



# Anglican Church of Australia

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## Appellate Tribunal

**Matter:**            **Primate's Reference re Affiliated Churches Ordinance 2005 of the Diocese of Sydney**

**Decision Date:** 26 November 2018

**Tribunal Members:**

The Hon Keith Mason AC QC, President  
The Hon Justice Richard Refshauge, Deputy President  
The Most Rev'd Dr Phillip Aspinall  
Mrs Gillian Davidson  
The Rt Rev'd John Parkes AM  
The Hon Justice Clyde Croft  
The Rt Rev'd Garry Weatherill

**Determination and Opinion  
(summary):**

None of the constitutional grounds advanced for invalidity of the Affiliated Churches Ordinance 2005 (Sydney) has been established.

**Catchwords:**

Questions arising "under" the Constitution – territorial nexus with diocese – Fundamental Declarations – consensual compacts – "steps...in furtherance of union with other Christian communions" – jurisdiction of diocesan tribunals over Anglican clergy resident in diocese – "affiliated church".

# PRIMATE'S REFERENCE RE AFFILIATED CHURCHES ORDINANCE 2005 OF THE DIOCESE OF SYDNEY

## OPINION OF THE APPELLATE TRIBUNAL

### Preliminary matters

1. On 28 July 2017 the Primate, at the request of the Diocesan Council of the Diocese of Newcastle, referred to the Appellate Tribunal under s 63 of the *Constitution* ten very generally framed questions. They were set out in a Schedule to a letter dated 25 July 2017 from the then Administrator of the Diocese of Newcastle, the Rt Rev Dr Peter Stuart. Bishop Stuart's letter showed the focus of attention to be the *Affiliated Churches Ordinance 2015* of the Diocese of Sydney ("the Ordinance") and action taken under it, especially as regards certain non-Anglican churches located within the Diocese of Newcastle that had become "affiliated churches" under the Ordinance.
2. Responding to directions made by the President, the Synod of the Diocese of Newcastle by letter dated 29 September 2017 identified 15 more narrowly-expressed questions, framed so as to reveal the sections of the *Constitution* under which they are said to arise. The later submissions by the participants in the Reference have addressed these questions.
3. The Primate has confirmed that the reference should be treated as amended accordingly.
4. All dioceses were notified about the Reference. The Dioceses of Sydney and Brisbane elected to participate and they, together with the Diocese of Newcastle, have filed submissions that address all issues including the practical utility of the 15 questions. Newcastle and Sydney have also filed an Agreed Statement of Facts and a Chronology. Brisbane has generally supported the Newcastle submissions while adding some information about the practical consequences of the Ordinance and proposing different answers in some instances.
5. The matter has proceeded by way of written submissions.
6. The Tribunal's jurisdiction is relevantly conferred by s 63 of the *Constitution* and limited to giving its opinion on questions that arise "under" the *Constitution* as referred by the Primate at the request of the diocesan synod affected or its diocesan council (see also s 74 (1)). Merely to frame a question by reference to a provision in the *Constitution* will not suffice to establish that it arises "under" the *Constitution* (cf *R v Commonwealth Court of Conciliation and Arbitration; ex parte Barrett* (1945) 70 CLR 141 at 154; *Reference concerning various matters to do with the Conduct of Church Services* 1996). In any event, the Tribunal may pay regard to the practical utility of answering questions or answering them in full (see *Appellate Tribunal Rules*, r 17).
7. It is not the role of the Tribunal to express any position on the merits of any ordinance or canon whose validity is in question.

### The Ordinance

8. The Ordinance was passed in 2005 and amended in a minor respect in 2014.
9. Its background is identified in the Preamble and two Sydney Synod resolutions (2/03 and 21/04) recited therein. Clause 2 sets out its Objects.

10. The first substantive provision is clause 4 which authorises the Synod or Standing Committee of the Sydney Diocese to make a declaration that “a non-Anglican church or group of non-Anglican churches” be “affiliated with this Church in this Diocese *only* if it is satisfied that the profession of faith of the non-Anglican church or group of non-Anglican churches is Bible-based” (emphasis added). “Non-Anglican church” is defined in clause 3 to mean:

*“a group of persons who regularly meet together for public worship as Christian people other than as part of the Anglican Church of Australia.”*

“Bible-based” is an undefined term in the Ordinance.

11. At first impression, the word “only” in clause 4 (to which we have drawn attention) serves to emphasise the condition that follows, so as to ensure that the power is not to be exercised except with respect to a Bible-based church. In their original submissions, the main parties to this Reference treated the word “only” as directed to the preceding words “in this Diocese” (see NS 12, 59; SS 70). The alternative possibility was drawn to attention along with an invitation to provide supplementary submissions on the point and its consequences. In the upshot, Newcastle, Sydney and Brisbane all accept that both readings are possible; and that, on either reading, satisfaction as to the “Bible-based” profession of faith is necessary. Sydney also contends that the words “this Church in this Diocese” make it clear that any declaration that is or might be made limits it to be read as limited to affiliating the affiliated church with the Anglican Church in the Diocese of Sydney: it does not purport to affiliate the non-Anglican Church with the Anglican Church of Australia (“ACA”) outside the Diocese of Sydney in any case (ie not the ACA as a whole or in any other Diocese). We shall return to this particular issue later in these reasons (see paras 64-73).
12. The Long Title to the Ordinance makes explicit the intent of clause 4 when it describes the Ordinance as one “to provide for the affiliation of non-Anglican churches *with the Anglican Church of Australia* in the Diocese of Sydney” (emphasis added).
13. A declaration of affiliation may be withdrawn by Sydney’s Synod or Standing Committee; and affiliation may be discontinued at the option of the affiliated church or group (clause 4 (2)).
14. Clause 5 stipulates that the Standing Committee may authorise the Diocesan Secretary to enter into an “affiliation agreement” with person(s) themselves authorised to do so on behalf of an affiliated church. Various forms of such agreement are contemplated. They must include terms enabling the termination of the agreement on stipulated grounds (clause 5 (3) (a) and (b)).
15. The key function of affiliation agreements is to regulate the terms upon which one or more “approved benefits” may be provided by the Diocese of Sydney to the affiliated church (see clause 5 (c)). However, the agreement is not to include any term which would enable the provision of a benefit which is not an approved benefit; nor the provision of an approved benefit to an affiliated church which, at the time the affiliated (sic) agreement is entered into, is not able to be properly provided (see clause 5 (d)).
16. “Approved benefits” are those of the type described in the Table to the Schedule to the Ordinance (see clause 3). Ten such benefits are listed: membership of superannuation fund; long service leave continuity of service; insurance cover; access to administrative, secretarial and accountancy services; Sickness and Accident Fund; stipend continuance; clergy removals; finance and loans; expression of affiliation with the Diocese; and professional standards.

