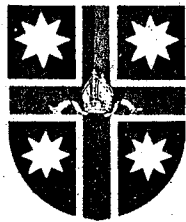


THE GENERAL SYNOD
OF THE CHURCH OF
ENGLAND IN AUSTRALIA



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OPINION OF THE APPELLATE TRIBUNAL OF THE
CHURCH OF ENGLAND IN AUSTRALIA

SITTING AT SYDNEY THE 22ND DAY OF DECEMBER, 1976

Present: The Honourable Mr. Justice Richardson, O.B.E., President
The Most Reverend Sir Marcus Loane, K.B.E., Archbishop
of Sydney
The Most Reverend Felix Arnott, Archbishop of Brisbane
The Right Reverend C.A. Warren, Bishop of Canberra and
Goulburn
The Honourable Mr. Justice Jenkyn
The Honourable Mr. Justice Gillard

In Attendance: The General Secretary (Mr. J.G. Denton)

Apology: The Honourable Mr. Justice Murray

It was resolved that the Secretary convey the sympathy of the Appellate Tribunal to the widow of the former Deputy Chairman of the Tribunal, Mr. Justice G.E.H. Bleby, O.B.E.

Having carefully considered the written submissions put forward by the Primate, The Most Reverend Sir Frank Woods, K.B.E., in a reference to the President of the Appellate Tribunal bearing date 29th day of November 1976, the Appellate Tribunal of the Church of England in Australia answers the questions submitted by the Primate contained in the said reference as follows:-

Question 1: Should the canon order only the forms in "An Australian Prayer Book"?

If so, will such canonical authorisation of "An Australian Prayer Book" cast any doubt on the status of the forms in the 1662 Prayer Book? Will the use of the 1662 forms continue to rest on the authority of Section 71(2) of the Constitution if the proposed canon does not explicitly authorise them?

Answer: Provided that the intention of the Question is to ask whether the Canon should order only An Australian Prayer Book the answer is yes.

Should General Synod authorise An Australian Prayer Book then such Prayer Book would become an alternative form of worship and accordingly the status of the Book of Common Prayer 1662 will remain unaffected. The authority for its use is to be found in Sections 4 and 71(2) of the Constitution.

Question 2: Need the canon do more than simply authorise for use in the church the forms in "An Australian Prayer Book"?

What would be the effect of such a simple authorisation? Would this leave the use of such forms on any given occasion entirely to an individual minister's discretion?

Assuming the canon has been adopted by a diocesan synod, should the assent of the parish be always required for the use by the minister of an alternative form? Could the assent of a parish to the use of "An Australian Prayer Book" restrict the right of a minister to use a 1662 form of service at any time at his own discretion? Should this right be explicitly preserved?

Answer: No. If the Canon were passed by General Synod the actual use of the Book of Common Prayer 1662 or An Australian Prayer Book in any Parish may be determined by such regulations as each Diocese may adopt.

Question 3: Should provision be made in the canon for any form of diocesan regulation?

If the canon did no more than authorise certain forms for use, would it be competent for a diocesan synod to limit or regulate that use by its own legislation, at its own initiative?

Answer: In view of the Answer to Question 2, the Appellate Tribunal considers that it would be desirable for provision to be made in the Canon which will allow any Diocese to draw up appropriate regulations to govern the application of the Canon within that Diocese.

Question 4: If the General Synod agrees to publish the 39 Articles with "An Australian Prayer Book", should the canon refer to the Articles in any way, or should the Synod merely resolve "that the 39 Articles be bound together with the contents of 'An Australian Prayer Book'"?

If the latter, should the text of "An Australian Prayer Book" as attached as schedule to the canon contain the Articles, or not?

Answer: There is no need for the Canon to refer to the Thirty-nine Articles. It will be sufficient for the General Synod to resolve that the Thirtynine Articles be bound together with the contents of An Australian Prayer Book In this case His Majesty's Declaration as printed in the Book of Common Prayer 1662 should be replaced by an appropriate quotation from Section 4 of the Constitution.

Question 5: In view of the penultimate section of the Act of Uniformity of 1662 which extends the construction of Article 36 (regarding the lawful ordination of bishops, priests and deacons ordained according to the Edwardian Ordinal of 1550) to the Ordinal of 1662, should the canon likewise extend the construction of Article 36 to include the Ordinal in "An Australian Prayer Book"

Answer: No. It is the opinion of the Appellate Tribunal that the Act of Uniformity does not now apply to this Church.

Question 6: If "other order" be taken under Section 4 of the Constitution and "An Australian Prayer Book" be authorised, do the provisos to Section 4 cease to have effect?

If the answer is no -

- (1) Which is the "existing Order of Service" referred to in the first proviso (i.e. the second paragraph of S. 4) in respect to which permission is sought for deviation?
- (2) Is it competent for the canon under which other order be taken to resolve the question of which is the "existing Order of Service" for the purpose of the proviso?

Answer: By majority, the Hon. Mr. Justice Gillard dissenting, this question is answered in the negative. The proposed Canon will not take "other order" within the meaning of that term in Section 4 of the Constitution.

The answer to the main question being no, the answers to the further questions are as follows:

- (1) The existing Order of Service referred to in the second paragraph of Section 4 of the Constitution is the Book of Common Prayer 1662.
- (2) No.

Question 7: Does the Preface to the Ordinal, while it remains unaltered preclude the use, in the Church of England in Australia, of any form for ordination other than the form contained in the 1662 Prayer Book?

If the answer is No, does the new Ordinal proposed to be included in "An Australian Prayer Book" fall within the terms of reference of the Preface, so that persons ordained according to that form could be accounted a lawful bishop, priest or deacon in the Church of England in Australia?

If the answer is Yes, by what constitutional means could the Preface to the 1662 Ordinal be changed so as to bring the proposed new Ordinal within its terms of reference?

Answer: The Answer to the Question is no. Assuming the General Synod adopts the second revision of the Ordinal, the Answer to the second Question is yes. It is recommended that the Preface to the 1662 Ordinal should not be reprinted in the new Ordinal.

DATED AT SYDNEY THIS 22ND DAY OF DECEMBER, 1976.



President