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Uniting Church *LGBTIQ* Network

“Welcoming and Celebrating Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) people, couples and families in the life of the Uniting Church in Australia”

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Uniting Network Australia rejects calls for additional discrimination and call for removal of all discrimination against LGBTIQ people in Australia

15 October 2018

Uniting Network, the LGBTIQ network within the Uniting Church of Australia expresses is concern that the full content of the Ruddock Review has not been made public. Elements were leaked, and Uniting Network provided a position statement on discrimination of LGBTIQ Students and Teachers in educational institutions on 10 October 2018.

Subsequently, further information has been leaked primarily the recommendations.

In response to the general public’s significant disquiet that private and religious schools can discriminate against LGBTIQ students, while the process has been unsettling, we applaud the Prime Minister’s move to eliminate discrimination against LGBTIQ students in all schools. We call on all State and Territory Premiers and Chief Ministers to urgently follow the lead of the Federal Government an urgently remove any legislative provisions that allow for schools in their area of legislative control discrimination of LGBTIQ Students in schools.

However, we further request that all legislators in Australia also revoke the discrimination of LGBTIQ in all situations. To this we call on the Federal, State and Territory Governments to:

- Removed all discrimination against LGBTIQ students in all school environments;
- Remove all discrimination against LGBTIQ teachers and staff in all school environments, including but not limited to hiring and ongoing employment, except in positions where the employee is responsible for teaching the religion or undertaking the role of a religious leader;
- Remove all discrimination against LGBTIQ patients and clients in all hospitals, age care facilities and nursing homes;
- Remove all discrimination against LGBTIQ staff in all hospitals, age care facilities and nursing homes; and
- Undertake a full review with the objective of removing all legislation and regulations that provide opportunities for discrimination against LGBTIQ people, outside of specific religious roles.

We acknowledge the Federal Government’s announcement for significant ongoing funding for Headspace, who provide mental health services for youth and young adults. We call on all governments to continue and grow mental health funding for the LGBTIQ community who suffer significantly higher rates of suicide attempts and mental health issues than the national average. To fully address LGBTIQ mental health, this will require effective programs to support anti-bullying of LGBTIQ children in schools and effective age appropriate sex education which encompasses all students, irrespective of their sexual orientation and gender identity to be delivered in all schools irrespective of the school sector.

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However, we further request that all legislators in Australia also revoke the discrimination of LGBTIQ teachers in all private and religious schools.

As the public has not been afforded the opportunity to see the logic and basis for the recommendations of the Ruddock Inquiry, we make the follow interim responses to the recommendations as currently available in the public domain.

Recommendation 1

Those jurisdictions that retain exceptions or exemptions in their anti-discrimination laws for religious bodies with respect to race, disability, pregnancy or intersex status should review them, having regard to community expectations.

UNA Response: It is our view that there should be no exemptions for religious bodies with respect to race, disability, pregnancy, intersex status or sexual orientation or gender identity (LGBTIQ).

Recommendation 2

Commonwealth, state and territory governments should have regard to the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights when drafting laws that would limit the right to freedom of religion.

UNA Response: Concerning the Siracusa Principles, we believe in the Australian context there is no basis for the exclusion of LGBTIQ in any aspect of the Australian community based on any of the principles; Public Health, Public Morality. In relation to the clause "viii. "rights and freedoms of others" or the "rights or reputations of others", it is our contention the most fundamental right is for those people intrinsic to who they are , the LGBTIQ community, over religious communities which is a matter of choice and faith, where there is a conflict between rights.

Without seeing the context of this recommendation, we contend that Article 18 of the International Covenant on Civil and Political Rights is not intended to extend right to exercise religion within a religious institution to using these rights outside of a religious institution, i.e. religious belief-based discrimination in the commercial or government sectors.

Recommendation 3

Commonwealth, state and territory governments should consider the use of objects, purposes or other interpretive clauses in anti-discrimination legislation to reflect the equal status in international law of all human rights, including freedom of religion.

UNA Response: We support the Uniting Church of Australia's position and encourage broader community discussion regarding Australia having a Charter or Bill of Human rights. Such a charter needs to ensure that any concept of religious freedom is not a cover for state authorised discrimination of LGBTIQ people within Australia.

Recommendation 4

The Commonwealth should amend section 11 of the Charities Act 2013 to clarify that advocacy of a 'traditional' view of marriage would not, of itself, amount to a 'disqualifying purpose'.

UNA Response: We do not support any further exclusions to marriage outside of those exclusions already provided within the Marriage Act as amended in 2017. The Government may consider this more broadly within a freedom of speech section within an Australian Bill of Rights. We acknowledge the rights for religious organisations to teach their view of marriage within their religious community, we continue to express our concerns on the balance of freedom of speech and the calling into question the validity of LGBTIQ people and their rights for civil (and religious where available) marriage in the broader community.