17. These benefits are described in more detail in the Schedule. Most are of a financial nature, capable of benefiting the affiliated church thorough the provision of tangible benefits in favour of its clergy and staff. Benefits 9 and 10 go somewhat further:
  9. *Expression of affiliation with the Diocese: Arrangements to authorise affiliated churches to make reference to being affiliated with the Anglican Church in this Diocese.*
  10. *Professional Standards: Arrangements to provide for appropriate selection of staff for and standards of conduct by staff in affiliated churches and to enable allegations of misconduct to be appropriately dealt with.*
18. Clause 6 (Proper provision of approved benefits) provides:
  - (1) *The Standing Committee may make such ordinances and take such other action as it considers necessary or desirable to enable an approved benefit to be properly provided to an affiliated church.*
  - (2) *Without limiting the generality of subclause (1), an approved benefit is not able to be properly provided if, in the opinion of the Standing Committee, the provision of the approved benefit would –*
    - a. *be contrary to law*
    - b. *result in any church trust property ceasing to be held on charitable trusts, or*
    - c. *result in any organisation of the Diocese ceasing to be a charitable or religious organisation for any purpose, or*
    - d. *impose an unreasonable burden on any person or organisation.*
19. As Newcastle points out, entry into an affiliation agreement and receipt of benefits are discretionary outcomes of affiliation. Conversely, as Sydney points out, most of the Ordinance deals with matters that could occur in the absence of any legislative provision. Absent the Ordinance, bodies associated with the Diocese of Sydney would be free to donate money to charitable causes of their choosing world-wide, subject to compliance with any applicable trusts relating to such money. These considerations do not undermine Newcastle's capacity to challenge the validity of the Ordinance although they may conceivably be relevant to the utility of some of the questions.
20. The Ordinance does, however, spell out (in clauses 7-9) three non-monetary "benefits" accruing to affiliated churches as automatic consequences of any declaration of affiliation.
21. Affiliated churches are authorised to nominate two representatives to attend each ordinary session of the Sydney Synod on certain conditions. Representatives may address the Synod on certain conditions but cannot vote in relation to the business of the Synod (see clause 7).
22. Clauses 8 and 9 together stipulate:
  8. *No prejudice for Anglican clergy returning to the Diocese*  
*A member of clergy who holds or has held a position in an affiliated church is not, by reason of holding or having held such a position, to be treated prejudicially in any consideration of that person's appointment to a position in the Diocese.*
  9. *Approval of general licences being issued to Anglican clergy*
    - (1) *Synod approves of the Archbishop issuing a member of clergy who holds a position in an affiliated church with a general licence.*
    - (2) *Any general licence issued by the Archbishop to a member of clergy who holds a position in an affiliated church continues only for so long as the affiliated church remains an affiliated church.*

23. Especially when read with their headings, these last two clauses confirm that both Anglican and non-Anglican clergy may serve as clergy of affiliated churches in the contemplation of the Ordinance. But only Anglican clergy are capable of enjoying the rights or privileges conferred or contemplated under clauses 8 and 9 (at least according to the headings of those clauses).
24. Clause 10 provides for Standing Committee to report to Synod regularly about action taken under the Ordinance.

#### **Four general observations about the Ordinance**

25. The Ordinance contemplates affiliation with churches located *outside* the boundaries of the Diocese of Sydney. This is common ground amongst the parties to this Reference.
26. Affiliation agreements are capable of enforcement as contracts according to their tenor (see generally *Bathurst Anglican Development Fund Diocese of Bathurst v Palmer* [2015] NSWSC 1856).
27. Beyond whatever rights and obligations that may validly ensue under the Ordinance and a particular affiliation agreement, the Ordinance does not purport to render an affiliated church subject to any governance by the Synod or hierarchy of the Diocese of Sydney.
28. Nor does the Ordinance purport to bring an affiliated church (which by definition is “non-Anglican” – see para 10 above) into communion with the ACA or any part of it, at least in any formal or constitutional sense. Accordingly, members of an affiliated church are unlikely to be able to declare or establish that they are or remain members of the ACA (see *Constitution*, s 74, definition of “Member of this Church”).

#### **The Ordinance in operation**

29. The manner in which legal authority is exercised under a legal instrument is not generally relevant to determining the true scope of that authority. It is certainly not determinative. But because issues about the utility of this Reference have been raised we record the following information, mainly drawn from the Agreed Statement of Facts.
30. Since the inception of the Ordinance, twelve churches have become affiliated, all of them located outside the boundaries of the Diocese of Sydney. They are operated in the Dioceses of Newcastle, Wangaratta, Grafton, Brisbane, Canberra and Goulburn, Gippsland and North Queensland. Each church is constituted by a company limited by guarantee or an incorporated association.
31. The Sydney Standing Committee has adopted the practice of giving advanced notification to the Bishop of the Diocese in which the proposed affiliated church is situated. In most instances, that Bishop has expressed unhappiness with the proposal. But the Standing Committee does not recognise any right of veto. On 21 June 2017, the Bishop Administrator of the Diocese of Newcastle requested the Sydney Standing Committee to defer proceeding with proposed affiliations with two churches situated within the Newcastle Diocese (Hunter Bible Church, Newcastle and Coast Evangelical Church, Forster). The request was denied and the affiliations ensued. This action appears to have been the immediate trigger for this Reference.
32. In 2008, when deciding upon the application for affiliation by the Stanthorpe Evangelical Community Church (located in the boundaries of the Diocese of Brisbane), the Standing Committee stated:

*"The test for determining whether a church is 'Anglican' for the purposes of the Ordinance is whether the bishop of the diocese in which the church is situated has issued, at the request of the senior minister or pastor of that church, licence or authority to that minister or pastor to conduct services in that church. A church is not to be regarded as Anglican merely because it uses Anglican forms of service or because its senior minister/pastor holds a general licence or authority to officiate from a bishop."*

33. In 2014, when answering a question at Synod, the Archbishop of Sydney described the nature of affiliation as follows:

*"It is important to note that our affiliates are non-Anglican churches which are and remain independent from us. Our relationship with these churches is one of mutual support and encouragement. We do not offer pastoral oversight."*

Para 48 of the Sydney Submissions also states that the assets of the affiliated churches do not comprise church trust property; no (Sydney) diocesan body is a member of the body corporate of an affiliated church, or appoints its members; no diocesan body controls the operations or policy of an affiliated church; and affiliated churches are not under the pastoral oversight of the Archbishop of Sydney. We do not understand these propositions to be in dispute.

