

APRIL 2012



SUBMISSION TO THE HOUSE STANDING COMMITTEE
ON SOCIAL POLICY AND LEGAL AFFAIRS COMMITTEE

INQUIRY INTO THE MARRIAGE EQUALITY AMENDMENT BILL 2012 AND THE MARRIAGE AMENDMENT BILL 2012

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1 | INTRODUCTION

UnitingJustice Australia is the justice unit of the Assembly of the Uniting Church in Australia (the national Council of the Uniting Church), pursuing matters of social and economic justice, human rights, peace and the environment. It works in collaboration with other Assembly agencies, Uniting Church synod justice staff around the country, and with other community and faith-based organisations and groups. It engages in advocacy and education and works collaboratively to communicate the Church's vision for a reconciled world.

UnitingJustice Australia exists as an expression of the Uniting Church's commitment to working towards a just and peaceful world. This commitment arises from the Christian belief that liberation from oppression and injustice is central to the outcome of the work that God has undertaken through Jesus Christ. We welcome this opportunity to provide comment to the Inquiry into the *Marriage Equality Amendment Bill 2012 (Marriage Equality Bill)* and the *Marriage Amendment Bill 2012 (Marriage Amendment Bill)*.

The Uniting Church in Australia is committed to involvement in the making of just public policy that prioritises the needs of the most vulnerable and disadvantaged in our society. In 1977, the Inaugural Assembly of the Uniting Church issued a *Statement to the Nation*.¹ In this statement, the Church declared that "our response to the Christian gospel will continue to involve us in social and national affairs."

The Uniting Church's support for human rights is based on how we understand the Christian faith. Christians believe that human beings are created in the image of God who is three persons in open, joyful interaction. As bearers

of God's image, human beings are inherently deserving of dignity and respect. The image of God that is reflected in human life, the form of life that corresponds to God, is the human community. Humans, made in God's image, are inherently relational, finding life and sustenance in relationship and community. Being called into community with the whole humankind as we are, when one person is diminished, we are all diminished.

The Uniting Church believes that it has a responsibility to contribute to the building of societies in which all people are valued and respected. In the context of public policy and international affairs, this means participating in the development of systems, processes and structures, such as the international human rights system and the protection of human rights domestically, that function to both protect and promote human dignity and peace, and hold all of us mutually accountable in this.

The Uniting Church's support for human rights and the upholding of the dignity of all people was fully articulated in its statement on human rights, *Dignity in Humanity: Recognising Christ in Every Person*, adopted by the Assembly of the Church in 2006.² As well as laying out the theological basis of our commitment to human rights, this statement expresses the Church's support for "the human rights standards recognised by the United Nations," which express the birth right of all people to "all that is necessary for a decent life and to the hope for a peaceful future."

In *Dignity in Humanity*, the Uniting Church also urged the Australian Government to fulfil its responsibilities under the human rights

¹ <http://www.unitingjustice.org.au/uniting-church-statements/key-assembly-statements/item/511-statement-to-the-nation>

² <http://www.unitingjustice.org.au/human-rights/uca-statements/item/484-dignity-in-humanity-a-uniting-church-statement-on-human-rights>

covenants, conventions and treaties that Australia has ratified or signed. We also 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. It is these promises that continue to drive the Church's involvement in the development of just and responsible government policy and practice in Australia.

It is in accordance with these beliefs that UnitingJustice Australia makes the following submission to the Inquiry into the *Marriage Equality Amendment Bill 2012 (Marriage Equality Bill)* and the *Marriage Amendment Bill 2012 (Marriage Amendment Bill)*.

2 | THE UNITING CHURCH AND SEXUALITY

The Uniting Church in Australia has wrestled with ongoing discussions about sexuality and equality for over thirty years. There is a great diversity of opinion amongst our Church members, derived from the different ways in which people understand the Bible and their own Christian faith. The expression of divergent opinions and beliefs does not occur in a vacuum; we acknowledge that the discussions that have taken place within our Church have been painful for many members, particularly those who belong to the LGBTI³ community. Living together in a diverse church requires of us that we learn how to deal with the multitude of different opinions that are held by faithful church members on a range of issues. Living together, reflecting God's love for every person, requires us to be an open and inclusive Church that welcomes all people as children of God.

The Uniting Church believes that diversity is a gift and is part of our experience of God in the world. Learning to live together embracing our diversity is an expression of faithful discipleship and part of our journey towards the reconciliation of all life with God. UnitingJustice stands in solidarity with all those who are marginalised in society, and it is of particular concern to us when situations of injustice exist within the church.

³ Lesbian, gay, bisexual, transgender and intersex.

