

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN HUMAN RIGHTS COMMISSION

Question No. AE16/002

Senator Canavan asked the following question at the hearing on 9 February 2016:

Senator CANAVAN: I have some questions following up on last estimates. I asked you about your UPR submission, and in particular about the recommendation that Australia should adopt same-sex marriage laws. I referred to a number of cases that seem to indicate that under our international human rights law obligations we would have no such obligation to change the Marriage Act. In particular—and I will murder these pronouncements—there is *Schalk and Kopf v Austria* in 2010 and *Hamalainen v Finland* in 2014. When I put those cases to you, you mentioned that there is other case law, presumably arguing a different position. You said:
... they are decisions of the European Court of Human Rights and the United Nations Human Rights Committee.

and:

I would really like to write to you with each of those cases;
I am just wondering if you have been able to review that case law. Do you have those cases for me today?

Prof. Triggs: My understanding is that we have provided you with a paper setting out all of these cases.

Senator CANAVAN: My office has no record of that correspondence.

Prof. Triggs: Can I then ask for us to be able to resend this material.

Senator CANAVAN: Sure.

Prof. Triggs: We have given you a complete analysis of all of the cases that are relevant to this question. I think it probably does not include the United States Supreme Court decision on marriage equality and the 14th amendment.

Senator CANAVAN: Do you have some of those cases for me now?

Prof. Triggs: We have this now, but I can also add a briefing on the American decision.

The answer to the honourable senator's question is as follows:

The Australian Human Rights Commission's position paper on Marriage Equality (2012) is available at:

<https://www.humanrights.gov.au/lesbian-gay-bisexual-trans-and-intersex-equality-0>

The President has written an opinion piece that includes an analysis of the decision of the US Supreme Court in *Obergefell v. Hodges* 576 U.S. ___ (2015). The opinion piece dated 29 January 2016 is available at:

<http://humanrights.gov.au/news/opinions/genuine-marriage-equality-more-overdue>