34. As indicated, clause 5 of the Ordinance contemplates that not all of the approved benefits listed in the Schedule need to be made available under affiliation agreements. Insurance, stipend continuance, Sickness and Accident Fund benefits and clergy removals benefits are not presently offered for various reasons.
35. We shall address the application of disciplinary and professional standards regimes to clergy associated with affiliated churches later in these reasons.
36. Another aspect of the Archbishop of Sydney's statement, confirmed in the Sydney Submissions, is that affiliated churches are not required by the Ordinance or the practice of the Sydney Standing Committee to recognise or commit to the Fundamental Declarations of the Anglican Church of Australia set out in ss 1-3 of the *Constitution*.

### **Questions referred**

37. The following fifteen "refined questions" were framed by Newcastle in response to a direction by the President that there should be specificity in identifying the engaged sections of the Constitution. As indicated, the Primate has effectively amended the scope of the Reference accordingly:

**A     *The requirement for consistency with the Fundamental Declarations (by reference to sections 3 and 6)***

1. Does the action of affiliating, attaching or connecting a non-Anglican church to the Anglican Church of Australia (or a Diocese thereof) need to be consistent with the Fundamental Declarations of this Church?
2. Is the action of affiliating, attaching or connecting a non-Anglican church, which does not explicitly affirm the three orders of bishops, priests and deacons in the sacred ministry (as referred to in section 3 of the Constitution), to the Anglican Church of Australia (or a Diocese thereof) inconsistent with section 6 of the Constitution?

**B     *The order and good government of the Church (by reference to sections 5 and 26)***

1. Is the action of affiliating, attaching or connecting a non-Anglican church to the Anglican Church of Australia (or a Diocese thereof) a matter that falls within the scope of section 26 of the Constitution?
2. Does the General Synod have the power under section 26 of the Constitution to make a canon, Resolution or Rule to affiliate, attach or connect a non-Anglican church with the Anglican Church of Australia (or a Diocese thereof)?
3. Does the General Synod have the power under section 26 of the Constitution to prescribe by Canon, Resolution or Rule the procedures by which a non-Anglican church may affiliate, attach or connect with the Anglican Church of Australia (or a Diocese thereof)?
4. Does the Synod of a diocese have the power under section 5 of the Constitution (or any other section) to make an Ordinance to affiliate, attach or connect a non-Anglican church with this Church?
5. Does the Synod of a diocese have the power under section 5 of the Constitution (or any other section) to make an Ordinance to affiliate, attach or connect a non-Anglican church with this Church in the absence of a Canon of General Synod?

**C    *The order and good government of the Church within a Diocese (by reference to sections 7, 30 and 51)***

1. Does the Synod of a Diocese have the power to make an Ordinance that affects:
  - a. The order and good government of another diocese; and/or
  - b. The see of another diocese's bishop?
2. Is the Synod of a diocese solely responsible for making ordinances which affect the order and good government within its own diocese?
3. Is the affiliation, attachment or connection of a non-Anglican church with this Church within a diocese a matter related to the order and good government of this Church within that diocese?
4. Is the action of a diocese in affiliating, attaching or connecting non-Anglican churches that are located within other dioceses capable of being authorised by an ordinance of the Synod of that diocese?

**D    *Consensual Compacts (by reference to section 71 (1))***

1. Does the Ordinary and Episcopal Jurisdiction of a Diocesan Bishop form part of the Consensual Compacts?
2. Does the act by a diocese of the Church in affiliating, attaching or connecting a non-Anglican Church that is located outside the jurisdiction of that diocese and which is not consented to by the Bishop of the diocese within which the non-Anglican church is located contravene section 71 (1) of the Constitution?

**E      *Summary Question***

1. Is the act of affiliation, attachment or connecting of a non-Anglican church with a diocese in circumstances where that non-Anglican church is located within the jurisdiction of another diocese prohibited by the Constitution?

**F      *With respect to the jurisdiction of the Diocesan Tribunal (by reference to section 54 (2) of the Constitution)***

1. Does the Diocesan Tribunal of the Diocese of Newcastle have jurisdiction to hear:
  - (a) charges of breaches of faith ritual ceremonial or discipline; or
  - (b) such offences as may be prescribed by the *Offences Canon* of General Synod or the *Clergy Discipline Ordinance 1966* of the Diocese of Newcastle?

against any person in holy orders who is resident in the Diocese of Newcastle and ministering in a church that is located within the Diocese of Newcastle but which is affiliated, attached or connected to the Diocese of Sydney?

**Sydney's Preliminary Submission as to the form and utility of the Questions and a partial response to it**

38. Sydney has addressed the fifteen "refined" Questions and proposed its own answers to them (see below). This, however, is subject to a Preliminary Submission that challenges the form and utility of all of those Questions.
39. We do not accept Sydney's proposition that the Questions are incapable of linkage with a specific factual context that would allow for any meaningful determination by the Tribunal or that the Questions fail to disclose any justiciable issue. The letter specifically mentioned in the Primate's original letter of reference, the Agreed Statement of Facts, and the Chronology placed before us by Newcastle and Sydney all show clearly the genesis and context of the Questions and the inter-diocesan dispute that lies behind them. This stems from action taken by Sydney in purported reliance upon the Ordinance whose validity is challenged by Newcastle on identified grounds. Nor can we accept Sydney's submission that there has been relevant delay, in light of the recent action taken by the Sydney Standing Committee to affiliate two churches located within the Diocese of Newcastle despite firm requests from Newcastle for this not to happen.
40. But we do accept that several of the Questions as framed lack sufficient specificity to enable them to be addressed in their terms or addressed usefully in the constitutional context within which the Tribunal must function under section 63 of the *Constitution*. This statement will be elaborated later in the Opinion, in the context of specific questions using terminology that lacks sufficient specificity to render any answer by the Tribunal reasonably attainable or of practical utility.
41. The Questions are framed by reference to identified provisions of the Constitution. But some of them go well beyond the controversy disclosed in the attachment to the Primate's letter, the Agreed Statement of Facts and the Chronology. We consider that there is no utility in addressing them in the absence of evidence that Sydney or any other diocese was proposing to act otherwise than through the mechanism of the Ordinance or some similar provision. There is no such evidence.
42. Some of the questions are also defective, as regards the jurisdiction of this Tribunal, insofar as they invoke the highly ambiguous notion of a Diocesan Synod authorising by



ordinance the “affiliating, attaching or connecting” the Church (or a Diocese thereof) with a non-Anglican church. Once again, we shall elaborate on this statement in the context of a relevant question.

