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Submission by the Synod of Victoria and Tasmania, Uniting Church in Australia on the *Human Rights Legislation Amendment Bill 2017* 27 March 2017

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes this opportunity to make a submission to the inquiry into the *Human Rights Legislation Amendment Bill 2017*. While the Synod is supportive of reforms that would allow the Australian Human Rights Commission to more easily dismiss complaints that are trivial, malicious, vexatious or misconceived, the Synod urges that the Committee recommend the Bill not be passed in its current form. The Bill as it stands is likely to send a green-light to sections to the Australian community that racism has become more acceptable to the Australian Parliament by substantially lifting the bar on when individuals and groups subjected to racist attack can seek the assistance of the Australian Human Rights Commission in conciliating such attacks or seeking legal recourse by the proposed changes to Section 18C of the *Racial Discrimination Act*.

We refer the Committee back to the submission made by the Uniting Church in Australia to the Joint Committee on Human Rights for the inquiry into Freedom of Speech in Australia for detailed background on the Uniting Church's position on human rights, free speech and the need to protect people from racial vilification and discrimination.

Uniting Church position on Racism and Freedom of Speech

From its foundation in 1977, the Uniting Church proclaimed its commitment to a balance between freedom of speech and other basic human rights including the right not to be discriminated against in a harmful manner, stating in its 'Statement to the Nation' at the inaugural National Assembly:

"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."

In the Uniting Church's view, Christian thought sees freedom of speech is part of a wider understanding of human well-being. It is not to be a tool to inflict harm, but rather one that should be used in the service of God and the greater good of our neighbours.



The Uniting Church seeks to bring God's vision of a reconciled and renewed world into the present, to reflect God's love for everyone, work for justice and peace and follow the example and teachings of Jesus Christ who taught what it means to love one's neighbour and one's enemy and who himself challenged the systems and structures of oppression in his society. In all of this, we are called to act with integrity, ensuring that our words and our deeds are aligned.

The cultural diversity of the Uniting Church was affirmed in the statement adopted by the Fourth Assembly in 1985, *The Uniting Church is a Multicultural Church*. This statement remembers that Jesus Christ "made peace between people of every race, culture and class" and states that such unity is "a goal to be achieved as we commit ourselves to one fellowship to achieve justice, affirm one another's cultures, and care for any who are the victims of racial discrimination, fear and economic exploitation".

In 1988 the annual Synod meeting of approximately 400 representatives from congregations across Victoria resolved (Resolution 88.5.3.2) to request that Uniting Church members dissociate themselves from the League of Rights because of that organisation's policies "which promote white supremacy and anti-Semitism."

In 1996 the Synod of Victoria Standing Committee resolved (Resolution 96/26.1) that "the Uniting Church, Synod of Victoria calls upon Christians and all Australian citizens to speak boldly against racism in any form."

In 1998, the annual Synod of members from across all Presbyteries resolved that the Synod acknowledged the value of a multicultural society and reaffirmed the Synod to be a multicultural Synod. Members were encouraged to "take every opportunity, both publicly and privately, to demonstrate and actively promote friendliness and neighbourliness of people of races, cultures, religions and languages other than our own."

Amending the Wording of Section 18C of the *Racial Discrimination Act 1975*

The Synod opposes Item 3 of the Bill to amend Section 18C of the *Racial Discrimination Act 1975*, as the change will send a signal that the Parliament is intending that a greater level of expression of racial hatred is acceptable in Australian society even though that is not the Government's intention.

