



OCTOBER 2015

Uniting Church in Australia
Assembly

SUBMISSION TO THE

Australian Human Rights Commission Religious Freedom Roundtable

CONTACT

Rev. Terence Corkin
General Secretary
Uniting Church in Australia, Assembly
PO Box A2266 Sydney South NSW 1235
T 02 8267 4204 E eleniep@nat.uca.org.au

SUBMISSION PREPARED BY

Rev. Elenie Poulos
National Director
UnitingJustice Australia

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1 | INTRODUCTION AND GENERAL COMMENTS

The Uniting Church in Australia Assembly is the national council of the Uniting Church in Australia (UCA). The Uniting Church has a long history of support for human rights, going back to its formation in 1977. The Church also has a long engagement with the Australian Human Rights Commission (AHRC), dating back to its support of the 1986 Act which formed the Commission. The Church's engagement with human rights issues in Australia is steeped in our concern for the rights of vulnerable groups in our society.

We welcome this opportunity to contribute to the Human Rights Commissioner's 'Roundtable on Religious Freedom'. This submission draws on previous submissions made by the UCA Assembly and UnitingJustice Australia (the Assembly's justice policy and advocacy unit), in particular the UnitingJustice Australia (UJA) submission made to the Human Rights Commissioner's consultation on 'Rights and Responsibilities 2014', the Consultation that has led to this Roundtable on Religious Freedom, and the Assembly submission to the Australian Human Rights Commission consultation 'Freedom of Religion and Belief in the 21st Century' in 2009.¹

The UCA Assembly notes the submission to the Roundtable from the Justice and International Mission (JIM) Unit of the Uniting Church's Synod of Victoria and Tasmania. Our submissions are aligned and complementary and we would point to the comments in that submission relating to anti-discrimination laws (particularly in Victoria) as especially helpful.

The Uniting Church in Australia and Human Rights

The Uniting Church in Australia has, since its inception, been a church of social justice, committed to the achievement of human dignity for all. This commitment was articulated in the Church's *Statement to the Nation* at its Inaugural Assembly in 1977:

We pledge ourselves to seek the correction of injustices wherever they occur. We will work for the eradication of poverty and racism within our society and beyond. We affirm the rights of all people to equal educational opportunities, adequate health care, freedom of speech, employment or dignity in unemployment if work is not available. We will oppose all forms of discrimination which infringe basic rights and freedoms.²

Christian support for human rights rests on the understanding that the community flourishes when all people are included and accorded the dignity and respect they deserve as beloved children of God. Human beings are made in the image of God, and as such are precious, capable of marvellous things, and entitled to dignity, compassion and respect. It is the responsibility of all of us as individuals and as a community to seek the common good: to help build a just, peaceful, inclusive and prosperous society, where all people are valued, where the First Peoples of this land are respected and honoured, where civil liberties are taken seriously and where the diversity of religions, languages and cultures is regarded as a great gift; where everyone has a home, decent work, access to a good

¹ UnitingJustice Australia (November 2014), Submission to the Australian Human Rights Commission consultation, 'Rights and Responsibilities', <http://www.unitingjustice.org.au/human-rights/submissions/item/981-rights-and-responsibilities>; and Uniting Church in Australia Assembly (March 2009), Submission to the Australian Human Rights Commission consultation, 'Freedom of Religion and Belief in the 21st Century', March 2009, <http://www.unitingjustice.org.au/human-rights/submissions/item/680-ahrc-freedom-of-religion-belief-in-the-21st-century>

² Uniting Church in Australia (1977), *Statement to the Nation*, <http://www.unitingjustice.org.au/uniting-church-statements/key-assembly-statements/item/511-statement-to-the-nation>

education and good healthcare and the opportunity to live meaningful lives free from fear, prejudice and violence. In the context of public policy and international humanitarian affairs, the Church supports the development of policy and legislation which upholds the rights of all people to participate in the community and public life, be treated with respect and accorded dignity without discrimination.

