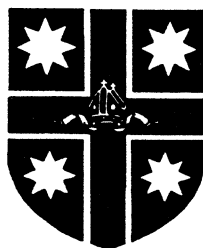




THE ANGLICAN CHURCH OF AUSTRALIA

GENERAL SYNOD



APPELLATE TRIBUNAL

OPINION

REFERENCE CONCERNING DIACONAL AND LAY PRESIDENCY
7 March, 1996

I certify that this is a copy of the Opinion of the Appellate Tribunal signed by the President, the Hon Mr Justice C Tadgell.

The Reverend Dr B.N. Kaye
Registrar to the Appellate Tribunal

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**APPELLATE TRIBUNAL OF THE ANGLICAN CHURCH
OF AUSTRALIA**

TO: The Most Reverend Dr Keith Rayner, A.O., Ph.D., Th.D., Primate
of the Anglican Church of Australia

May it please Your Grace:

OPINION OF THE APPELLATE TRIBUNAL

I have the honour to report the opinion of the Appellate Tribunal upon the questions set forth in Schedule "A" to the reference under your hand and seal dated the 7th day of March 1996 requesting the opinions of the Tribunal on those questions, namely -

1. Is it consistent with the Constitution of the Anglican Church of Australia to permit or authorise, or otherwise make provision for -
 - (a) deacons to preside at, administer or celebrate the Holy Communion; or
 - (b) lay persons to preside at, administer or celebrate the Holy Communion?
2. If the whole or any part of the answer to Question 1 is YES, is it consistent with the Constitution of the Anglican Church of Australia for a diocesan synod, otherwise than under and in accordance with a Canon of General Synod, to permit, authorise or make provision as mentioned in Question 1?

The reference was made under section 63 of the Constitution. Before giving its opinion the Tribunal, pursuant to section 58 of the Constitution, sought and obtained the opinions of the House of Bishops and the Board of Assessors.

No interested person or body indicated a wish to present oral submissions to the Tribunal with respect to the questions referred but written submissions were received as indicated in the annexed reasons of the President.

Draft reasons of individual members of the Tribunal were exchanged and two conferences were had by telephone link between all members, namely -

The Honourable Mr Justice Tadgell (President)
The Honourable Mr Justice Handley, A.O. (Deputy President)
The Honourable Mr Justice Young
The Honourable Justice Bleby
The Most Reverend Ian George, A.M., (Archbishop of Adelaide)
The Right Reverend Peter Chiswell (Bishop of Armidale)
The Right Reverend B.W. Wilson (Bishop of Bathurst).

The opinions of the Tribunal upon the questions referred are these:

Question 1 -

- (a) Yes (the President and the Honourable Justice Bleby and the Archbishop of Adelaide dissenting);
- (b) Yes (the President and the Honourable Justice Bleby and the Archbishop of Adelaide dissenting).

Question 2 - No (the Bishop of Armidale dissenting).

A concurrence as required by section 59(1) of the Constitution is achieved in respect of each question.

The Tribunal makes no order as to the costs of the reference.

The reasons of each of the members of the Tribunal accompany this report.

The Tribunal gratefully acknowledges the valuable assistance received from the Registrar of the Tribunal, the Reverend Dr B.N. Kaye, and his staff in connection with this reference and the publication of the Tribunal's opinion and the reasons of its members.

Pursuant to the provisions of Rule XVIII made under section 63 of the Constitution, I now forward three copies of this opinion and its annexures. The Rule requires that a certified copy 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 Melbourne in the State of Victoria
this 24th day of December 1997.



R.C. TADGELL
President,
Appellate Tribunal

APPELLATE TRIBUNAL

REFERENCE CONCERNING DIACONAL AND LAY PRESIDENCY

REASONS OF THE PRESIDENT

(THE HON. MR JUSTICE TADGELL)

On 16th May 1995, pursuant to section 63 of the Constitution, the Primate referred the following question to the Appellate Tribunal for its opinion -

"Would the Preaching and Administration of Holy Communion by Lay Persons and Deacons Ordinance 1995, if passed by the Synod of the Diocese of Sydney and assented to by the Archbishop of Sydney in the form now before the Synod, be consistent with the provisions of the Constitution of the Anglican Church of Australia?"

The question had been referred at the request by resolution of the Synod of the Diocese of Sydney but the request was later withdrawn. Accordingly the Primate in December 1995, having sought the advice of the Appellate Tribunal on the course he might take, withdrew the reference before the Tribunal had given its opinion on the question referred.

On 7th March 1996, pursuant to section 63 of the Constitution, the Primate of his own motion referred the following questions to the Appellate Tribunal for its opinion -

- "1. Is it consistent with the Constitution of the Anglican Church of Australia to permit or authorise, or otherwise make provision for -
 - (a) deacons to preside at, administer or celebrate the Holy Communion; or
 - (b) lay persons to preside at, administer or celebrate the Holy Communion?
2. If the whole or any part of the answer to Question 1 is Yes, is it consistent with the Constitution of the Anglican Church of Australia for a diocesan synod, otherwise than under and in accordance with a Canon of General Synod, to permit, authorise or make provision as mentioned in Question 1?"

Pursuant to section 58 of the Constitution the Appellate Tribunal, before giving its opinion on the reference, sought and obtained opinions of the House of Bishops and the Board of Assessors.

At a preliminary hearing in Sydney Mr Justice Young, sitting alone, gave directions on behalf of the Tribunal with respect to the reference. No interested person or body indicated a desire to

present oral submissions. The Tribunal accordingly invited written submissions and received them from the following -

the Dioceses of Ballarat, Newcastle, Riverina, The Murray
and Wangaratta;
the Synod of the Diocese of Brisbane;
the Reverend Dr J.W. Woodhouse.

All submissions save the last-mentioned contended that the referred questions numbered 1(a) and 1(b) should be answered No and that question 2, if answered, should also be answered No. That was also the unanimous opinion of the Board of Assessors. A statement of opinion (called a "submission") provided to the Tribunal by the House of Bishops expressed "... our belief that an attempt to permit either deacons or lay persons to preside at, administer or celebrate the Holy Communion would be in breach of both the Fundamental Declarations and the ruling principles of our church." One member only of the House indicated that he dissented from the statement as it stood but that he was prepared to accept that part of it which I have just quoted, adding for himself, "... I believe Lay Presidency, and probably Diaconal Presidency, is contrary to our Constitution." Dr Woodhouse alone submitted that questions 1(a), 1(b) and 2 should all be answered Yes. Although his submission did not say so, I took it that he made it on behalf of the movers of the Preaching and Administration of Holy Communion by Lay Persons and Deacons Ordinance 1995 of the Diocese of Sydney, for he claimed at the preliminary hearing before Mr Justice Young to be representing those people. In addition to the above material, the Tribunal received a paper from the Diocese of Melbourne prepared pursuant to a resolution of the 1995 Melbourne Diocesan Synod claiming to present a case for and a case against Lay and Diaconal Presidency at the Eucharist.

I acknowledge the very considerable assistance that I have derived from the whole of the material received.

Questions 1(a) and 1(b)

All submissions made and opinions provided to the Tribunal were agreed, and I understand that members of the Tribunal are also agreed, or are prepared for present purposes to accept, that the verbs "preside", "administer" and "celebrate" as used in question 1 are in effect synonymous, and that they refer in particular to the consecration of the elements of bread and wine. For convenience I shall generally use the verb "celebrate" and its derivatives to cover all of the above, distinguishing from it the mere distribution of the consecrated elements.

In my opinion permission or authority or provision of the kinds referred to in both question 1(a) and question 1(b) would be inconsistent with section 3 of the Constitution. Both questions should therefore be answered No.

Section 3 is found in Chapter I of the Constitution - the so-called Fundamental Declarations - and, because of section 66, it is not alterable by virtue of any power contained in the Constitution. Section 3 provides that -

"This Church will ever obey the commands of Christ, teach His doctrine, administer His sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline and preserve the three orders of bishops, priests and deacons in the sacred ministry."

Chapter I, reflecting the Lambeth Quadrilateral of 1888, proclaims in sections 1, 2 and 3 what is fundamentally constitutive of the Anglican Church of Australia. Save for the name, however, the three sections contain nothing that is uniquely or even distinctively Anglican. Collectively, they declare and affirm the Church's place in the One Holy Catholic and Apostolic Church of Christ, holding the Christian Faith as professed by that Church from primitive times and in particular (but not only) as set forth in the creeds, receiving all the Scriptures of the Old and New Testaments, ever obeying the commands of Christ, teaching His doctrine, administering His sacraments, upholding His discipline and preserving the three orders in the sacred ministry. What have been traditionally known as the four "marks of the Church" enunciated in the Nicene Creed - its oneness, holiness, catholicity and apostolicity - are prominently displayed in section 1; but it is in the context of all of the several declarations in Chapter I that we are to understand the specific and ineluctable undertaking in section 3 that "This Church will ever ... preserve the three orders of bishops, priests and deacons in the sacred ministry".

The Appellate Tribunal has twice had particular occasion to consider the meaning of the concluding clause of section 3. The first was upon the 1985 reference concerning the ordination of women as deacons. The majority (the Archbishop of Adelaide, the Bishop of Newcastle, Mr Justice Young and I) then expressed the opinion, at p.3, that -

"For the orders to be preserved, it is necessary to preserve more than their names. Their essential functions and their relationships with one another also need to be preserved."

The second occasion was upon the 1986 reference concerning the Ordination of Women to the Office of Deacon Canon 1985, when Mr Justice Young, at p.103, affirmed that 1985 opinion; and at p.82 I said very much the same thing, namely that "The orders are to be preserved in their essence, individually and *inter se*, not in their composition." In his reasons for opinion in the same reference the Archbishop of Sydney, at p.55, referred to the use of the definite

article, twice, in the phrase "the three orders of bishops, priests and deacons in the sacred ministry", and observed that the language -

"... indicates that both 'the sacred ministry' and 'the three orders' in that ministry are well-known and require no further definition within this Chapter. It is not enough to recognise merely some form of ministry, or to preserve the names of the three orders, or three orders of anyone's devising. 'The three orders of bishops, priests and deacons in the sacred ministry' can only be the ministry and orders referred to in the thirty-nine Articles (see for example articles 19, 23, 26, 32 and 36) and in the Book of Common Prayer, especially the Ordinal. Just as 'the canonical Scriptures' in Section 2 of the Fundamental Declarations depend on the 39 Articles for their correct definition (see Section 74), so 'the three orders ... in the sacred ministry' depend on the Articles and Prayer Book for their correct definition. This definition claims catholic and apostolic, not merely Anglican, status for the three orders. The orders are in fact common to the Anglican, Roman and Orthodox communions. 'The sacred ministry' itself is declared in the Ordinal to have been 'appointed for the salvation of mankind', and the orders in that ministry are said to have been in Christ's Church 'from the Apostles' time' and to have been appointed by God's 'divine providence'.

There can be no doubt that what Section 3 commits this Church to preserve are these orders in this sacred ministry. The question is whether admission of women to the order of deacons would be inconsistent with this commitment." (original emphasis)

Although the Archbishop of Sydney alone answered that question Yes, there is nothing that I can see in the reasons of the other members of the Tribunal that was inconsistent with the passages of his reasons that I have just quoted. Speaking for myself I respectfully agree with those passages; and they seem to be consonant with what was said by the Archbishop of Adelaide (as Archbishop Rayner then was), at p.48, namely -

"It is widely agreed that the three orders of ministry, while rooted in the ministries named in the New Testament, did not settle into fixed forms until later. Nevertheless the Ordinal clearly understands the three orders as directly continuous with the ministries of the New Testament."

Mr Handley, Q.C. (as he then was) pointed out in his reasons, at p.120, that the orders of ministry as such are neither masculine nor feminine. The Ordinal makes it very clear, however, that the "essential functions" (to quote the majority in the 1985 opinion) of the order of

priest differ from those of the order of deacon, just as those of bishop differ from those of priest, although many of their powers overlap. The injunction imposed by section 3 of the Constitution to preserve the orders "in their essence, individually and *inter se*" (as I put it in 1987) cannot be obeyed if an essential power committed to one order is conferred on another. If that were to happen there would be preservation neither of the orders individually nor of their relationships *inter se*: there would be an elimination of an essential distinction of which section 3 requires preservation.

So far as I am aware it has never been distinctly and authoritatively decided by a court (ecclesiastical or secular) that as a matter purely of canon law "the function of Presidency", to borrow the words of the Bishop of Bathurst in his reasons in the present reference, is to be fulfilled within the Church of England only by one who has been ordained priest. An occasion to decide the point presumably did not arise during the 312 years of operation until 1974 of section 10 the Act of Uniformity 1662 (14 Car. 2 c. 4), which expressly provided that "...no person whatsoever shall...presume to consecrate & administer the holy sacrament of the Lords Supper before such time as he shall be ordained priest...". It is true that there are obiter dicta to the same effect in *Escott v. Mastin* (1842) 4 Moo. P.C. 104, at 128; 13 E.R. 241, at 250 per Lord Brougham; and *Cope v. Barber* (1872) L.R. 7 C.P. 393, at 402 per Willes, J. These statements, however, appear to have done no more than to recognise the statutory prohibition. The Tribunal was urged in the submission made on behalf of the Dioceses of Ballarat, Newcastle, Riverina, The Murray and Wangaratta to conclude that section 10 of the Act of Uniformity 1662 was in force in England when the Constitution took effect on 1st January 1962 and that, by virtue of section 71(2) of the Constitution, section 10 provides a ready answer to questions 1(a) and 1(b) that are now before us. The question whether section 10 of the 1662 Act was applicable to and in force in the several dioceses in this country in 1962 is moot. A decision of the questions now before the Tribunal by reference to the moot question would be likely on that account to remain unnecessarily controversial and unsatisfactory. It is therefore better to grasp the nettle and to consider in the first place whether, irrespective of the Act of Uniformity, the One Holy Catholic and Apostolic Church of Christ, of which the Anglican Church of Australia proclaims itself to be part, reserves the celebration of the Holy Communion to the ordained priesthood. I conclude that it does.

The use of the words "order", "office" and "function" in the Book of Common Prayer, and in the Church generally, deserves comment. It would appear that the Preface to the Ordinal of 1662 tends to equate office and function, an explanation for which may be derived from Ayliffe's *Parergon Juris Canonici Anglicani*, 2nd ed. (1734), p.400. It is there said that -

"The exterior Act of Ordination, is in *Latin* stiled *Signaculum* [in English, a signacle, or formal sign or seal],

and the interior Act thereof is called a *Power* given thereby; and the Execution of this Power is term'd an *Office*." [original italics.]

