



Proposal from members

57 Deferral of decisions on Same-Gender Marriage

That the Assembly resolve:

- (a) To defer any decisions on Marriage and same-gender relationships until the 16th Assembly;
- (b) To request the Standing Committee to establish a Marriage and Same-Gender Task Group to report to the 16th Assembly with detailed consideration given to the following aspects of this issue:
 - (i) The potential ecumenical and legal impact;
 - (ii) Diverse biblical and theological perspectives; and
 - (iii) The concerns and hopes of, and impact on congregations and presbyteries.

Proposer: David de Kock

Secunder: Peter Armstrong

Rationale:

The 15th Assembly has received two proposals from the Assembly Standing Committee on the issue of Marriage and same-gender relationships. The continuation of this long and necessary conversation provides the Assembly with a raft of information that is essential in discerning God's will on this matter.

The rationale for these proposals states that "The Working Group on Doctrine Report on Marriage and Same-Gender Relationships offers to the Church a thoughtful and extensive document that examines the biblical and theological perspectives on marriage, as well as drawing on contemporary thought and experience." There is a definite thoughtfulness to the distinctiveness of a prevailing point of view within the report. There are however a number of questions regarding the extensive nature of the report, the rationale and therefore, the proposals.

The Working Group on Doctrine Report and the Assembly Standing Committee's rationale and proposals do not adequately inform the Assembly in a range of ways, including the following five areas:

- Ecumenical considerations and impact;
- Legal ramifications of the Sexual Discrimination Act and Freedom of Conscience ;
- Broad Biblical perspectives;
- Theological perspectives of the Triune God and Diversity;
- Providing processes, resources and advice for Presbyteries, Congregations and Ministry Agents impacted by the decisions resulting from these proposals.

The lack of depth and breadth of information in these regards provides a fundamental flaw in the discernment process expected of the 15th Assembly. Essential in the consensus decision making process of the Uniting Church is an initial session described by the Manual for Meetings as "The Information Session." Paramount in this session is the presentation of an issue whereby "The aim is to resource the council with information from the range of possible perspectives so that an informed way forward may be discerned...Any relevant information that will help people

understand the issue is presented.” With respect to these proposals the Working Group on Doctrine has had six (6) years to develop a report for the Assembly Standing Committee. This exhaustive process highlights that relevant information from other possible perspectives involves vast and complex quantities of consultation and consideration. It is thus impossible to present the quantum of information that is behind the current report, rationale and proposals. To develop such a body of information would likely take another triennium. However, the aforementioned areas are absolutely essential in providing the Assembly with the detailed information it requires to discern God’s will on this matter.

Consideration of the aforementioned five areas is required to provide an understanding of the need for further extensive exploration of marriage and same-gender relationships. It should be noted that the following is borrowed heavily from reflections offered by Rev. Professor James Haire (Past President of the UCA) and Rev. Nigel Rogers (Former CEO/General Secretary of the SA Presbytery and Synod).

Ecumenical considerations and impact

The final sentence of Paragraph 2 of the Basis of Union (Of the Whole Church) states: ‘ The Uniting Church declares its desire to enter more deeply into the faith and mission of the Church in Australia, by working together and seeking union with other Churches’ (1992). The report makes no mention of any discussion with any other Church or Churches in Australia regarding proposals (b), (c)(ii) and (d).1. It merely, and very briefly, mentions discussions with other Churches regarding whether clergy and other church marriage celebrants should or should not continue to act also as agents for the state in marriage services (3.4.4). However, proposals (b), (c)(ii) and (d).1 are likely to cause further fracturing of relations between the UCA and other Churches in Australia, and certainly are likely to go against any moves to seek ‘union with other Churches’. If, as seems clear in this report, the methodology of the Working Group on Doctrine and the Assembly Standing Committee is largely a matter of theological discourse with contemporary society, and not intentionally with other Churches in Australia, then a unique charism of the UCA (to seek the reunion of the Churches) has been abandoned in favour of the UCA acting in a specific denominational way, or in the very least acting in isolation from other denominations in Australia.