The Uniting Church's support for human rights was fully articulated in its statement on human rights, *Dignity in Humanity: Recognising Christ in Every Person*.³ *Dignity in Humanity* commits the Church to uphold human rights and stand against human rights violations, stating:

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.⁴

As well as laying out the theological basis of our commitment to human rights, this statement describes the Church's support for "the human rights standards recognised by the United Nations", which express the birthright of all people to "all that is necessary for a decent life and to the hope for a peaceful future" (par.12). The statement describes the Church's commitment to these standards as "a valuable framework for assessing political, economic and social systems" and "an important tool for peace" (par.12).

Dignity in Humanity also expresses the commitment of the Church to critically assess national and international policies against the international human rights instruments:

We pledge 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. (par. 18)

Protection of Rights and Freedom in Australia

Human rights are derived from our status as human beings in society. They describe the inherent and inalienable right of all people to live with dignity, free of persecution and violence, with access to all that is necessary for a decent life. Human rights are not granted by governments, but they are protected and promoted by government policy and practice. Respect for human rights is needed to create a just and peaceful world founded on a common humanity. Human dignity can only be protected if human rights are protected and the responsibility of all nations and people to protect the rights and freedoms of all others is met. The United Nation's human rights treaties are a reflection and expression of these principles.

The Uniting Church believes that the Australian Government, in its law-making, policy and practice, must uphold, protect and promote all of the human rights contained in the UN human rights instruments which Australia is party to. These include the following:

- *International Covenant on Civil and Political Rights* (ICCPR)
- *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment* (CAT)
- *Convention in the Rights of the Child* (CRC)
- *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)
- *Convention on the Elimination of All Forms of Racial Discrimination* (CERD)

³ Uniting Church in Australia Assembly (2006), *Dignity in Humanity: Recognising Christ in every person*, Assembly Resolution 06.20.01, <http://www.unitingjustice.org.au/human-rights/uca-statements/item/484-dignity-in-humanity-a-uniting-church-statement-on-human-rights>

⁴ op. cit.

- *Convention on the Rights of Persons with Disabilities*
- *Convention and Protocol Relating to the Status of Refugees* (Refugee Convention)
- *Convention Relating to the Status of Stateless Persons*

We also believe that Australia must uphold in domestic law the commitments made by signing the *Universal Declaration on the Rights of Indigenous Peoples* (UNDRIP).

We acknowledge that human rights can and should be protected in many different ways – through law, government policy and practice and through the community as an expression of the mutual responsibility we have to uphold the dignity of every person.

In the international arena, Australia has made a commitment to uphold and protect the rights and freedoms contained in these instruments. Any lack of such protections and subsequent human rights violations domestically place the Australian Government in breach of its obligations. Apart, of course, from the dangers this lack of protection poses for the Australian community, this also has a significantly negative effect on Australia's standing internationally, weakening our ability to advocate for human rights protections overseas, and particularly in our immediate region.

At the federal level, human rights protections are severely lacking. In Australia there is no Commonwealth law that sets out fundamental human rights and freedoms. Australia remains the only liberal democratic nation in the world where this is the case. There is a collection of legislation that protects some important elements of the human rights agreed to by nations at the international level, however this does not comprehensively or adequately provide the protection of rights and freedoms to which all members of the Australian community are entitled. These pieces of legislation include the *Racial Discrimination Act 1975* (RDA), which partially implements CERD and the *Sex Discrimination Act 1984* (SDA), which partially implements CEDAW.

In the Australian Constitution, there are a few civil and political rights protected, including the right to vote (Section 41 gives the limited right to vote in Commonwealth elections if enrolled for State elections, while Section 25 actually allows states to disqualify people from voting on the basis of race⁵), the right to trial by jury (but only for the breach of a Commonwealth law, not a state law – so is very limited), a limited expression of freedom of religion and an implied right to freedom of political communication (which has been interpreted by the High Court from the notions of representative and responsible government).⁶

For these reasons, the Uniting Church supports the development of a national Human Rights Act that would implement our commitment to the Universal Declaration of Human Rights, ICESCR and ICCPR.⁷ Such an instrument would, therefore, necessarily, include substantive protection for freedom of religion, protection currently lacking in Commonwealth law.

