



PRESIDENT: Rev Sharon Hollis

GENERAL SECRETARY: Colleen Geyer

Submission from the Uniting Church in Australia Assembly

Response to the Australian Law Reform Commission Consultation Paper regarding Religious Educational Institutions and Anti-Discrimination Laws.

The Uniting Church in Australia Assembly (UCA) is the national council of the Uniting Church in Australia and has determining responsibility within the Church for matters of doctrine, worship, government and discipline. We welcome this opportunity to make a submission to the Australian Law Reform Commission's (ALRC) Consultation Paper (CP) regarding Religious Educational Institutions and Anti-Discrimination Laws.

While the Assembly as a Council of the Church does not hold direct responsibility for any educational institution, the whole Uniting Church within its various constituent Councils and Agencies is involved in operating a number of educational institutions ranging from Pre-schools, primary and high schools, to tertiary institutions. Stakeholders involved in the oversight of these institutions have been consulted in the framing of this submission.

The UCA begins by commending the five principles listed as framing the proposals from the ALRC. In previous submissions to government concerning human rights, the UCA has grounded its own responses in the principle of the human dignity arising from creation as God's children.

The national Assembly of the Uniting Church in Australia has made a number of statements concerning the dignity and rights of the human person as understood within the Christian tradition commencing with a Statement to the Nation in 1977. The Statement pledged the new Uniting Church to:

"...affirm the rights of all people to equal educational opportunities, adequate healthcare, freedom of speech, employment of dignity in unemployment if work is not available. We will oppose all forms of discrimination which infringe basic rights and freedoms."

In 2006 the Assembly affirmed:

...the Uniting Church believes that every person is precious and entitled to live with dignity because they are God's children, and that each person's life and rights need to be protected or the human community (and its reflection of God) and all people are diminished.

The UCA likewise has had a long history of recognising that all human rights are important, interdependent and interrelated. It is for this reason that our long-standing preference has been that all such rights, including the right to religious freedom should be encoded in a positive form in an integrated Australian federal act or charter of human rights, providing a framework within which cases of competing rights can be considered.

In 2008 the Standing Committee of the UCA national Assembly declared its support for:

...a national human rights charter that is born from widespread and effective community and stakeholder consultation. ^{vii}

The UCA also welcomes the recognition of the importance of a pluralist and socially cohesive society and the key role that education plays in enabling this, along with the commitment to centre the needs of students in addressing this issue.

In general terms, the UCA believes that the four propositions outlined in the CP strike a good balance between protecting the rights of students and teachers not to suffer discrimination on the basis of the protected attributes listed in the Sex Discrimination Act, while enabling religious educational institutions to operate to create, maintain and strengthen communities of faith according to the doctrine, tenets, beliefs and practices of their religion or creed.

Proposition A

With regard to Proposition A, the UCA is supportive of the principle that students should not be discriminated against on the grounds of sexual orientation, gender identity, marital status or pregnancy (along with current prohibitions against discrimination on the grounds of sex, intersex status, potential pregnancy and breastfeeding). We are pleased to note that within the details covered by the technical proposals, it is made clear that discrimination against prospective students on the grounds of sex, in relation to enrolment at a single sex school is still enabled, along with the provision of accommodation in such cases. This would be applicable to a number of Uniting Church schools.

We note the freedom being given in the specific area of training of ministers and members of religious orders, and participation in religious observances and practices, although in the UCA context it is not likely that such freedom to discriminate on grounds covered by the sex discrimination laws would ever be taken up.

We further welcome the freedom for religious educational institutions to be permitted to teach doctrines related to beliefs on sex or sexual orientation subject to that teaching being conducted in a manner which accords with the duty of care and the requirements of the curriculum.

Proposition B

Proposition B represents a narrowing of the exceptions currently provided in federal law regarding staff at religious educational institutions. The UCA is supportive of this change and as with proposition A, is not likely to ever make use of the specific freedom from sex discrimination laws offered with regard to staff involved in the training of ministers or members of religious orders.

We are in agreement with the idea that religious educational institutions should be able to require those whose role involves teaching religious doctrine or belief to do so according to the tenets of their religion provided that this is done in accordance with the duty of care, requirements of the curriculum and the human rights principle of proportionality.

Proposition C

The UCA supports the provision of an ability to preference the selection, appointment and promotion of staff based on their religious belief or religious activity where this is a genuine requirement of the role and where the differential treatment is proportionate to the objective of upholding the religious ethos of the institution. The UCA has a concern that the definition of whether religious belief and practice is 'a genuine

requirement for the role' may allow for the possibility of excessively broad role definitions being used, resulting in undue discrimination against individuals on grounds contained within the Sex Discrimination Act. There may also be substantial differences between role requirements of primary school teachers, compared to that of more specialised high school teachers. These considerations, along with a concern raised by some of the exemplar cases listed in the CP suggest that a clearer definition of what is a "genuine requirement of the role" may be needed in order to strike an appropriate balance of protection of the individual's rights and protection of the institution's ethos.

Proposition D

The UCA welcomes the idea that religious educational institutions should be able to expect staff to respect the institutional ethos and to prevent active undermining of that ethos by an employee. We have some concern that the idea of 'active undermining' is not clearly defined and might enable unwarranted discriminatory activity by the institution toward individuals based on choices and activities outside the workplace. In relation to this we welcome the idea that respect for the institutions' ethos and codes of conduct should not require the hiding of sex, sexual orientation, gender identity, marital or relationship status or pregnancy, or refraining from supporting another person with these attributes.

Conclusion

The UCA welcomes the CP as a well-balanced starting point for the further development of support for religious freedom alongside the protection of the rights of individuals, but see that greater clarification may be needed for Proposition C. We do not at this time wish to make detailed comment on the technical proposals concerning legislation contained within the CP. However, we do wish to note our approval of proposal 6, regarding the extension of the sex discrimination act to prohibit discrimination against students or prospective students on the basis of the attributes of family members or carers. Thank you for the opportunity to make a submission regarding this matter.

Ms Colleen Geyer

General Secretary

Uniting Church in Australia Assembly

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