43. Similarly unhelpful in the present context are the bald references in the Newcastle submissions to affiliated churches becoming “part of the Sydney Diocese”. The concept is too vague to be the springboard of an Opinion about it with practical utility once it is separated from the operation of the Ordinance.
44. As Newcastle points out in para 20 of its Submissions, “the literal meaning of the word ‘affiliate’ is...of varying intensity. According to the *Oxford English Dictionary* [it] is ‘to officially attach or connect (a subsidiary group or person) to an organisation’. The *Macquarie Dictionary* defines it as ‘to attach as a branch or part; unit; associate.’” Affiliation is not, however, a term or concept used within the Anglican Communion, so far as we are aware.
45. References to an affiliated church being located “within the jurisdiction of another diocese” (as in the Summary Question E) also carry an unnecessary ambiguity, if only because of the more particular issue raised under Question F. The matter becomes clearer if the word “boundary” is substituted for “jurisdiction”, which may have been what was intended. Other problems with the Summary Question remain.
46. In light of the matters referred to in the previous paragraphs, we consider it both unhelpful and dangerous to consider legal issues under the *Constitution* unconnected to the particular Ordinance that has generated the present controversy. While the Ordinance uses the term “affiliated” as a past participle and states that “affiliated” status is the first consequence of a declaration made under clause 4 (1), the Ordinance effectively provides its own dictionary, when it spells out the processes for becoming affiliated and the consequences thereof.
47. We have not overlooked the submissions from both sides as to the motivations and intended effects of the Ordinance, including the submissions referring to the *travaux préparatoires* of the Ordinance. See for example Newcastle Submissions paras 3 (re purpose), 13-14 (re “Bible-based”), 21, 23 (re benefits for independent churches and the Diocese of Sydney that were contemplated before the Ordinance was drafted), 25 (re the “intention” of the Ordinance), 57 (re “synchronicity in matters of theology, structure, staff, discipline, finance and administration”). Only some of these are grounded in the Resolutions recited in the Preamble to the Ordinance. And those that are so grounded still require to be shown to be reflected in what the Ordinance actually achieves in order for the Tribunal’s constitutional jurisdiction to be engaged. Unless such matters relate to material that is both agreed and relevant to the constitutional task of the Tribunal, their exploration must be left to others.
48. It will be necessary to return to these considerations as we consider what formal answers can be usefully given by the Tribunal in the proper exercise of its constitutional jurisdiction. But we reject the blanket attack on the Reference and its utility raised by Sydney. Further explanation will emerge as we turn to the particular categories of issues that have been debated in the balance of the submissions.
49. With these preliminaries, we propose to address the substantive legal challenges raised by Newcastle and supported by Brisbane, also mindful of Sydney’s residuary submissions about utility to which we shall return. We shall change the order for reasons that will become apparent.
50. We do not propose to answer the Summary Question for reasons already apparent. As to the other Questions, we discern the following topics of a constitutional nature that arguably pertain to the Ordinance and the present controversy:

- (1) The Lack of Nexus Issue (Question C)
- (2) The General Synod Exclusive Power Issue (Question B)
- (3) The Fundamental Declarations Issue (Question A)
- (4) The Consensual Compact Issue (Question D)
- (5) The Diocesan Tribunal and Professional Standards Jurisdictional Issues (Question F).

**(1) Nexus: Does the Ordinance have a sufficient nexus with the Diocese of Sydney to be a valid exercise of Sydney Synod's legislative authority, subject to the other issues arising directly under the Constitution?**

51. At the risk of some repetition the Questions C are repeated and the suggested answers by Newcastle, Sydney and Brisbane are supplied:

***The order and good government of the Church within a Diocese (by reference to sections 7, 30 and 51)***

**C1** *Does the Synod of a Diocese have the power to make an Ordinance that affects:*

*the order and good government of another diocese; and/or*

*the see of another diocese's bishop?*

**Newcastle:** No

**Sydney:** *Prima facie the Synod of a Diocese does not have power to make an Ordinance that affects the order and good government of another Diocese. However, conceivably there may be Ordinances that do not affect the order and good government of another diocese but have some impact or affect (sic) in the see of another diocese's bishop. The question is pitched at such a general level that the potential answers might be varied and lack any utility for that reason.*

**Brisbane:** No

**C2** *Is the Synod of a diocese solely responsible for making ordinances which affect the order and good government within its own diocese?*

**Newcastle:** No

**Sydney:** *A Synod of a Diocese may, subject to its Constitution and the Constitution and Acts of Parliament make ordinances which affect the order and good government of its own diocese. The Synod may also adopt General Synod Ordinances (sic) which affect the order and good government of the Church in a diocese.*

**Brisbane:** *Yes, in accordance with the Constitution of the Diocese.*

**C3** *Is the affiliation, attachment or connection of a non-Anglican church with this Church within a diocese a matter related to the order and good government of this Church within that diocese?*

**Newcastle:** Yes

**Sydney:** *Apart from the lack of definition of 'affiliating, attaching or connecting a non-Anglican church to this Church' the question regarding legislative power in respect of the order and good government within a diocese lacks sufficient precision to be*

answered. The answer will depend on the circumstances. As a general proposition the action of the diocese in affiliating with non-Anglican churches that are located within other dioceses is potentially capable of being authorised by an Ordinance of the Synod of that Diocese.

Brisbane: Yes.

C4 *Is the action of a diocese in affiliating, attaching or connecting non-Anglican churches that are located within other dioceses capable of being authorised by an ordinance of the Synod of that diocese?*

Newcastle: No

Sydney: Same answer as to C3

Brisbane: No.