The Uniting Church and Interfaith Relationships

The Uniting Church is committed to creating and sustaining communities of peace. It values mutually respectful and positive relationships with people of other faiths and affirms the place of interfaith dialogue in creating and sustaining peace and harmony. As Christians we believe that all people are created by God and that we are called to live together in peace, loving our neighbour who is different.

As a manifestation of this belief, the UCA Assembly has a permanent working group dedicated to interfaith relations. The Relations with Other Faiths (ROF) Working Group:

⁵ The Uniting Church supports the removal of Section 25 of the Constitution <http://www.unitingjustice.org.au/justice-for-indigenous-australians/uca-statements/item/970-recognition-of-indigenous-peoples-in-the-australian-constitution>

⁶ Human Rights Law Resource Centre (2009), 'The National Human Rights Consultation – Engaging in the Debate', <http://www.hrlrc.org.au/files/hrlrc-the-national-human-rights-consultation-engaging-in-the-debate.pdf>, pp. 22-3

⁷ Uniting Church in Australia Assembly (2008), *Uniting Church Response to Human Rights Legislation*, Assembly Standing Committee Resolution 08.24, <http://www.unitingjustice.org.au/human-rights/uca-statements/item/482-a-uniting-church-response-to-human-rights-legislation>

- is involved in interfaith dialogues and relationships including the Australian National Dialogue of Christians, Muslims and Jews, a national dialogue with the Executive Council of Australian Jewry, Religions for Peace and the Women's Interfaith Network;
- has developed mutually respectful relationships with leaders and members of other faiths and has acted in solidarity with other faiths in times of crisis;
- produces interfaith resources for congregations who are seeking to learn more about and engage with other faiths;
- is committed to providing continuing theological education and professional development to Uniting Church Chaplains in schools, prisons and hospitals, recognising that these are multi-faith placements; and
- participates in global events such as the Parliament of World Religions and other interfaith seminars and programs.⁸

The Church as a whole continues to develop mutually respectful relationships with leaders and members of other faiths and has acted in solidarity with other faiths in times of crisis. For example, the President of the Uniting Church's National Ministers' Conferences in 2014 included visits to Sydney's Gallipoli Mosque and Wat Phrayortkeo Dhammayanaram Laotian Buddhist temple. The President has in recent years attended media events around the National Day of Unity and has stood in solidarity with Australian Muslims targeted by inflammatory media coverage. For the last two years the UCA Synod of NSW and the ACT has held Iftar dinners during the Muslim fasting month of Ramadan to build bridges with the local Muslim community.

Many Uniting Church congregations and members are also actively involved in state-based interfaith organisations or their own outreach activities within their local communities.

⁸ For more information see <http://assembly.uca.org.au/rof/>

3 | THE PROTECTION OF RELIGIOUS FREEDOM

Article 18 of the *Universal Declaration on Human Rights* (UDHR) states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

This right to religious freedom is enshrined in a number of international human rights treaties. Discrimination on the basis of religion is prohibited by Article 2.1 of the ICCPR, guaranteeing the enjoyment of human rights

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 (emphasis added)

and Article 18:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. 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 morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Religious freedom is also protected by Article 2(2) of the ICSECR and Article 2 in the CRC.

While Australia has ratified the ICCPR, it has only partially implemented it in an ad hoc manner. Until these commitments are fully implemented in Australian domestic law, the Australian Government is under no legal obligation to comply with them.

This means that the Federal Government can enact laws or policies that discriminate on the basis of religion or belief, without any avenues for people or religious organisations adversely affected by such laws to seek legal redress. There is a possibility of redress under the RDA but the provisions are indirect and selective at best. The RDA will only cover discrimination if a religious group can be classified as an "ethnic" group, and may arguably protect against discrimination on religious groups in certain circumstances such as indirect race discrimination. This is not sufficient protection.

While there is no Commonwealth legislation that prohibits discrimination on the basis of religion, neither does the Australian Constitution provide adequate protection. The protections provided for freedom of religion and belief under Section 116 of the Australian Constitution have been subject to extensive scrutiny, consideration and debate in various forums including the courts. The AHRC's *Article 18* report concluded that "the wording of Section 116, coupled with the weight of judicial

opinion, leaves little doubt that its scope is limited. In particular, it does not amount to a constitutional guarantee of the right to freedom of religion and belief.”⁹

The states and territories in Australia do have law that protects against religious discrimination, but the provisions differ across the states.

