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## Religious Discrimination Submission – Uniting Church in Australia

### The Uniting Church in Australia Assembly

The Uniting Church in Australia Assembly is the national council of the Uniting Church in Australia (UCA) and has determining responsibility within the Church for matters of doctrine, worship, government and discipline. We welcome this opportunity to contribute to the Religious Discrimination Bill 2019.

### Previous Statements and Submissions

The Uniting Church has made a number of previous statements regarding religious freedom and human rights, arising from triennial Assembly meetings, as well as in submissions to government made by the UCA National Assembly office. A listing of some of those statements and submissions of relevance can be found in the Appendix.

The Uniting Church describes itself as a “justice oriented” Church,<sup>1</sup> and has a long history of support for human rights. In its Statement to the Nation made at its inaugural Assembly in 1977, the Church affirmed the rights of all people and committed itself to oppose all forms of discrimination which infringe basic rights and freedoms.<sup>2</sup> The Church’s engagement with human rights issues in Australia is steeped in our concern for the rights of vulnerable groups in our society. Our commitment comes from our belief that all people are created in the image of God and are loved and valued by God.<sup>3</sup>

We view the right to religious freedom as an important element in the protection of all human rights by law nationally. As a result, the consistent position of the Uniting Church has been, and continues to be that legislative provisions for religious freedom would best be made through the mechanism of a comprehensive Human Rights Act, within which the competing claims and values inherent in this discussion may be grounded in a holistic approach to human rights.<sup>4</sup>

In its approach to the right to religious freedom, the Uniting Church is aware of the tension which can sometimes be found within the right to practice religion, including the right to

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<sup>1</sup> “In the light of this faith, we will live out our covenant as First and Second Peoples, our commitment to being a multicultural Church, oriented towards justice, and that engages constructively with ecumenical partners.” *Assembly Strategic Plan 2017 – 2020*. Available at <https://assembly.uca.org.au/about/strategicplan>

<sup>2</sup> *Statement to the Nation, Inaugural Assembly June 1977*. Available at <https://assembly.uca.org.au/resources/introduction/item/134-statement-to-the-nation-inaugural-assembly-june-1977>

<sup>3</sup> Uniting Church in Australia (2006) *Dignity in Humanity: A Uniting Church Statement on Human Rights*, point 2. Available at <https://www.unitingjustice.org.au/human-rights/uca-statements/item/484-dignity-in-humanity-a-uniting-church-statement-on-human-rights>

<sup>4</sup> Uniting Church in Australia (2014) *Rights and Responsibilities: Submission to the Human Rights Commissioner’s Consultation*, p6. Available at <https://www.unitingjustice.org.au/human-rights/submissions/item/981-rights-and-responsibilities>

discriminate in some cases, and the right for all people to live lives of equality under the law free from discrimination.<sup>5</sup> Fundamental to the Uniting Church's approach to its own religious freedoms is that such freedoms are never to be self-serving, but rather ought to be directed toward the Church's continuing commitment to seeking human flourishing and wholeness within a healthy, diverse society.<sup>6</sup>

### Focus of Proposed Legislation

The Church urges that any provisions for religious freedom or protection from discrimination should be driven by an overriding focus on enabling and maintaining a society which encourages mutual respect and is free from discrimination for everyone. There should be no winners and losers when it comes to the protection of human rights in Australia.

Having identified the Uniting Church preference for a comprehensive Human Rights Act, there are significant parts of the Exposure Draft that we support. The legislation by and large would enable the UCA to continue to freely practise our religion.

The Uniting Church is however concerned that this legislation adds to the complex patchwork of anti-discrimination laws already in place but does not adequately achieve the balance between competing rights. We are concerned that the Exposure Draft leans too heavily in favour of religious freedom over other rights.

As such, the Church is concerned that the protections afforded to those most vulnerable in our society are at risk of being diminished by this legislation.

### Coverage of the legislation

In previous submissions, the Uniting Church has been particularly concerned to ensure that any legislated religious freedoms are not simply the prerogative of those (generally Christian) religious organisations who are most largely represented in our society, but also that the religious freedoms of minority communities are strongly upheld.<sup>7</sup>

In this regard we support the broad approach taken in the legislation to defining religion and religious belief, including for those who hold no religious belief.

The Uniting Church is however concerned that Indigenous religious beliefs are not mentioned in either the draft legislation nor the explanatory notes.

