. In particular, the *International Covenant on Civil and Political Rights (ICCPR)* indicates that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁴

This strengthens Australia's earlier undertaking, outlined under the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, to guarantee that the economic, social and cultural rights enunciated in the treaty were to be exercised:

² *Dignity in Humanity: A Uniting Church Statement on Human Rights*, Resolution of the 11th Assembly of the Uniting Church in Australia, July 2006, unconfirmed minute.

³ *Ibid.*

⁴ *International Covenant on Civil and Political Rights*, article 6.

without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵

Further, it is the State's responsibility to protect its population in line with the commitments outlined in the *Conventions*. The *ICCPR* states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁶

As discussed in detail in HREOC Report No. 7,⁷ discrimination on the basis of sexuality is potentially comprehended in the definition outlined in the *Convention* at two points: in the prohibition against discrimination on the basis of 'sex', and on the basis of 'other status'. The Uniting Church supports the ratification of Australia's international human rights obligations in this area, as in other areas, and we accept the expert opinion of the United Nations Human Rights Committee that this form of discrimination is not compatible with Australia's international obligations to treat all citizens equally under the law. While the *Convention* does not explicitly outlaw "sexual orientation" or "involvement in a same-gender relationship" as a basis for discrimination under the law, it seems clear that denying committed same-gender couples the same access to basic markers of equality as committed heterosexual couples constitutes an abrogation of our obligations under the *ICCPR*.

In addition to Australia's obligations under the *ICCPR*, it is clear that children of parents in same-gender relationships may be disadvantaged by the operation of certain laws which discriminate against their primary caregivers, in comparison to children whose parents are in heterosexual relationships. This disadvantage might be related to the impact of financial legislation (qualification for state welfare benefits, inheritance, etc.) or work-related legislation (recognition of caring responsibilities and access to corresponding entitlements, etc.), further evidence of which is outlined in the Uniting Network (NSW Synod) submission to this inquiry.

We support HREOC's assessment that such disadvantage could constitute a breach of Australia's responsibilities as outlined by the *Convention on the Rights of the Child*, article 2(2) of which indicates that states parties must:

take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members.

⁵ *International Covenant on Economic, Social and Cultural Rights*, 2(2).

⁶ *Ibid* 2(1)

⁷ *Superannuation entitlements of same-gender couples*, HREOC Report No. 7, April 1999.

There is a clear responsibility for the Government of Australia to comply with its undertakings in this area, as in other areas of international human rights law, in the best interests of the children of same-gender partnerships.

THE UNITING CHURCH AND THE RECOGNITION OF SAME-GENDER RELATIONSHIPS

As stated above, UnitingJustice views the current issues around equality of entitlements for same-gender couples as a clear-cut case of discrimination, which must be rectified in the interests of justice and in fulfilment of Australia's international responsibilities. This view is supported by others within the Uniting Church. In August 2005, UnitingCare NSW.ACT addressed these issues in a submission to the ACT Government's inquiry into the recognition of same-gender relationships under the law. UnitingCare's submission supported the legal recognition of same-gender relationships, as an important step towards economic and social equality under the law for gay and lesbian people. In particular, the submission noted that changes to allow the registration of same-gender relationships should be strengthened to unambiguously assert rights relating to inheritance, property and superannuation, recognition of caring rights in the workplace, and other important issues.

Recognition of committed same-gender relationships as having a legal status corresponding to that of committed heterosexual relationships is essential in rectifying the current imbalance in access to entitlements for same-gender couples and their children. However it is important here to note that the Uniting Church does not support expanding the legal definition of 'marriage' to encompass same-gender unions. The Uniting Church tradition of marriage explicitly defines a union between a heterosexual couple. The Eighth Assembly of the Uniting Church in Australia adopted such a policy Statement on Marriage, noting that:

Marriage for Christians is the freely given consent and commitment in public and before God of a man and a woman to live together for life. It is intended to be the mutually faithful lifelong union of a woman and man expressed in every part of their life together. In marriage the man and the woman seek to encourage and enrich each other through love and companionship.⁸

Addressing the central issue of civil unions and marriages, the UnitingCare NSW.ACT submission opposes the use of the term "marriage" to describe a lawfully recognised caring relationship between a same-gender couple. The submission draws a distinction between the traditional heterosexual institution of marriage, and the recognition under the law of same-gender relationships, taking the view that a marriage is a unique relationship which, by its very nature, cannot be expanded to include same-gender relationships. It states:

It is not problematic, in terms of human rights, to value marriage in its traditional sense. That is a worthwhile thing to do. What is problematic is

⁸ *Minutes of the Eighth Assembly, Uniting Church in Australia, July 1997, 97.31.12*

for law to disadvantage people whose sexual identity leads them to take on equivalent responsibilities in a different type of relationship. Issues of rights and language are intertwined, but redefining key words like marriage is not necessarily the appropriate solution.