The UCA Assembly does not believe that there is sufficient uniform protection against discrimination based on religion or belief in Australia.

Freedom to Manifest Belief

The Uniting Church is committed to the right of every person to freedom of thought, conscience and religion, the right of every person to adopt a religion or belief, individually or in community, and to manifest that religion or belief in worship, observance, practice and teaching as described in Article 18 of the ICCPR. It believes that religious communities, groups and organisations should be accorded the freedoms necessary for the practice and maintenance of the faith, including the freedoms to educate in the faith, build places of worship, observe holy days, display the symbols of the faith and observe religious dress practices.

The Uniting Church believes that all faith groups should have the freedom to build places of worship and faith-based schools with regard to due process. No faith group should be denied permission to build a place of worship or school solely on the grounds of their religious identity. Local demographics and history, in and of themselves, should not be a reason for denying permission to a faith group to build in a new area or an area new to that particular group. We believe that local councils are using issues such as traffic flows and environmental impact as the basis for denying building applications to Muslim groups in particular. These concerns should never be used as an excuse to discriminate.

The UCA Assembly is concerned by a general lack of awareness within workplaces and educational institutions about holy days other than those of western Christianity. This applies equally to Eastern Christian traditions (which usually celebrate their Christian feast days on different dates to the western calendar), as well as to other faith groups. Australia celebrates three holy days as public holidays—Good Friday, Easter Sunday and Christmas Day—all observed by the western Christian calendar. In this practice Australia is similar to many other nations, although a number of these do not gazette Good Friday as a public holiday (Great Britain, United States, France, and Brazil among others). Some countries permit significant members of religious minorities to take certain religious holidays (for example Egypt allows Coptic Christians designated holy days) and in Great Britain the civil service and some businesses now permit employees to ‘shift’ designated public holidays to alternative dates of their own choice.

In Australian workplace legislation, religious discrimination is sometimes covered by additional objections. We note that religious observance in and of itself is not sufficient reason for an employee to refuse to work on a public holiday or for those members of minority religious groups wishing to gain leave for observance of non-designated holy days. We are concerned that employees requesting leave for reasons of religious observance are being denied such leave under the ‘reasonable hardship’ exemption for employers, when the ‘hardship’ is in fact a rostering difficulty or a minor inconvenience. At the same time, we recognise that there will be times when it will not be reasonably possible to grant an employee leave for religious observance.

The Uniting Church believes that the right to worship is central to freedom of belief and to a harmonious society and would encourage the AHRC and the federal and state governments to explore options to make possible the observance (without undue penalty) of religious holy days for members of minority religious groups, including those other than western Christian traditions.

⁹ Human Rights and Equal Opportunities Commission (1998), *Article 18: Freedom of religion and belief*, available: http://humanrights.gov.au/pdf/human_rights/religion/article_18_religious_freedom.pdf, p.13

While current workplace laws and governance practice at educational institutions allow for consideration of religious practice and observance, Uniting Church university chaplains have observed that the general lack of awareness both of provisions of legislation and of religious practices and holy days of minority religious groups sometimes makes this very difficult for individual believers to achieve. For example, applications for deferral of examinations or special consideration for assessments and assignments scheduled for Friday midday (principal Islamic prayer time), Saturdays (Jewish and Seventh Day Adventist Sabbath), during Ramadan, or other holy days can still be treated with extreme suspicion.

The Uniting Church supports the freedom of individuals to carry religious symbols and wear religious apparel as a legitimate expression of their faith, except where such apparel may raise legitimate and serious occupational health and safety concerns and except in such cases where an item of religious apparel is captured under laws regarding apparel more generally, for example, laws prohibiting the wearing of helmets and other head and face coverings in banks. Whilst most western Christian religious groups have ceased to wear specific religious apparel in public over the past forty years, this should not be considered normative. The freedom to identify oneself as a member of a religious group is fundamental to the right to freedom of belief and freedom of worship.