Reasonable Member of the Australian Community Test

The Synod strongly opposes Item 4 of the Bill which has the stated aim to "ensure that the subjective sensitivities of particular groups do not make unlawful certain conduct which a reasonable member of the Australian community would not judge to constitute harassment or intimidation."¹ This is likely to open up great uncertainty about the protection of the *Racial Discrimination Act 1975* to forms of racial hatred that are specifically targeted as certain groups in the community. For example, Holocaust denial or praise of the Holocaust has been used as a form of racial hatred against members of the Jewish community in Australia, especially

¹ Explanatory Memorandum, p. 5.



members of the Jewish community that survived the Holocaust themselves. A court would now need to consider if Holocaust denial or praise of the Holocaust breached the amended Section 18C when targeted at members of the Jewish community by the standard of a reasonable member of the Australian community, rather than by the impact it has on members of the Jewish community. Similarly, praise of acts of genocide against Indigenous Australians in Australia's early history of settlement as a means of racial hatred would have to be judged by the standard of a reasonable Australian rather than by the impact on the Indigenous community.

As another example, the Executive Council of Australian Jewry has rightly pointed out the very deep offence and hurt caused to members of the Jewish community when Christians label Jews as 'Christ-killers'.² A court would now need to consider if the use of this labelling as a form of racial hatred would breach Section 18C based on the standard of a reasonable member of the Australian community, where it is possible that reasonable member of the Australian community may not understand the full context of why such labelling would be so offensive.

The test of a reasonable member of the Australian community also ignores that certain groups in society have experienced a lifetime of more subtle forms of racism, which means overt expressions of racism have a greater impact on many members of these groups and on their well-being. It is the Synod's view that this lived experience should be relevant to issues of providing protection to members of these groups against overt expressions of racism and racial hatred. A court may take the view that a reasonable member of the Australian community may not be aware of this cumulative impact of the experience of racism and therefore the cumulative impact of racism and racial stereotypes does not need to be considered in determining if Section 18C has been breached.

By increasing the bar on what will be considered a breach of Section 18C, it is clear the current Commonwealth Government is wanting to send a signal to both the courts and the general community that a greater amount of racial hatred will be acceptable in the Australian community, especially when it is specifically targeted at the deeply held sensitivities of the community being targeted.

It is far more sensible to address racial hatred in Australia by considering the impact of expressions of racial hatred on a reasonable member of the community being targeted by the expression of hatred.

Termination of Complaints

With regards to termination of complaints, the Synod supports that the President be able to terminate a complaint where the President assesses that continuation of an inquiry into the complaint is not warranted and that the President must terminate a complaint that is assessed to be trivial, vexatious, misconceived or lacking in substance. The Synod opposes the President having to terminate a complaint on the basis that the President forms a view that the complaint will not be resolved in favour of the complainant or that there is no reasonable prospect that the Federal Court or the Federal Circuit Court would be satisfied that the alleged acts, omissions or practices are unlawful discrimination (parts of Item 43). In many cases the complainant seeks to resolve a complaint through conciliation, and the President should have the discretion to

² Julie Nathan, 'Report on Antisemitism in Australia 2016', Executive Council of Australian Jewry, 27 November 2016, p. 128, <http://www.ecaj.org.au/wp-content/uploads/2012/08/ECAJ-Antisemitism-Report-2016d-WEB.pdf>



continue conciliation where the President assesses there is merit in doing so or where it is in the public interest to do so and where the complaint is not trivial, vexatious, misconceived or lacking in substance.

The Synod supports item 53 that requires the leave of the Federal Court or the Federal Circuit Court to make applications alleging unlawful discrimination where the subject of the complaints was terminated by the President.

Lodging a Complaint

While largely supportive of Item 27, the section should authorize the Commission to assist a person in making their complaint where they may lack the capability to meet the requirements of the amended section to lodge a complaint, for example that they have a disability, English is not their first language or they lack the literacy skills to formulate the complaint in the written form the section requires. Such characteristics of a complainant should not be a barrier to them being able to gain the protection of the law against unlawful discrimination.

Notifications

While largely supportive of Item 36, the Synod believes that the President should not be required to notify a respondent not just in cases where the notification is likely to prejudice the safety of a person, but also in cases where it is likely the notification will lead to further unlawful conduct.

Costs

The Synod is supportive of Item 57, to encourage reasonable settlement of complaints.

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