Hence, perhaps, the language of the Preface, which declares that -

"It is evident ... that from the Apostles' time there have been these Orders of Ministers in Christ's Church; Bishops, Priests, and Deacons. Which *Offices* were evermore had in such reverend Estimation, that no man might presume to *execute any of them*, except he were first called, tried, examined, and known to have such qualities as are requisite for the same; and also by publick Prayer with Imposition of Hands, were approved and admitted thereunto by lawful Authority. And therefore, to the intent that these Orders may be continued, and reverently used and esteemed, in the Church of England; no man shall be accounted or taken to be a lawful Bishop, Priest, or Deacon in the Church of England, or suffered to execute any of *the said Functions*, except he be called, tried, examined, and admitted thereunto, according to the Form hereafter following, or hath had formerly Episcopal Consecration or Ordination..." [my italics]

It is of interest that, whereas most of the passage that I have just quoted mirrors the Ordinals of 1549 (or 1550) and 1552, the expression "...any of the said Functions ..." is, I think, new to the 1662 Book. In the two 16th century Ordinals the relevant passage ran -

"...And therefore to the entent that these orders should bee continued, and reuerentlye used and esteemed in this Church of England... no man... shall execute any of them, excepte ..." etc.

Thus, although the Ordinal of 1662 appears *linguistically* to equate order, office and function, the equation of the *concepts* of order, office and function would appear to be nothing new. Language somewhat similar to that in the Ordinal is to be seen in the Ember collects in the Book of Common Prayer, which speak of "those which shall be ordained to any holy function" and "those who are to be called to any office and administration" - meaning, it would seem, the execution of any power - in any of the "Orders in thy Church".

It has been held that the function of ordaining priests and deacons is to be fulfilled only by one who has been consecrated a bishop: *Bishop of St. Albans v. Fillingham* [1906] P. 163, a decision of the Dean of the Arches, Sir Lewis Dibdin. There, an Anglican priest purported to use the Ordinal to ordain the member of a Non-conformist Chapel as a presbyter in the Church of God, thereby assuming the function of a bishop. The central question was whether the priest had usurped the function which had been from the earliest

times reserved exclusively to the order of bishops, thereby committing an ecclesiastical offence. "Is it really conceivable", asked counsel for the Bishop of St. Albans rhetorically, "that episcopacy and ordination by bishops is not a part of the ecclesiastical law of the Church of England?" The very clear answer of the Arches Court was that it is not conceivable. At first blush the decision might be thought not much to illuminate the matters with which we are concerned. The approach of the Dean of the Arches, however, was to demonstrate by reference to authority that the acts complained of offended against "the whole order and constitution" of the Church of England, as an integral part of the Church of Christ which, as he put it (at 178-9) -

"...is a body entrusted with the administration of certain spiritual powers which it must necessarily exercise through representatives or delegates. It has taken pains from the beginning to indicate in some formal way the persons through whom it purposes to act and to insist that its ministers should be chosen and appointed to do this on behalf of the Church. The Church of England is subject to episcopal government. It is immaterial to consider whether this is or is not the only right or perfect ecclesiastical constitution. It is enough for the purpose in hand that the particular method that the Church of England has adopted of choosing fit men to be ministers and of formally admitting them to Holy Orders is by placing these duties in the hands of the Bishops."

Sir Lewis Dibdin, at 182, quoted Dean Goode's *Divine Rule of Faith and Practice* (1842) in support of the view that - "...episcopacy belongs rather to the *de bene esse* than to the *esse* of the Church, and in defence of the non-episcopal churches abroad." That is to say (and it is obvious enough) the Christian Church can do without bishops; and there are areas of that Church that get along without them. Nonetheless, those areas of the Christian Church that are episcopal, as the Church of England has always been, reserve the function of ordination to the bishops. The usurpation of the bishops' function by the presbyter is not validly possible. Dean Goode claimed that -

"...the language used in these Epistles [to Timothy and Titus] shews that it belonged exclusively to them [presidents or bishops] to ordain, not merely from the charge of ordination being expressly delivered to them alone, but from the power given them over presbyters, which renders it absurd to suppose that the presbyters then might appoint others to be presbyters, and thus have the power of introducing any teachers they please into the Church."

Sir Lewis Dibdin referred also, at 183, to Bishop Lightfoot's "well-known Essay on the Christian Ministry" as indicating that -

"...even those writers who maintain a substantial identity in the offices of the Bishop and presbyter reserve the power of ordaining to the former. This distinction in fact may be regarded as a settled maxim of Church polity in the fourth and later centuries."

I understand the point, in other words, to be this. It is not essential that the three orders of bishop, priest and deacon should all co-exist for the proper functioning of the Christian ministry. Where, however, the three orders do co-exist, there is a natural and accepted scheme of distribution of functions between them. The function or office of ordination is reserved to the bishops, so it cannot be performed by priests unless the scheme be altered. The alteration of the scheme, so that the office of ordination might be executed by a priest who is not a bishop, would entail not only the enlargement of the office of priest but diminution of the office of bishop. Hence, those who would seek to justify the execution of the office of celebration of the Holy Communion by deacons contrary to any established scheme (if there be one) need to reckon with the enlargement of the office of deacon and the diminution of the office of priest. The alteration of the scheme in that way would not, in my opinion, preserve what section 3 requires to be preserved.

It is difficult to discern a scriptural prescription of exclusiveness in the celebration of the Eucharist so obvious as that of episcopal ordination found in, for example, the Pauline correspondence to which Dean Goode alludes. But, as the Preface to the Ordinal reveals, and as Archbishop Robinson and Archbishop Rayner have noted in the passages quoted above, the three orders of ministry have apostolic status. The Ordinal recognises both the three-fold ministry and a distribution of their functions. It has been suggested that, while the Ordinal describes what "appertaineth to the Office of a Deacon", it gives no corresponding description of the office and function of a priest. It may be conceded that the Ordinal does not set out in so many words what "appertaineth to the Office of a Priest". That is not to say, however, that what is central to the office of a priest may not be collected from the Ordinal or that the book of common prayer as a whole does not distinctly contrast the offices of priest and deacon. The Ordinal prescribes that upon ordination the priest, receiving "the holy Ghost for the Office and Work of a Priest in the Church of God", is to take authority "to preach the Word of God, and to minister the Holy Sacraments in the Congregation, where ... lawfully appointed thereunto". The deacon, without receiving the gift of the holy Ghost, is also to take authority by virtue of ordination, but the difference between that and the authority conferred on the priest is striking and fundamental. It is surely neither merely incidental that the priest is authorised to "minister the Holy Sacraments" nor merely accidental that the deacon is not, save that by implication the deacon may, *virtute officii*, "in the absence of the priest baptize infants". A lawyer might call upon the canon of construction sometimes designated in the Latin phrase *expressio unius est exclusio alterius*; but

there is as much a principle of universal logic - albeit not necessarily of universal application - that an express mention of one thing may be intended to carry with it an exclusion of that which is not mentioned. The difference between the offices of priest and deacon, while recognised and reflected in the Ordinal, seems not, however, to derive from it or even from the eucharistic liturgy, in which there is a tantalising ambiguity in the several references to "the Priest", "the Minister" and "the Curate". The true distinction derives, in my opinion, from what Sir Lewis Dibdin described in *Bishop of St. Albans v. Fillingham, supra*, as "the whole order and constitution" of the Church - in this case the Anglican Church of Australia as an integral part of the Church of Christ.

The Eucharist, instituted by Christ Himself, constitutes "the principal part, the great central act of Christian worship": Phillimore, *The Ecclesiastical Law of the Church of England*, 1873, vol. 1, 675; E. Garth Moore, *An Introduction To English Canon Law* (1967), 67. Unsurprisingly, the Eucharist is described by Norman Doe, *The Legal Framework of the Church of England* (Clarendon Press, 1996) at 335, as "... the principal liturgical act in both the Church of England and the Roman Catholic Church." Great emphasis is laid in the Church of England (and, by inheritance, in the Anglican Church of Australia) -

"... on the sacramental character of what occurs, in that the outward and visible sign of the consecrated bread and wine, properly used, effectively conveys an inward and spiritual grace, by the strengthening and refreshing of our souls by the Body and Blood of Christ, which is given, taken and eaten after an heavenly and spiritual manner": Moore, *op. cit.* 72.

The report entitled *Eucharistic Presidency*, being a Theological Statement by the House of Bishops of the General Synod of the Church of England (April, 1997), Church House Publishing, London), contends, at para.4.13, that it is "... fitting to regard the Eucharist as the fullest and richest act of worship available to the Christian community". It follows that the celebration of the Eucharist is not just a function, a task, a job - to go through the motions to achieve a result as if, so to speak, to turn unconsecrated elements into the holy mysteries. In particular, the celebration is not a discrete, isolated ritual function capable of being performed by anyone, whether or not trained and ordained to perform the office essential to the great central act of Christian worship. The celebration is therefore reserved as the central *representative* office of the several offices to be performed by a member of the ordained ministry. The priest necessarily assumes upon ordination a representative character, bearing in that capacity what Archbishop Woods has called "the lonely responsibility of being the people's representative": *Forward in Depth*, a selection of sermons and addresses edited by the Reverend Brian Porter (Joint Board of Christian Education, Melbourne, 1987) at p.116. It is in order to fulfil that representative role that the priest is ordained, the celebration of

the Eucharist being central to, but part only, of the role. In order to convey the notion of the centrality of the act of celebration of the Eucharist, performed amidst diverse tasks for which training and ordination as a priest are a preparation, I take leave to quote a passage from the opinion of the Board of Assessors which (despite a protest from Dr Woodhouse to which I shall later refer) I respectfully adopt -

"Praying the Eucharistic Prayer (or Prayer of Consecration) is far more than reciting the appropriate words. The Lord's Supper or Eucharist represents in symbol, word and action the whole story of the people of God from creation to eschaton, and is centred in the act of God in the life, ministry, passion and resurrection of Jesus Christ. By the power of the Holy Spirit this worship is filled with the mystery of revelation and salvation. It demands of the presiding minister a life of prayer and witness that is saturated with the living tradition out of which the story comes, and a pastoral commitment to and love for the particular community in which the worship is being conducted. The presiding minister is a witness, implicated in heart, soul, mind and strength in the trinitarian drama being enacted in the service. Without this involvement of the whole person, the Eucharist is separated from its living context, past and present."

A like point is made by Archbishop Woods, *op. cit.*, at p.116-7 in this important passage -

"The ordained priest does not ordain himself. No, but he is ordained, authorised and empowered to be the focus of the sacrificial, the priestly life of Christ and therefore the whole Church. *And because only those so ordained can represent the whole Church, the celebration of Holy Communion came very soon in the early Church to be reserved to the ordained priesthood.* In the Eucharist this same sacrificial life of Christ is recalled, even re-enacted. Incarnate in his people, they are enabled to offer themselves to God, the bread and wine are symbols of that life; by the action of the Holy Spirit that offering is transformed and united to the perfect offering of the crucified Lord; that same life is shared again with his people so that they too may share Christ with the world. The priest is ordained to focus in himself, to be the channel, the catalyst, through whom and by whom the sacrificial life of Christ our High Priest is reproduced in his Body, the Church." (my italics)

That passage is found in an address entitled "*Jesus the Priest*", which follows one entitled "*Jesus the Deacon*". The references in the passage

to "the ordained priesthood" and the "priest" are, as I read it, plainly intended to designate to the priest in contradistinction to the deacon.

The importance of the representative role of the priest in celebrating the Eucharist, in that capacity, has been emphasised also by Archbishop Habgood. "Celebrating the Eucharist is not just a function", he has said -

"... it is basically about representing the whole church in this action in which this particular little bit of the church is engaged. Take that away and you take away the whole meaning of it as being part of the universal Church and expressing the mystery of the Church for those who are present in this place with Christ in this sacramental action. Because this is representational, we enter into the possibility of doing this through actions which are symbolic and sacramental, and that is the difference between ordination and authorisation. Ordination includes authorisation but it is more, and it is precisely all these overtones which are the important thing."

(Speech at the General Synod of the Church of England, 10th July 1994, referred to in the paper received by the Appellate Tribunal from the Diocese of Melbourne, referred to above.)

The arguments for an affirmative answer to the questions now before the Tribunal appear to me not to recognise the view of the office of the priest in the celebration of the Holy Communion as expounded in passages of which those I have mentioned are representative. It is chiefly for that reason that I cannot agree with those arguments. Some of them appear to me, with due respect, to be unduly tendentious. Reliance is placed, for example, on the width of authority now available to preach the word of God. The reasoning seems to be that, if the laity may now preach, and if it has become a normal function of the deacon to preach, celebration of the Holy Communion by deacons and laity should not be seen as precluding the proper preservation of the three orders of ministry as a matter of constitutionality. It is argued that, whatever may be said for the view that there is no theological equivalence of preaching and celebration of the Eucharist, such a view does not stand in the way of an alteration of the law to provide for constitutional equivalence. This is in the end, as it appears to me, to classify the identity of the celebrant as a mere matter of liturgy, order or discipline, a classification which I do not accept. Preaching may be said to be largely functional, whereas celebration of the Eucharist is not. It is precisely because there is no theological equivalence between the priest and the deacon in the matter of celebration of the Eucharist that I consider a constitutional equivalence cannot, consistently with section 3 of the Constitution, be achieved.

It has also been argued that, because the church allows the sacrament of baptism to be administered in cases of genuine emergency by deacons, by laity and even (technically) by non-believers, diaconal and lay celebration of the Eucharist in limited and carefully defined circumstances can be justified. I do not accept the argument because, again, it fails to acknowledge the distinctive character of the Eucharist, and of the role of the priest in it, compared with the sacrament of baptism and the necessarily *ad hoc* role of the emergency baptiser: see *Eucharistic Presidency, supra*, para.5.15.

The submission by Dr Woodhouse would appear to reject the representative authority of the priest that is emphasised by, for example, Archbishop Woods and Archbishop Habgood in the passages I have quoted above. Statements similar or complementary to theirs are to be found in *Eucharistic Presidency, supra*, at paras.1.40, 3.32, 4.11, 4.38 and 4.40. As I understand him, Dr Woodhouse's rejection depends substantially on the thesis that the "priest" in the Anglican Church is not a sacerdotal officer with sacrificial functions but an elder or presbyter, whose distinctive role is oversight of the congregation, there being (according to Dr Woodhouse) "no sacerdotal, or even representative, connotations". I acknowledge that the Anglican priest has not the sacrificial role that was held by an Old Testament priest or by a pre-reformation Christian priest. To assert, however, that the post-reformation use of "priest" has no "representative connotations" in the Anglican Church appears to me to fly in the face of a considerable body of what I should regard as authoritative opinion, some of which I have quoted. Certainly, the priest is responsible for pastoral oversight of a congregation (if there be a congregation) but -

"The liturgical functions of the ordained arise out of pastoral responsibility. Separating liturgical function and pastoral oversight tends to reduce liturgical presidency to an isolated ritual function":

David R. Holeton, *Renewing the Anglican Eucharist: Findings of the Fifth International Anglican Liturgical Consultation, Dublin, Eire, 1995* (Grove, 1996), p.7 - quoted in *Eucharistic Presidency, supra*, para.4.46, where the same point is made again by saying -

"... separating liturgical function and pastoral oversight runs the risk of inhibiting the realisation of the four marks of the Church."

A preceding passage in paragraph 4.46 is worthy of reproduction in the present context -

"The restriction of Eucharistic Presidency to those ordained as bishop or priest/presbyter, which is (as we have said) an intensive form of the presbyter's role in relation to the community, brings assurance that this

ministry is being performed by one who not only is closely related to the local community of Christians, but is also a minister of the church universal. It also brings assurance that this ministry is being performed by a presbyter who has received the sign of historic episcopal succession. We note that many ecumenical statements have stressed the inseparability of presiding over the community and presiding at the Eucharist, and this is thoroughly in line with the practice, as far as it can be discerned, of the earliest Christian communities."