Since 1997, the Uniting Church's understanding of marriage has been:

Marriage for Christians is the freely given consent and commitment in public 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 a 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.⁴

However, one of the key roles that UnitingJustice holds is to examine the Church's own life in areas pertaining to social justice, and we believe that the right to equality is one of those areas. In our seminal founding document, the *Basis of Union*, the Uniting Church declared itself to "remain open to constant reform" under Christ "as the living Head of the Church."⁵ This commitment was reaffirmed at the Eighth Assembly, where the Church committed to a "continuing dialogue on the matters as yet unresolved in the same spirit of openness and compassion." Importantly, we do not seek to further divide our Church on the issue of the legalisation of same-sex marriage. We note that the debate around the recognition of same-sex marriage within the Church does not comprehend a discussion about the rights of individuals in the wider civil society – rights that proceed from the State and as such are governed by the commitments of the Australian Government to the principles of equality under law. Accordingly, UnitingJustice believes that no person in our society should be denied the rights and benefits afforded by the state to others in equivalent situations, based on their sexuality or their involvement in a committed same-sex relationship.

It falls within the mandate of UnitingJustice to bring to light inequities in our legal system that negatively impact particular groups of people. With regards to the proposed amendments to the *Marriage Act 1961*, we note that there are many members of the

⁴ Eighth Assembly of the Uniting Church in Australia, 1997. Available at: <http://www.onemansweb.org/jan/studies/sexes/UnitingSexuality.pdf>

⁵ <http://assembly.uca.org.au/images/stories/HistDocs/basisofunion1992.pdf>

Uniting Church who feel deeply saddened that because they are homosexual their committed and loving relationship cannot be blessed and acknowledged in the same way as heterosexual relationships, within the Church and in society. It is also the case that there are many Uniting Church heterosexual members and leaders who regard the long-standing doctrine of marriage between a man and a woman as exclusive and inequitable and who would welcome a conversation within the Church to re-examine this doctrine.

Despite the ongoing tension with regards to this issue, it is important to acknowledge that this conversation is an internal Church matter: it involves an ongoing and evolving discussion about the nature of our faith and doctrine, and the nature and shape of our community in a culturally and religiously diverse nation such as Australia – a conversation that UnitingJustice hopes will take place in the spirit of open reform as articulated in our *Basis of Union*.

3 | HUMAN RIGHTS AND MARRIAGE EQUALITY

In 2011, the United Nations Human Rights Council passed a resolution that condemned discrimination against LGBTI individuals and the acts of violence that are often fuelled by state-legislated inequity and stigmatisation.⁶ Following this resolution, the UN High Commissioner for Human Rights noted that governmental discrimination on the basis of sexual orientation or gender identity is a fundamental denial of human rights and human dignity, that “causes enormous, unnecessary suffering, reinforces stigma, and fuels violence.”⁷

Although there has been recent debate in the European Court of Human Rights as to

whether ‘marriage’ is in fact a human right,⁸ the right of consenting adults to enter into marriage is clearly and definitively enshrined in international human rights treaties to which Australia is a signatory. The International Covenant on Civil and Political Rights (ICCPR) states that:⁹

All persons are equal before the law and are entitled without 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.

Australia is also a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) which prohibits:¹⁰

discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

While these two Conventions do not explicitly proscribe against discrimination on the basis of involvement in a same-sex relationship, UN treaty bodies interpreting these provisions have unanimously agreed that the right to non-discrimination *does* include protection from discrimination on the grounds of sexual orientation.¹¹ Two Australian cases have been considered by the Human Rights Committee

8 Much has been made of the recent case of *Gas and Dubois v. France* (App no. 25951/07) in which the court upheld an earlier decision in *Schalk and Kopf v. Austria* (App no. 30141/04). In that case, the majority of the court reported that “the protection of same-sex relationships under the Convention did not give rise to an obligation to change the law of marriage.” We note in both cases, however, that the right to non-discrimination against individuals on the basis of their sexual identity was *not* challenged. Consequently, we would argue that media reports resulting from this case have been misleading.

9 Article 26.

10 Article 2(2).

11 HREOC Same-Sex: Same Entitlements report, http://www.humanrights.gov.au/human_rights/samesex/report/pdf/SSSE_Report.pdf, p. 40.

6 UN General Assembly Resolution 17/19 (2011), *Human rights, sexual orientation and gender identity*, available at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement>

7 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11917&LangID=E>

on this issue: *Toonen v. Australia*¹² and *Young v. Australia*.¹³ In both of these cases, the Committee concluded that the categories of 'other status' and 'sex' protect individuals from discrimination on the basis of sexual orientation.

Only once has the Committee been asked to explicitly consider the issue of same-sex marriage, in the case of *Joslin v. New Zealand*.¹⁴ In that case, the Committee noted that they could not find "by mere refusal to provide for marriage between homosexual couples, the State party has violated the rights of the authors." It is important to note, however, that the narrow approach reflected in the Committee's findings simply indicates that there is no positive requirement in the ICCPR for States to recognise same-sex marriage. UnitingJustice also argues that this case was heard ten years ago, and that international trends and subsequent cultural shifts would likely be judicially reflected today.

More recent cases lend credence to our belief on this issue. In 2005, for instance, the South African Constitutional Court noted that defining marriage as an act between a man and a woman to the exclusion of all others was "an assumed reality, rather than prescriptive of a normative structure for all time."¹⁵ In 2001, the Netherlands became the first country to open civil marriage to same-sex couples. Belgium became the second in 2003. In 2002 through 2004, courts in six Canadian provinces held that the opposite-sex definition of marriage was contrary to Canada's Charter of Rights, and in 2005 federal legislation extended same-sex marriage to all of Canada. Same-sex marriage was also legalised in Spain in 2005, in South Africa in 2006, in Norway and Sweden effective in 2009, and in Portugal, Iceland, and Argentina effective in 2010. As of March 2012, eight states in the United States have also legalised same-sex marriage.