Protection from Religious Vilification¹⁰

While there is state legislation which protects against religious vilification in Australia, there is no Commonwealth legislation which prohibits discrimination or vilification on the basis of religion or protects the right to freedom from religious hatred and violence. Protection under the RDA is limited (occurring only if a religious group can be classified as an 'ethnic' group or in certain circumstances under indirect race discrimination protections) and while the RDA allows for complaints to be made to the AHRC, the legislation does not allow for any criminal sanctions or enforcement of any rulings that the Commission makes.

Article 20 of the ICCPR provides that advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. There is a complexity in reconciling the right to freedom of expression with the right to freedom of religion and belief. However, freedom of expression is not an absolute right and carries with it special duties and responsibilities. Article 19 of the ICCPR, which sets out the right to freedom of expression, also states that this right may be subject to certain restrictions, so as to respect the rights or reputations of others and to protect national security, public health, or morals.

The UCA Assembly is concerned about legislation, policies and practices that might have the outcome (whether intended or unintended) of increasing prejudice against religious groups. In particular, we are concerned that Muslims in Australia (especially Muslim women who are easily identifiable because of their dress) have become targets of discrimination and bigotry as a result of the harsh public discussion around anti-terrorism legislation and responses, fuelled by a hostile media and political environment and by the permission being given by political leaders for the expression of racist and religiously prejudiced opinions. This is a particularly destabilising approach in the current context of heightened fears about Islamic extremists.¹¹

¹⁰ The material in this section is largely drawn from UnitingJustice Australia's submission to the Australian Human Rights Commission consultation, 'Rights and Responsibilities', op. cit.

¹¹ Of particular concern was the comment from the Attorney General, Senator the Hon. George Brandis QC, that people have a right to be bigots (technically correct but unhelpful in the circumstances and open to misinterpretation), see <http://www.theguardian.com/world/2014/mar/24/george-brandis-people-have-the-right-to-be-bigots>. More recently we have experienced a furore over the short-lived restriction placed on women wearing burqa in the parliamentary public galleries and the proposed introduction of legislation intended to ban the burqa from public spaces, see <http://www.news.com.au/national/jacqui-lambie-to-introduce-private-members-bill-to-ban-the-burqa-in-public-places/story-fncynjr2-1227073575959> and <http://www.news.com.au/national/palmer-united-party-senator-jacqui-lambie-to-introduce-legislation-to-ban-burqa-full-face-coverings-in-public/story-fncynjr2-1227104414371>

The World Council of Churches holds similar concerns on an international scale. In a publication of its International Affairs Commission, it was recognised that:

religious minorities in some parts of the world are becoming targets of discrimination, acts of violence or hostility and even persecution merely because of their adherence to one or other particular religion.¹²

Commonwealth anti-terrorism and security laws introduced since 2001 have had a disproportionate and long-term discriminatory impact on Australia's Islamic community.¹³ While legislation may not intend to directly discriminate against Muslims, it is clear that it has this effect and leads to alienation. UnitingJustice Australia's submission to the *Australian Security Intelligence Organisations Legislation Amendment (Terrorism) Bill 2002* expressed concern about the use of control orders and preventive detention, and inappropriate definitions of 'sedition' and 'a terrorist organisation', all of which lend themselves to targeting of certain ethnic or religious groups.¹⁴ In 2005, our submission to the Security Legislation Review Committee expressed concerns about casting certain people, whether an Australian citizen or not, as 'more likely' to be 'terrorists' and that anti-terrorism legislation perpetuates a view that members of the Islamic community, as well as any person of 'middle eastern descent' is more likely to be a 'terrorist'.¹⁵