Recommendation 5

The Commonwealth should amend the Sex Discrimination Act 1984 to provide that religious schools can discriminate in relation to the employment of staff, and the engagement of contractors, on the basis of sexual orientation, gender identity or relationship status provided that:

- The discrimination is founded in the precepts of the religion.
- The school has a publicly available policy outlining its position in relation to the matter and explaining how the policy will be enforced.
- The school provides a copy of the policy in writing to employees and contractors and prospective employees and contractors.

UNA Response: It is our view that there should be no exemptions for religious bodies in relation to gender, race, disability, pregnancy, intersex status, sexual orientation, gender identity (the latter two collectively LGBTIQ) or relationship status, and accordingly reject this recommendation except in positions where the employee is responsible for teaching the religion or undertaking the role of a religious leader.

Recommendation 6

Jurisdictions should abolish any exceptions to anti-discrimination laws that provide for discrimination by religious schools in employment on the basis of race, disability, pregnancy or intersex status. Further, jurisdictions should ensure that any exceptions for religious schools do not permit discrimination against an existing employee solely on the basis that the employee has entered into a marriage.

UNA Response: It is our view that there should be no exemptions for religious bodies in relation to gender, race, disability, pregnancy, intersex status, sexual orientation, gender identity (the latter two collectively LGBTIQ) or relationship status, and accordingly this recommendation should be expanded to include sexual orientation, gender identity (the last two collectively LGBTIQ) or relationship status (pre or during employment).

Recommendation 7

The Commonwealth should amend the Sex Discrimination Act to provide that religious schools may discriminate in relation to students on the basis of sexual orientation, gender identity or relationship status provided that:

- The discrimination is founded in the precepts of the religion.
- The school has a publicly available policy outlining its position in relation to the matter.
- The school provides a copy of the policy in writing to prospective students and their parents at the time of enrolment and to existing students and their parents at any time the policy is updated.
- The school has regard to the best interests of the child as the primary consideration in its conduct.

UNA Response: We concur with the Prime Minister's decision to reject this recommendation and the proposal to create legislation to reject discrimination of students based on sexual orientation, gender identity or relationship status. Further, we call on all Premiers and Chief Ministers to remove just acts from their legislation where they exist on their statutes.

Recommendation 8

Jurisdictions should abolish any exceptions to anti-discrimination laws that provide for discrimination by religious schools with respect to students on the basis of race, disability, pregnancy or intersex status.

UNA Response: It is our view that there should be no exemptions for religious bodies in relation to race, disability, pregnancy, intersex status, sexual orientation, gender (the latter two collectively LGBTIQ) or relationship status, and accordingly this recommendation should be expanded to include sexual orientation or gender identity (the latter two collectively LGBTIQ).

Recommendation 9

State and territory education departments should maintain clear policies as to when and how a parent or guardian may request that a child be removed from a class that contains instruction on religious or moral matters and ensure that these policies are applied consistently. These policies should:

- Include a requirement to provide sufficient, relevant information about such classes to enable parents or guardians to consider whether their content may be inconsistent with the parents' or guardians' religious beliefs
- Give due consideration to the rights of the child, including to receive information about sexual health, and their progressive capacity to make decisions for themselves.

UNA Response: It is our view that there should be no withdrawal of students from respective departments of education course material based on religious or moral matters. We do agree that parents or guardians should be provided with sufficient and relevant information about such classes to enable the parents if they desire to have conversations with their children in the privacy of their homes and/or religious institutions around their religious beliefs in relation to the educationally valid and approved courses. The sexual education and health of all students,

including LGBTIQ students is equally important. There should be no exemption for inclusive sexual education programs within private or religious schools.

Further we call upon all States and Territory departments of education to provide age appropriate sex education that also incorporates appropriate and relevant materials for LGBTIQ students, irrespective if there are known LGBTIQ students in the classes. Finally, we call for all anti-bullying programs to specifically address bullying of LGBTIQ students.

Recommendation 10

The Commonwealth Attorney-General should consider the guidance material on the Attorney-General's Department's website relating to authorised celebrants to ensure that it uses plain English to explain clearly and precisely the operation of the Marriage Act 1961. The updated guidance should include:

- A clear description of the religious protections available to different classes of authorised celebrants, and
- Advice that the term 'minister of religion' is used to cover authorised celebrants from religious bodies which would not ordinarily use the term 'minister', including non-Christian religions.

UNA Response: Although we do not have the context of this recommendations, on face value we would support such a recommendation. We do wish to be assured that this is not a "back door" to allow civil celebrants from not officiating at the wedding of two persons.

Recommendation 11

The Commonwealth Attorney-General should consider whether the Code of Practice set out in Schedule 2 of the Marriage Regulations 2017 is appropriately adapted to the needs of smaller and emerging religious bodies.

UNA Response: Although we do not have the context of this recommendations, on face value we would support such a recommendation, particularly for smaller Christian denominations, such as Metropolitan Churches of Christ and other non Christian religions. We do wish to be assured that this is not a "back door" to allow civil celebrants from not officiating at the wedding of two persons.

