

ANGLICAN CHURCH OF AUSTRALIA

APPELLATE TRIBUNAL RULES 1988

Pursuant to s.59 of the Constitution of the Anglican Church of Australia and all other enabling powers, the Appellate Tribunal makes the following rules:

1. Short Title

These Rules may be cited as the "Appellate Tribunal Rules 1988/11.

2. Application

- (1) These Rules apply to references made to the Tribunal in pursuance of a petition, or of a written request of 25 members of General Synod, or, subject to rule 19, to any other reference made by the Primate under the Constitution.
- (2) These Rules are expressed to apply to a reference in pursuance of a written request but apply to a reference in pursuance of a petition as if references to the request were read as references to the petition and references to the members who make the request were read as references to the members who sign the petition.

3. Applicants

- (1) Where a question is referred to the Tribunal at the request of 25 or more members of General Synod, all of those members shall be the applicants in the proceeding.
- (2) Subject to subrule (3), all the applicants in a proceeding (whether they all signed the same document raising the question or some signed one such document and others another such document or other such documents) shall be treated as a single party to the proceeding.
- (3) Where some of the applicants make application to the Tribunal for leave to be treated as a separate party to the proceedings, then, while the application is pending and, if leave is granted by the Tribunal, after leave is granted:
 - (a) those applicants shall be treated as a single party to the proceeding; and
 - (b) the other applicants shall also be treated as a single, but separate, party to the proceeding.
- (4) The Tribunal may, if it is satisfied that there are special reasons for doing so, give leave for some of the applicants to be treated as a single party to the proceeding separate from the party constituted by the other applicants.

4. Other Parties

- (1) The Tribunal may direct that a synod, person, group of persons or association believed by the Tribunal to have a special interest in a proceeding be notified of the proceeding.
- (2) A synod, person, group of persons or association notified under subrule (1) may, within the time fixed by the Tribunal or such longer time as the Tribunal may allow, notify the Registrar that they wish to intervene in the proceeding and thereupon they shall become a party to the proceeding.
- (3) Without limiting the application of subrule (1), the Tribunal may invite the Standing Committee of General Synod to become a party to a proceeding that involves the constitutional validity of a canon and, if it accepts the invitation, it shall notify the

Registrar that it accepts the invitation and thereupon it becomes a party to the proceeding.

- (4) The Tribunal may advertise a proceeding in such manner as it may determine and specify in the advertisement a time and manner within which, and any conditions subject to which, a synod, person, class of persons or association claiming to be interested in the question before the Tribunal may notify the Tribunal of that interest and apply for leave to appear or be represented at any hearing of the matter.
- (5) An applicant under subrule (4) shall apply to become a party in the proceeding and shall make that application within the time and in the manner specified in the advertisement and shall state whether, if leave is given, the applicant wishes to make a written submission or appear at any hearing, or both.
- (6) The Tribunal may give leave to an applicant under subrule (4) to become a party in the proceeding.

5. Addresses for service

- (1) Within seven days after sending their request or requests to the Primate, the applicants shall notify the Registrar, in writing, of the name and postal address of the solicitor or agent who will, subject to these rules, act in the proceeding for the party constituted by the applicants.
- (2) The inclusion of the information required by subrule (1) in the request or requests shall be sufficient compliance with that subrule.
- (3) Where some of the applicants in a proceeding make application to the Tribunal for leave to be treated as a separate party in the proceeding, they shall state in the application the name and postal address of the solicitor or agent who will act in the proceeding for the party until the application is determined by the Tribunal and, if leave is granted, in the proceeding generally.
- (4) Where a solicitor or agent is acting for some of the applicants in accordance with a notice under subrule (3), the solicitor or agent to whom a notice under subrule (1) relates shall be treated as acting for the remaining applicants.
- (5) Where
 - (a) a synod, person, group of persons or association notifies the Registrar under rule 4(2); or
 - (b) the Standing Committee of General Synod notifies the Registrar under rule 4(3);
 the notice to the Registrar shall state the name and postal address of the solicitor or agent who will act for them, or for the Standing Committee, as the case may be, in the proceeding.
- (6) Where a synod, person, class of persons or association makes application under rule 4(5), the application shall state the name and postal address of the solicitor or agent who will act for the applicant in connection with the application and, if leave is granted to become a party in the proceeding, for that party in the proceeding.
- (7) The person nominated to act in a proceeding for a synod, person, group or class of persons or association may be that person, one of that group or class of persons or a member of that association.
- (8) A requesting body that is deemed to be a party to a proceeding in accordance with rule 19 shall conform with the provisions of subrule (1), as though it were an

