



Submission to the Senate Standing Committee on Legal and
Constitutional Affairs

***Inquiry into the Same-Sex Relationships (Equal
Treatment in Commonwealth Laws – General Law
Reform) Bill 2008***

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Contact

Rev. Elenie Poulos
National Director
UnitingJustice Australia
Uniting Church in Australia, National Assembly

PO Box A2266
Sydney South NSW 1235
Phone: 02 8267 4239
Email: unitingjustice@nat.uca.org.au

Introduction

UnitingJustice Australia, the justice and advocacy agency of the Uniting Church in Australia National Assembly, welcomes the opportunity to comment on the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Bill 2008*.

UnitingJustice supports the amendments to several Commonwealth laws proposed in this Bill. A recognition of committed same-sex de facto relationships as having a legal status corresponding to that of committed heterosexual de facto relationships is essential for ensuring equality before the law and in access to entitlements for same-sex couples and their children.

We wish to note that this submission draws largely on our submission made in July of this year to the Inquiry into the *Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008*. We also note that our submission addresses the general intent of the Bill, to eliminate discrimination against same-sex couples and their children, and does not address individually the specific Acts proposed for amendment.

The Uniting Church and human rights

The Uniting Church in Australia has a strong tradition of working against discrimination in all its forms. In the past, the National Assembly of the Church has made important statements on the equality of men and women, multiculturalism and our solidarity with Indigenous people. We are committed to building and maintaining good ecumenical and inter-faith relationships 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 the Government and the wider community in a variety of contexts in work for an end to the marginalisation of vulnerable people in our society and the recognition of the basic humanity of each person.

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 all human beings to live with dignity. At its most recent triennial gathering, the Eleventh National Assembly of the Uniting Church in Australia adopted a 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".¹

Further, the Assembly pledged:

¹ Uniting Church in Australia (2006), *Dignity in Humanity: Recognising Christ in Every Person*, Eleventh Assembly, Resolution 06.20.01

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.²

Equality before the law for same-sex couples

In addressing the question of equality before the law for same-sex couples, the Uniting Church, by virtue of the resolutions above, is committed to evaluating Government policy against the United Nations' human rights treaties to which Australia is party. UnitingJustice believes that the current arrangements for entitlements and obligations in the Acts proposed for amendment in the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Bill 2008 do not meet Australia's international commitments in this area. Indeed, the breadth of portfolios and policy areas up for amendment in the Bill demonstrates the extent of the discrimination currently being felt by same-sex couples in Australia.

The *International Covenant on Civil and Political Rights* (ICCPR) states that:

All persons are equal before the law and are entitled without any discrimination to 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, religion, political or other opinion, national or social origin, property, birth or other status.³

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

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.⁴

Discrimination on the basis of sexuality is forbidden in both the ICCPR and ICESCR potentially on two grounds: discrimination on the basis of 'sex' and on the basis of 'other status', as discussed in detail in the HREOC *Same-Sex: Same Entitlements Report*. While the two Conventions do not explicitly outlaw 'sexual orientation' or 'involvement in a same-sex relationship' as a basis for discrimination in law, UN treaty bodies interpreting these provisions have agreed that the right to non-discrimination includes protection from discrimination on the grounds of sexual orientation.⁵

Further, it is the state's responsibility to protect its population in line with the commitments outlined in the Conventions:

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

² *ibid.*

³ Article 26

⁴ Article 2(2)

⁵ HREOC *Same-Sex: Same Entitlements* report

http://www.humanrights.gov.au/human_rights/samesex/report/pdf/SSSE_Report.pdf, p.40

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

Accordingly, any laws which exclude same-sex de facto couples from entitlements and obligations afforded to heterosexual de-facto couples are in breach of the right to equality before the law under the Conventions, and of the Government's responsibility to ensure such equality for all people under its jurisdiction.

Equality for children

Children of parents in same-sex relationships may also be disadvantaged by laws which discriminate against their primary caregivers. The *Convention on the Rights of the Child* requires that children not suffer any discrimination on the basis of the status of their parents or legal guardians:

States Parties shall take all appropriate measures to ensure that the child is protection again 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.⁷

The Committee on the Rights of the Child has expressly stated that discrimination on the basis of sexual orientation constitutes discrimination for the purpose of Article 2 (outlined above).⁸ There is therefore a clear obligation on the Australian Government to ensure that all children, including those of same-sex parents, are treated equally in law.