That passage is entirely consistent with the opinion of the Board of Assessors provided to us (and with which Dr Woodhouse was disposed to quibble) that -

"... presiding at the Holy Communion is inextricably connected with other responsibilities, which fall fundamentally and primarily on the one ordained to preside. These responsibilities are generally wider in their import, symbol and function than the local congregation. Authorising the exercise of these responsibilities is part of the meaning of ordination. The celebration of the Holy Communion and presiding over that celebration should be coherent with this wider understanding."

The passage from Holeyton's Report - I.A.L.C. - 5, quoted above, is remarkably congruent with the opinion of the Board of Assessors that -

"The three orders of the (Anglican) Church - deacon, priest and bishop - are distinguished in their ministries from other legitimate ministerial assignments in the Church by the fact that their primary role is to take overall responsibility for these central, necessary and essential tasks in the Church's life and mission. *It is out of this responsibility that their distinctive liturgical functions arise, not the other way around.*" (my italics)

The passage in the opinion of the Board of Assessors which I have quoted somewhat earlier in these reasons, and which I have specifically adopted, was the subject of further criticism by Dr Woodhouse. He submitted that the understanding of the Lord's Supper expressed in the passage -

"... is at variance with that found in the Book of Common Prayer. The Lord's Supper does not 'represent ... the whole story of the people of God ...'. It is rather 'a Sacrament of our Redemption by Christ's death' (Article 28). The role of the 'presiding minister' as it is described

here cannot be found in the New Testament or in the Book of Common Prayer, and is contrary to Article 26."

I do not agree that any part of the passage which Dr Woodhouse impugns is at variance with the Book of Common Prayer. If his submission is that Article 28 exhaustively defines the Lord's Supper as "a Sacrament of our Redemption by Christ's death", and nothing else, it appears, if I may respectfully say so, to be the product of a misreading of the Article. Further, the eschatological context of the Eucharist, to which I take the second sentence of the impugned passage to refer, is very well fortified by paragraph 4.6 of *Eucharistic Presidency, supra*, and the New Testament references there given: 1 Cor. 11:26; Acts 2:46 and (perhaps) Hebrews 12:18-24. Of course the role of the presiding minister "as it is described here" cannot be found in the New Testament, but that is scarcely a reason for condemning the description. The asseveration that the description is "contrary to Article 26" is one that I simply do not comprehend.

I shall not go through all of Dr Woodhouse's submissions, one by one, but I have considered them all and have, I believe, understood them. None has persuaded me that questions 1(a) and 1(b) should be answered in the way for which he contends. I do wish to notice, however, that Dr Woodhouse has approached the questions asked by submitting that a true answer to them depends on the answer to yet another question: "What basis is there in the Constitution of the Anglican Church of Australia for the proposition: only an ordained priest may administer the Lord's Supper?" Dr Woodhouse then refers to and briefly examines each of sections 1, 2, 3 and 4 of the Constitution, *seriatim* and in isolation, finds nothing in any one of them to provide a basis to which his own question refers, and concludes that it follows that each of the Primate's questions should receive an affirmative answer. This, as it seems to me, is a potentially misleading approach. What is asked by the Primate's questions is whether, consistently with the Constitution, permission or authority may be given or provision made for (a) or (b). The answer requires a consideration of the provisions of the Constitution as a whole for the purpose of discovering what is and what is not consistent with them. It is of no use to look at each of sections 1, 2, 3 and 4 in isolation from each of the others for the purpose of determining what is and is not consistent with the Constitution as a whole. In taking the approach he did I think Dr Woodhouse distracted himself so as to consider and provide answers to questions other than those which are relevant. The vice of that approach is illustrated by Dr Woodhouse's consideration of section 1 of the Constitution, which section provides -

"The Anglican Church of Australia, being a part of the One Holy Catholic and Apostolic Church of Christ, holds the Christian Faith as professed by the Church of Christ from primitive times and in particular as set forth in the creeds known as the Nicene Creed and the Apostles' Creed."

As to that, Dr Woodhouse asserts that "The 'Christian Faith' is here that which is set forth in the creeds"; and that "The Nicene Creed and the Apostles' Creed contain no reference to either the Lord's Supper or the priesthood." His treatment appears to give no work to the expression "in particular" in section 1. It is in my opinion a mistake to say that the "Christian Faith" mentioned in section 1 is "that which is set forth in the creeds". Certainly the faith includes what is set forth in the two creeds but, as section 1 itself recognises, it is not confined to that. Apart from unduly confining section 1 as a matter of its own interpretation, the approach taken by Dr Woodhouse does not allow section 1, for example, to cast light on section 3. The four "marks of the Church", to which I have already referred, and which are given express and emphatic recognition in section 1 (apart from the implied recognition accorded them by the mention in that section of the Nicene Creed) plainly inform the interpretation of section 3. Hence, for example, what is necessary in order to preserve the three orders of ministry cannot be properly understood without reference to section 1 and, for that matter, to section 2. The interaction between sections 1, 2 and 3 is axiomatic in my own approach to answering the questions that have been referred to the Tribunal. I consider an approach that overlooks any such interaction to be flawed and in my view it has, in this case, led to error.

I wish also to say that, in referring as I have to the report entitled *Eucharistic Presidency*, I acknowledge that it was not a report designed to consider the questions which the Tribunal is now required to answer. Indeed the report was not required to consider any questions as such. As the Archbishop of Canterbury's *Forward* explains, the report was a response to a request by the General Synod of the Church of England for a statement from the House of Bishops about "... the theology of the Eucharist and about the respective roles of clergy and laity within it". I have found the report informative but it does not provide answers to the Primate's questions and I have not treated it as doing so.

Question 2

Having regard to my answers to questions 1(a) and 1(b), I have in strictness no need to answer question 2. In case I am wrong in the answers I have given, however, and if (contrary to my view) it is open to the Church to permit, authorise or make provision of the kind mentioned in question 1, I would wish to say that in my opinion a diocesan synod by itself could not achieve that end. My answer to question 2 would, therefore, be No. Any such permission, authorisation or provision would necessarily (I consider) seek to make an alteration in the existing canon law and it would, in my opinion, be an "alteration in the ritual or ceremonial of this Church" proscribed by section 71(1) of the Constitution except in conformity with an alteration made by General Synod. I refer in this connection generally, and without elaboration, to the reasons of the majority of the Tribunal

for the opinion dated 28th November 1991 on the Reference relating to the ordination of women to the order of priests.

I am unable to agree with the Bishop of Armidale that the celebration of the Holy Communion during the puritan Commonwealth by recalcitrant clergy not episcopally ordained provides a basis for a conclusion that the qualification of the celebrant relates only to discipline. Nor, I think, is there any other basis for such a conclusion.

Dr Woodhouse contended that question 2 should be answered Yes, apparently on the footing that section 4 of the Constitution permits a diocesan bishop to permit the celebration of the Holy Communion by a deacon or a lay person as a deviation from the existing order of service. That, with respect, must be incorrect if only because it does not address the question asked, which concerns permission, etc. by a diocesan synod, not by a diocesan bishop. A diocesan synod can act only by legislation (sections 5 and 51 of the Constitution) and Dr Woodhouse did not address any submissions to the matter of diocesan legislative power, confining himself, apparently deliberately, to Part I of the Constitution. In any event, as will be evident, I cannot agree that what questions 1(a) and 1(b) refer to is a mere deviation from the existing order of service.

Postscript

In answering each of the referred questions in the negative, I wish to say that I am by no means unsympathetic to the problems created for the due celebration of the Holy Communion in a country characterised by vast areas and distances, sparse and far-flung communities, scarce resources and limited numbers of celebrants. What was seen anciently to be fit in relatively compact European countries for the conduct of the western Christian church, and even in the less populous sixteenth century England, is not necessarily fit for Australia today. No doubt changes to suit local conditions are overdue and ought to be seriously considered. I offer the view, however, that changes can only be properly made by legislation after due consideration and debate. This Tribunal would be mischievous and false to its responsibilities to contrive a solution by other means, for upon the present Reference we have no jurisdiction but to express our opinion on the existing canon law.

R.C. TADGELL

IN THE APPELLATE TRIBUNAL

REFERENCE AS TO DEACONS AND LAITY CELEBRATING THE HOLY COMMUNION

REASONS OF THE HONOURABLE MR JUSTICE HANDLEY

In this reference I have had the benefit of reading in draft form the reasons of the President, Justices Young and Bleby, and the Bishops of Armidale and Bathurst. They set out the necessary background.

Question 1 asks:

“Is it consistent with The Constitution of the Anglican Church of Australia to permit or authorise, or otherwise make provision for -

- (a) deacons to preside at, administer or celebrate the Holy Communion; or
- (b) lay persons to preside at, administer or celebrate the Holy Communion?”

I would answer this question Yes. In my opinion the form of service of Holy Communion, and the Ordinal in the Book of Common Prayer, embody a principle that only bishops or priests may preside at Holy Communion. This is a ruling principle of the Church, pursuant to s 4 of the Constitution which is binding until altered in the manner provided in that section.

The form of service for the Ordination of Deacons in the Ordinal contemplates that deacons may assist priests in Divine Service, including Communion Services, by reading the scriptures or prayers, in distributing the elements, and in preaching.

The form of service for the Ordination of Priests in the Ordinal culminates in the bishop giving the priest “authority to preach the Word of God, and to minister the holy Sacraments in the Congregation where thou shalt be lawfully appointed ...”. A priest is thus authorised to conduct communion services, but a deacon is only allowed to assist a priest in such a service. Since a deacon is also authorised to read the scriptures and prayers, and to preach, he or she may conduct services of Morning and Evening Prayer and other occasional services.

The service of Holy Communion provides in terms for the priest to read the whole service, including the lessons. However the Ordinal shows that deacons may assist the priest conducting such a service.

The central prayer in a service of Holy Communion, which is exclusive to that service, and inappropriate in any other, is the Prayer of Consecration. Since priests may conduct the whole service, and deacons, by the terms of the Ordinal, are limited to the role of an assistant (“specially when he ministereth the holy Communion”), diaconal presidency is excluded and deacons should not say the Prayer of Consecration.

The Articles of Religion do not prohibit lay involvement in the conduct of services. Article 23 "Of Ministering in the Congregation" requires that a "man" be lawfully called and sent before he takes upon himself the office of public preaching or ministering the Sacraments in the Congregation, but it does not include any particular role for priests or deacons, or exclude lay involvement. Deacons and lay persons may be "called and sent" for this purpose as well as priests.

The Book of Common Prayer, including the service of Holy Communion, makes no provision for lay involvement in the conduct of services, but it has not been understood as prohibiting such involvement. There is no reason why this should not include, during communion services, the reading of lessons and some of the prayers, and the distribution of the elements. Lay involvement in these parts of the service has indeed become common practice. However if the Book of Common Prayer excludes diaconal presidency and the reading of the Prayer of Consecration by a deacon, the case for excluding lay presidency, and the reading of that prayer by lay persons, must be even stronger.

The next issue is whether so much of s 3 of the Constitution as provides that the Church will "preserve the three orders of bishops, priests and deacons in the sacred ministry" entrenches the principle of priestly presidency as an essential difference between a priest and a deacon so as to deny this function to deacons and lay persons. On this issue I find myself in agreement with those members of the Tribunal who have reached the view that s 3 does not entrench any such principle.

Section 3 preserves the threefold ministry which emerged in the Church in Apostolic times or shortly afterwards. The ministries so preserved are not defined by their functions accepted in the English reformation settlement in the 16th century. On this issue I agree generally with the opinions of Justice Young and the Bishop of Bathurst.

The role of the deacon, as defined in the Ordinal, is to assist the priest. If the priest was present at a communion service he (or she) would preside and the deacon would be relegated to the role of an assistant to the presiding priest. The situation would be otherwise if the priest was sick, on holidays, away from the parish on duty, or conducting services elsewhere. In such circumstances the deacon could "assist" the priest in fulfilling his/her ministry to the parish by conducting communion services that the priest could not conduct personally.

The duties of deacons referred to in the Ordinal include baptising infants "in the absence of the priest" so that the other sacrament of the Church can be celebrated by a delegate during the absence of the priest. However the role of an assistant is not limited to situations in which the rector is absent. An assistant priest could assist the rector by conducting an entire communion service although the rector was present. In these circumstances I see no reason to construe s 3 as denying to the Church the power, if it saw fit, to expand the role of the deacon as an assistant to the priest in charge of a parish, to enable the deacon to preside at communion, certainly in the absence of the priest, but even if the priest is present. It follows in my opinion that subject to compliance with Article 23, a lay person could also be given this function subject to such restrictions and regulations as the Church thought appropriate.

IN THE APPELLATE TRIBUNAL**REFERENCE AS TO DEACONS AND LAITY CELEBRATING THE HOLY COMMUNION****REASONS OF THE HONOURABLE MR JUSTICE YOUNG**

The questions asked by the Primate are:-

1. Is it consistent with The Constitution of the Anglican Church of Australia to permit or authorise, or otherwise make provision for-
 - (a) deacons to preside at, administer or celebrate the Holy Communion; or
 - (b) lay persons to preside at, administer or celebrate the Holy Communion?
2. If the whole or any part of the answer to Question 1 is "Yes", is it consistent with the Constitution of The Anglican Church of Australia for a diocesan synod, otherwise than in accordance with a Canon of General Synod, to permit, authorise or make provision as mentioned in Question 1?

For the reasons which follow, I would answer the Questions, 1 "Yes" as to each of (a) & (b) and 2 "No."

The factual matrix has already been outlined in the reasons given by the President and it is unnecessary to repeat them. Although the questions are at large, the debate is really about the possibility of a deacon or lay person celebrating the Eucharist under the aegis of a bishop or the rector of a parish. I will say this on more than one occasion to emphasise that the question asked and answered is in many respects, theoretical.

Were the questions directed to whether or not the law of the Church currently permits lay persons or deacons to celebrate the Holy Communion, the answer to Question 1 would clearly be "No." As Chancellor Bursell says in his book, "Liturgy, Order & the Law" (Clarendon Press, Oxford, 1996) p 98, "Holy Communion can only be celebrated and administered by an episcopally ordained priest; it cannot be celebrated by a layman, even in an emergency." All the other texts agree and the statement is supported by dicta in *Escott v Martin* (1842) 4 Moo PC 104, 128; 13 ER 241, 250 and dicta in *Cope v Barber* (1872) LR 7 CP 393, 402.

The only submission contrary to this position was received from the Reverend Dr John Woodhouse. He accepted that the proposition I have just set out may reflect an ancient custom, but he submitted that it had no basis in Holy Scripture and no sound basis in the Constitution of this Church.

Even, however, if one, for the purpose of argument, agrees that there is no reference in Scripture as to who is to celebrate the Holy Communion, the "ancient custom" would probably constitute a "law of the Church of England" which would apply in this Church until duly altered by virtue of s 71(2) of the Constitution.