52. Subject to Sydney's preliminary submissions about the non-justiciable nature and inutility of the questions as framed, the parties have joined issue as to the validity of the Ordinance as an exercise of the general legislative authority of the Synod of the Diocese of Sydney. It appears to have been assumed, by some at least, that this Tribunal would have jurisdiction to address this matter independently under s 63 of the *Constitution* despite the latter provision's requirement of a question that arises "*under this Constitution*" (emphasis added). In what follows, we should not be taken to be expressing a concluded view on this jurisdictional point. But the nexus issue is logically anterior to some of the other issues that are not, in our opinion, under any such jurisdictional cloud.
53. Newcastle submits in effect that the Ordinance lacks what constitutional lawyers term a sufficient nexus to the Diocese of Sydney to be regarded as one for the order and good government of the Church "within the diocese" (cf *Constitution*, s 51; *Anglican Church of Australia Constitution Act 1902 (NSW)*, Schedule clause 2).
54. A variant of the submission contends that the Ordinance impermissibly extends to the order and good government of dioceses outside Sydney in which affiliated churches operate (with particular focus upon Newcastle). Our attention has been drawn to the discussion about "limitations of a territorial nature" in *The Appeal of Keith Francis Slater* at [119] where this Tribunal referred with approval to the statement in *Harrington & Ors v Coote* (2013) 119 SASR 152, [2013] SASCFC 154 at [156] that:
- "A diocese cannot legislate upon matters relating to the order and good government of the Anglican Church as a whole, or the order and good government of the Anglican Church within another diocese."*
55. If applicable, this argument would deprive the Ordinance of validity and arguably render the balance of the Reference moot. Invalidity on this (and possibly other grounds) would not necessarily deprive affiliation agreements of their efficacy as contracts or negate the provision or enjoyment of such "approved benefits" as may be conferred by the Diocese of Sydney or its Archbishop.
56. But there is little to be gained by dwelling on this particular point because, in our view, the Ordinance clearly relates to the order and good government of the Church within the Diocese of Sydney in many respects: it purports to establish, express and define the relationship between the Diocese and affiliated churches, it provides for rights of participation in the processes of the Sydney Synod, it approves the Archbishop issuing general licences effective in (and only in) the Sydney diocese, it provides for the making of agreements by agents of the Sydney Diocese and the provision of financial benefits funded by that diocese.

57. Merely because the Ordinance authorises or encourages action beyond Sydney's diocesan boundaries does not deprive it of validity on the basis of lack of nexus with Sydney. The dictum quoted in para 54 above does not mean that every matter appropriate for legislation must be assigned exclusively to a single synod in the ACA polity. (We note that Newcastle effectively accepts this in its proposed answer to Question C2.) As with the Australia's secular polity, in *some* fields there can be overlapping legislative competencies; and an actor's conduct may expose him or her to legislation emanating from more than one jurisdiction. See, eg *Victoria v Commonwealth* (1937) 58 CLR 618. A diocesan ordinance that satisfies the nexus requirement may, of course, be invalid in whole or part on other bases.
58. Newcastle points out that the Ordinance relates to churches that have no pre-existing connection with the Diocese of Sydney. But absent some principle that nothing could ever be done for the first time this could hardly be determinative.
59. If a diocese in which an affiliated church was located could point to its own (valid) diocesan legislation that in some way operated inconsistently with the Sydney Ordinance then it may be necessary to consider a different constitutional principle to resolve the conflict (cf *Port Macdonnell Professional Fishermen's Association Inc v South Australia* (1989) 168 CLR 340 at 374; *Appeal of Keith Slater* at [121]). Our attention has not been drawn to any such legislation.
60. If there were some Canon of General Synod in force within the Diocese of Sydney (or perhaps a diocese in which an affiliated church is located) that operated inconsistently with the Ordinance this would render the Ordinance of no effect to the extent of the inconsistency (*Constitution*, s 30). Our attention has not been drawn to any such canon.
61. In the upshot, we consider it inappropriate to offer formal (and necessarily qualified) answers to the nexus Questions as framed. Since, however, the focus of this Reference is the particular Ordinance of the Diocese of Sydney, and since its validity (considered solely as an exercise in the legislative authority of the Synod of the Diocese of Sydney according to its own constitution) is clear, we shall take the nexus issue no further.

**(2) General Synod Exclusive power: Does the subject matter of the Ordinance lie within the exclusive authority of the General Synod?**

62. Newcastle submits that the General Synod has exclusive authority within the Church to legislate on matters involving union with other Christian communions; and that the Ordinance intrudes impermissibly upon that realm of exclusive power. These propositions do raise matters under the *Constitution*. However, the formal Questions are framed in less categorical terms.
63. The Questions B and the contending answers to them are:

***The order and good government of the Church (by reference to sections 5 and 26)***

B1 *Is the action of affiliating, attaching or connecting a non-Anglican church to the Anglican Church of Australia (or a Diocese thereof) a matter that falls within the scope of section 26 of the Constitution?*

*Newcastle: Yes*

*Sydney: As a general proposition it could be said that the act of affiliating a non-Anglican church to the Anglican Church of Australia is a matter that potentially falls within the scope of the*

*legislative power of General Synod under section 26 of the Constitution. However, beyond that no useful response can be given.*

*Brisbane: Yes.*

- B2** *Does the General Synod have the power under section 26 of the Constitution to make a canon, Resolution or Rule to affiliate, attach or connect a non-Anglican church with the Anglican Church of Australia (or a Diocese thereof)?*

*Newcastle: Yes*

*Sydney: These questions appear to be a variation of question B1. For the reasons given in respect of B1, there is no helpful answer to this question, other than to indicate the potentiality even if such Canon, Resolution or Rule were made, the extent such a Canon affects the order and good government of the Church in a diocese it will only have force and effect in that diocese if it is adopted by the Synod of that diocese and the Canon has not been excluded.*

*Brisbane: Yes.*

- B3** *Does the General Synod have the power under section 26 of the Constitution to prescribe by Canon, Resolution or Rule the procedures by which a non-Anglican church may affiliate, attach or connect with the Anglican Church of Australia (or a Diocese thereof)?*

*Newcastle: Yes*

*Sydney: Same answer as to B2.*

*Brisbane: Yes.*

- B4** *Does the Synod of a diocese have the power under section 5 of the Constitution (or any other section) to make an Ordinance to affiliate, attach or connect a non-Anglican church with this Church?*

*Newcastle: No*

*Sydney: As a general proposition a Synod of a Diocese could make an ordinance regarding affiliation subject to the legislative power set out in its Constitution and the Constitution, and potentially so in the absence of a Canon of the General Synod. However, these questions do not make any reference to the Ordinance. Absent that connection or indeed any specification of the terms of any such "ordinance" this question should not be answered.*

*Brisbane: Yes.*

- B5** *Does the Synod of a diocese have the power under section 5 of the Constitution (or any other section) to make an Ordinance to affiliate, attach or connect a non-Anglican church with this Church in the absence of a Canon of General Synod?*