The *National Security Legislation Amendment Bill (No. 1) 2014* strengthened ASIO's warrant-based intelligence collection powers and capability to conduct covert intelligence operations. For example, amendments to the ASIO Act will enable warrants to search computers to extend to all computers owned by a specified person as well as all computers at a specified location. The legislation will also enable access to third party computers 'in transit' to the computer specified. The Act also enables the use of listening, surveillance and tracking devices without a warrant. The legislation also provides for the Minister to issue an 'identified person warrant' (IPW) for any person suspected of terrorist activity, and enables ASIO to access records and computers related to that person, use surveillance devices and access postal items related to that person. These amendments are a violation of privacy and the presumption of innocence. It is our fear that Muslims and people who are recognised by others as "of middle eastern descent" will be disproportionately targeted. For example, in the three weeks after police anti-terror raids carried out in Sydney and Brisbane in September 2014¹⁶, there were 30 attacks against Muslims, mainly women wearing the hijab, according to Muslim community leaders who compiled a register of religiously motivated incidents.¹⁷

Representatives of the Lebanese Muslim Association have told the media that these recent anti-terrorism laws are more discriminatory than were the proposed changes to Section 18C of the RDA.¹⁸

The resurfacing of the 'Ban the Burqa' campaigns which aim to legislate against Muslim women's dress, with particular focus on the face-covering, has also been of concern and illustrates the intersection of freedom of religion, freedom of expression, freedom of movement and gender equality.¹⁹

As previously stated, the public discourse and political leadership in relation to this has been concerning and played a role in fuelling an increase in the religious and racial vilification of Muslim women, including instances of physical and verbal abuse. The parallels being drawn between Muslim women, Islamic dress and criminality is misrepresentative and detrimental to social cohesion.

¹² CCIA Study Report (2014) *Freedom of Religion and Rights of Religious Minorities*, WCC Publications, Geneva, Switzerland

¹³ see our submission to the AHRC 2009 inquiry 'Freedom of Religion and Belief in the 21st Century' op. cit.

¹⁴ <http://www.unitingjustice.org.au/human-rights/submissions/item/671-inquiry-into-asio-legislation-amendment-bill-2002>

¹⁵ <http://www.unitingjustice.org.au/human-rights/submissions/item/691-submission-to-the-security-legislation-review-committee>

¹⁶ <http://www.smh.com.au/national/live-antiterrorism-raids-across-sydney-and-brisbane-20140918-3fzkg.html>

¹⁷ see <http://www.smh.com.au/national/dozens-of-antimuslim-attacks-as-islamic-leaders-warn-of-community-fear-20141009-113tmk.html> and <http://www.abc.net.au/worldtoday/content/2014/s4093692.htm>

¹⁸ <http://www.theguardian.com/world/2014/aug/07/terrorism-laws-more-frightening-racial-abuse-muslim-group>

¹⁹ G. Krayem (January 2010) *Freedom of Religion, Belief and Gender: A Muslim Perspective*, Australian Human Rights Commission, <https://www.humanrights.gov.au/sites/default/files/content/frb/papers/Gender.pdf>



Fear for their own safety have compromised Muslim women's right to freedom of movement and independent living.²⁰

It has been heartening to witness a recent shift in the stance, tone and language of some political leaders and the beginnings of a shift to a more consultative and inclusive approach by Australian governments in addressing concerns about the radicalisation of young people, in particular.

²⁰ G. Krayem, *ibid.* and Australian Human Rights Commission (2015), *Rights and Responsibilities – Consultation Report 2015*, p. 27

4 | BALANCE AND LIMITS IN RELIGIOUS FREEDOM

The Uniting Church's historical commitment to work for an end to discrimination has led the Church to a finely nuanced position on the limits to religious freedom and how religious freedom and equality before the law should be balanced in Australia, a diverse society of people of many faiths and none and a secular democratic state. This submission argues that the right to freedom of religion is of vital importance, and its recognition necessary. It is also the Church's position that every person is equal before the law and any permission given to religious organisations (usually couched in the form of exceptions or exemptions) 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.

As the Australian Law Reform Commission points out in its interim report, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws*,

it is widely recognised that there are reasonable limits even to fundamental rights. Only a handful of rights—such as the right not be tortured—are considered to be absolute.²¹

Both the Victorian *Charter of Human Rights and Responsibilities Act 2006* (section 7.2) and the ACT *Human Rights Act 2004* (section 28) provide that a human right may be limited only as it can be “demonstrably justified in a free and democratic society based on human dignity, equality and freedom”.²²

It is principles such as these, applied to our belief that every person is made in the image of God and entitled to live dignity, which have guided the Uniting Church to a position which does not hold that freedom of religion is an inviolable right.