However, the form of Question 1 makes me pass beyond this point. The Tribunal is not asked about the present legal position, but whether this Church may make provision for deacons or laity to celebrate the Holy Communion without contravening its Constitution.

The Preface to the Book of Common Prayer of 1662 entitled "Of Ceremonies" concludes with these words, "for we think that every country should use such Ceremonies as they shall think best to the setting forth of God's honour and glory, and to the reducing of the people to a most perfect and godly living, without error or superstition...." The Prayer Book recognizes that from time to time and from country to country there will be alterations in ceremonies and that the actual form prescribed by the 1662 Book and the manner of performing those ceremonies will change.

This Church by s 4 of the Constitution has plenary authority to order its forms of worship and rules of discipline. The section is clumsily worded and contains four distinct provisos. Only the first proviso would appear to be directed to this Church ordering its forms of worship. The second proviso says that "no alteration in or permitted variations from the services or Articles therein shall contravene any principle of doctrine or worship laid down in such standard." The "standard" is the Book of Common Prayer together with the 39 Articles. I agree with the submission of Mr Cumbrae-Stewart to this Tribunal on 20 July, 1972 that this second proviso is not a qualification of anything which precedes it in s 4.

As no argument has been put before the Tribunal on this point in the present reference, I should deal with the matter as if this second proviso was relevant. On this basis, the question is,

Would a provision to authorize celebration of the Holy Communion by a person other than a Bishop or a priest be contrary to a principle of doctrine or worship in the standard?

It is certainly the case that the order for the Administration of the Lord's Supper in the Book of Common Prayer, assumes that the celebrant will be a priest. Such an assumption, or even a statement in the text of a service does not necessarily show that a "principle" is being stated. "Principle" connotes something which is fundamental, of the first order of importance. As Archbishop Rayner, Bishop Holland, Tadgell, J and I said in the first Ordination of Women Case (Proceedings of Seventh General Synod, August, 1985 p 268-9) that "principles" denotes "the body of principles as a whole, and consequently by the main thrust of those principles, rather than by every individual rule and custom which might be included on a broad definition of "principle."

We then went on to adopt the OED definition of "principle, viz, "a fundamental truth or proposition on which many others depend." Cox & Handley, JJ adopted the

same definition at p 274, but adopted a wider view of the word. Despite subsequent invitation, I do not think any of us deviated from the views we there expressed.

The Articles show the principles of the Holy Communion. Transubstantiation is repudiated (Art 28), as is a Mass in which Christ is resacrificed (Art 31), the people are to receive the Sacrament in both kinds (Art 30) and the basis of the Sacrament is clearly stated (Art 28). Other matters including who is to administer the Sacrament and how they are to dress are left to subsidiary measures such as the Act of Uniformity of 1662 which is not part of the standard adopted by this Church.

This Church has then plenary power to alter its services as it considers appropriate from time to time to the glory of God. There is no question of any person having some vested right either to continue doing what people in his or her position have been doing for centuries, or to attend a service in a form that has been used for centuries.

It has been put to the Tribunal that the command in section 3 of the Constitution to "preserve the three orders of bishops, priests and deacons in the sacred ministry" prevents this Church ever permitting the presidency of the Eucharist being performed by a lay person or a deacon.

In my view it is impermissible to define the orders of bishops priests and deacons in terms of function. Nor is it correct to interpret the section, as the assessors do, by forbidding this Church from altering the basic functions of bishops, priests or deacons.

It may be argued that what section 3 preserves is the office of a bishop etc as it existed in the Church of England in Australia on 31 December, 1961. I would not accept that proposition as the whole tone of section 3 is that this Church is preserving something that is ancient and universally accepted.

There is little room for doubt that the functions of bishops and priests and, especially deacons, have varied widely over the last 1650 years (ie since 313). We now have bishops known as assistant bishops who have no title, are not chosen by the people and who have no jurisdiction yet are still bishops.

Priests have moved from being Mass priests to ministers of the Word, from the English role of being officials of the State entitled to the profits of a parish to the Australian role of being paid leaders of the local branch of a voluntary association. It may be that in 50 years time, the basic task of the priest will change further. However, the people concerned were, are or will be ordained to the office of priest.

I have read with interest the article "The Priest in Anglicanism" by Professor J Robert Wright referred to by the Archbishop of Adelaide. I have also listened intently to a debate in the Sydney Diocesan Synod in October, 1997 as to whether the term "priest" should continue to be used in the Diocese of Sydney. These two sources approached the matter in vastly different ways, yet those holding the various views of what is a priest in the Anglican Church still can worship together and the episcopally ordained ministers in charge of parishes in both camps are in priests orders.

It is said that no matter what the differing ideas of priesthood are in the Anglican church, there is a common acceptance that the role centres on the Eucharist. Not everyone would agree with this statement, because, as I note later, there is considerable support for the view that the principal role of the priest is to be the leader of Christian community in a particular place. However, even accepting its correctness, the statement does not take the argument anywhere. Any modification of the existing procedure that the General Synod may adopt in the future which removes the bishop and the priest from the primary role as president of the Eucharist may be questionable. A measure that recognized that primacy, but permitted delegation of certain eucharistic activities to lay people or deacons under the authority and aegis of the priest would be in a different category.

The Oxford Dictionary of the Christian Church clearly shows how the function of those who held office of a deacon has greatly varied over the centuries. Their functions change from dealing with material matters, then to high administrative matters with the archdeacon becoming a high administrative official and the Cardinal deacons of Rome having great influence. They had functions at the altar which were greatly reduced by Gregory the Great in 595. They lost most of their influence during the Middle Ages and for centuries were merely probationary priests. Indeed even in the last twenty years, the office of deacon in some dioceses has changed to being a distinct ministry of service. To-day we see a fledgling permanent diaconate, deacons in the workplace etc. No matter what the function for the time being, the office remains.

It is not difficult to define the essential nature of the office of bishop priest and deacon. Not everyone who holds that office will necessarily at all times fit wholly within that definition. I agree with the reasons of the Bishop of Bathurst, which I have seen in draft, that the essential nature of a priest is to be the leader of a community of Christians in Word and Sacrament and that it is inadequate to say that a priest is ordained to say Mass. However, there will always be some priests who from time to time will be fulfilling different functions including those exercising their ministries as "Senior Associate Ministers" under the direction of another priest.

It may be that, in the future, appropriate authority may properly decide that the Holy Communion may be celebrated by deacons or laity. That decision may be made for reasons of difficulty in ministering in certain places, for economic or cultural reasons or for many other reasons. It is inappropriate to speculate on this matter as it may be that when a definite proposal has been formulated, it will be necessary to test it to ensure it does not fall foul of ss 1-4 of the Constitution.

I am very conscious that my answer at first sight the answer I have given appears contrary to the advice of the bishops and the assessors.

The Constitution in s 58 requires the Tribunal to obtain the opinion of the bishops and the assessors in matters such as the present. The section makes it plain that the opinions obtained are just that, opinions, of course, opinions of experts and their purpose is to aid the tribunal. The Constitution does not make those opinions *prima facie* to be followed by the Tribunal unless they are plainly wrong, nor is there any reason why that should be the position. The Constitution commits the task of making the decision on the reference to the Tribunal and to the Tribunal alone. The Tribunal must pay due respect to the opinions obtained, but it alone is in a position

to have access to all the information which the parties to the reference have provided. Furthermore, the Tribunal is able to inform itself on history and theology from other sources, subject always to its duty to obey the principles of natural justice.

Again, the Tribunal usually has to deal with mixed questions of law and theology. When the bishops or the assessors include in their opinions, as they are entitled to do, their opinions on questions of law or statutory construction, the lawyer members of the Tribunal in particular, will usually not feel constrained to abide by the opinion.

I will make only three further comments about the opinions received.

First, although they deal with other matters as well, the prime thrust of the opinions is directed to the manifestly correct proposition that at present it is impermissible for anyone but an episcopally ordained priest or bishop to celebrate the Holy Communion.

Secondly, my reading on the issue does not lead me to the ineluctable conclusion that "there is no instance in the history of the undivided church of the consecration of the Eucharist by others than bishops or priests being authorized under any circumstances." That statement may be correct, but perhaps it is not. Canon 16 of Arles (314) reads, "Concerning Deacons, whom we have ascertained make the offering in many places, we decree that this must cease." That such a matter was dealt with at a Council called to deal with a particular heresy tends to suggest that deacons celebrating the Holy Communion was not then uncommon. Although most of the surviving documents refer to bishops and priests as the presidents of the Eucharist, the documents between Arles of 314 and the Fourth Council of Toledo in 633 show a continuing struggle between the priests and the deacons, in which the former ended the winners. History is always written by the winner. Furthermore, the theory and practice of what happened in churches doubtless varied as much in past ages as it does now.

Thirdly, there is no reference in the opinions to the theological views that each Christian Community has the right to the Eucharist and is not to be denied that right merely because it cannot afford a stipendiary priest. Writers such as Edward Schillebeeckx & Leonardo Boff suggest that the essential feature of the presidency of the Eucharist is the choice by the community of its leader and that the episcopal ordination is a subsidiary matter. However, lest it be thought that I am wandering too far, even Boff is said to advocate a priest and a lay person con-celebrating.

Accordingly, both parts of Question 1, which look to future possibilities, should be answered, "Yes."

In view of my answer to Question 1, I need to answer Question 2.

Subject to s 4, s 5 gives to the Church plenary authority and power to legislate for the good government of this Church. This power is distributed amongst the synods of the Church. S 26 confers on the General Synod power to make canons for the order and good government of this Church. I take that to mean, as I have

said in previous decisions of this Tribunal, the Church as a whole. S 51 notes that within its constitutional power a diocesan synod may make ordinances for the order and good government of the church within that diocese. The dichotomy is clear.

What is not often clear is how far a matter which might appear only to affect the life of the church may impact on the life of the National Church. Thus Ordination, even though it is brought about by a single act of a bishop within his own diocese may impact on the life of the church as a whole as a priest is a priest in the Church of God.

However, on the present question, there is little purpose to be served by considering whether an alteration as to who may celebrate the Holy Communion is a matter concerning the good government of the church as a whole. I am of the view that it is. One reason for this view is because the matter is one which affects the relationship of our church with the other member churches of the Anglican Communion. S 71(1), however, makes it abundantly clear that no diocesan synod may make an alteration in the ritual or ceremonial of this Church except in conformity with an alteration made by General Synod. The matter in issue is a prime example of ritual or ceremonial.

Thus I would answer Question 2, "No."

I have agonized over this decision as it touches a matter on which both sides of the debate have very strong views. It also seems to me, both in my own reading and in some of the submissions, that it is extremely difficult to separate oneself from one's cultural conditioning and the belief that what one is doing here and now is not only correct, but the only way to proceed. I am comforted that the substantial majority agree in the view that lay or diaconal presidency is not currently an option and that, if there is to be any change, the General Synod alone can lead the way. Whether the General Synod will be in the mood to make any such change in the foreseeable future is a speculative matter which does not concern me in my present role. I have read in draft the views of Tadgell JA & Bleby, J who have taken a different view as to the possibility of change in the future. I respect their views, but, unfortunately cannot bring myself to agree with them on this point.

PETER YOUNG, J
28.11.1997

ANGLICAN CHURCH OF AUSTRALIA

APPELLATE TRIBUNAL

REFERENCE AS TO DEACONS AND LAY PERSONS CELEBRATING THE HOLY COMMUNION

REASONS OF THE HONOURABLE JUSTICE BLEBY

The questions referred and their background are set out in the reasons of the President. I will not repeat them. I would answer the questions as follows:-

Question 1	(a)	:	No
	(b)	:	No
Question 2		:	No

A Question of Definition

The first question referred by the Primate asks whether it is consistent with the Constitution of the Anglican Church of Australia to permit... deacons or lay persons to "preside at, administer or celebrate" the Holy Communion. A question immediately arises as to whether there is intended to be any difference in meaning between those three terms. As appears from the report of the Board of Assessors, the term "preside at" appears in the introductory rubric of the second order of the Holy Communion in An Australian Prayer Book and seems to be synonymous with "celebrate", a term found in a Book of Common Prayer 1662 ("BCP") in the rubric at the end of the Prayer for the Church Militant and at the end of the second Exhortation. Although perhaps admitting of less clarity, the phrase "to administer" appears to have reference to the title page of the BCP ("Administration of the Sacraments...according to the Use of the Church of England") and the title of the service within the BCP: "The Order of the Administration of the Lord's Supper or Holy Communion". However, the table of contents of the BCP speaks of "The Order of the Ministration of the Holy Communion" and of "The Collects, Epistles, and Gospels, to be used at the Ministration of the Holy Communion" throughout the year. I refer later in this opinion to the use of the word "ministration" in Article 23 and to the possible meaning of the word in that context, and whether it is something different from "Administration" referred to in the titles of the service. For present purposes, however, I am prepared to accept, as did the Board of Assessors, that the terms "preside at, administer or celebrate" are synonymous, and that the term "administer" does not refer merely to the physical distribution of the consecrated elements.

Some preliminary observations

Before I turn to consider the answer to the questions it is necessary that I make some preliminary observations about the structure of Chapters 1 and 2 of the Constitution, the structure and interpretation of section 4, and the role and function of the House

of Bishops and the Board of Assessors in a reference such as this. These observations will have some bearing on my approach to the answering of the questions.

Structure of Chapters 1 and 2 of the Constitution

Chapter 1 of the Constitution contains the Fundamental Declarations of this Church. Chapter 1 is unalterable (Constitution, s66). It reads as follows:

“Chapter I. - FUNDAMENTAL DECLARATIONS

1. The Anglican Church of Australia, being a part of the One Holy Catholic and Apostolic Church of Christ, holds the Christian Faith as professed by the Church of Christ from primitive times and in particular as set forth in the creeds known as the Nicene Creed and the Apostles’ Creed.
2. This Church receives all the canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation.
3. This Church will ever obey the commands of Christ, teach His doctrine, administer His sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline and preserve the three orders of bishops, priests and deacons in the sacred ministry.”

Chapter 2 contains what are known as the Ruling Principles. I will have occasion to refer in detail to some of the sections in this Chapter, but there seems to be little dissent from the proposition that Chapter 1 represents the fundamental truths of the Apostolic faith, while Chapter 2 represents the particular Anglican development of those truths. The Board of Assessors in its report put it this way:

“3.1.1 The opening chapter of the Constitution (ss.1-3) represents the agreed understanding of the whole Anglican Church of Australia, after generations of debate and dispute. It declared what all finally agreed was fundamentally constitutive of this Church, in language evocative of the Lambeth Quadrilateral. This Church claims its place in the One Holy Catholic and Apostolic Church of Christ, holding the Faith as professed in the creeds, receiving the Scriptures of the Old and New Testaments, obeying and teaching the doctrine of Christ, administering his sacraments, upholding his discipline and preserving the three orders of sacred ministry. These Fundamental Declarations include nothing that is distinctively Anglican.

3.1.2 Specific Anglican formularies are included in the second chapter, (ss.4-6). These Ruling Principles indicate the ways this Church receives and develops the expression of the fundamentals of being this Church. This includes both the claiming of powers and the setting of

limitations. Unlike the Fundamental Declarations, these Ruling Principles may be altered or indeed removed, given sufficient agreement. They therefore represent a different level of authority from that of the Fundamental Declarations."