*Newcastle: No*

*Sydney: Same as answer to B4.*

*Brisbane: Yes.*

64. Section 26 relevantly states that the General Synod “may take such steps as may be necessary or expedient in furtherance of union with other Christian communions”. Since, by clear inference, this provision refers to union between the Anglican Church of Australia and “other Christian communions” the very nature of the power strongly suggests that ultimate “union” is something only to be achieved by and with the participation of General Synod. No single diocese could legislate on its own to achieve this, which is not the same as denying that a single diocese could initiate consideration or discussion of the topic.
65. To the extent that s 26 (and perhaps other provisions) of the *Constitution* vest *exclusive* power in the General Synod to control or regulate the Anglican Church of Australia’s “union with other Christian communions”, the correlative preclusion of individual diocesan activity could not lawfully be avoided by a single diocese purporting to limit the intrusion to operate “only” within that diocese. The constitutional internal working levers of the Anglican Church of Australia are many and various, but they all relate to a single Church. Concern for this principle explains the additional opportunity afforded by the Tribunal to the parties to address the possible consequences of an alternative interpretation of clause 4 of the Ordinance (see para 11 above).
66. But, as Sydney rightly contends, there is real difficulty in relating these considerations to the Ordinance in question. The Tribunal sees no utility in addressing abstract questions framed by reference to the amorphous notions of “affiliating, attaching or connecting” given that an infinite variety of affiliations, attachments or connections may be envisaged. Only some of them will entail “union” and not all of them would entail “steps...necessary or expedient in furtherance of” union. See also paras 42-44, 46 above.
67. Furthermore, nothing in the material before the Tribunal suggest that the various “Bible-based” but “non-Anglican” churches contemplated as objects of affiliation under the Ordinance constitute a “communion”, jointly or singly. Nor have Newcastle or Brisbane suggested as much in their submissions.
68. The breadth of the definition of “non-Anglican church” in the Ordinance reinforces the capacity to envision an extremely wide variety of “affiliations, attachments and connections” with the Diocese of Sydney (which itself has many arms). This is so, even if one adds the relatively unhelpful rider that the connections should be “official” (cf Newcastle Submissions para 20). The following are listed to show the opacity of the undefined or unconfined term “affiliated”, without suggesting any particular consequence singly or collectively: The provision of a *locum tenens* or a preacher? The supply of teaching resources? Conducting a mission in an affiliated church or hosting one from an affiliated church? Permitting or assisting the enrolment of students at a theological college? Sending charitable relief following a bushfire or flood? Supporting in regular prayer or by funding of a particular ministry? Permitting *Anglicare* or a Marriage Guidance Agency to offer services to the non-Anglican church or its members? The supply of information or other resources concerning professional standards matters?
69. Returning to the Ordinance, it is difficult to see in its terms that it entails the “taking of steps” [even preliminary steps] “in furtherance of *union* with [an]other Christian *communion*”, having regard both to the limited nature of the benefits contemplated and the difficulty of identifying all or any of the affiliated churches as a “communion”.
70. It may be accepted, as a general proposition, that some types of affiliation, attaching or connecting between the Anglican Church of Australia and another “Christian communion” would engage the power which s 26 confers upon General Synod to the exclusion of individual diocesan action. Sydney’s proposed answers to Question B1 accepts as much.

71. For these reasons, the Tribunal sees no utility in addressing Questions B1, B2 or B3. *A fortiori*, if (as the Sydney proposed answer to Questions B2 and B3 indicates) any answer may throw up the subsidiary issue as to whether the putative Canon of General Synod might affect the order and good government in a diocese such as to engage s 30 of the *Constitution* in the particular context.
72. Questions B4 and B5 carry a similar difficulty as they come at the same extremely broad issue from the diocesan perspective, seeking to explore the extent (if any) to which a single diocesan synod may act on its own. It really depends on the nature of the action taken. Nevertheless, we reiterate para 65 as to the existence of limits upon individual action. We also flag but reserve for a more appropriate context consideration of the possibility that s 26 of the *Constitution* may not be the only constitutional or canonical basis for precluding a diocese or a bishop taking unilateral action that interferes with or impairs traditional lines of communion as between the Anglican Church of Australia and other (Anglican or non-Anglican) Churches or communions.
73. In the final resort, the *Constitution* binds all bishops clergy and laity as members of the Anglican Church and for all purposes connected with or in any way relating to Church trust property (see s 70). A diocesan ordinance that transgressed a provision of the *Constitution* would be void (see s 51). Many clergy and some laity will have given solemn assents to the *Constitution* (see *Oaths Affirmations Declarations and Assents Canon 1992*, to the extent that it is in force). And all diocesan bishops are subject to s 2 of the *Offences Canon 1962* which makes it an offence wilfully to violate the *Constitution* or to engage in conduct that involves wilful and habitual disregard of consecration vows.

**(3) *Fundamental Declarations: Is the Ordinance invalid because it authorises affiliation with a church that does not have to recognise and abide by the Fundamental Declarations, including but not limited to whatever is entailed in the inalterable commitment to the preservation of the three orders of bishops, priests and deacons***

74. The Questions A and the contending answers to them are:

***The requirement for consistency with the Fundamental Declarations (by reference to sections 3 and 6)***

A1 *Does the action of affiliating, attaching or connecting a non-Anglican church to the Anglican Church of Australia (or a Diocese thereof) need to be consistent with the Fundamental Declarations of this Church?*

Newcastle: Yes

Sydney: No

Brisbane: Yes

A2 *Is the action of affiliating, attaching or connecting a non-Anglican church, which does not explicitly affirm the three orders of bishops, priests and deacons in the sacred ministry (as referred to in section 3 of the Constitution), to the Anglican Church of Australia (or a Diocese thereof) inconsistent with section 6 of the Constitution?*

Newcastle: Yes

Sydney: No

Brisbane: Yes. However, this may depend upon the facts and degree of connection.

75. Section 6 of the *Constitution* states the Ruling Principle that:

*"This Church will remain and be in communion with the Church of England in England and with churches in communion therewith so long as communion is consistent with the Fundamental Declarations contained in this Constitution."*

76. One of those Fundamental Declarations affirms that the Church will preserve the three orders of bishops, priests and deacons in the sacred ministry.
77. Newcastle correctly submits that these provisions are "overriding constraints" that limit all law-making within the Church (citing *Report and Opinion of the Tribunal on the Ordination of Women to the Office of Priest Act 1988* of the Synod of the Diocese of Melbourne (1989) at 28).
78. Newcastle further submits that the absence of any requirement in the Ordinance to bind an affiliated church to recognise and abide by the Fundamental Declaration to preserve the three orders operates to invalidate the Ordinance.
79. Exactly how this would come about was not, however, developed by Newcastle in its initial Submissions beyond reference to the Ordinance contemplating that one of the approved benefits capable of being offered to an affiliated church is "*Expression of affiliation with the Diocese*" (see item 9 of the Schedule).
80. The Schedule describes the relevant benefit as follows:

*"Arrangements to authorise affiliated churches to make reference to being affiliated with the Anglican Church of Australia in this Diocese."*

It is likely that this provision was at least designed to convey one of the "benefits" identified in the Initial Report prepared by the Sydney Standing Committee that would flow to both the Sydney Diocese and the non-Anglican churches should the Ordinance be drafted and passed. That was that "*independent churches may want the integrity of the Anglican name*" (quoted in Newcastle Submissions, para 23).