applicant, and shall do so within seven days after the resolution or other initiating step has been forwarded to or otherwise brought to the notice of the Primate.

6. Service of notices

- (1) Service of any notice or other document, whether by the Registrar or any other person interested in a proceeding, on the solicitor or agent for a party in the proceeding or for applicants for leave to be treated as, or to become, a party in a proceeding, shall be deemed to be service on each of the persons who constitute, or on the body that constitutes, that party.
- (2) Subject to these Rules, and unless the Tribunal otherwise orders, service of all documents may be made by post.
- (3) Any papers to be served on the Tribunal or the Registrar may be sent to or left with the Registrar at the Registry of the Tribunal, the address of which is the address of General Synod.

7. Notification to Signatories

As soon as practicable after the expiration of 7 days after the receipt by the Tribunal of a question referred to the Tribunal by the Primate pursuant to a request by 25 or more members of General Synod, the Registrar shall notify the signatories accordingly.

8. Preliminary Conference

- (1) As soon as practicable after the expiration of the time specified in an advertisement under rule 4(4) or, if the Tribunal decides not to advertise under that subrule, after the time within which notification may be made under rule 4(2) or (3), the Tribunal shall convene a preliminary conference in the proceeding by serving notice of the time, date and place for holding the conference on
 - (a) the parties in the proceeding; and
 - (b) applicants who have applied for leave to be treated as, or become, parties in the proceeding.
- (2) The business of the preliminary conference is
 - (a) to determine any applications that have been made to be treated as, or to become, parties in the proceeding;
 - (b) to fix the times within which parties in the proceeding may make written submissions and furnish written evidence in the proceeding;
 - (c) to fix the times within which parties in the proceeding may make written submissions in reply to the submissions of other parties;
 - (d) to regulate the service of copies of written submissions, of written evidence and written replies;
 - (e) to determine any other applications in the proceeding that may be before the Tribunal, and
 - (f) to give any directions, not inconsistent with these rules, that the Tribunal deems fit to give for the convenient disposal of the proceeding.

9 Written Submissions

- (1) Unless the Tribunal otherwise directs, a party in a proceeding shall file in the Registry of the Tribunal, within the time fixed at the preliminary conference, the submission that the party wishes to make to the Tribunal in the proceeding.
- (2) The submission shall contain the full argument that the party wishes the Tribunal to take into account in forming its opinion on the question referred to it.
- (3) The submission shall state whether the party wishes to be heard at any hearing of the matter by the Tribunal.
- (4) The submission must be accompanied by the originals or photocopies of all documents, or parts of documents, that are referred to in the submission and upon which the party relies, but it shall not be necessary so to deal with citations of Scripture or well-known service books or recognised law reports or dictionaries or the like.
- (5) If the party seeks to rely upon the evidence of any witness, a full statement of the evidence of the witness shall accompany the submission.
- (6) Ten copies of the submission and accompanying documents (including witness statements) shall be filed.
- (7) Written evidence will not be received by the Tribunal unless verified by the statutory declaration of the witness.

10 Supplementary Submission

- (1) A party who has filed a submission under rule 9 may seek leave of the Tribunal to file a supplementary submission.
- (2) Leave shall not be given unless the Tribunal is satisfied that there are special reasons for doing so, and may be given on such conditions as the Tribunal determines.
- (3) Unless the Tribunal otherwise determines, a supplementary submission shall conform in all respects with the requirements of a submission filed under rule 9.