The only submission before us that Question 1 should be answered "Yes", that of Dr John Woodhouse, although meticulous in its dissection of the report of the Board of Assessors, did not comment adversely on that proposition.

The Diocese of Brisbane, in its submission described it thus:

"It is our view that Chapter 1 of the Constitution [ss1, 2 & 3] is a broad fundamental statement of the Christian faith, generally acceptable to any mainline Christian denomination, but not particularly Anglican in its doctrine [although expressed from an Anglican perspective].

It is further our view that Chapter 2 [ss4, 5 & 6] is the 'Anglicising' of the broad statement set out in Chapter 1. Section 4 in particular attempts to set out the doctrinal position of the Anglican Church.

Section 4 rests fundamentally on the doctrine set out in the Book of Common Prayer of 1662 and the Thirty-nine Articles. This indeed seems to be the most recent statement of doctrine that the Anglican Church has been able to agree to. In 1962 when the Constitution was established and since then, there has been no later statement of Anglican doctrine generally acceptable in Australia."

I agree with those formulations as to the structure and effect of Chapters 1 and 2. I will have occasion to refer to this later.

Structure and Interpretation of section 4 of the Constitution

Section 4 is a difficult section. So far as is relevant for present purposes, s4 reads as follows:

"This Church, being derived from the Church of England, retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer together with the Form and Manner of Making Ordaining and Consecrating of Bishops, Priests and Deacons and in the Articles of Religion sometimes called the Thirty-nine Articles but has plenary authority at its own discretion to make statements as to the faith ritual ceremonial or discipline of this Church and to order its forms of worship and rules of discipline and to alter or revise such statements, forms and rules, provided that all such statements, forms, rules or alteration or revision thereof are consistent with the Fundamental Declarations contained herein and are made as prescribed by this Constitution. Provided, and it is hereby further declared, that the above-named Book of Common Prayer, together with the Thirty-nine Articles, be regarded as the authorised standard of worship and doctrine in this Church, and no alteration in or permitted variations from the

services or Articles therein contained shall contravene any principle of doctrine or worship laid down in such standard.”

I respectfully adopt the analysis of that section by Young J in his 1987 opinion concerning the Ordination of Women to the Office of Deacon Canon 1985. He adopted a structural analysis of the section as follows:

- “1. The Church retains and approves the doctrine and principles of the Church of England embodied in the BCP, the Ordinal and the 39 Articles,

BUT

2. The Church has plenary authority to make statements as to the faith, ritual, ceremonial or discipline of the Church,

AND

3. The Church has plenary authority to order its forms of worship and rules of discipline,

AND

4. The Church has plenary authority to alter or revise the statements, forms and rules referred to in paragraphs 2 and 3 above.

5. The proviso to paragraphs 2, 3 and 4 above is that all such statements, forms and rules etc. are consistent with the Fundamental Declarations and are made as prescribed by the Constitution.

6. The BCP and the 39 Articles are regarded as the authorised standard of worship and doctrine in the Church.

7. No alteration in or permitted variations from the services or articles contained therein shall contravene any... principle of doctrine or worship laid down in the BCP or the 39 Articles.”

I will refer to this as “the section 4 analysis”. Of that analysis His Honour said:

“The analysis again, to my mind, (unless there is some special significance in the word ‘but’) throws up the plenary power of this Church to alter any of the principles and doctrine of the Church of England in England which were part of its heritage, provided that so far as principles of doctrine and principles of worship were concerned, the body of the Prayer Book (including the Ordinal) and 39 Articles were not to be contravened.”

After discussion of various authorities on the meaning of the word “but”, Young J concluded:

"If a synonym was required for the word 'but', it would seem to me that 'yet' or 'notwithstanding this statement' would come nearest to the proper sense. The Church retains the principles of the Church of England, yet notwithstanding it is autocephalous and has plenary authority."

Tadgell J in the same reference took a similar view. After discussing the structure of the section he said:

"I take section 4, then, to authorize the Church to legislate upon matters of its doctrine, worship, faith, ritual, ceremonial and discipline, and section 5 to empower it to legislate for its order and good government and to administer its own affairs, subject only to the conditions specified. These are that such legislation and administration are to be consistent with the fundamental declarations, that no principle of doctrine or worship laid down in the authorized standard (which in my view includes by implication the Ordinal) should be contravened, and that the legislation is made and the administration of the Church's affairs is conducted otherwise in accordance with the Constitution."

It follows that in my opinion where the Church makes a statement as to its faith, ritual, ceremonial or discipline or orders its forms of worship and rules of discipline or alters or revises such statements, forms and rules, (items 2, 3 and 4 of the section 4 analysis) it can only do so where they are consistent with the Fundamental Declarations of Chapter 1 and are made as prescribed by the Constitution (Item 5 of the section 4 analysis). If the Church seeks to alter or vary the services or articles contained in the 39 Articles and the BCP (which I take to be included in item 4 and item 7 of the section 4 analysis), such alteration or variation is subject to the further qualification that it cannot contravene any principle of doctrine or worship laid down in the BCP or the 39 Articles (item 7 of the section 4 analysis). In that sense item 7 of the section 4 analysis does add a further qualification to what is contained in items 2, 3, 4 and 5, in that alterations in and variations from the BCP services or the Articles must not only be consistent with Chapter 1 but also must not contravene a principle of doctrine or worship laid down in the BCP or 39 Articles. Section 5 of the Constitution ensures that the same applies to canons, and rules for the order and good government of the Church.

It is also to be noted that in item 1 of the section 4 analysis the Church retains and approves the doctrine and principles referred to, and that that denotes the body of such principles as a whole rather than every rule and custom¹. However item 7 of the section 4 analysis requires that no alteration in or permitted variations from the services or articles shall contravene any principle (singular) of doctrine or worship. I agree, as did the majority of the Tribunal in its 1985 Opinion², that a "principle" means a fundamental truth or proposition on which many others depend, and does not mean every individual rule or custom, but the fact remains that alterations or permitted variations may not contravene any individual principle. Therefore, if there is a principle of doctrine or worship laid down in the BCP or the 39 Articles

1 Opinion of the Tribunal - Ordination of Women 1985, Report of the Proceedings of the 7th General Synod, August 1985, per the Archbishop of Adelaide, the Bishop of Newcastle, Tadgell and Young JJ at pp268-269.

2 Ibid p269

that lay persons may not preside at the Holy Communion, it is beyond the power of the Church to authorise it without an alteration to section 4.

Role and Function of the House of Bishops and Board of Assessors

Section 58(1) of the Constitution requires that before giving an opinion on any reference the Appellate Tribunal must, in any matter involving doctrine³ upon which the members are not unanimous, and may, if it thinks fit, in any other matter obtain the opinion of the House of Bishops and the Board of Assessors constituted under the Constitution. Section 58(2) provides:

“In any case where the House of Bishops is consulted under this section, the House of Bishops shall aid the tribunal with such information in writing as it thinks proper, provided that if all members of the House of Bishops do not concur each of the members at the time in Australia may aid the tribunal with such information in writing as he thinks proper. For the purposes of this sub-section the House of Bishops shall not include the bishops who are members of the Appellate Tribunal.”

Subject to the qualification referred to in s58(2), the House of Bishops comprises all the diocesan bishops of the Australian Church, and the Board of Assessors comprises seven priests elected by General Synod voting as a whole. It usually comprises theologians of undoubted standing in the Church.

Before expressing any views on the question, the Tribunal in this case sought and obtained the opinion of the House of Bishops and of the Board of Assessors. The Tribunal, in its advisory jurisdiction under s63 of the Constitution, is not obliged to call for submissions or to conduct a hearing. It may do so (s63(2)), and as a matter of practice in recent references has done so. However, the Constitution affords a special place and standing to the opinion of the House of Bishops and of the Board of Assessors which is not afforded to other representations. In effect those bodies have a constitutional standing as advisers to the Appellate Tribunal. This is not surprising, particularly in relation to matters of doctrine, where a majority of the Tribunal comprises legally qualified lay persons and therefore persons not necessarily qualified in such matters. It is also not surprising that the Constitution should ensure that substantial weight is given to the advice of diocesan bishops as the pre-eminent guardians of the doctrine of the Church. There may even be an implication from s58(1) (although we have heard no argument on the matter) that any lack of unanimity in matters of doctrine among members of the Appellate Tribunal should be resolved by reference to the opinion of the House of Bishops and the Board of Assessors.

It follows that in my opinion the Tribunal should be very slow to depart from the advice it receives from the House of Bishops and Board of Assessors, particularly when that advice is unanimous or substantially so. It should only depart from that advice if it is plainly wrong or contains an obviously flawed process of reasoning. Of course, if the House of Bishops and the Board of Assessors is more or less equally

³ “Doctrine” is defined in section 74 of the Constitution as meaning “the teaching of the Church, on any question of faith. “Faith” is defined as including the obligation to hold the faith.

divided on the issue, then the Tribunal will have to form its own view on the matters.

In this case the House of Bishops (which for this purpose excludes the episcopal members of the Tribunal) was unanimous in its view on the question as expressed in the following passage:

“It is our belief that an attempt to permit either deacons or lay persons to preside at, administer or celebrate the Holy Communion would be in breach of both the Fundamental Declarations and the ruling principles of our church.”

One member of the House of Bishops expressed a qualified view on other matters of detail, but did not dissent from the view expressed above.

The view of the Board of Assessors is summarised in Paragraph 4.1.1 of its report as follows:

“4.1.1 In the light of the above discussion, and especially having regard to the Fundamental Declarations contained within the Constitution and the Ruling Principles for the interpretation of the Fundamental Declarations, and after examining the Book of Common Prayer together with the Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests, and Deacons of 1662, to which reference is made in the Fundamental Declarations and Ruling Principles, the Board of Assessors reports its unanimous opinion to the Appellate Tribunal, namely that

- (a) it is not consistent with the Constitution of The Anglican Church of Australia to permit or authorise, or otherwise make provision for deacons to preside at, administer or celebrate the Holy Communion; and *a fortiori*
- (b) it is not consistent with the Constitution of The Anglican Church of Australia to permit or authorise, or otherwise make provision for lay persons to preside at, administer or celebrate the Holy Communion.”

I shall have occasion to refer to certain aspects of the reports of both the House of Bishops and the Board of Assessors later in this opinion.

The Law of the Church - a Simple Answer

The question asks whether it is consistent with the Constitution “to permit or authorise, or otherwise make provision for” deacons or lay persons to preside at the Holy Communion. It does not specify the possible means by which such permission or authority might be given or provision might be made. If it includes, for example, the granting of permission by a diocesan bishop or a priest without more, then the answer must plainly be “No”.

Section 71(2) of the Constitution provides:

“The law of the Church of England including the law relating to faith ritual ceremonial or discipline applicable to and in force in the several dioceses of the Church of England in Australia and Tasmania at the date upon which this Constitution takes effect shall apply to and be in force in such dioceses of this Church unless and until the same be varied or dealt with in accordance with this Constitution.”

Section 10 of the Act of Uniformity 1662 (Charles.II.c.4)⁴ reads:

10 And ... no person whatsoever shall thenceforth (after the feast day of St Bartholomew, 1662) be capable to bee admitted to any parsonage vicarage benefice or other ecclesiastical promotion or dignity whatsoever nor shall presume to consecrate & administer the holy sacrament of the Lords Supper before such time as he shall be ordained preist according to the forme and manner in and by the said booke prescribed unlesse he have formerly beene made preist by episcopall ordination upon pain to forfeit for every offence the sum of one hundred pounds one moyety thereof to the Kings Majesty the other moyety thereof to be equally divided betweene the poore of the parish where the offence shall be comitted and such person or persons as shall sue for the same by action of debt bill plaint or information in any of his Majesties courts of record wherein no essione protection or wager of law shall be allowed and to be disabled from taking or being admitted into the order of preist by the space of one whole yeare then next following.”

It appears reasonably clear that the Act of Uniformity was never part of the civil law applicable to the Australian colonies on their formation. One of the main purposes of the Act of Uniformity was to ensure uniformity of worship by requiring adherence to the BCP. That principle is reflected in s4 of our national Constitution. Section 10 of the Act of Uniformity had not been repealed by the British Parliament as at 1 January 1962. It appears that the principle of uniformity of worship which was enacted and the contents of s10 were undoubtedly part of the consensual compact of the dioceses of the Australian Church prior to 1962. In *Wylde v Attorney-General (NSW)* (1948) 78 CLR 224 at 262 Latham CJ said:

“The *Act of Uniformity* is not in force as a statute in New South Wales, but it is a statute which prescribes both the doctrine and ritual of the Church of England in England, and therefore equally determines the doctrine and ritual of the Church of England as it exists in New South Wales.”

Rich J, at p276, also said that the Act of Uniformity did not apply in New South Wales, but he considered that the obligations under the Act in England were personal obligations on clergymen, and that those obligations could not be transmuted into obligations on the part of trustees of church trust property. Dixon J said (at p296):

⁴ In this opinion I refer to the text of the Act as it appears in the 2nd Edition of Halsbury's Statutes, Volume 7, page 583ff, although different versions of the Statute exist where the sections are differently numbered.

"[W]hile it is conceded that the Acts of Uniformity are not laws applicable to Australia so as to be in operation here in pursuance of 9 Geo. IV. c.83, yet an obligation of obedience to the actual provisions of the Act of 1662 is conceived as both an implied term of the consensual compact and as a necessary part of the full effectuation of the trusts."

Williams J said (at p303):

"The *Act of Uniformity* of 1662 is not in force in New South Wales but this is, I think, immaterial for I agree with [Roper CJ in Eq.] that the liturgy prescribed by the Act is made by the Act a fundamental law of the Church of England and that it follows necessarily that this liturgy is a fundamental rule of the voluntary association in New South Wales. Otherwise I fail to see how the Church of England in New South Wales can be an integral part of the Church of England."

There is no reason to believe that the position was any different in any of the other States. Section 10 was thus a law of the Church of England relating to faith ritual ceremonial or discipline, and was applicable to and in force in the several dioceses of the Australian Church as at 1 January 1962. It remains in force by virtue of s71(2) of the Constitution unless and until it is varied or dealt with in accordance with the Constitution. No such alteration has been made.

In its answer to some questions referred to it in 1976 concerning the proposed canon for "An Australian Prayer Book" the Appellate Tribunal expressed the view that "the Act of Uniformity does not now apply to this Church". That was in a somewhat different context, and it is not entirely clear whether the answer was directed to the Act as part of the civil law of the various States of Australia or in some other capacity, whether the Tribunal then had its attention directed to s71(2) of the Constitution or whether the observations in *Wylde v Attorney-General* (supra) were considered. The answer was given at a time when the Tribunal gave no reasons. In that rather unsatisfactory state of affairs, I do not consider that the Tribunal presently constituted is necessarily bound by that answer (see also s73(1) of the Constitution) and particularly as both then and now the Tribunal was and is exercising its advisory jurisdiction.

It is therefore inconsistent with the Constitution for an individual to permit or authorise or otherwise make provision for deacons or lay persons to preside at the Holy Communion. However, that is perhaps an unhelpful answer, and the real import of the question, as I understand it, is whether the Church can, consistent with the Constitution, change that law and thereby permit deacons or lay persons to preside at the Holy Communion.