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<sup>5</sup> Uniting Church in Australia (2015) *Submission to the Australian Human Rights Commission Religious Freedom Roundtable*, p12. Available at <https://www.unitingjustice.org.au/human-rights/submissions/item/1103-religious-freedom-inquiry>

<sup>6</sup> Uniting Church in Australia National Assembly (2009) *Submission Australian Human Rights Commission Freedom of Religion and Belief in the 21st Century*, p5. Available at <https://www.unitingjustice.org.au/human-rights/submissions/item/680-ahrc-freedom-of-religion-belief-in-the-21st-century>

<sup>7</sup> Eg. Uniting Church in Australia (2015) *Submission to the Australian Human Rights Commission Religious Freedom Roundtable*, p8 – 9. Available at <https://www.unitingjustice.org.au/human-rights/submissions/item/1103-religious-freedom-inquiry>; Uniting Church in Australia National Assembly (2009) *Submission Australian Human Rights Commission Freedom of Religion and Belief in the 21st Century*, p28 – 29. Available at <https://www.unitingjustice.org.au/human-rights/submissions/item/680-ahrc-freedom-of-religion-belief-in-the-21st-century>

We encourage some clarity being provided as to how this legislation understands Indigenous religious beliefs and practices to be protected, noting not all traditions and cultural practices that we would recognise as 'religious' have systems and structures that can be easily identified by the law to help it determine doctrine, tenets, beliefs or teachings.

#### Timing, process and due consultation

The Uniting Church has greatly appreciated that the Federal Government has consulted in the last two months with different faiths and faith-based organisations including our own Church.

We remain concerned however that the period and scope for submissions and consultations is too short and rushed, particularly in regard to minority groups and communities who are concerned that they might feel the brunt of these proposed legislative changes.

The Uniting Church has attempted to consult a diverse range of people from across our Church and beyond in developing our submission. The UCA is concerned that the proposed legislation ignores the role that religious beliefs have played in perpetrating and perpetuating discriminatory attitudes in relation to women, people with disabilities and LGBTIQ people.

We encourage the government to take time to consult carefully with the LGBTIQ community in Australia. The people we know well within this community from within the Uniting Church have shared with us their concern that the process is being rushed and that they are not being consulted adequately. They are fearful for the consequences, intended and unintended, that might arise from this legislation. Similarly, we are concerned that people with disabilities may experience discrimination as a result of this legislation and ask that adequate consultation is undertaken. More broadly, given the nature of some religious beliefs, we see there is potential for women to be subject to discrimination under this legislation.

We would ask that adequate time and consultation be given to ensuring that all groups in society that are likely to be impacted by this legislation be adequately consulted. Adequate consultation and listening would go some way to addressing our concerns and the concerns these different groups are expressing.

#### Employment in the Uniting Church, its Schools and Agencies

The Uniting Church's commitment to a diverse society means that while we recognise that there may be cause for certain exceptions for discrimination by religious organisations, these should be limited in scope, being only as is required in order to maintain the integrity and existence of the religious organisation. The Uniting Church is a significant employer both within the Church and also its Schools and Agencies. Generally, we do not see the legislation negatively impacting on the Church, its Schools and Agencies in this regard.

The Uniting Church welcomes the exception that would allow it to employ people who are practicing Christians and members of the UCA to significant leadership roles across the Church.

In order for such exceptions to be administered appropriately and transparently, the Uniting Church believes that organisations wishing to apply exceptions should be required to be transparent in so doing, able to point to specific documents, policies, statements etc upon which their exercise of exceptions is based. Understanding there would need to be some *reasonable* measures applied to such requirements, we believe these should be available to public scrutiny.

We support the legislation insofar as such exceptions are not being provided to individuals or businesses involved in commercial activities.

Hereafter we wish to raise areas of concern that we have with the Exposure Draft Legislation.

#### Clause 41 - Statements of belief

Clause 41 states that *A statement of belief does not constitute discrimination for the purposes of any anti-discrimination law.*

Broadly the Uniting Church does not believe that Clause 41 is necessary and would be best removed.

If Clause 41 remains, we are concerned that this Clause legitimises virtually any opinion however hurtful or harmful, as long as a case can be made that it is a statement of belief, which is itself very broadly defined.

Clause 41 would expose women, LGBTIQ people, single parents, people in de facto relationships, divorced people, people with disabilities and other groups, to a range of statements that would otherwise be considered discriminatory if not couched within a religious belief.

Clause 41 of the Bill seeks to exempt certain 'statements of belief' from all Commonwealth, State and Territory anti-discrimination protections (including adverse action protections under the Fair Work Act), s17(1) of Tasmania's Anti-Discrimination Act, and any other law prescribed by regulation.