11 Reply

- (1) Unless the Tribunal otherwise directs, a party to a proceeding may, within the time fixed at the preliminary conference, file a written reply to the submissions made by the other parties and to any opinion expressed by the House of Bishops or a Board of Assessors under section 58 of the Constitution.
- (2) Unless otherwise ordered, any reply shall conform in all respects with the requirements of a submission filed under rule 9.
- (3) The Tribunal may reject a reply, though filed, if in its opinion it contains a substantial amount of new material that should not have been included in the reply.

12 Pre-hearing Conferences

- (1) As soon as practicable after the expiration of the time fixed at the preliminary conference for the filing of replies, the Tribunal may convene a conference of the parties by serving notice of the time, date and place for holding the conference on each party.
- (2) The business of the conference is
 - (a) to determine whether the Tribunal will hear oral submissions by the parties or any of them;
 - (b) if the Tribunal is to hear such submissions:

- (i) to fix (if practicable) the date, time and place of the hearing;
 - (ii) to determine which of the parties may make oral submissions at the hearing; and
 - (iii) to determine procedures for the hearing including, but without limiting the generality of the foregoing, the time to be allowed to each party to make its oral submission; and
- (c) to give any other directions, not inconsistent with these rules, that the Tribunal deems fit to give for the convenient disposal of the proceeding.

13 Hearing

- (1) Any hearing of a proceeding shall take place at the time and place fixed at the pre-hearing conference or otherwise determined by the Tribunal.
- (2) A party to a proceeding may make oral submissions to the Tribunal at the hearing only if given leave to do so at the pre-hearing conference or otherwise by the Tribunal
- (3) A party to a proceeding making oral submissions at the hearing shall comply with any directions given by the Tribunal at the pre-hearing conference or during the hearing.
- (4) The Tribunal may, if there had not been a pre-hearing conference, give notice, prior to the hearing, of the kind of directions it is likely to give at the hearing.
- (5) The Tribunal shall not give leave to make oral submissions at the hearing to a party who has failed to comply with these rules or with directions given, or determinations made, by the Tribunal under these rules unless it finds special reasons for doing so.

14 Leave Required To Take Part

Subject to these rules, no body or person shall be permitted to take part in a proceeding without leave of the Tribunal.

15 Other Directions

The Tribunal may give all necessary directions, not inconsistent with these rules, for the convenient disposal of a matter before it.

16 Exercise Of Tribunal's Powers

The interlocutory powers of the Tribunal under these rules may be exercised by the Tribunal or by any member of the Tribunal.

17 Saving Provision – Section 63

Nothing in these Rules shall require the Tribunal to give its opinion on a question referred to it under s.63 of the Constitution if in the judgement of the Tribunal there would be insufficient practical utility in doing so.

18 Costs

At the hearing of a proceeding, the Tribunal shall consider whether it should make an order, or give a direction, under the Tribunals Procedure Canon 1962 with respect to the costs or and incidental to the proceeding.

19 Application Of Rules To Other References

- (1) Unless the Tribunal in a particular case otherwise determines, and subject to subrule (2), these rules apply to references made by the Primate otherwise than in pursuance of a petition or of a written request of 25 members of General Synod.
- (2) The extent to which and the manner in which the rules shall apply to such other references shall be determined as occasion requires by the Tribunal, with such additions or omissions as may be expedient.
- (3) The powers of the Tribunal under this rule may be exercised by any member of the Tribunal.
- (4) Where a reference is made at the request by resolution of General Synod or at the request by resolution of a provincial or diocesan synod, the requesting body shall, unless a contrary direction shall have been given by the Tribunal under this rule, be deemed to be a party to the proceeding.

20 Definitions

In these Rules, unless the contrary intention appears “canon” includes a rule, resolution or statement of General Synod;

“Registrar” means the Registrar of the Appellate Tribunal appointed by the Standing Committee of General Synod;

“Tribunal” means the Appellate Tribunal.

21 Commencement

These Rules shall come into force on the 1st day of August 1988.

I certify that these Rules were made by resolution of the Appellate Tribunal on the 8th day of July 1988.

The Hon Mr Justice Cox
President

12 July 1988