81. In its Amended Submissions in Reply Newcastle submitted that if the Tribunal accepts that the Ordinance creates a formal relationship between the Anglican Church of Australia (through the Sydney Diocese) and a non-Anglican church "to such an extent that it effectively becomes a part of the Church, then it would consequently flow that recognition of the Fundamental Declarations would be necessary".
82. The short answer to this submission is that the Tribunal does not accept its premise. Affiliated status under the Ordinance does not make an affiliated church "part of" the Anglican Church of Australia so as to engage any duty in the affiliated church itself to preserve the three orders. Nor does the Ordinance render the non-Anglican affiliated church under such level of episcopal oversight as to raise any question about the Archbishop of Sydney acting inconsistently with the Fundamental Declaration. This question might require to be revisited by the Tribunal (in a proper jurisdictional context) were there an attempt by the Bishop of one diocese to "plant" a visibly Anglican parish within another diocese on the basis that its clergy would not owe canonical obedience to the bishop of that other diocese. (Our term "visibly Anglican" shall remain undefined. But see para 84 below.)
83. It has already been explained why we are not prepared to address a question framed such as this one in any context that is not rooted to the particular Ordinance or some clearly identified alternative.



84. Whatever is entailed in item 9's contemplation that the Diocese of Sydney might "authorise affiliated churches to make reference to being affiliated with the Anglican Church of Australia in" the Diocese of Sydney, or whatever action in that regard were to be taken by an affiliated church with or without such authorisation, it should be remembered that the name and reputation of the whole Church may be affected by what is purportedly done in its name in any place. Absent proper authority, which a single diocese may be unable to confer for reasons already stated, an entity that passed itself off in any way as a part of the Anglican Church of Australia would be at risk of legal action in a civil court regardless of the non-commercial nature of its enterprise. Cf *Holy Apostolic and Catholic Church of the East (Assyrian) v Attorney-General (NSW)* (1989) 18 NSWLR 291.

**(4) Consensual Compact issue**

85. The Questions D and the contending answers to them are:  
***Consensual Compacts (by reference to section 71 (1))***

*D1 Does the Ordinary and Episcopal Jurisdiction of a Diocesan Bishop form part of the Consensual Compacts?*

*Newcastle: Yes*

*Sydney: The question referring to the Ordinary and Episcopal Jurisdiction of a Diocesan Bishop is pitched at such a general level that there is no utility in answering it. The connection of this question to the Ordinance either at a matter of generality or any specific part of it, is unclear.*

*Brisbane: Yes.*

*D2 Does the act by a diocese of the Church in affiliating, attaching or connecting a non-Anglican Church that is located outside the jurisdiction of that diocese and which is not consented to by the Bishop of the diocese within which the non-Anglican church is located contravene section 71 (1) of the Constitution?*

*Newcastle: Yes.*

*Sydney: The question regarding unspecified acts of affiliation is again too general to admit of a useful answer. No attempt has been made by the Diocese of Newcastle to identify what if any element or part of section 71 of the Constitution is being referred to in the question. Questions regarding breach of section 71 require precision as to the particular law in question, the act of affiliation, and the alleged contravention. There is no suggestion that the Ordinance makes an alteration in faith, ritual or ceremonial.*

*Brisbane: Yes.*

86. Section 71 of the *Constitution* relevantly declares that "every consensual compact...in force in the Church of England in the dioceses of Australia...shall insofar as they are not inconsistent with this Constitution, continue in force...until altered under this Constitution or under the constitution of the province or diocese".
87. Newcastle's concern relating to this provision focusses upon the approval given by clause 9 of the Ordinance to the Archbishop of Sydney issuing a general licence to a member of Anglican clergy who holds a position in an affiliated church. Such action is said to contravene an aspect of the law of the Church of England in England as it stood before the creation of the Dioceses of Sydney and Newcastle. Newcastle's submissions contain a general statement about the inherited law of the Church of England being "directed towards ensuring that parishes and places came under the

jurisdiction of the bishop of the diocese in which the parish or place was situated, the exceptions being certain Royal Peculiars". An 1843 statute about Welsh cathedrals is cited, possibly a typographical error.

88. This submission is hard to comprehend. In our view, it also proceeds on at least two false premises, namely that non-Anglican churches were somehow engaged by the English ecclesiastical rule, whatever its scope; and that churches that are affiliated under the Ordinance become "part of" the Anglican Church of Australia.
89. Para 14 of Newcastle's Amended Submissions in Reply submits that any member of clergy [of an affiliated church] who is licensed by the Archbishop of Sydney "undertakes ministry in a place outside the Sydney Diocese with the effect of being able to exercise jurisdiction over that place and those persons". This proposition is also flawed, in our opinion, when it is recognised that any general licence issued by the Archbishop of Sydney would and could be expressed only so as to authorise (Anglican) ministry within the Diocese of Sydney.
90. A letter from the Commissary of the Archbishop of Sydney that accompanied the Primate's reference states that any "general licence" issued as contemplated by the Ordinance would only pertain to Anglican ministry within the Diocese of Sydney. In our opinion, this also represents the fair and intended effect of clause 9. It is not unknown for a person who is resident outside a diocese to be given a general or particular licence to exercise some clerical role within that diocese.
91. In paras 64 and 65 above, we observed that General Synod alone is armed with authority under the *Constitution* to take operative steps to effect union between the ACA and other Christian communions. And in para 28 above we noted that an affiliated church (which by definition of the Ordinance is "non-Anglican") will not be in formal communion with the ACA or any part of it. Accordingly, as also noted in para 28, members of an affiliated church will be unlikely to be able to declare or establish that they are or remain members of the ACA (see *Constitution*, s 74, definition of "Member of this Church"). Whether these considerations limit the capacity of the Archbishop of Sydney to issue general licences as contemplated by the Ordinance is a matter that has not been adequately explored and on which we would reserve our position. In flagging this issue, we are not suggesting that a member of clergy in (Anglican) Holy Orders loses his or her status as such by assuming membership of an affiliated church or any conduct done in that regard. Whether such status or the capacity to exercise it may be affected by more specific conduct is a separate issue that is addressed in the next Section of this Opinion.
92. In the circumstances it is unnecessary to answer Questions D.