In over-riding all other Commonwealth, State and Territory anti-discrimination laws, the Bill marks a radical departure from the existing anti-discrimination framework. For decades, Australia has provided protection from discrimination through coexisting laws at the Commonwealth and State/Territory level. This approach has allowed improvement over time in the protection of rights by respecting local variations.

While clause 41(2) excludes conduct that is malicious, harassing, vilifying or incites hatred or violence, it will leave people without protection from a significant range of conduct that is humiliating, intimidating, insulting or offensive and may otherwise constitute discrimination in line with the Racial Discrimination Act 18(c).

The Uniting Church notes Explanatory Notes 9 and 157 which state that the legislation is seeking to promote attitudinal change.

Whilst supporting this intent, the Uniting Church is concerned that, by setting the 'harm' bar so high, this legislation would permit the expression of statements about minority and vulnerable groups that has the opposite effect. Just because religious speech doesn't directly incite violence, doesn't mean it isn't used to legitimise violence and abuse. The same is likely to be true of comments that are made by one religious group against another. We believe this part of the legislation would not serve to encourage better behaviour in interfaith acceptance.

While we are supportive and encourage religious beliefs to be expressed in the public domain, we maintain that religious bodies and individuals must be accountable for the language they use, the context and the likely impact it might have on others, particularly vulnerable groups.

The Bill also introduces a substantial imbalance into anti-discrimination law. People who are subjected to derogatory comments because of the other person's religious belief would be stripped of legal protection under anti-discrimination law. However, people making these derogatory comments will be able to make a complaint of indirect discrimination on the basis of religious belief if a third party attempts to prevent them from making such statements (for example, an employer who is seeking to provide a safe and inclusive workplace for all employees).

The Uniting Church and its Agencies are committed to fostering safe and inclusive workplaces and have strict workplace policies regarding equal opportunity and the promotion of workplaces that are free of unfair discrimination and offensive and demeaning behaviour. We ask that the legislation not undermine such an approach.

Finally, in addressing Clause 41, Note 402 in the Explanatory Notes states that:

A key aspect of protecting the right to freedom of religion is protecting the ability of individuals to explain, discuss and share their fundamental beliefs. Protecting the freedom to express religious beliefs civilly and as part of public discourse is an essential part of maintaining a healthy and functioning democracy

The Uniting Church strongly agrees with the essential nature of civil public discourse. We are concerned that the inclusion of Clause 41 will not promote such civility.

#### Clause 8

The Uniting Church is of the opinion that Clause 8 is unnecessarily complicated, with 8 (1, 2, 7 and 8) adequate to ensure that reasonableness is used in assessing any potential discrimination.

If the legislation remains in its current form in regard to Clause 8 then the Uniting Church would raise a number of more specific issues as follows.

#### Private time vs Public/work (Clause 8 (3))

The Uniting Church understands that the legislation attempts to make clear distinction between private and public domain.

We are concerned however that in the age of social media, the line between work time and time not performing work is often blurred. For example, where a CEO or high-profile figure gains a social media following based on their employment and regularly posts regarding their employment from a particular social media account, but then also uses this same account to make statements of belief.

There seems to be no provision in the proposed legislation for employers to have in place some form of Code of Conduct based on the values of the organisation and the potential for severe reputational damage if these values are breached.

The Uniting Church does not support the use of financial hardship as the only threshold in this case.

We would support, as a better threshold, the International Convention on Civil and Political Rights which states that the “freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or moral or the fundamental rights and freedoms of others” (Article 18(3)). This should be the reference point for assessing whether an employer’s code of conduct and its application to an employee’s conduct outside of work is reasonable.

Further in this regard, the Uniting Church has sought to encourage businesses to develop socially responsible cultures. We believe it is important for business to actively contribute to a just, peaceable and inclusive society. We believe there needs to be additional consideration that moves beyond the consideration of financial hardship in isolation as the only compliance measure.

#### Conscientious Objection

The Uniting Church understands and supports the right of conscientious objection for medical practitioners. We are concerned however that the proposed provisions could result in a health practitioner legally refusing to act, and there being no clear requirement for the practitioner to provide information or refer patients to other practitioners who will treat them.

‘Health service’ has a very broad definition. It is not limited to services which seem to us to be inherently likely to raise ethical issues, for example, relating to abortion and euthanasia.

Rather, the provisions apply to services of any kind provided in the practice of a long list of health professions, including occupational therapy, optometry, pharmacy and podiatry.

A fundamental principle in medical ethics is that the right for conscientious objection should apply to specific medical interventions or procedures, not to specific individuals or groups of individuals. We maintain that the right to conscientious objection should be balanced against other considerations, such as the effects on vulnerable populations and the right to access health care.