Moreover, Paragraph 2 also states: ‘...the Uniting Church commits itself to seek special relationships with Churches in Asia and the Pacific’ (1992). Although in the report there are accounts of marriage, including Christian marriage, in Tongan, Sri Lankan Tamil, Chinese and Korean cultures by individual experts in these areas, there is no discussion of the official views on this issue of any of the UCA’s Asia and Pacific partner Churches, nor is there any discussion of the official resolutions of any of CALD congregations’ national conferences in Australia. It is highly likely that proposals (b), (c)(ii) and (d).1 will fracture relations with the UCA’s partner Churches in Asia and the Pacific, or at least leave them in a position where they may continue to receive support from the UCA but largely cease to be theological partners with the UCA. So proposals (b), (c)(ii) and (d).1 would militate against the UCA’s commitment to this part of Paragraph 2.

Legal ramifications of the Sexual Discrimination Act and Freedom of Conscience

The notion of “Freedom of Conscience” has been introduced into this proposal (c) (i) without any broad consultation with Ordained Ministers in the life of the UCA. Therefore, there has been no exploration by the Assembly Standing Committee with Ministers about the possible legal ramifications. As such, the 15th Assembly is being asked to discern God’s will without external legal advice on this matter, with no consideration of risk issues and with no understanding outside of the floor of the Assembly meeting as to the thoughts of Ministers of the Word and Deacons across the UCA. The potential legal ramifications of this proposal are of concern, especially with respect to the Sex Discrimination Act (SDA) and Freedom of Conscience. The current position of the UCA, with respect to marriage being between a Man and a Woman, does provide Freedom of Conscience for those authorised to solemnise marriages according the rites of the UCA. Therefore, with respect to the SDA, Ministers are currently able to discriminate by not conducting same-gender marriage services because it is the current doctrine, tenet or belief of the UCA. There is, however, no Freedom of Conscience that extends the other way for those

who seek to conduct a same-gender marriage service because it is outside of the current doctrine, tenet or belief of the UCA. Section 37 of the SDA “allows for bodies established for religious purposes to discriminate against people on the basis of the protected attributes...in relation to acts or practices that conform to the doctrines, tenets or beliefs of that religion.” The legal ramifications inherent in the potential decision of the Assembly, with respect to marriage and same-gender relationships is that adoption of the proposed policy statement will redefine what is considered “doctrine, tenet or belief” of the UCA with regard to marriage. Whatever is considered a doctrine, tenet or belief binds the Minister so that they are not able to discriminate on the grounds of what is the agreed and accepted teaching or policy of the religion. This completely removes the ground by which a Minister can discriminate with respect to the Sex Discrimination Act.

Alternatively, it is granted that section 2A (c) of the Marriage Act does provide for Freedom of Conscience as it states: It is an object of this Act to create a legal framework...to allow ministers of religion to solemnise marriage, respecting the doctrines, tenets and beliefs of their religion, the views of their religious community or their own religious beliefs. Hence, the Marriage Act does provide for Freedom of Conscience. Therefore, the tension is obvious in that the Sex Discrimination Act may be used to deny the capacity for Ministers to exercise their Freedom of Conscience as outlined in the Marriage Act. The presence of this tension clearly suggests that significant legal consideration is needed before the Assembly can be reasonably and reliably informed on this aspect of marriage and same-gender relationships. This extensive legal consideration is not found in the Working Group on Doctrine Report. Furthermore, the Working Group on Doctrine report provides no extensive consideration of the legal and reputational risk inherent in the Assembly Standing Committee’s proposals. For instance there is no exploration of matters such as the potential conflict which could arise in a case where a Minister wants to celebrate a same-gender marriage but is denied access to the church building by the Church Council (or vice versa).

Whilst these matters are open to differing legal interpretation, the Assembly Standing Committee’s proposals provide no internal or external legal reflection on the potential impact of this decision. Subsequently, the notion of Freedom of Conscience is a seriously questionable element of what the Assembly Standing Committee is proposing. The lack of legal information and the absence of consultation with Ministers regarding the potential impact of these proposals on their ministry practice is a complete oversight and needs to be addressed.

Broad Biblical perspectives

A considerable amount of the report is taken up with the issues of biblical interpretation and context. Whatever may be said, it needs to be acknowledged that the biblical witnesses, both in the Old and New Testaments, assume marriage to be between male and female. In particular, this appears to be so in the life of the early church. Therefore, the only way in which it is possible to reinterpret the biblical material in support of same-gender marriage is to find a prism through which the material in the Old and New Testaments can be seen in a new light. This appears to be the way the report is constructed, particularly through the use of the concepts of ‘love’, ‘grace’, ‘justice’ and ‘inclusion’.