We believe the current definitions of stepchildren and stepparents discriminate against children of same-sex couples as the meaning of these terms requires a couple to be married. Same-sex couples cannot marry, and so a child born to a same-sex couple will only currently be legally and financially tied to a parent if they are their birth mother or birth father. The children of these relationships would never be able to qualify as stepchildren of the other non-biological partner, and so never be eligible for the legal and financial status that corresponds to this relationship.

We support the amendments proposed in the Bill, as we believe they will remove the discriminatory aspects of the Acts concerned and ensure equal treatment for same-sex and heterosexual de-facto couples and their children in numerous policy areas.

The definition of 'de facto partner'

We believe that many pieces of legislation currently discriminate against same-sex de facto couples. In a research paper produced for HREOC's *Same-Sex: Same Entitlements* inquiry in 2006, it was reported that 'virtually all federal legislation specifically includes heterosexual de facto partners within the definition of "spouse",

⁶ ICCPR, Article 2(1)

⁷ Article 2(2)

⁸ Committee on the Rights of the Child (2003), General Comment 3 in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI/GEN/1/Rev.8

meaning that therefore in general heterosexual de facto partners have 'almost identical rights, entitlements and obligations to married spouses in federal law.'⁹ It was also found that numerous Acts specifically required a de facto couple to be made up of partners of the 'opposite sex', and that many others, although not expressly excluding same-sex couples, have been interpreted to do so because of the use of the words 'husband or wife' or 'spouse'.¹⁰

As such, we welcome the changes proposed to the definition of de facto spouse in several of the Acts up for amendment. More specifically, we support the removal of definitions that discriminate against same-sex couples and the insertion of a non-discriminatory definition.

We also support the recognition of relationships registered under prescribed state and territory registration schemes. It is also important to note our support for the exclusion of 'caring' or 'interdependent' relationships from recognition in this instance.¹¹ We do not believe that this Bill should be used as a vehicle for examining the status of interdependent relationships. As argued by the Attorney-General in the Bill's second reading, there are many complex issues involved in a recognition of interdependent relationships, including the possibility that those involved may not necessarily benefit from such recognition. A bill intended to remove discrimination against same-sex couples and their children is not the appropriate place for examining this issue.

The institution of marriage

We note that the Attorney-General, in the second reading of the Bill, highlighted the tendency for debates around legal equality for same-sex couples to become one concerned with the institution of marriage in our society, and the possibility that reforms will undermine its status.

The Uniting Church does not support expanding the legal definition of 'marriage' to encompass same-sex unions, however UnitingJustice believes that ensuring the equal treatment of same-sex couples in the areas of law covered by this Bill will do nothing to undermine the institution of marriage.

The understanding of marriage as a heterosexual religious and social institution should not be used as a platform from which to discriminate against same-sex couples in areas where unmarried heterosexual couples are legally recognised by the State as having a relationship equivalent to that of a marriage, and are able to access benefits and entitlements because of this.

Furthermore, we do not believe that the removal from some laws of different treatment for married and de facto couples will at all undermine the institution of marriage in our society. Such laws currently discriminate on the basis of marital status, which we believe

⁹ Millbank, J., T. Hambley, A. Ward and A. Vogel (2006), *Areas of Federal Law that Exclude Same-Sex Couples and their Children*, Research Paper for the Human Rights and Equal Opportunity Commission's *National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits*, available:

http://www.hreoc.gov.au/human_rights/samesex/inquiry/docs/Same_Sex_ResearchPaper200609.pdf, p.5

¹⁰ *ibid.*, pp.5-6

¹¹ As noted in page 6 of the Explanatory Memorandum of the Bill

to be unjust given that married and de facto couples in many cases share vastly similar circumstances. This change, in conjunction with the altered definition of 'de facto partner' (as discussed above) will remove the aspects of law currently discriminating against both heterosexual and same-sex de facto couples.

Conclusion

The Uniting Church in Australia is committed to 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 in Australia for people in committed same-sex relationships and their children.

It is clear that in many areas of Government legislation, same-sex partnerships are discriminated against. We believe the Government has a responsibility to rectify this situation and to provide equality to all its citizens under 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 same-sex relationship. This is also the case for children who are systematically discriminated against and suffer disadvantage as a result of the same-sex relationship of their primary caregivers.

UnitingJustice Australia recommends that this situation be amended to give those in committed same-sex relationships and their children the same legal status and entitlements as those heterosexual couples (and their children) whose relationship is recognised by the State. As such, we support this Bill and recommend it be passed through Parliament.