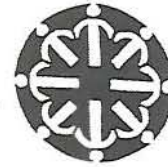


Uniting Network (NSW SYNOD)



*working for safety and equality for lesbian, gay, bisexual, transgender and intersex people in the Uniting Church in Australia*

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Mr John von Doussa, QC, President  
Mr Graeme Innes, AM, Member  
Human Rights and Equal Opportunity Commission (HREOC)

Dear Commissioners

**SUBMISSION: SAME SEX RELATIONSHIPS INQUIRY**

The Uniting Network, the official link agency of the Uniting Church in the Synod of NSW for lesbian, gay, bisexual, transgender and intersex people, is pleased to present this submission to HREOC. (The NSW Synod includes the ACT.) In compiling the submission, Uniting Network members have been consulted in each of our Synods, with reference to your Terms of Reference.

It is important to state that the Uniting Network does not have the authority to speak for the Uniting Church in Australia (UCA). If the Commission seeks formal UCA input, the Commission needs to contact our national President, the Revd Dr Dean Drayton; the General Secretary of the National Assembly, the Revd Terence Corkin; or UCA's National Director for Social Justice and Human Rights, the Revd Elenie Poulos.

The Uniting Network commends the following general principle (middle moral axiom – see Endnote below):

*that committed same gender relationships should be treated, wherever possible, in an equivalent and proportional manner to opposite gender relationships, unless to do so is discerned to be of harm to the common weal.*

Documents A and B are attached. They have been compiled by one of our NSW/ACT Co-Convenors, Warren Talbot, and contain a diverse mixture of comments, historical references and personal narratives. They are compiled documents, and thus the views are not necessarily those of the compiler or all members of the Uniting Network. None the less, we believe that all are worthy of consideration.

With best wishes for the current Inquiry, and your wider work in upholding and developing human rights and equal opportunity in Australia.

Yours sincerely

.....  
Elizabeth Teece, Co-Convenor, Uniting Network in NSW/ACT  
Revd Ian Pearson, Minister, Pitt Street Congregation, Uniting Church in Australia, Sydney

**Copied to:**  
John Oldmeadow, Executive Director, Board of Education, Uniting Church in Australia (NSW Synod)  
Members of the Uniting Network  
Various officials of the Uniting Church in Australia

## Attachment A

### Personal comments received from members of the Uniting Network within the Uniting Church

1. In response to the HREOC guidelines and public call for submissions, members of the Uniting Network throughout the Uniting Church in Australia made comments in three broad categories, namely (1) family security; death and sickness; (2) workplace entitlements; and (3) moral status.
2. The compiler has summarised and grouped the views received under those broad headings, although some might fit under more than one heading.

#### *Family security; death and sickness*

3. One member of the Uniting Network referred to her three gay children and stated that there would be a much greater sense of family security for her children if same gender relationships were regarded in a way broadly comparable to opposite gender relationships.
4. A point raised by several Uniting Church Network members relate to benefits in circumstances involving illness and death. This was raised in the context of same gender partners and persons with HIV/AIDS, but should not be limited to that or any specific medical condition.
5. It was stated that if a person is facing the ending of her/his life, then we should surely support that person's dearest friend or partner being present at that time, and receiving what might be considered as the normal next of kin entitlements.
6. The Christian principles of pastoral care suggest strong support for equal treatment and access for same gender partners, although how this is governed or even enforced is a matter we leave to the Commission and to those with the appropriate expertise, which is usually at a State, Regional, Area Health, Hospital, NGO or Local level.
7. The compiler verified that Uniting Church hospitals, such as Epworth in Melbourne and Wesley in Brisbane, already respect the individual decisions of patients in matters of visitation. We have copied this note to UnitingCare (NSW/ACT), which has responsibility for Uniting Church hospital and prison chaplains in NSW/ACT. We are assured that Uniting Church chaplains already respect same gender friends and partners.
8. One Uniting Network member stated that he and his same gender partner had gone to considerable lengths and financial expense in obtaining legal advice about financial security, including joint assets, in the event of the death of himself or his long-term partner.
9. Several members referred to family security and children, the main focus being to diminish any discrimination faced by children of same gender relationships.

#### *Workplace entitlements*

10. A Uniting Network member wrote of her concerns about workplace entitlements, in the context of her then partner, who had two children, when parenting responsibilities are shared by same gender couples. This member referred to matters such as sickness and Carer's leave to ensure the continuance of good parenting.
11. Workplace entitlements require both State and Federal legislation, and we have not had the opportunity to examine in detail the new Federal Industrial Relations legislation and the implications of such legislation in this area. The 2005 meeting of the NSW/ACT Synod agreed, by

consensus, to oppose the new Federal IR laws for reasons entirely unrelated to the current HREOC Inquiry.

