

17 August 2005

The Chief Executive
ACT Department of Justice and Community Safety
PO Box 158
CANBERRA ACT 2601

Dear Sir

Re: recognition of same sex relationships in the ACT – Discussion Paper

I write on behalf of *UnitingCare* NSW.ACT, the social justice agency of the NSW Synod of the Uniting Church. (The NSW Synod covers both NSW and the ACT.)

The Uniting Church is committed to support of human rights, recognizing that the role of Government is to enhance human rights and to ensure that policies treat equivalent situations similarly. Everyone has a right to equality before the law.

The NSW Synod values marriage as a heterosexual institution, but also values other caring relationships. *UnitingCare* Unifam, a program of *UnitingCare* NSW.ACT, provides relationship counselling to people with relationship difficulties, whether they are in a heterosexual marriage or some other sexual relationship. *UnitingCare* rejects the view sometimes put forward by Christians, that recognition of same sex relationships in some way undermines marriage, since the nature of the relationship into which one enters depends on one's sexual identity. Heterosexuals, not homosexuals, have to take the responsibility for the problems that heterosexual marriage encounters in the 21st century.

Many people are in same sex relationships, and they need their partners to be recognized at law with regard to a wide range of matters such as superannuation, property, inheritance, permission for medical treatment of seriously ill partners, recognition at work of their caring responsibilities, and other matters. While current ACT legislation goes some way towards providing this, it is not evident from the outline in the Discussion Paper whether the already enacted changes to ACT law deal with all the situations where same sex partners need to be recognized. If any of the options in the discussion paper are adopted, the legislation should be framed so as to extend to partners in registered relationships the legal rights available to partners in marriage relationships, to the extent possible within ACT law. That would be a significant move towards equality under the law.

It is important that where the law is meant to apply to partners in same sex relationships, as is already the case in some ACT legislation, there is a mechanism by which they can be recognized and legal rights asserted. We can therefore, see

no valid objection to **registration**, or to provision for a ceremony to accompany the act of registration if people so desire (which seems to be the additional element in the option that the Discussion Paper calls “**civil unions**”), provided that similar conditions apply to those required in the case of heterosexual marriage, i.e. conditions of residency, minimum wage, not within a prohibited family relationship and not already married or in a registered relationship. We note that these conditions apply in some overseas legislation.

The point of registration should be to remove the need for people in same sex relationships to “prove” the relationship in other ways before legal rights apply. To fulfill the purpose of equality before the law, it needs to be formulated in such a way that once registered, all rights applicable to spouses in a marriage will apply to partners in a registered relationship – the registration certificate should function in the same way, and in the same legal situations, as a marriage certificate.

Since registration would extend legal rights to a partner in an ongoing relationship, it is important that there be the equivalent of divorce, i.e. some mechanism for revocation of registration if a relationship ends. That also is part of equality before the law.

Since heterosexuals can already register their relationship at a registry office (becoming “married”), it would be inappropriate for ACT registration to be available to heterosexuals.

Comment on civil unions and religion

It is not clear why civil unions are defined as “non-religious” on page 10 of the Discussion Paper, when the option includes a ceremony recognizing the relationship. There are many same sex couples who are religious and have a religious ceremony to recognize their relationship, even though this is not recognized at law. Many couples go through such a service at a Metropolitan Community Church. Some Uniting Church Ministers have provided a prayer service, blessing a same sex relationship.

It would be discriminatory in the civil union option to require the ceremony to be non-religious. This would give same sex couples fewer rights than heterosexuals, who can choose, under the Marriage Act, either a registry office event, a ceremony somewhere else conducted by a civil celebrant (which may be secular or religious) or a wedding with a registered Minister of religion conducted according to a recognized liturgy. Heterosexuals who are married at a registry office may also ask for a ceremony within their religion to bless that marriage (a matter on which the law has nothing to say, provided that the church does not purport to marry the couple again). It is therefore, unhelpful to characterize any particular option in the Discussion Paper as “non-religious” – human rights and equality before the law

require that if there be a ceremony, whether it is religious or non-religious, should be a choice made by the couple.

We do not support the use of the term “marriage” in the ACT legislation on same sex relationships, for several reasons.

First, we believe that the term marriage should continue to be used in the sense defined in the *Marriage Act 1961 (Cth)*. Marriage is a useful term for a particular type of relationship that is highly valued by church and by society, i.e. the relationship of a man and a woman. It is appropriate that government continue to recognize and support marriage as traditionally understood.

What is discriminatory is not the confining of the term “marriage” to a particular type of relationship, but the failure of the law to recognize same sex relationships in an equivalent way. (In this we take a different view from the court in *Halpern v Canada*, which the discussion paper cited).

The use of the term “marriage” is not only a legal question, but needs to take account of social discourse and meaning, since relationships are part of everyday life and ordinary speech. If the same word is used for all relationships, it becomes impossible to talk about the specific character of different types of relationships. It is not problematic, in terms of human rights, to value marriage in its traditional sense. That is a worthwhile thing to do. What is problematic is for law to disadvantage people whose sexual identity leads them to take on equivalent responsibilities in a different type of relationship. Issues of rights and language are intertwined, but redefining key words like marriage, is not necessarily the appropriate solution.

Second, in our experience, there is a range of views within the gay and lesbian community as to whether it is appropriate or desirable to use the term “marriage” in the case of same sex relationships. We have been informed that Uniting Network, an organization of gay and lesbian people within the Uniting Church, and those who support them, has discussed this matter and there is a variety of views among members.

It appears that many people in same sex relationships see their relationships as equivalent but different to that of heterosexuals.

This raises the possibility that changing the meaning of the term “marriage” would not only offend, as it will, some heterosexual people, but also some of those for whose benefit the change is purportedly made. Whether or not this is the case is, of course, a matter that can only be determined empirically.

Status

The Discussion Paper claims that the status of the same sex relationship will increase depending on whether registration, civil union, or marriage is adopted. This seems to be a naïve claim to make in a Government Discussion paper. It is not supported by evidence that such legislation has achieved that outcome elsewhere. Social status of same sex relationships is a complex and difficult matter. Many of those who most object to same sex relationships will not change their values and understanding of sexuality simply because legal status changes. The ACT government should focus on improved legal status rather than attempting to change “social status”, since legal status is within its mandate as a government that must bring laws into line with human rights. Appropriately worded legislation that provided for registration as the way for same sex couples to access the same rights as heterosexual marriage partners, would achieve equality of legal status within ACT law (although it cannot deal with the lack of equality in national law).

Conclusion

We recognize the importance, as a matter of human rights, of equality before the law, whether people are married or in a same sex relationship. For the reasons outlined above, we urge the ACT Government to focus on registration as the key mechanism that is required, with provision for a ceremony at the time of registration if particular couples so choose.

Yours sincerely

REV. HARRY J. HERBERT
Executive Director
UnitingCare NSW.ACT

Attachment: NSW Synod family ministry policy