This is not a new methodology. These themes have an important place in the church’s history. However, this methodology has a number of difficulties. First, the search for the ‘genuine Jesus’ and ‘the genuine teachings of Jesus’ needs to be carried out with great care, as there is always the danger of projecting one’s own culture onto Jesus and his teaching. Second, it is dangerous always to use the Old Testament as a foil against which Jesus’ teaching is to be understood. Sometimes the Old Testament is not a foil at all for the New Testament, as Jesus does indeed fulfil the account or message in the Old Testament. Third, it is very clear that there is a strong element of counter-cultural understanding, both in the two Testaments and particularly in the life of the early church, persecuted and suffering as it was. Thus it seems that the biblical arguments of the report are not proven. Thus proposals (b), (c)(ii) and (d) are on weak ground.

Theological perspectives of the Triune God and Diversity

Here a major theme in the report is that of diversity, related as it is to the Trinity in the report. The difficulty here is that the distinctions within the Godhead are somehow associated with the

contemporary category of 'diversity'. The language surrounding 'diversity', especially human diversity, is not necessarily a helpful way to approach understanding of the Trinity, in that the church's language regarding the Trinity speaks primarily about three distinct Persons in the Godhead. They are not diverse; they are distinct.

Thus this line of thought in relationship to Trinitarian understanding is largely irrelevant. Again, here proposals (b), (c)(ii) and (d) are not on firm ground.

Providing processes, resources and advice for Presbyteries, Congregations and Ministry Agents impacted by the decisions emanating from these proposals

There has been minimal consultation with Congregations and Presbyteries on moving forward with same-gender marriage throughout the past six (6) years. The Working Group on Doctrine has developed a report for the Assembly Standing Committee that has resulted in the 15th Assembly being considerably uninformed about the impact this decision might have on Congregations and Presbyteries. In the previous triennium the Working Group on Doctrine did undertake a consultation with Congregations via a survey. However, the Working Group lost a considerable amount of the survey results and was not able to report to Assembly Standing Committee or the last Assembly on the viewpoint of Congregations. This lack of consultation must be viewed with a great degree of concern by the Assembly. Not least of all because the federal government saw consultation with the nation, via a plebiscite, as essential to the development of legislation on this matter. However it would be pre-emptive to suggest that the results of the national plebiscite automatically translate into a groundswell amongst Church members to change the traditional view that Christian marriage is between a man and a woman. The lack of consultation on the issue of Marriage and same-gender relationships raises significant concerns as to why, as a national church, we are not seeking to canvas the opinion of the whole church. Essentially, the 15th Assembly is missing a very large amount of information necessary for it to discern God's will on this vitally important matter in the life of the UCA.

Furthermore, there has been no consultation with Presbyteries regarding the potential impact on how they will fulfil their responsibilities to oversee the Congregations and Ministers should a decision be made. Whilst a degree of consultation was undertaken with Synods, nothing has informed the Working Group on Doctrine's report concerning the operational realities of Presbyteries overseeing the effective implementation of what these proposals are positing. This lack of consultation has failed to inform the Assembly in its discernment process. The exclusion of Presbyteries from having a voice into the report has already led to responses such as that of the North Queensland Presbytery which has decided the following:

- (a) the Presbytery of North Queensland reaffirms the orthodox Christian view that marriage is between a man and a woman excluding all others.
- (b) all the committees of the Presbytery conform to this position.
- (c) the North Queensland Presbytery undertake not to approve an issue of a call to placement for any ministry agent that does not also affirm this position.

The report has not given adequate voice to Presbyteries and as such continues to push the diversity of the church into a divisive space. This is inconsistent with the very fabric of who the UCA is called to be and become.

Summary

It is apparent that the Assembly is not fully informed on this matter. Therefore, as it seeks to discern God's will on this potentially divisive issue in the life of the church the question must be asked as to whether a decision needs to be made now. In some regards this very question may well be the trigger for formal proceedings around discerning an answer in the context of the 15th Assembly meeting. However, deferring the decision now needs to be strongly considered because of the amount of information that is currently absent from the Assembly Standing Committee's proposals. The Assembly decision will impact a vast number of Congregations and Ministers across the life of the UCA. Surely the extent of this impact warrants a far more informed basis for discernment and decision making. Failing to gain all the necessary information diminishes the capacity of the Assembly to bring its best discernment on this issue. A deferral of the decision, a renewed process of exploring the matter with greater breadth,

including legal opinion and a report that fully informs the Assembly is essential for this to be a healthy, discerned decision for the UCA.