12. Some individual Uniting Network members were concerned that if they were not "out" in the workplace, it was difficult to access entitlements. Obviously, this is a Catch 22 faced by some lesbian and gay persons. If they "come out" in the workplace, they may lose entitlements; but that will not be known until they "come out".
13. One Uniting Network member, who described herself as the "grandmother of a gay man", expressed her wish for her grandson to receive the same entitlements as her heterosexual children and grandchildren. A wish that is commended by us.
14. One gay man believed he had been discriminated against in the matter of a promotion because of his same gender relationship.
15. Several Uniting Network members stated that they needed to think carefully about whether they should invite their partner to a work function as they might experience an adverse reaction from their peers and seniors.
16. There were no specific comments on superannuation entitlements or wills. The compiler found that surprising. Perhaps lesbian and gay people are seeking professional advice concerning their superannuation and instructions to Trustees and other legal documents, such as Wills.
17. One gay man referred to changes to 2003/04 Medicare Plus. A Medicare Plus brochure (distributed to all Australian households) specifically stated that Medicare Plus excludes same gender couples. The Medicare Plus exclusion may involve an additional \$1000 in medical expenses for same gender couples.
18. The same member also argued that Centrelink entitlements specifically exclude lesbian and gay couples for benefit purposes. There was a mixture of views within the Uniting Network on this matter.

### *Moral status*

19. The moral status of same gender relationships is not within the HREOC Terms of Reference, but more than one Uniting Network member expressed a concern that the very same people who complain about alleged gay "promiscuity" are the last people to support committed lesbian and gay relationships.
20. Some Uniting Network members asked, rhetorically, whether committed, same gender relationships "threaten" opposite gender relationships?
21. Moral status is, obviously, a matter for the Councils of the Church and numerous others to address in our overall assessment of human relationships, marriage and the family.

## Attachment B

### A range of other comments received of relevance to the Inquiry

1. The Uniting Church in Australia has taken a strong moral stand against all forms of discrimination. In particular, we have opposed discrimination against women and indigenous persons. Since 1985 we have declared ourselves to be a multicultural Church. We respect and are in dialogue with persons of other faiths.
2. In 1988 the Revd Brian Howe, a Uniting Church Minister in good standing, then also the Federal Minister for Social Security, applied the Christian moral principles of comparability, proportionality and equivalence to same gender partners for the national Carer's Benefit. The Carer's Benefit legislative changes passed both chambers of the Federal Parliament on a multi-partisan basis.
3. Some interpretations of agreements applicable to same gender relationships under the purview of the International Labour Organisation (ILO 111) were applied by states, notably by the (Hon. Sir Rupert) Hamer Government in Victoria in 1976. Prior to the passage of equal opportunity legislation in that jurisdiction Hamer had already established a Committee on Discrimination in Employment with a mandate including ILO 111, chaired by the then CEO of the Victorian Employers Federation, Ian Spicer.
4. We understand that in 1979 the then Commonwealth Attorney, the Hon. Peter Durack offered a ruling on the *International Covenant on Civil and Political Rights* (ICCPR) Clause 26, namely that "sexual orientation" was "another status" under the Covenant. A later Attorney, the Hon. Michael Duffy, signed optional protocols, which strengthened the legal status of the ICCPR in Australia.
5. It was in August 1989, in the context of Australia's first National HIV/AIDS Strategy, and the interpretation of ICCPR Clause 26 that HREOC obtained an additional brief in this area. We would be interested to read of particular developments since then.
6. There are many pieces of Federal and State legislation, not to mention regulations and policies, that require change. A minimal but major achievement for HREOC would be to document all such discriminatory policies at a Local, Regional, State and Federal level.
7. Australian governments have generally acted with great caution in human rights and equal opportunity legislation on the basis of the Constitution of the Commonwealth. Progress in human rights has often relied on the use of international instruments and their interpretation by the High Court of Australia.
8. The Australian Capital Territory has recently enacted legislation covering same gender relationships, known in the ACT as "Civil Unions". The Federal Government /Parliament is currently considering whether it should override the ACT legislation. (The situation is not clear at the time of writing.)
9. The Synod of Victoria and Tasmania must now formally relate to the Tasmanian Registrar of Birth, Deaths, Marriages, also responsible for "registered partnerships" in that jurisdiction. The concept of "registered partnerships" is one the Councils of the Uniting Church still need to consider.
10. The obvious, but not easily answered question is that if a Government recognises a partnership or a "Civil Union", what are the appropriate ways for the Church to share in that recognition?
11. A point of debate in the ACT was to do with marriage celebrants. In the Synod of NSW/ACT there are nearly 800 Uniting Church clergy and some lay leaders who are authorised as marriage celebrants. Some clergywomen and clergymen may now decide, on the grounds of pastoral care, to seek further authority under the new ACT legislation. There is no policy of the Uniting

Church in Australia that the compiler is aware of to prevent an individual clergywoman or clergyman from registering as a civil celebrant if they are acting in good conscience.