Changing the Law - Chapter 1 of the Constitution

One then must ask whether it is possible for this Church, eg by Canon of General Synod, to repeal s10 of the Act of Uniformity or to provide that it has no further application in this Church. I assume that such notional repeal does not at the same time re-enact the substance of the section in some other form. Of course if the Act of Uniformity was merely declaratory of the existing law, then it may be necessary to

go further and expressly authorise, by legislation, non-ordained persons to preside at the eucharist.

Such a repeal and enactment by itself would not purport to order any forms of worship (item 3 of the section 4 analysis), neither would it purport to alter or vary the services or articles contained in the BCP or the 39 Articles (item 7 of the section 4 analysis). The forms of service and the rubrics in the Book of Common Prayer would remain untouched by the suggested repeal. For the purposes of this part of the discussion I am also prepared to assume (although, for reasons which will become apparent, I do disagree with the assumption) that there is no express or implied prohibition on lay or diaconal presidency contained in the BCP forms of service and the rubrics or the 39 Articles. If the assumption is correct, there is plainly no alteration to the forms of worship or the Articles by the repeal of s10 and the authorising of lay persons to preside.

However, the repeal of s10 and authorising lay persons to preside would amount, in my opinion, to an alteration in a rule of discipline of the Church, and could therefore only be validly made if it were consistent with the Fundamental Declarations (item 5 of the section 4 Analysis). The validity of any such repeal must therefore be tested against the requirements of Chapter 1 of the Constitution.

The opinion of the House of Bishops and of the Board of Assessors would regard such repeal and authorisation as contrary to Chapter 1, and therefore not possible. The conclusion of the House of Bishops on this point is summarised in the following paragraph:

“In requiring the retention of the three orders of bishop, priest and deacon, the Fundamental Declarations in the Constitution of the Anglican Church of Australia express the determination to retain the historic pattern of ministry which this Church has received as part of the one holy catholic and apostolic church. This requires not only the retention of three orders of ministry bearing these names, but that the orders continue to exercise the same functions as in the past and that the same differentiation of function between them should continue. This rules out permission being given to deacons or lay persons to consecrate the sacrament of the Lord’s Supper.”

That opinion should be accepted by this Tribunal unless it is demonstrably incorrect. The opinion of the House of Bishops and the reasons therefor relate to the requirement in s3 of the Constitution that the Church will preserve the three orders of bishops, priests and deacons in the sacred ministry. Their opinion develops reasons why to permit lay presidency would not preserve those three orders. In the opinion of this Tribunal of 1985 concerning the ordination of women, the reasons of the Archbishop of Adelaide, the Bishop of Newcastle, Mr Justice Tadgell and Mr Justice Young said of that requirement:

“For the orders to be preserved it is necessary to preserve more than their names. Their essential functions and their relationships with one another also need to be preserved.”

The advice of the House of Bishops in this matter proceeds upon an historical analysis of the functions of bishops, priests and deacons with particular reference to the celebration of the Holy Communion. The advice concludes that all the available evidence "points to the universal practice of the early Church that only a bishop or priest could celebrate the Holy Communion".

At the end of the day it is this analysis of what is the nature and character of their role and therefore what are the essential functions of each of three orders that will determine whether the performance of a particular function by a lay person will or will not preserve the order. It is not enough merely to say that a priest is a person who has undergone episcopal ordination. True it is that in our Church that is an essential requirement. But to what is the person ordained? The words of ordination invoke the reception of the Holy Spirit "for the office and work of a Priest in the Church of God..." It is that office and work which must be different in order to identify the order that is preserved by s3. There will, of course at different times in history and in different parts of the Church be different emphases on the importance or significance of the essential functions; there will be peripheral functions that come and go; the organisation of the Church will differ, as Young J points out, from country to country, even from diocese to diocese, from an established Church where priests hold offices or benefices created by law to a voluntary organisation where priests are the acknowledged leaders. The periphery and the emphasis will change, but one of the historic and core functions which the bishops and the assessors have identified is that of presiding at the eucharist. Just because the periphery and the emphasis (and the functions attached to them) may change does not mean that there are not identifiable core functions which go to make up the nature and character of each order, and which differentiate the orders from each other and from non-ordained persons.

Both the preface to the BCP Ordinal and the words of ordination require the identification of a function associated with the order. I have already referred to the words of Ordination. The preface, when speaking of the three Orders says:

"Which Offices were evermore had in such reverend estimation that no man might presume to execute any of them, except he were first called, tried, examined, etc..."

And therefore, to the intent that these Orders may be continued, and reverently used and esteemed, in the Church of England; No man shall be accounted or taken to be a lawful Bishop, Priest or Deacon in the Church of England, or suffered to execute any of the said functions, except he be called, tried, examined, etc..."

The reference to "execut(ing)" any of the offices and "execut(ing) any of the said functions" can only mean that the orders, apart from ordination, are identified by what they do - what their function or role and hence their character is. One is ordained by God to perform certain priestly or episcopal functions not carried out by others. Without recognition of such functions to which those ordained are called, it is almost impossible to define what, for example, a priest is or to what he or she is ordained, and therefore impossible to define the Orders that are required by section 3 of the Constitution to be preserved.

The principal attack in the only submission before us which challenges the conclusion that authorising lay presidency would be contrary to Chapter 1 (that of Dr Woodhouse) is based on an argument that the English word “priest” has two meanings, one meaning derived from the Greek *presbyter* meaning “elder” and one meaning in the sense of the Greek *hiereus* or the Latin *sacerdos* with a distinctly sacrificial emphasis. But as his own quotation from the Oxford English dictionary points out, with the close of the Anglo-Saxon period the word “preost” and “prest” became the word for both *presbyter* and *sacerdos* and thus, as the OED describes it “an ambiguous term”. Dr Woodhouse argues that the authors of the BCP only intended it to be used in the *presbyter* sense and no other. I am not convinced of that or of the fact that it matters. The significant fact is that at no stage in history have the formularies of the Church acknowledged that the celebration of the Holy Communion could be by other than a priest or bishop, and that appears to reflect what the Church has regarded as an essential and distinguishing function, necessary for the preservation of the orders. I therefore agree with and feel bound to accept the unanimous advice of the House of Bishops.

The advice of the Board of Assessors is to like effect, although their process of reasoning relies more heavily, for the interpretation of the functions of the order of priests in s3 of the Constitution, on what they consider to be the doctrine and principles of the Church of England embodied in the BCP, the Ordinal and the Thirty-nine Articles. That is an acceptable process in so far as it is used as evidence of the proper understanding of the function of a priest for the purposes of s3. Once again, I have no reason to doubt their argument in that regard. If, however, they argue as a matter of statutory construction that because the formularies referred to in s4 indicate in this area a certain exclusive function, therefore the order of priests referred to in s3 must have that same function, then their argument is less reliable. Such an argument uses the provisions of s4 to interpret s3 and what is meant by “priest” in that section. Given the nature and structure of the two Chapters to which I have already referred, this is a process of doubtful validity. This is because s4 is alterable. It could theoretically be altered to reflect a somewhat different emphasis and to delete any reference to the BCP. Section 3 cannot be altered. The meaning of s3 therefore cannot, as a matter of statutory construction, be governed by the possible changing content of s4. In some parts, the Board of Assessors seem to come close to adopting this process. It may be a distinction which matters little, as I am prepared to accept their opinion that to the extent that the s4 formularies reflect an Anglican understanding that an exclusive function of a priest or bishop is to celebrate the Holy Communion, that is evidence, and powerful evidence, of this Church’s historical understanding of the nature and functions of the order of priests required to be preserved by s3.

What, then, of the argument that because this Church has authorised, by the Authorised Lay Ministry Canon 1992, (inter alia) the preaching of sermons and the distribution of Holy Communion by authorised lay persons, by the same authority it can authorise lay presidency?

In the first place, that Canon itself recognises⁵, in the definition of “lay ministry” which is authorised by the Canon, an exclusion “of any function required by the discipline or doctrine of this Church to be exercised or performed only by a deacon, priest or bishop”.

As I understand the argument, it says that lay preaching is allowed, and there must therefore be a head of constitutional authority which allows that. If it allows that, then it must allow lay celebration without compromising the preservation of the three orders in s3 of the Constitution. However, I do not think that that necessarily follows, and that one can make the assumption that because lay preaching is constitutionally allowed, lay celebration must be as well. That could only happen if there is a "theological equivalence". That is not the case. It is accepted that eucharistic presidency is recognised as a delegation by the worshipping community itself of the priesthood of the people of God to the presbyter/priest overseer. The one who has oversight represents the unity in Christ of the community itself. It does not follow that that function can be further delegated to a deacon or lay person or, that if it can, it is in some way confined to "abnormal circumstances". As President, the celebrant can be said to represent the being of the congregation as together constituting a priesthood of believers.

A preacher or reader, on the other hand, seeks to expound the word of God to the congregation. He or she does not symbolise or embody the being of the congregation in its gathering but seeks to be faithful to what God has revealed through the scriptures. The person who assists in the distribution of the Holy Communion likewise has an obviously different and subordinate function. The preaching or reading function and the distribution function are delegable, and are, of course, able to be supervised. The presidential function is not. If there is, in that sense, no theological equivalence, there can be no constitutional equivalence for the purpose of s3.

This type of distinction has long been recognised in the Church. As Phillimore points out⁶:

"The canonists distinguish the office-bearers in the Church into those who compose the *sacerdotium* and those who compose the *ministerium*. The former were empowered to administer the sacraments; the latter were employed in the discharge of subsidiary ministerial functions.

The *ordines* of bishops, priests, and deacons are called *ordines hierarchici*. In earlier times they were called *ordines sacri*. After the twelfth century the sub-deacon was ranked amongst the *ordines sacri*; and according to the Tridentine law of the Roman church the *ordines sacri* or *majores* include bishops, priests, deacons, and sub-deacons; the *ordines minores* or *non sacri* include the acolyte, exorcist, lector, and ostiary.

The *sacerdotium* is composed of the order of priests and deacons in our church...

Bishops, Priests, and Deacons.]- The other orders of the Church of Rome which composed the *ministerium* were, as it has been said, five: viz., subdeacons, acolyths, exorcists, readers, and ostiaries. 1. The subdeacon is he who delivers the vessels to the deacon, and assists him in the administration of the sacrament of the Lord's Supper. 2. The acolyth, is he who bears the lighted candle whilst the Gospel is in reading, or whilst

the priest consecrates the host. 3. The exorcist, is he who abjures evil spirits in the name of Almighty God to go out of persons troubled therewith. 4. The reader, is he who reads in the Church of God, being also ordained to this, that he may preach the word of God to the people. 5. The ostiary, is he who keeps the doors of the church and tolls the bell...

Imposition of Hands.]- This was always a distinction between the three superior, and the five forementioned inferior orders; that the first were given by imposition of hands, the second not."

The reader clearly survived the reformation. Phillimore⁷ observes that in the Greek church they were said to have been ordained by the imposition of hands, but not so in the Latin church. He continues:

"The council of Carthage speaks of no other ceremony, but the bishop's putting the Bible into his hands in the presence of the people, with these words, 'Take this book, and be thou a reader of the word of God, which office if thou shalt faithfully and profitably perform, thou shalt have part with those that minister in the word of God.' And in Cyprian's time they seem not to have had so much of the ceremony as delivering the Bible to them, but were made readers by the bishop's commission and deputation only, to such a station in the church.

Upon the reformation here, readers and deacons were required to subscribe to the following injunctions:-

'Imprimis, I shall not preach nor interpret, but only read that which is appointed by public authority:

'I shall read divine service plainly, distinctly, and audibly, that all the people may hear and understand:

'I shall not minister the sacraments or other public rites of the church, but bury the dead, and purify women after their childbirth:..."

Phillimore also notes⁸ that lecturers came to be appointed as assistants to rectors of some churches, some lectureships being endowed and some supported by voluntary contributions. They too were preachers chosen by the vestry or chief inhabitants, but requiring the licence of the bishop as to qualification and fitness. There is nothing in Phillimore or in the authorities to which he refers to suggest that lecturers were necessarily ordained persons, although many of them no doubt were.. There has therefore long been a constitutional basis for lay preaching which would appear to lie in the lack of theological equivalence, and which also appears to be allowed not only by the continued use of readers but by the s4 formularies through the Act of Uniformity, particularly s15, which reads:

"15. - And ... no person shall be or be received as a lecturer or permitted suffered or allowed to preach as a lecturer or to preach or read any sermon or lecture in any church chappell or other place of publique worshipp within this realme of England or the dominion of Wales and towne of Berwick upon Tweed unlesse he be first approved and

7 *ibid* at 450

8 *ibid* at 444 ff

thereunto licensed by the archbishopp of the province or bishopp of the diocese or (in case the see be void) by the guardian of the spiritualties under his seale ...”

That section obviously applied to non-ordained readers, and the clearest implication from s18 of the Act is that lecturers were not necessarily ordained people either. Section 18 reads:

“18. Provided alwaies ... that att all and every time and times when any sermon or lecture is to be preached the common prayers and service in and by the said booke appointed to be read for that time of the day shall be openly publiquely and solemnly read by some preist or deacon in the church chappell or place of publique worshipp where the said sermon or lecture is to be preached before such sermon or lecture be preached and that the lecturer then to preach shall be present att the reading thereof.”

If it were a requirement that the lecturer be ordained, there would be no need to require a priest or deacon to read the common prayers and service.

The contrast between the two functions of presiding and preaching, as illustrated by their historical treatment and by their treatment in the s4 formularies, is the short answer to any supposed constitutional equivalence, such as might be said to justify the authorisation of lay persons as eucharistic presidents.

There is even a certain arrogance which suggests that preaching can only be performed if authorised by proper (ordained) delegation. Preaching is but the proclamation of the Word. To deny that the laity, other than perhaps in the formal setting of Divine Service, are unable to proclaim the Word of God unless so authorised is to paint a priest-ridden distorted view of the Body of Christ on Earth. It merely demonstrates the essential and fundamental difference, theologically and functionally, between preaching and presiding.

I do not consider that the report of the Board of Assessors is compromised by their reference to the need to provide some alternative *in extremis* (Paragraph 3.3). I do not take the Board to be suggesting that there is or could be an alternative to the provision of sacramental ministry by other than ordained priests. They refer to the possibility of “acting priests” in situations of emergency by analogy with the position of acting judges in the legal profession. But an acting judge is no less a judge than a permanently appointed one. He or she requires the same qualifications, will receive a similar Commission from the Governor and will be required to swear the Oath of Allegiance and the Oath of judicial office. The only difference will be the duration of the appointment. This was one solution which the Board said could be carefully investigated. There may, of course, be others.

Therefore, on the assumptions I have made, the repeal of s10 of the Act of Uniformity and the enactment of authorising legislation, would be contrary to Chapter 1 of the Constitution.