**(5) Diocesan Tribunal and professional standards issues**

93. Question F and the contending answers to it are as follows:

*F Does the Diocesan Tribunal of the Diocese of Newcastle have jurisdiction to hear and determine:*

- (a) charges of breaches of faith ritual ceremonial or discipline; or*
- (b) such offences as may be prescribed by the Offences Canon of General Synod or the Clergy Discipline Ordinance 1966 of the Diocese of Newcastle*

*against any person in holy orders who is resident in the Diocese of Newcastle and ministering in a church that is located within the Diocese of*

*Newcastle but which is affiliated, attached or connected to the Diocese of Sydney?*

*Newcastle: Yes, as to both (a) and (b).*

*Sydney: The answer to this question is potentially yes. Part of the reason for that is that this question is not framed in terms of the church in question being a non-Anglican church. Potentially, the question picks up persons in holy orders within an Anglican Church in an Anglican Parish that has some connection to the Diocese of Sydney.*

*Brisbane: We do not comment specifically on the provisions of the Tribunal ordinance in Newcastle. From a Brisbane perspective, in principle, we consider that the answer to the question would be Yes in respect of the Diocesan Tribunal in the Diocese of Brisbane.*

94. The written submissions indicate that all parties are in substantial agreement as to the response to this Question.
95. This Tribunal's jurisdiction to address the particular issue stems, in part at least, from the fact that s 54 (2) of the *Constitution* vests jurisdiction in diocesan tribunals to hear and determine a wide range of charges against "any...person in holy orders resident in the diocese". See also s 54 (2A) as regards sexual offending where the act of the member of clergy which gave rise to the charge occurred in the diocese or involved a member of clergy licensed by the bishop of the diocese or resident in the diocese within two years before the charge was laid.
96. Unlike the limited permission granted by a bishop's licence, the status of Holy Orders is portable and durable, at least until formal relinquishment or deposition.
97. The *Constitution*, various canons of General Synod and various ordinances (or canons) of the several dioceses create a number of ecclesiastical offences and recognise or establish tribunals and processes for their determination. These are directed at clergy or former clergy in Anglican Holy Orders but the framing of various offences is not always linked to conduct as such.
98. Misconduct by a person may conceivably attract the disciplinary jurisdiction of tribunals in more than one diocese depending on the application of s 54 of the *Constitution* and the particular disciplinary regimes operating in the several dioceses. The experience of the recent Royal Commission shows that one church authority with jurisdiction could not expect to be excused for inaction simply by pointing to another with concurrent jurisdiction to respond to particular misconduct or general unfitness.
99. It is also conceivable that a member of an affiliated church (lay or cleric) might be amenable to charges of having committed an ecclesiastical offence during his or her (possibly continuing) status as a member of the Anglican clergy. Ministry in an affiliated church would not in itself confer immunity from a provision like Newcastle's *Clergy Discipline Ordinance 1966* which, we are informed, extends to members of the clergy including persons "in holy orders resident in the diocese".
100. Similar principles apply with regard to the professional standards regime in force throughout the Church. The relevant canons and diocesan ordinances would apply according to their terms. Unlike the disciplinary regime, these also extend to lay people who are church workers as defined, usually by reference to an arm of the Anglican Church. Conduct showing unfitness occurring before linking with the Anglican Church may well be relevant to fitness for ministry in that Church.

101. As regards (Anglican) clergy ministering in an affiliated church who (subject to the matter flagged in para 91 above) are given a Sydney general licence pursuant to the approval granted in clause 9 of the Ordinance, such a licence may itself provide a territorial nexus with the Diocese of Sydney sufficient to engage that diocese's own disciplinary and professional standards regimes. See, eg *Constitution*, s 54 (2), (2A). Sydney's *Ministry Standards Ordinance 2017* relevantly extends to church workers "resident, licensed or authorised in" the Diocese of Sydney (see s 3) and includes those who are or have been a member of the clergy (s 5).
102. We note Newcastle's submissions expressing concern that an affiliated church which professes any connection with the Anglican Church of Australia or which is encouraged in its ministry by but not under fully effective oversight of any arm of that Church should be left to its own devices as regards the level of protection offered to its vulnerable members through the recently enhanced professional standards regimes promoted through General Synod and the diocesan synods. We also note Brisbane's submissions that a reputational risk to the Anglican Church as a whole may be involved, and that the diocese within which an affiliated church operates may bear a disproportionate share of public or official opprobrium should an incident occur that is not addressed according to the fairly uniform standards now operating throughout the Anglican Church of Australia.
103. These last-mentioned submissions raise matters of policy. So too do the means of addressing them. As presently advised the Tribunal does not see the concerns expressed by Newcastle and Brisbane as giving rise to any issue that engages its constitutional jurisdiction. Whether such problem as is identified creates a matter of good order and government for "host" dioceses like Newcastle and Brisbane sufficient to engage their own Synod's legislative authority to respond to it (as Brisbane submits) is a matter for those dioceses to address in the first instance. The same may be said as to the possibility of General Synod addressing the issue.
104. As indicated in the next paragraph, we would answer this Question as proposed by Newcastle with a minor qualification that does not change its effect.

## Conclusion

105. For these reasons we provide the following answers to the fifteen revised questions:
- A (Fundamental Declarations): There is insufficient practical utility to answer the Question in the form it is framed.
  - B (Order and good government of the Anglican Church of Australia):
    - 1-3 Yes
    - 4-5 There is insufficient practical utility to answer the Question in the form it is framed.
  - C (Order and good government of the Anglican Church of Australia within a Diocese):
    - 1-4 There is insufficient practical utility to answer the Question in the form it is framed.
  - D (Consensual Compact): Unnecessary to answer.
  - E (Summary Question): There is insufficient practical utility to answer the Question in the form it is framed.

F (Diocesan Tribunal and Professional Standards Jurisdiction): Yes, as to both (a) and (b) if jurisdiction is otherwise conferred under the *Constitution* or a diocesan ordinance.

106. Implicit in the foregoing, we conclude that none of the constitutional grounds advanced for invalidity of the Ordinance has been established.

26 November 2018

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line with a small upward curve at the end.

**The Hon Keith Mason AC QC, President**