12. In the Churches of the Reformation, marriage is not and has never been a Sacrament in the formal sense, so there has always been scope for diverse views and decisions. The UCA Presbytery of the Canberra Region, the Uniting Network, the NSW/ACT Synod and National Assembly of the UCA still need to consider this matter.
13. There are some specific issues concerning LGBTI people that are still under discussion in the UCA, and there will continue to be diverse views about the precise moral status of genital sexual expression between persons of the same gender for many years to come in different churches.
14. The annual meeting of the NSW Synod of the UCA agreed by consensus to oppose discrimination in Church employment of any lay person on the grounds of sexuality (*reference: Synod Minutes, 2002-03*). The policy endorsed by this Synod is important and has wide implications not only for the thousands of persons employed by Uniting Church welfare, community, health, hospital, childcare, education, adoption, parenting, family, housing services and overseas development, but also across Australia and internationally. However, the policy did not specify whether this non-discriminatory approach extended to same gender partners.
15. We have not sought and thus do not offer any comment on the legislation required for the Commission, government departments, agencies and regulatory bodies, the Federal Parliament itself, or international bodies or covenants of which Australia is either a member or signatory, to advance the implementation of the general principle in the covering letter.
16. In advocating this general principle, the Uniting Network has made no comment concerning the advocacy of marriage as a God-given institution for one woman and one man for their entire life, to the exclusion of all others, in sickness and in health (see various references, notably the National Assembly's *Uniting In Worship* (1988), *Homosexuality and the Church* (1985), National Assembly Task Group on Sexuality (ATGS) reports (1996 and 1997), *UCA-Lutheran Dialogue* (1996), and the National Assembly itself, by consensus, in 1997.
17. Since Union in 1977, the Uniting Church has devoted considerable time and effort in appraisals of changing human relationships in society. There are numerous Regional and State reports on the subject. The National Assembly of the UCA published *Homosexuality and the Church* (1985), with *Responses* to that report (1988); a short report on sexuality called *Making Decisions as Christians* (1991); *Interim Report of the Assembly Task Group on Sexuality* (1996); the final report of ATGS *Uniting Sexuality and Faith* (1997); *Joy/Pain* (2001); and a set of papers on *Sexuality and Leadership* (2004). From within the Uniting Network, reference is made to the Adelaide Affirmation of 2002, which sets out Christian beliefs to support the overall guiding principle above.
18. Uniting Network members are generally of the view that our Church, society, nation and the international community can uphold marriage and support faithful same gender relationships at the same time, although some would support a re-definition of marriage to include same gender relationships.
19. The compiler believes that according to the National policies of the UCA, local congregations can welcome, worship, sing hymns and pray together with and perform blessings for same gender couples, provided that any such liturgy or pastoral support does not "resemble" the Christian marriage ceremony. The morally serious unintended consequence of not offering some recognition and pastoral support for same gender relationships might be the endorsement of non-covenantal arrangements.
20. The Christian tradition has never required marriage as a pre-condition for faithful discipleship, and we have upheld (at least at the level of principle) the value of single persons, divorced persons, remarried persons, childless heterosexual couples and same gender friendships. What is taking place now is a gradual and renewed understanding of friendship as a paradigm for the ways in which some LGBTI might live their lives.

21. Following some of our partner churches in the World Alliance of Reformed Churches and the World Methodist Council, the ATGS of the Uniting Church's national Assembly referred to this renewed understanding as "right relationships". With Australian marriages ending at a rate approaching 50 per cent, and second marriages ending at 35 per cent, a renewed paradigm of covenant, commitment, friendship and right relationships might be for the benefit of the many and also for the common good.
22. The ATGS final report itself (although not all of its policies or recommendations) was received by consensus by the National Assembly's triennial meeting in Perth in July 1997. In particular, concerning the current HREOC Terms of Reference, it would be of value to assess carefully paragraphs 4.18 - 4.29, contained on pages 40 and 41 of the final report (see paragraph 17 above).
23. On the wider subject of human sexuality, some members of the Uniting Network are concerned about the numerous ways in which patriarchal capitalism has commodified human sexuality, changing our relationships into economic or social "outputs", glorified in the media when (for example) a starlet might marry on Friday and divorce on Monday.

#### Endnote

#### *What is a "general principle" or a "middle moral axiom"?*

The "general principle" stated in our covering letter might be more technically described in Christian moral theology "middle moral axiom".

- (1) For a theological discussion of this understanding of morality within the Reformed and Evangelical traditions, the writings of Paul Ramsey, Helmut Thielicke and Virginia Ramey Mollenkott (to name but three) may be consulted.
- (2) In the 1950s Professor Ramsey (*Basic Christian Ethics*, and elsewhere) made the distinction between primary biblical axioms (for example, support for justice and peace), middle moral axioms (such as support for nuclear disarmament), and particular policy axioms (such as that adopted by the 1982 National Assembly of the UCA in calling for the Australian Government to sever treaty arrangements with the United States of America). Biblical, middle and policy axioms are clearly of a different order in terms of moral and theological reasoning.
- (3) In his authoritative volumes on *Evangelical Theology*, *Theological Ethics* and *The Ethics of Sex* (1959), Professor Thielicke sets out a detailed rationale for those behaviours that might be morally justifiable in certain circumstances. Thielicke makes particular reference to the moral status of same gender relationships.
- (4) In a groundbreaking evangelical re-examination of homosexuality in 1976, *Is the Homosexual my Neighbour?*, Professor Mollenkott and her co-author, Dr Leitha Scanzoni, advocated a new ethic for morally upright same gender relationships.