It may be asked why s10 of the Act of Uniformity was necessary, if it had always been a fundamental truth of the Church that only ordained priests and bishops could celebrate the Holy Communion. The answer must be that it was in order to

correct errors of doctrine that had crept in and to provide what at that time was a very substantial penalty for a lay person purporting to celebrate the eucharist, thereby ensuring strict observance of what were the requirements of the Church. It is not unusual for an Act to be merely declaratory of the common law, perhaps reinforcing it with (as in this case) a very substantial penalty for its breach.

Changing the Law - Section 4 of the Constitution

Thus far, I have been dealing only with the question of the effective repeal of s10 of the Act of Uniformity and the authorising of lay presidency on the assumption that if that occurred, the existing formularies, without amendment, would allow deacons or lay persons to preside at the Holy Communion. The question must then be asked whether the assumption to which I have just referred is correct. The Board of Assessors on that topic says this:

“2.3.4 The Board considers that the definitive Anglican formularies authorise episcopally ordained priests to celebrate the Holy Communion, but make no provision whatever for either an episcopally ordained deacon or a lay person to do so.”

Dr Woodhouse agrees that this conclusion is “beyond dispute”. What he does dispute is whether that reflects a principle of the BCP. What does seem to be agreed, however, is that some form of legislation to alter those formularies would be necessary if lay presidency is to occur lawfully.

This means, if I may return to the section 4 analysis, that in order to achieve that objective it would be necessary for the Church to revise its forms of worship (item 4 of the section 4 analysis), and that such revision would necessarily have to be consistent with the Fundamental Declarations (item 5 of the section 4 analysis). Because it would also involve an alteration in, or variation from, the services contained in the BCP or the Articles, it must not contravene any principle of doctrine or worship laid down in the BCP or the Thirty-Nine Articles (Item 7 of the section 4 analysis). In other words, such legislation must pass the test of consistency with s3 and the non-contravention of a principle of doctrine or worship referred to in the s4 formularies.

For reasons which I have already mentioned in relation to the possible repeal of s10 of the Act of Uniformity, such legislation would appear to be contrary to s3 of the Constitution.

As to whether such legislation would contravene a principle of doctrine or worship contained in the BCP or the Thirty-Nine Articles, again the unanimous advice of the House of Bishops and of the Board of Assessors is that it would. Once again, I have no reason to doubt that advice, and I have not been persuaded that it is wrong. Indeed, it is not surprising in view of their advice about Chapter 1. It would be surprising if a principle of doctrine or worship contained in the BCP were inconsistent with section 3.

The rubrics themselves of the BCP are somewhat equivocal and seem to use the expressions “minister”, “priest” and “curate” interchangeably in the service of Holy

Communion and indeed in some of the other offices, including Morning and Evening Prayer. As the House of Bishops points out, the strongest indication available that the s4 formularies reflect a relevant principle of doctrine and worship is to be seen from the Ordinal and, particularly, the preface to the Ordinal. Among other things it says:

“No man shall be accounted or taken to be a lawful Bishop, Priest or Deacon in the Church of England, **or suffered to execute any of the said functions**, except he be called, tried, examined, and admitted thereunto, according to the Form hereafter following, or hath had formerly Episcopal Consecration or Ordination.”

It was well known to the authors of the BCP and the Ordinal that it would be enforced by an Act of Uniformity, as had been the case with the Book of 1559 in the reign of Elizabeth I. That indeed was the principal purpose of the Act of Uniformity of 1662. The recitals to that Act also make it clear that its purpose was to overcome the refusal to use the previous book and that it was designed to correct, because of “the great and scandalous neglect of ministers in using the said order or liturgy so set forth (in the book of 1559) and enjoined as aforesaid great mischeifs and inconveniencies during the times of the late unhappy troubles have arisen and grown and many people have been led into factions and schismes to the great decay and scandall of the reformed religion of the Church of England and to the hazard of many souls”. The writing and understanding of the BCP and the Ordinal cannot be divorced from the turmoil which gave birth to it and the fact that non-ordained persons had been consecrating and administering the sacrament - a fact clearly recognised and forcefully corrected by the provisions of s10. It was so much a principle of doctrine or worship laid down in the BCP and the Ordinal that the Holy Communion should be celebrated by a bishop or priest that s10 of the Act required its observance on pain of substantial forfeiture. That an integrated statutory force was recognised in the Book itself can be seen in the rubric following the Nicene creed:

“Then the Curate shall declare unto the people what Holy-days, or Fasting-days, are in the week following to be observed. And then also (if occasion be) shall notice be given of the Communion; and Briefs, Citations, and Excommunications read. And nothing shall be proclaimed or published in the Church during the time of Divine Service, but by the Minister: nor by him anything but what is prescribed in the Rules of this Book, **or enjoined by the Queen**, or by the Ordinary of the place.”

In similar manner the BCP reflected a doctrine or principle that non-ordained (but licensed) persons could preach. I have already quoted section 15 of the Act relating to the authorisation of preachers.

The case against there being a principle of doctrine or worship which does not prevent lay presidency, as I understand the argument, is that the BCP demonstrates that priests are to celebrate the Holy Communion, but it does not say that only they may celebrate. If the BCP contemplated that others could do so, in my opinion it is odd that nothing is said in or implied from the Book or its rubrics or the accompanying Act that they can do so. If anything, the clearest implication is in the other direction.

Whilst the Articles do embody some of the principles of doctrine and worship⁹, they are not the only source, and I cannot accept that the question of who may celebrate the Eucharist is merely a subsidiary rule or practice.

Article 23 does not, in my opinion, detract from the principle of doctrine or worship reflected in the s4 formularies. It reads as follows:

"23 Of Ministering in the Congregation

It is not lawful for any man to take upon him the office of publick preaching, or ministering the Sacraments in the Congregation, before he be lawfully called, and sent to execute the same. And those we ought to judge lawfully called and sent, which be chosen and called to this work by men who have publick authority given unto them in the Congregation, to call and send Ministers into the Lord's vineyard."

That article merely requires that there be some public authorisation for both preaching and administering the Sacraments. It is consistent with that article for the BCP and the Ordinal to lay down a principle of doctrine or worship that goes further and says by whom and in what manner a person who ministers the Sacraments must be authorised. That is also on the assumption that "ministering" the Sacraments means, in the case of the Holy Communion, celebrating it. However, although it is not free from doubt, that may not be the meaning which that word has in that Article. The Board of Assessors argue that there may be a sense in which the Article uses that word as meaning no more than distribution or delivery of the sacrament. That has some support from some of the definitions of "minister" and "ministration" in the Macquarie Dictionary, which suggest that in the sense in which it is used it may amount to no more than delivery or distribution, particularly where it is accompanied by the words of distribution.

I also accept that the BCP recognizes that from time to time and from country to country there will be differences in ceremonies and the manner of performing them.¹⁰ But I cannot accept that that principle goes as far as altering the fundamental nature of the respective functions of the priest and the lay people in those ceremonies.

I understand the question referred to the Tribunal to be asking whether the authorisation of lay presidency is consistent with the Constitution as it presently stands. I have considered that it would be contrary to both Chapter 1 and section 4. Of course, if it is only contrary to section 4, that section can be changed in such a way as to allow the practice to occur. But the same cannot be said of section 3.

Answer to Question 1

For the reasons I have given, in my opinion the answer to both parts of Question 1 must be "No".

9 Especially in this context, Articles 28, 30 and 31.

10 Preface to the BCP, "Of Ceremonies".

Question 2

In the light of my answer to Question 1, an answer to Question 2 is not necessary. If, however, I am wrong or in a minority in that answer, then, in my opinion, the answer to question 2 must also be "No". I have nothing to add to the reasons given by Justice Young in that respect.

I would not want it to be thought that I am not acutely conscious of the needs and aspirations of Christian communities who are remote from the available services of an ordained priest. That presents a significant challenge to the Church, particularly in rural Australia and, indeed, in countries where the Church is rapidly expanding. I believe that the answer is not to compromise the essential functions of a priest but to preserve the order by restricting presidency at the eucharist to episcopally ordained persons, and at the same time to develop different emphases or models for the other or peripheral functions which allow perhaps for less than full-time employment as priests.

THE ANGLICAN CHURCH OF AUSTRALIA - APPELLATE TRIBUNAL

**REFERENCE CONCERNING DIACONAL/LAY PRESIDENCY
AT THE CELEBRATION OF THE HOLY COMMUNION**

REASONS OF THE ARCHBISHOP OF ADELAIDE

THE REFERENCE

I adopt the understanding of the questions and history of the referral as set out by the President of the Appellate Tribunal.

I accept the definitions of the terms "preside at", "celebrate", "to administer" as set out by Justice David Bleby, and that they are interchangeable.

It seems agreed that at this stage it would not be lawful for any deacon or lay person to preside at, administer or celebrate the Holy Communion. It is agreed that historically this has been the case for at least 1600 years.

However, the question before us in 1 (a) and 1 (b) is whether it is possible under the existing Constitution of the Anglican Church of Australia to permit or authorise, or otherwise make provision for deacons and/or lay persons to do so.

ANSWERS

My answers to the questions are:

- 1 (a) No
- 1 (b) No
- 2 No

THE BACKGROUND

Section 3 of Chapter 1 of the Constitution (Fundamental Declarations), which is unalterable, (without returning to parliament for amendment) makes it clear that the Anglican Church of Australia is committed to preserving the three orders of bishops, priests and deacons in the sacred ministry. The Diocese of Brisbane has submitted that Chapter 1 of the Constitution "is a broad fundamental statement of the Christian Faith, generally acceptable to any mainline Christian denomination".

To what are we as Anglicans committed? The President has given close attention to this and I respectfully adopt his words: "The injunction imposed by S.3 of the Constitution to preserve the orders ... cannot be obeyed if an essential power committed to one order is conferred on another."

The President goes on to refer to the Judgments of Archbishop Donald Robinson and Archbishop Keith Rayner in 1987, who agreed that the three orders of ministry have apostolic status. This is not just a matter of function although it is true, as Mr Justice Young points out, that the functions have changed somewhat over the centuries. I agree with Justice Bleby, that these changes have been “peripheral” or matters of “emphasis”. One function, however, appears to have been unchanged “since time immemorial” and this is the role of bishop or priest as exclusive celebrant at the eucharist.

Justice Bleby has also reminded us of the Opinion of this Tribunal of 1985, concerning the Ordination of Women, where the Archbishop of Adelaide, the Bishop of Newcastle, Mr Justice Tadgell and Mr Justice Young said: “For the orders to be preserved it is necessary to preserve more than their names. Their essential functions and their relationships with one another also need to be preserved.”

It is hard to imagine anything more consistently central to the nature of priesthood than presiding at the Holy Communion, even though, as the Rev’d John Woodhouse has submitted, that is not as a “sacrificing” priest in the Old Testament sense.

Chapter 2 (Ruling Principles) represents the particular Australian Anglican development of the general principles outlined in the Fundamental Declarations, as the Board of Assessors points out. Section 4 makes it clear that the Anglican Church of Australia not only retains but approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer, together with the form and manner of making, ordaining and consecrating of bishops, priests and deacons (as well as the Thirty-Nine Articles).

It is true that Section 4 gives the Church plenary authority to make statements as to faith, ritual, ceremonial or discipline and to order its forms of worship and rules of discipline and alter them in any way that is consistent with the Fundamental Declarations.

The proviso makes it clear that the Book of Common Prayer and the Thirty-Nine Articles constitute the authorised standard of worship and doctrine in this Church. It is reasonable to assume that the Ordinal is included in that particular basis as Mr Justice Young pointed out in his 1987 Opinion concerning the Ordination of Women to the Office of Deacon Canon, 1985.

REASONS

In my opinion, legal and theological matters are inextricably intertwined in the Constitution. In other words, the Constitution has given legal expression to theological propositions accepted by the tradition of our Church. I accept the view of the Board of Assessors that the present questions relate to “a matter involving doctrine”.

The submission by the House of Bishops maintains that the Book of Common Prayer 1662, (including the Ordinal) makes it clear that the Prayer of Consecration in the Holy Communion Service is restricted to an ordained priest. That was given statutory authority by the Act of Uniformity of 1662. Whether that Act continues in force in relation to the Anglican Church of Australia is a question which has been pursued by Justice Bleby in an interesting discussion. There is no doubt he is right in

saying that "it was well known to the authors of the BCP and the Ordinal that it would be enforced by an Act of Uniformity".

In my view, an understanding of priesthood is vital to the proper determination of this reference. It is to this that I address the remainder of my reasons. A full understanding of the complex nature of the priesthood as it is understood in the Anglican tradition leading up to 1662 makes it clear, I suggest, that the central and symbolic role of president at the eucharist could not, according to our Constitution and formularies, be delegated to a deacon or lay person without legislative change to the Constitution.

THE COMPLEX NATURE, CHARACTER, ROLE AND FUNCTION OF THE PRIESTHOOD

It is not adequate to suggest that eucharistic presidency is recognised as a delegation by the worshipping community itself of the priesthood of the people of God to the presbyter/priest overseer. This is a significant depreciation of the traditional role and nature of priesthood and is a very modern assertion. A true understanding of priesthood as underlying Anglican formularies is a great deal more complex. The passages which follow in quotation come from a cross-section of history and read with a somewhat sexist flavour to our ears.

The power of blessing and absolution

Leslie Paul says (*The Payment and Deployment of the Clergy*, CIO, London, 1964, P 90)

"The clergy is also the *sacred* ministry. The service of ordination is the gift of the Holy Spirit in the laying-on of hands. 'Receive the Holy Ghost for the office and work of a Priest in the Church of God, now committed unto thee by the imposition of our hands. Whose sins thou dost forgive, they are forgiven; and whose sins thou dost retain, they are retained.' Whether the laying on of hands is *symbolic* of the transmission of divinely granted power from the first Pentecost or is the means of it might be argued. The plain words of the ordinal speak of a real committal, not a symbolic one. The powers conferred in ordination to the priesthood are mighty and holy powers if one accepts that here the priest acts in the name of, and by authority of, Christ. The candidate is, in the words of the bishop, ordained to 'the same office and ministry appointed for the salvation of mankind' as that to which the first apostles, prophets and evangelists were appointed. The only meaning which can be attached to these words and acts is that the priest is a man set apart by God; and that ordination intends this meaning is shown by the ban on certain other callings as dangerous or injurious to the ordained man: a man's life from this moment on is limited and disciplined by his new status."

The power of blessing and absolution is appropriately combined with presidency at the eucharist.

The early Church

It is agreed that in the early Church, perhaps even to sub-apostolic times, there was a great diversity of roles and offices within the Christian community. It is, however, conceded that by the third century at the latest a great deal of crystallisation had taken place and that bishops, presbyters and deacons were clearly key officers of the Church probably associated with a continuing range of charismatic ministries. From as early as Ignatius of Antioch (c 110) we have a strong statement that the bishop is the prime celebrant of the Eucharist (or one to whom the bishop might delegate). The principle needed reiteration. Innocent III, Bishop of Rome (1198-1216), wrote in 1208:

“We firmly believe and confess that nobody, however honest, religious, holy and prudent he may be, either can or should consecrate the Eucharist ... if he is not a priest regularly ordained by a bishop, visible and tangible.