Recommendation 12

The Commonwealth should progress legislative amendments to make it clear that religious schools are not required to make available their facilities, or to provide goods or services, for any marriage, provided that the refusal:

- Conforms to the doctrines, tenets or beliefs of the religion of the body
- Is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

UNA Response: We contend that this recommendation is not necessary as it is already covered by the amendments to the Marriage Act in 2017

Recommendation 13

Those jurisdictions that have not abolished statutory or common law offences of blasphemy should do so.

UNA Response: We concur with this recommendation.

Recommendation 14

References to blasphemy in the Shipping Registration Regulations 1981, and in state and territory primary and secondary legislation, should be repealed or replaced with terms applicable not only to religion.

UNA Response: We concur with this recommendation.

Recommendation 15

The Commonwealth should amend the Racial Discrimination Act 1975, or enact a Religious Discrimination Act, to render it unlawful to discriminate on the basis of a person's 'religious belief or activity', including on the basis that a person does not hold any religious belief. In doing so, consideration should be given to providing for appropriate exceptions and exemptions, including for religious bodies, religious schools and charities.

UNA Response: Our immediate response is this is not necessary, and our final position would be enhanced by a review of the detailed report and discussion leading to this recommendation. As previously indicated we are supportive of an Australian Bill of Rights that also clearly addresses the relationship between competing rights.

Recommendation 16

New South Wales and South Australia should amend their anti-discrimination laws to render it unlawful to discriminate on the basis of a person's 'religious belief or activity' including on the basis that a person does not hold any religious belief. In doing so, consideration should be given to providing for the appropriate exceptions and exemptions, including for religious bodies, religious schools and charities.

UNA Response: Our immediate response is this is not necessary, and our final position would be enhanced by a review of the detailed report and discussion leading to this recommendation. We are concerned particularly around the concept of "activity" as this could be used to justify discrimination in the secular and government sectors, and further discrimination or abuse of LGBTIQ people within religious organisations. We are supportive of an Australian Bill of Rights that also clearly addresses the relationship between competing rights.

Recommendation 17

The Commonwealth should commission the collection and analysis of quantitative and qualitative information on the experience of freedom of religion in Australia at the community level, including:

- Incidents of physical violence, including threats of violence, linked to a person's faith
- Harassment, intimidation or verbal abuse directed at those of faith
- Forms of discrimination based on religion and suffered by those of faith
- Unreasonable restrictions on the ability of people to express, manifest or change their faith
- Restrictions on the ability of people to educate their children in a manner consistent with their faith
- The experience of freedom of religion impacting on other human rights
- The extent to which religious diversity (as distinct from cultural diversity) is accepted and promoted in Australian society

UNA Response: Our immediate response is this is not necessary, and our final position would be enhanced by a review of the detailed report and discussion leading to this recommendation.

If this was deemed to be an important collection, then we could contend that similar collection and analysis must also be undertaken in relation to the LGBTIQ community and reported with equal importance and veracity, including:

- *Incidents of physical violence, including threats of violence, linked to a person's sexual orientation, gender or status (LGBTIQ)*
- *Harassment, intimidation or verbal abuse directed at those of the LGBTIQ community*
- *Forms of discrimination based on LGBTIQ identification and suffered by those of the LGBTIQ community*
- *Unreasonable restrictions on the ability of people to express, manifest or change their life as LGBTIQ community members*
- *Restrictions on educating children's understanding of LGBTIQ people and appropriate age sex education that is inclusive of LGBTIQ students*
- *The experience of living freely as LGBTIQ people and the impact on other human rights*
- *The extent to which LGBTIQ acceptance (as distinct from cultural diversity) is accepted and promoted in Australian society*

Recommendation 18

The Commonwealth should support the development of a religious engagement and public education program about human rights and religion in Australia, the importance of the right to freedom of religion and belief, and the current protections for religious freedom in Australian and international law. As a first step, the panel recommends that the Attorney-General should ask the Parliamentary Joint Committee on Human Rights to inquire into and report on how best to enhance engagement, education and awareness about these issues.

UNA Response: Our immediate response is this is not necessary, and our final position would be enhanced by a review of the detailed report and discussion leading to this recommendation.

If any such engagement and public education on human rights, it should cover all human rights and not have a specific focus on religious freedom.

Recommendation 19

The Australian Human Rights Commission should take a leading role in the protection of freedom of religion, including through enhancing engagement, understanding and dialogue. This should occur within the existing commissioner model and not necessarily through the creation of a new position.

UNA Response: Our immediate response is this is not necessary, and our final position would be enhanced by a review of the detailed report and discussion leading to this recommendation. We are supportive of an Australian Bill of Rights that also clearly addresses the relationship between competing rights.

Recommendation 20

The Prime Minister and the Commonwealth Attorney-General should take leadership of the issues identified in this report with respect to the Commonwealth, and work with the states and territories to ensure its implementation. While the panel hopes it would not be necessary, consideration should be given to further Commonwealth legislative solutions if required.

UNA Response: Our immediate response is this is dependent on the final recommendations that are acceptable to the public in Australia, and the LGBTIQ community.

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