Two of the most discussed issues in relation to the balancing of rights and freedoms in Australian public conversation are around freedom of speech/expression and religion and religious vilification (discussed above),²³ and religious freedom and equality for members of the LGBTI communities (as discussed in *Rights and Responsibilities – Consultation Report 2015*).²⁴

There is a diversity of opinion amongst our Church members—derived from the different ways in which people understand the Bible and the traditions of the faith—around issues of sexuality and equality.

The UCA has wrestled with ongoing discussions about sexuality and equality for over 30 years, and the Assembly has acknowledged the pain this has caused to LGBTI people in the Church.²⁵

Discrimination against LGBTI people, including on religious grounds, has contributed to their experiences of marginalisation, prejudice, discrimination and physical and emotional abuse. There is a direct causal relationship between discrimination on the basis of sexual and gender discrimination and the higher rates of psychological morbidity and health inequities experienced by members of the LGBTI community.²⁶

²¹ Australian Law Reform Commission (July 2015) *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws (Interim Report)*, p. 27, available at <https://www.alrc.gov.au/publications/alrc127>

²² This relates to the principle of proportionality, see for example, Australian Law Reform Commission *ibid.*, p. 28 ff

²³ See the UnitingJustice Australia submission to the Rights and Responsibilities Consultation 2014 for a discussion about racial discrimination and freedom of expression, *op. cit.*, p. 11

²⁴ Australian Human Rights Commission (2015), *op. cit.*, pp. 24 ff.

²⁵ Uniting Church in Australia Assembly (July 2006), *Sexuality and Leadership*, Resolution 06.41 (3), <http://www.unitingjustice.org.au/society-religion-and-politics/uca-statements/item/502-sexuality-and-leadership-in-the-uniting-church-australia>

²⁶ King, M. (2008), *A systematic review of mental disorder, suicide and deliberate self-harm in lesbian, gay and bisexual people*, BMC Psychiatry, Vol 8.

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.²⁷ 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.

In 2009, the UCA Assembly made a submission to the AHRC consultation, 'Freedom of Religion and Belief in the 21st Century'. The Assembly made the following comments in relation to the rights described in Article 18 of the ICCPR:

We believe that these rights have important implications for the freedoms allowed religious communities, groups, organisations and bodies.

It is necessary to remember, however, that not all religious communities, groups and organisations, manifest their religion in ways that serve the common good. The history of Christianity is scarred with examples of churches perpetrating violence, abuse and appalling discrimination against people and communities on the basis of race, gender, sexuality and religion, and claiming those actions to be in the name of God. Expressions of faith can become so degraded and perverse that the central tenets of authentic Christianity no longer have meaning in those contexts. The right to freedom of thought, conscience and religion, must always be bound together with the "due recognition and respect for the rights and freedoms of others and of meeting the just requirements of human dignity and the general welfare of a democratic society" [quote from Dignity in Humanity].

Consistent with and in the context of the rights and freedoms described by the international human rights instruments, we believe that religious communities, groups and organisations should be accorded the freedoms necessary for the practice and maintenance of the faith. We also believe that religious communities, groups and organisations should be open to be challenged by society for any practices which may infringe upon the wellbeing of others and the general welfare of society.²⁸

In that submission, the Assembly highlighted the importance of specific legislative provisions that allowed for discrimination on the basis of religion by faith communities in the area of employment in leadership and teaching positions, where it is reasonably necessary for maintaining the integrity of the religious organisation. The act of ordination in particular is core to the integrity of a religious community and we believe it is appropriate that religious organisations are given the freedom to appoint their leaders, ordained and lay, in keeping with their religious traditions and beliefs.

