



APPELLATE TRIBUNAL OF THE CHURCH OF ENGLAND IN AUSTRALIA

To the Most Reverend Sir Marcus Loane, K.B.E., M.A., D.D.,
Primate of the Church of England in Australia:

REPORT OF THE APPELLATE TRIBUNAL

Having received your Reference dated the 15th day of December 1980 which contained questions for the opinion of the Appellate Tribunal set forth in Schedule A to the Reference and numbered therein 1 and 2, the Tribunal met at Sydney in the State of New South Wales on the 23rd day of February 1981.

The members who attended the meeting were the Honourable Mr. Justice Cox (President), the Right Reverend C.A. Warren, Bishop of Canberra and Goulburn, the Right Reverend A.C. Holland, Bishop of Newcastle, Mr. K.R. Handley Q.C., and Mr. P.W. Young, Q.C.

The opinion of the Tribunal with respect to each of the questions in Schedule A is as follows:

QUESTION 1

Legislation has been proposed for amendment of the Constitution of the Church of England in Australia by

1. (i) adding to Section 4 a sub-section in the form
"(2) Nothing in this section prevents this Church from authorising by Canon the ordaining of women into the three orders of bishops, priests and deacons in the sacred ministry."

and

1. (ii) adding to Section 74 a sub-section in the form

"(6A) Notwithstanding anything in sub-section (6), in Chapters II to XII both inclusive and in the Table annexed to this Constitution words importing the masculine shall include the feminine."

Would such amendment of the Constitution enable the making of a Canon to authorise the ordaining of women?

Answer:

Yes, but two members of the Tribunal would prefer, as a matter of drafting, the form of amendment to Section 74 that was suggested by the Tribunal in the answer that it gave to a similar question in its report to you of the 8th day of February 1980 - namely, that Section 64 of the Constitution be amended simply by deleting from sub-section (6) the words "in the case of lay but not clerical persons." The other three members of the Tribunal consider the proposed sub-section (6A) to be preferable.

QUESTION 2

- (i) Is a bill for the altering of the Constitution pursuant to Chapter XI subject to the provisions of

Section 27,
Section 28,
Section 29, and
Section 30

or any of them?

Answer (Mr. Handley dissenting):

None of these sections is applicable to such a bill.

- (ii) If so, would a bill for amendments as described in Question 1 be a bill "which deals with or concerns the ritual ceremonial or discipline of this Church"?

Answer (Mr. Handley dissenting): Does not arise.

(iii) If the Constitution is altered by amendments as described in Question 1, would Section 52 (1)(b) operate to prevent a woman being a clerical representative in General Synod of a diocese which did not assent to the amendment?

Answer: No.

(iv) If a bill to alter the Constitution as outlined in Question 1 were passed in accordance with Section 67(d), would it "come into effect" eo instante upon its being assented to by ordinance by three quarters of the diocesan synods including all metropolitan sees or may such a bill include a provision stipulating that it shall come into effect only upon some further condition being satisfied?

Answer: Section 67(d) prescribes the minimum assent requirement that must be satisfied before a bill altering the provisions of the Constitution mentioned at the foot of that clause may come into effect as a valid piece of legislation. However, it is open to General Synod to include in such amending legislation further conditions which must be satisfied before the proposed alteration shall become operative.

Mr. Handley's answers to Questions 2(i) and 2(ii) are as follows:

- 2(i): A bill for the alteration of sections 4 and 74 of the Constitution in the manner

referred to in Question 1 would be subject to the provisions of section 27, 28 and 29 of the Constitution but would not be subject to section 30 of the Constitution.

2(ii): Yes. In my opinion such a bill would be a bill "which ... concerns the ritual ceremonial or discipline of this Church."

Pursuant to the provisions of Rule XVIII made under Section 63 of the Constitution, I now forward in triplicate by certified mail three copies of this opinion. The Rule requires that a certified copy of the opinion be filed in the Registry of the Primate and that a certified copy be sent from the Registry to each Diocesan Bishop and to such other persons as the Primate may direct.

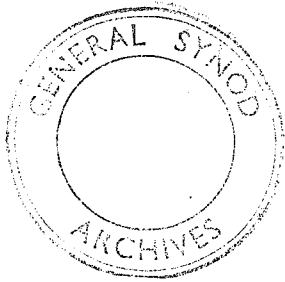
Given under my hand at Adelaide in the State of South Australia this 8th day of April 1981.



President,
Appellate Tribunal.

Certificate under Rule xviii of the Constitution

I certify that the foregoing four pages comprise one of the three copies of the Report of the President of the Appellate Tribunal to the Primate dated 8th April 1981 and lodged in the Registry of the Primate at St. Andrew's House, Sydney.



P. G. Chamman

M. John G. Denton
Registrar for the Primate

Dated: 9th April, 1981