12 Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

13 Communication No. 941/2000, U.N. Doc CCPR/C/78/D/941/2000 (2003).

14 Communication No. 902/1999, U.N. Doc CCPR/C/75/D/902/1999 (2002).

15 CCT60/04; CCT 10/05 [100].

In Australia, there is currently a disparity between the legislative arrangements of the states, territories and federal laws. The ACT, Tasmania and Queensland provide for civil union schemes and also recognise civil same-sex unions entered into in other states and international territories. New South Wales recognises civil same-sex unions entered into in other states, although it does not provide for an official ceremony. Victoria does not allow for an official ceremony and does not recognise civil same-sex unions entered into in other states, while in South Australia, Western Australia and the Northern Territory, same-sex couples may only be recognised as de-facto partners.¹⁶ The recent commitment by the Australian Government to consolidate anti-discrimination laws seeks to eliminate inconsistent, overly complex and uncertain laws, and should be extended to cover the discrimination faced by same-sex couples in Australia. UnitingJustice believe that this extension of protection against discrimination must go beyond the provision of civil partnership recognition schemes. Without acknowledgement of same-sex relationships under the *Marriage Act*, there runs the very real risk of viewing same-sex relationships as somehow inferior to opposite-sex relationships. This concern was validated in a recent survey of same-sex attracted couples, who felt that when compared to heterosexual relationships, their own committed and loving partnerships were valued less by their friends, families and the wider Australian society.¹⁷

While UnitingJustice welcomed the removal of many discriminatory aspects of our legislative framework in 2008,¹⁸ we believe that the *Marriage Act* in its current form continues to

16 See <http://www.australianmarriageequality.com/wp/get-informed/quick-facts/>

17 Dane, S.K. (et. al.) (2010), *Not so private lives: National findings on the relationships and well-being of same-sex attracted Australians*, The University of Queensland.

18 UnitingJustice made two submissions to Inquiries in 2008 advocating the removal of discriminatory legislation in this area. Both submissions are available at: <http://www.unitingjustice.org.au/society-religion-and-politics/submissions/item/754-inquiry-into-same-sex-relationships-bill-2008> and <http://www.unitingjustice.org.au/society-religion-and-politics/submissions/item/753-inquiry-into-same-sex-relationships-superannuation-bill-2008>

discriminate against same-sex couples by failing to allow them to validate their commitment to each other under our Commonwealth laws. Excluding LGBTI couples from the *Marriage Act* entrenches discrimination against those who are in loving and committed relationships. Substantive equality is the inalienable right of all Australians, and must be viewed in light of the effect that our legislative arrangements have on particular groups of people. In the case of the *Marriage Act*, denying committed same-sex couples the right to have their relationships acknowledged by the state directly contributes to the LGBTI community's struggle for validation and acceptance. Discrimination on the grounds of sexual orientation and the associated stigmatisation of same-sex partnerships bears a direct causal relationship to the higher rates of psychological morbidity and health inequities experienced by members of the LGBTI community.¹⁹ LGBTI individuals are 2.5 times more likely than their heterosexual peers to attempt suicide and 1.5 times more likely to suffer from depression and associated anxiety disorders.²⁰ Young people who identify as same-sex attracted are particularly vulnerable to the consequences of the stigmatisation that accompanies our refusal to acknowledge their sexual orientation and their relationships. We can begin to address these unacceptable statistics if we remove the barriers to validating and honouring same-sex relationships.

4 | MARRIAGE EQUALITY BILL AND FREEDOM OF RELIGION

The two Bills for consideration in this Inquiry have similar goals, namely, the removal of discriminatory aspects of the *Marriage Act 1961*. UnitingJustice supports the broad goals of these Bills and notes that both the *Marriage Equality Bill* and the *Marriage Amendment Bill* do not seek to amend section 47 of the *Marriage Act* with regards to Ministers of religion. In the Uniting Church, the solemnisation of marriages is a matter of doctrine and discipleship - Ministers of religion are not compelled to solemnise *any* marriage. Both the *Marriage*

Equality Bill and the *Marriage Amendment Bill* provide model clauses that effectively balance the rights associated with freedom of religion with the rights of non-discrimination and equality.

5 | CONCLUSION

The Uniting Church in Australia is committed to the principles of social justice and equality, 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. UnitingJustice acknowledges that this is not the current state of affairs for people in committed same-sex relationships. Accordingly, adopting a rights-based approach grounded in the international human rights statutes to which Australia is a signatory, UnitingJustice believes that this situation be amended to give those in same-sex relationships the same rights and benefits through marriage as are bestowed upon heterosexual couples whose relationship is recognised by the state.

¹⁹ King, M. (2008), *A systematic review of mental disorder, suicide and deliberate self-harm in lesbian, gay and bisexual people*, BMC Psychiatry, Vol 8.

²⁰ Ibid.