The institution of marriage holds a particular meaning for many in the community, a meaning which is valued by many faith communities as part of an historical and religious tradition. The celebration of marriage in the Uniting Church is an affirmation of each partner's life within the Church, and marriage is viewed as a relationship set apart from other caring relationships.

However, this understanding of marriage as a heterosexual religious and social institution should not be used as a platform from which to discriminate against same-gender couples in areas where unmarried heterosexual couples, legally recognised by the state as having a relationship equivalent to that of a marriage, are able to access financial and work-related entitlements.

It is clear that many areas of Government legislation recognise the presence and validity of caring partnerships outside of the auspices of traditional marriage. It is equally clear that in areas where same-gender partnerships are discriminated against in comparison to the benefits enjoyed by heterosexual partnerships in these situations, the Government has a responsibility to rectify this situation and to provide equality to all its citizens under the law. While the tradition of heterosexual marriage remains a cornerstone of Uniting Church and the Christian tradition, as well as a valued secular institution, other loving and caring relationships are also valuable and should be afforded respect and dignity, and equality under the eyes of the law in line with Australia's international human rights commitments. Neither the partners nor the children of such relationships should be disadvantaged.

THE UNITING CHURCH AND SEXUAL ORIENTATION

Within the Uniting Church, as within the wider community, there are a variety of strong views on the nature of interpersonal and sexual relationships. Here we would like to share with the Commission a part of the Uniting Church's experience in this area.

The Tenth National Assembly, noting the divergence of views in this area, called on all members of the Church to continue their work and live together as a community of faith. The Assembly meeting reiterated earlier resolutions of the Uniting Church, stating that sexual orientation does not preclude involvement in our faith community:

membership of the Uniting Church is open to all persons subject only to the guidance of the Basis of Union, the Constitution, the Regulations and policies of the assembly.⁹

The Uniting Church welcomes all baptised Christians into its congregations, regardless of sexual orientation. The Uniting Church deeply values the talents, gifts and faith that

⁹ *Ministry and Membership in the Uniting Church*, Resolution of the 10th Assembly/Assembly Standing Committee, 2003, 03.69.03.02

call a person to ministry. However, a continuing discussion around sexual practice and church leadership has been a key focus of our triennial National Assembly meetings over preceding years.

The most recent meeting of the National Assembly, held in July 2006, spent much time grappling with the issues of faith and sexuality, listening to the insights of the Church's diverse membership and attempting to understand the true nature of God's plan for our world. An important insight from our national gatherings is that the Uniting Church, a geographically and culturally diverse fellowship of people, continues to strive together for reconciliation, and that this process of uniting together as God's people is a continual and often fraught process.

At this year's Assembly, a position was adopted which sought to encompass the divergent beliefs of Uniting Church members on the issue of sexual practice and leadership, by respecting both the prayerful beliefs of individual members and congregations on this issue, and the diversity of the Church as it continues in its path towards reconciliation. Following lengthy debate between members, characterised by respect, a resolution was passed by the Assembly stating:

- a) that congregations who resolve that they are unable in conscience to receive into ministry placement a person living in a committed same-gender relationship, shall not be compelled to do so; and
- b) to respect the decision of a congregation indicating its willingness to consider calling a minister in a committed same-gender relationship.¹⁰

The Assembly resolution sought to enable a 'safe place' within the Uniting Church for a variety of opinions and beliefs as to the suitability of people in committed same-gender relationships continuing to minister within the Uniting Church. It took into account the irreconcilable nature of the different beliefs expressed by members of the Assembly, and sought to move forward with a commitment to our diversity. It is a source of great sadness and loss within the Church that there are some Church members who find the current position untenable.

CONCLUDING REMARKS

While this debate continues to occupy Uniting Church members and congregations, it is important to realise that it concerns an internal Church matter, one that involves an ongoing and evolving discussion about the nature of our faith and doctrine. It does not comprehend a discussion about the rights of individuals in secular society, which proceed from the State and as such are governed by the commitments that the Australian Government has made to uphold international human rights law.

No person in society should be denied the rights and benefits afforded by the state to others in equivalent situations, due to their sexuality or involvement in a committed

¹⁰ *Sexuality in Leadership in the Uniting Church in Australia*, Resolution of the 11th Assembly, Uniting Church in Australia, July 2006, unconfirmed minute.

same-gender partnership. This is particularly clear as it applies to children whose primary caregivers are systematically discriminated against by the state, and who may in turn suffer disadvantage as a result.

The Uniting Church in Australia is committed to the principles of social justice and peacemaking, and the realisation of the inalienable human rights of all people. Underlying this commitment is the principle that all people must be equal before the law, and we recognise that this is not the current state of affairs for people in committed same-gender relationships. As such, UnitingJustice Australia recommends that this situation be amended to give those in committed same-gender relationships the same legal status and benefits as those heterosexual couples whose relationship is recognised by the state.