On the other hand, we are concerned that when religious bodies are provided with what amounts to a 'blanket exception', there is no incentive for a religious body to ensure that it does not discriminate, and no incentive to promote equality and inclusion in areas of employment and representation other than those leadership positions necessary to maintain the integrity of the religious organisation.²⁹

While we also acknowledge the need for some level of exemption to allow faith-based organisations to maintain their integrity according to the tenets of the relevant communities, references in legislation to concepts such as "doctrine", "tenets of that religion" and "injury to religious sensitivities" are, in many cases, unhelpful. This language is contested even within religious communities themselves, and so to require participants in court proceedings to present and decide on a definitive definition of any of these terms is problematic.³⁰

²⁷ *ibid.*

²⁸ *op. cit.*, pp. 5-6

²⁹ UnitingJustice Australia (February 2012), Submission to the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the *Human Rights and Anti-Discrimination Bill 2012*, Exposure Draft Legislation, p. 14 <http://www.unitingjustice.org.au/human-rights/submissions/item/888-human-rights-anti-discrimination-bill-2012>

³⁰ *ibid.*, p. 15

Religious Freedom and Government-funded Services

In May 2013, UnitingJustice Australia wrote to the Prime Minister about proposed changes to the SDA – the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013*.³¹

The letter made the following comments in relation to our support for the proposed removal of an exception which allowed government-funded faith-based aged care services to discriminate against gay, lesbian, bisexual, transgender and intersex persons:

As representatives of Christian agencies we see no publicly defensible grounds for discrimination against GLBTI persons by Commonwealth-funded aged care services. This includes discrimination on the grounds of religion. We therefore reject carrying over existing exceptions into the *Bill*.

In the first place such exceptions are not justified by general practice in the sector. The majority of sector agencies, including Christian agencies, do not refuse their services to GLBTI persons. Three of the largest providers, Catholic Health Care, Anglicare Australia and Uniting Care have expressly stated that their services are available to all regardless of sexual orientation or intersex status. Maintaining the exceptions will create a misleading impression about the views of these agencies as discriminatory. As Christian agencies we maintain that a power to deny services to certain sections of the community, especially those with a history of mistreatment is inconsistent with our values and principles. Yet we also recognise that different approaches exist among Christian groups. In such cases Christian organisations are still able to act in a manner that conforms to their conscience, albeit not while in receipt of Government funding.

Second, it is foreseeable that if such exceptions are available to Government-funded aged care providers, and then only very rarely relied upon, GLBTI persons and their families will experience unnecessary and unjustified confusion and hardship. It is evident to us that sporadically applied religious exceptions to the law have contributed to disputes in the past. Such complaints are traumatic for the individual(s) and families concerned. That they may occur during a period of life when people are already under stress intensifies our concerns. The problems are not ameliorated by proposals that those who are denied services may simply turn to an alternative provider. In practice this may be impossible and would be invariably difficult and distressing.

³¹ The letter was signed by the Associate General Secretary of the Assembly, the Associate General Secretary of the Synod of Western Australia and the National Director of UnitingCare Australia. It is available at <http://www.unitingjustice.org.au/human-rights/submissions/item/924-exceptions-in-the-sex-discrimination-amendment>

5 | CONCLUDING REMARKS

The idea of human rights is built on a shared understanding that oppression, persecution, discrimination, poverty and violence diminish us all and that to overcome these we must work together which a shared vision of a better society. A commitment to human rights takes seriously that no person is of inherently less value than anyone else. In this it reflects the Christian understanding that every human being is a child of God and loved by God.

The Uniting Church in Australia Assembly believes that religious freedom should be protected by law and promoted by government and civil society as an essential part of a healthy, diverse and vibrant society. At the same time we seek to bear witness to God's love and the inherent dignity of every person, and to the gospel call to inclusive community. This call leads us to oppose any form of discrimination beyond that which is necessary for the practice and maintenance of religious faith.³²

The Uniting Church understands human rights as an expression of shared hope and values, a language which enables people to talk across the usual divides of culture, religion and ideology about what it means to be human, about the values inherent to our very humanity and how we might be accountable to each other for upholding our humanity and working together to build a just society. The commitment to uphold and protect human rights is not all we need for a just society but it does matter and it can make a difference.

³² Uniting Church in Australia Assembly (November 2009), *On the Discussion Paper 'A Balancing Act: the right not to be harmed by discrimination versus the right to religious freedom*, Submission to the Justice and International Mission Unit, Uniting Church in Australia Synod of Victoria and Tasmania, p. 4