Particularly in rural and regional areas where there is limited choice of medical practitioner, there is potential for the refusal of treatment for single women or LGBTIQ people whose lifestyles are not in line with the religious beliefs of the practitioner. This may have a negative impact on the level of care such people can receive in their own area, forcing them to travel further for medical care or live with lower levels of care than might be available in urban settings. In its current form the Bill foresees a role for conscientious objection in the provision of services far beyond 'controversial' medical issues such as abortion or euthanasia.

#### Clause 10

The Uniting Church understands that an exclusion clause in some form is necessary to ensure that religious institutions are able to operate in certain circumstances to the exclusion of people who are not of the same religion. However, it is important that such an exclusion is carefully and narrowly defined to avoid unintended consequences and a negative impact on the rights of others.

We are concerned that the test proposed in Clause 10 is different to, and easier to satisfy than, equivalent tests on other anti-discrimination laws. Specifically, Clause 10 provides that:

'A religious body does not discriminate against a person under this Act by engaging, in good faith, in conduct that **may reasonably be regarded as being in accordance with** the doctrines, tenets, beliefs or teachings of the religion...' (our emphasis added).

In contrast, the test in s 37(1)(d) of the Sex Discrimination Act 1984 (Cth) is:

'any other act or practice of a body established for religious purposes, being an act or practice that **conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents** of that religion' (our emphasis added).

We are concerned that Clause 10 gives an excessively wide discretion to large religious organisations, including charities that have welfare-related purposes and are large employers and service providers, to discriminate – for example in relation to those to whom they provide services. Generally, social service agencies within the Uniting Church do not discriminate in such a way and we do not favour such provisions for social service providers being made in the legislation.

Consideration might be given to amending the definition of ‘religious body’ to narrow its focus. An alternative wording might be ‘bodies established for religious purposes’.

The Uniting Church is concerned that Clause 10 applies to religious schools so as to permit them to disadvantage or expel students – for example if a student decides in the course of their schooling that they no longer share the faith of the religious body, but nevertheless wish to complete their education in the school.

This is contrary to the approach taken in Queensland, Tasmania, the ACT and Northern Territory under which schools can discriminate at the time of admission or enrolment, but not thereafter. The approach in these jurisdictions strikes an appropriate balance between the needs of schools and students and recognises the special vulnerability of children.

Clause 10 should therefore be amended to exclude clause 18(2) (prohibiting discrimination against students of an educational institution) from its operation. This could be done, for example, by amending clause 10(3) to read: ‘This section does not apply to section 18(2), relating to discrimination in education. It otherwise applies despite anything else in this Act’.

#### Australian Human Rights Commission Funding

If the proposed legislation comes into being, the Uniting Church would expect to see the Federal Government providing an appropriate increase in funding to the Australian Human Rights Commission, adequately meeting the costs associated with the new commissioner and the expanded brief.

#### Conclusion

In conclusion, the Uniting Church is committed to the right of every person to a robust freedom of religion as described in Article 18 of the International Covenant on Civil and Political Rights.<sup>8</sup> Every person is equal before the law and any permission given to individuals or religious organisations that allows them to discriminate on the basis of religious belief must be carefully balanced against the rights of people to be free from discrimination.

The Uniting Church remains concerned that the Exposure Draft (29 August 2019) Religious Discrimination Bill 2019 does not yet achieve that balance and that vulnerable people in particular are likely to be adversely impacted should it be implemented in its current form. As this discrimination bill is further developed the Uniting Church would welcome being consulted further.

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<sup>8</sup> *International Covenant on Civil and Political Rights*, Article 18. Available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

## **Appendix: Previous Statements and Submissions made by the UCA**

The UCA has made the following submissions and statements that are relevant to this new inquiry:

1. 1977 – [Statement to the Nation](#)
2. 2000 October – Submission to Inquiry into, and Report on – [Australia's efforts to promote and protect Freedom of Belief](#)
3. 2006 – [Dignity in Humanity: Recognising Christ in Every Person](#) – A Uniting Church in Australia Statement on Human Rights
4. 2009 March – Submission to the Australian Human Rights Commission – [Freedom of Religion and Belief in the 21<sup>st</sup> Century](#)
5. 2014 November – Submission to the Human Rights Commissioner's Consultation – [Rights and Responsibilities](#)
6. 2015 October – Submission to the Australian Human Rights Commission – [Religious Freedom Roundtable](#)
7. 2016 December – Submission to the Parliamentary Joint Committee on Human Rights – [Inquiry into Freedom of Speech in Australia](#)
8. 2018 January - Submission to the Expert Panel on Religious Freedom – [Submission to the Expert Panel on Religious Freedom](#)