(*The Anglican Tradition - A Handbook of Sources*, ed G R Evans and J Robert Wright, SPCK, 1991, P 104)

The “porrectio”

The central eucharistic role of the priest was emphasised up until the Reformation by the handing over of the chalice with wine and the paten with the bread at ordination. The delivery of such “*porrectio instrumentorum*” is still part of the ordination rite in many Anglican dioceses today. The Council of Florence decreed in 1439:

“The sixth sacrament is that Order. It’s matter is ... that handing over by which the Order is conferred; thus the presbyterate is conferred by handing over the chalice with wine and paten with the bread; the diaconate by giving a book of the gospels; the subdiaconate by handing over the empty chalice covered with an empty paten; and similarly the other Orders by assigning the things pertaining to their office.”

(*The Anglican Tradition*, P 124)

“Indelibility” of Orders

The phrase “indelibility of ordination” is no longer fashionable today but it was well known to people like Richard Hooker who wrote in 1597 (*Ecclesiastical Polity*, Book 5, LXXVII, 1-3):

“The ministry of things divine is a function which as God did himself institute, so neither may men undertake the same but by authority and power given them in lawful manner ... They are therefore ministers of God, not only by the way of subordination as princes and civil magistrates whose execution of judgment and justice the supreme hand of the divine providence doth uphold, but ministers of God as from their authority is derived, and not from men. For in that they are Christ’s ambassadors and his labourers, who should give them their commission but he whose most inward affairs they manage ? ... to whom Christ hath imparted power both over that

mystical body which is the society of souls, and over that natural which is himself for the knitting of both in one; (a work which antiquity doth call the making of Christ's body): the same power is in such not amiss termed a kind of mark or character and acknowledged to be indelible. Ministerial power is a mark of separation, because it severeth them that have it from other men, and maketh them a special order consecrated unto the service of the Most High in things wherewith others may not meddle. ... They which have once received this power may not think to put it off and on like a cloak as the weather serveth, to take it, reject it and resume it as often as themselves list, of which profane and impious contempt these later times have yielded as of all other kinds of iniquity and apostasy strange examples; but let them know which put their hands unto this plough, that once consecrated unto God they are made his peculiar inheritance for ever."

(The Anglican Tradition, P 183-4)

The 'official Ministry' and the Ministry of Christ

In 1938 the Doctrine Commission of the Church of England produced its long-awaited statement on "Doctrine in the Church of England". In regard to this matter it says:

"The fundamental Christian Ministry is the Ministry of Christ. There is no Christian Priesthood or Ministry apart from his. His priestly and ministerial function is to reconcile a world to God in and through Himself, by His Incarnation and by His 'one sacrifice once offered', delivering men from the power of sin and death. The Church as the Body of Christ, sharing his life, has a ministerial function derived from that of Christ. In this function every member has his place and share according to his different capabilities and calling. The work of the Church is to bring all the various activities and relationships of men under the control of the Holy Spirit, and in this work each member has his part. The particular function of the official Ministry can only be rightly understood as seen against the background of this universal Ministry. The Church on the day of Pentecost is set before us in the book of the Acts of the Apostles as a body of believers having within it, as its recognised focus of unity and organ of authority, the Apostolate, which owed its origin to the action of the Lord Himself ... From the first there was the fellowship of believers finding its unity in the Twelve. Thus the New Testament bears witness to the principle of a distinctive ministry, as an original element, but not the sole constituted element, in the life of the Church. This fact is of great importance in any consideration of the relation which should subsist between the ministerial Body of Christ and the Ministry which is its organ for the performance of certain distinctive and characteristic acts. The Ministry, then, is to be regarded as an original and essential element in the Church ... whether or not the succession of the Ministry as known from (at latest) the end of the second century can be traced through

all its stages to the Apostles, yet the Ministry exists in succession to the original Apostolate. The ministry does not exist apart from the body, nor the body apart from the ministry. But Christ, in drawing men to Himself, unites them in a fellowship of which the Apostolate, which he appointed, and the ministry, which is its successor, are the ministerial organs." (PP 114-115)

The report goes on at Page 119:

"It is essential to the idea of the ministry which leads that worship that it is an organ of the whole Church, not of a single group or congregation. Further, since it is a function of the ministry thus to be a symbol and effective instrument of the unity of the Church, it is appropriate that it should be constituted by a rite of ordination having an agreed, universal, and traditional character."

THE ORDINATION RITES

When looking at the English rites of ordination from the middle of the sixteenth century onward, it is notable that by comparison with the medieval rites which portrayed the priesthood primarily in cultic and sacrificial language, the Anglican services stress the ministry of the word and of pastoral care. It is even more interesting in that context that the word "priest" is retained in significant places, especially at the Prayer of Consecration in the Eucharist.

The Preface to the 1550 Ordinal underscored the importance of the wider Church in saying that "No man by his own private authority might presume to execute" any of the offices of bishop, priest or deacon. It is clear that the new Anglican Ordinal did not envisage ordination as simply delegation of authority by the local congregation. In retaining episcopal ordination Anglicanism sought to retain a ministry "rightly, orderly, and lawfully consecrated and ordered" (Article XXXVI), that is, a ministry "chosen and called to this work by men who have publick authority given unto them in the Congregation, to call and send Ministers into the Lord's vineyard." (Article XXIII).

The Reformation Ordinals omitted the *porrectio instrumentorum* expressing a specific determination to eliminate sacrificial language which in medieval times had become crude indeed. But that is not the issue before us, although our richer understanding is presented by the Church of England House of Bishops in their recent publication "Eucharistic Presidency" to which I will return.

The 1662 Ordinal describes the responsibility of the clergy as "weighty". Every bishop, priest and deacon understands that. But the expectations of the priest are extraordinarily diverse and taxing. The priest is expected to be leader at public worship, preacher, celebrant of sacraments, pastor, catechist, clerk, officer of law and order, almoner, teacher, officer of health, and politician. (Anthony Russell, *The Clerical Profession*, SPCK, 1950, PP 28-41)

According to Professor O C Edwards, JR, (*The Study of Anglicanism*, ed by Stephen Sykes and John Booty, SPCK, 1988, P 343):

"The Ordinal ... implies an understanding of the universe and the place of human beings in it. God created the world so that human beings can enter into a relationship with him and enjoy the blessings that he has prepared for them both here and hereafter. The purpose of human life is to enter into that relationship; the only real good consists in doing so and in final evil consists in failing to do so. Clergy exist in order to assist people in entering and remaining within that relationship. Thus they are of vital importance to the whole human enterprise. It is this which makes their office in charge 'weighty'."

The level of responsibility placed upon the clergy is massive. They are indeed responsible for the eternal salvation of all within their area and cure.

Whether the priest of today would see himself or herself in the same mould is a good question. However, that is not our concern in this context. What is vitally important is for us to have an understanding of the meaning and nature of priesthood as understood in 1662 and indeed in the Anglican tradition from its earliest times before it.

There has been a revival of the recognition that the eucharistic memorial can be spoken of as a sacrifice "in the sacramental sense, provided that it is clear that this is not a repetition of the historical sacrifice." (ARCIC Final Report, P 20). This is so "Because the eucharist is the memorial of the sacrifice of Christ, the action of the presiding minister in reciting again the words of Christ at the last supper and distributing to the assembly the holy gifts is seen to stand in sacramental relation to what Christ himself did in offering his own sacrifice. So our two traditions commonly use priestly terms in speaking about the ordained ministry." (ARCIC P 35).

This has reminded us of a tradition in Anglican thought which at least from the Caroline Divines has maintained that eucharistic elements are offered to God by the priest as a commemorative sacrifice. A recent Church of England report, "The Priesthood of the Ordained Ministry" (1986) has placed significant emphasis on this tradition and has shown that it has been a consistent presence in Anglicanism from the Caroline period. This, of course, pre-dates the Book of Common Prayer of 1662.

The Anglican-Reformed Dialogue Report "God's Reign and our Unity" (London, 1984) argues that "'priests exercise' their priestly office neither apart from the priesthood of the whole body, nor by derivation from the priesthood of the whole body;" (P 79) The ARCIC final report on "Ministry and Ordination" (The Canterbury Statement) proposes that ordained ministry "is not an extension of the common Christian priesthood but belongs to another realm of the gifts of the Spirit." (P 36)

ANGLICAN PRIESTHOOD THROUGH THE CENTURIES

I have been greatly assisted by Professor J Robert Wright, the St Mark's Church in the Bowerie Professor of Ecclesiastical History at the General Theological Seminary, New York City. Professor Wright is writing in "A Speaking Life: The Legacy of John Keble" (ed by Charles R Henery, Grace Wing, Fowler Wright Books, Leominster, 1995). Professor Wright, writing on "The Priest in Anglicanism" maintains (and I

think successfully) that the beginnings of Anglicanism go right back to the earliest days of the Church in England. After looking at eleven classic examples of the priesthood from the days of St Alban until the late nineteenth century, he maintains that there is a "consistency and even unity of Anglican doctrine about priesthood, expressed of recent centuries in the Prayer Book or Ordinal, that underlies the diversity of persons who have been ordained to it and makes sense of the plurality of evidence that survives." (P 87)

In articulating that underlying unity he describes five models of priesthood and then considers the way in which they are interrelated through the centuries coming to a number of conclusions to which I shall refer later.

When Wright looks at the presbyters and their origins, he notes that the Greek word "presbyteros" is the origin of our English word "priest" and points out that there are similar shortened forms in Spanish, French, Italian, German and Dutch. Furthermore, the classical ordination rites for the western Church, be they Roman Catholic or Anglican, use the Latin form "presbyter", namely presbyterate, for priests, rather than "hiereus", the Greek word for the old temple priesthood. Dr Woodhouse has called attention to the confusion that the use of the two Greek words has caused, in the past, but this does not really appear to be a problem in this context.

Professor Wright says:

"One of the agreed conclusions of historical investigation and theological discussion emphasised as a cardinal point in the Canterbury Statement of the Anglican-Roman Catholic International Commission, is the fact that this ... sort of priesthood, the ordained presbyterate, as it inheres in the Roman and Anglican Churches today (and, we could add, in the Orthodox Churches as well), belongs to a different 'realm of the gifts of the Spirit' from ... the priesthood or priestly nature of the whole church, prophesied in Exodus 19:5-6, and in Isaiah: 6. "Presbyteroi", that is to say, do not derive their priesthood, their priestliness, from the "hierateuma" of the whole church (even though they remain a part of it and in this sense partake also of its meaning), but rather their priesthood comes from being a Christian version, so to speak, of the Old Testament presbyterate. The common priesthood of the faithful and the ordained or hierarchical priesthood 'differ from one another in essence and not only in degree,' as the Second Vatican Council's Dogmatic Constitution on the church, "Lumen Gentium" (Section 10) puts it. In contrast to the Anglican tradition, it has been remarked, the churches of the complete Reformation generally came to equate these ... sorts of priesthood, to reason from the priesthood of all believers, that is from the priestly nature of the whole church, to the conclusion that every individual believer is therefore a priest. The churches of the complete Reformation, but not Anglicanism, thus came to define the ordained priesthood (the ordained presbyterate) as being simply a particular extension of the priesthood (hierateuma) of all believers, rather than a conferral of the presbyterate, and in this way the scriptural terminology was confused and the distinction

between ... types of priesthoods was blurred. It is with this ... sort or type of priesthood, though, that the Anglican doctrine of priesthood really begins, and I believe that it is this doctrine that is mirrored in John Keble's insistence upon the necessity of episcopal ordination, rather than presbyteral, for the conferral of priesthood in the Church of England." (P 94)

Professor Wright goes on to another fifth kind of priesthood and this is the application of the priesthood of Christ to the one that we have been discussing, the ordained presbyterate, in order to serve the priesthood of the whole Church. Only in this way, he says, can we comprehend the full doctrine of the priest in Anglicanism.

This begins with the writers of the early Church in applying the Greek word 'hiereus' (or its Latin equivalent 'sacerdos') to describe ordained Christian presbyters. This happens by the early third century AD.

The imagery of the unique priesthood of Christ as well of some of the connotations of other sorts of priesthood come eventually to be applied by analogy to the Christian presbyterate. As Professor Wright says:

"in this way there soon evolves a uniquely Christian version of the Old Testament presbyterate." (P 95) He cites many examples of this usage."

How did this happen ? Professor Wright suggests:

"The Last Supper of Jesus with his disciples (in a pre-resurrection sense, the first Eucharist) probably coincided with the celebration of a Passover meal and at least shared many of its features. The one who first presided was Jesus himself, but as these meals continued after his death and resurrection the presiding officers very soon came to be the Christian bishops, or 'episkopoi', and then the presbyters or 'presbyteroi' ... whom they appointed. St Ignatius of Antioch ... writes to the Smyrnaeans in the early second century: 'You should regard that Eucharist as valid which is celebrated either by the bishop or by someone he authorises.' But the eucharists that grew out of the Last Supper, which were quite different from the spiritual sacrifices of holy lives that all Christians as members of the priestly community called the church ... were supposed to be leading, commemorated not only the original Passover of the Old Testament but also, for Christians, the final sacrifice of Jesus himself, both priest ... and victim. Thus, by a sort of assimilation, or by a 'sacramental relation' as the Canterbury Statement puts it or even by means of what we might call 'analogy' ... the ordained Christian minister, the 'presbyteros', and of course even earlier the bishop, came in time to be called a 'hiereus' as he was to be seen to be standing in the place of Christ." (PP 96-7)

Professor Wright maintains that this understanding of the ordained presbyterate "safeguards the ordained priest today from being seen simply as an elder, a senior official who has no commission directly from Christ and no responsibility directly to

him, both of which safeguards are implied in the church's application of the term 'hiereus' to the presbyter, in its use of priestly language for its ordained ministers." (P 97)

So the Canterbury Statement of the Anglican-Roman Catholic International Commission says:

"Despite the fact that in the New Testament ministers are never called 'priests' (hiereus), Christians came to see the priestly role of Christ reflected in these ministers and used priestly terms in describing them. Because the Eucharist is the memorial of the sacrifice of Christ, the action of the presiding minister in reciting again the words of Christ at the last supper and distributing to the assembly the holy gifts is seen to stand in a sacramental relation to what Christ did himself in offering his own sacrifice. So our two traditions commonly use priestly terms in speaking about the ordained ministry." (Para 13)

Richard Hooker had already said it:

"The Fathers of the Church of Christ with like security of speech call usually the ministry of the Gospel *Priesthood* in regard of that which the Gospel hath *proportionable* to ancient sacrifices, namely the Communion of the blessed Body and Blood of Christ, although it have probably now no sacrifice." (quoted Wright, Op.cit.P.98)

To sum up, Professor Wright says (P 100):

"such priests do not cease to be laity once they are ordained, and they act *in persona ecclesiae* in the leadership of the Church's prayers as well as in other functions; but their function as representative of the laity does not exhaust that which is conferred upon them sacramentally at ordination."

He goes on (P 101):

"In this way, then, the eucharistic celebration, certainly in the great thanksgiving if not already in the offertory, makes a public and powerful visual statement of the consistent doctrine of priesthood that follows the tradition of earlier Anglican Prayer Books begun in 1549 by causing the priest ... to appear and function here as an icon or image of Christ. This dual role of the priest in the eucharist was well expressed by the 1976 Moscow Statement of the International Anglican-Orthodox Joint Doctrinal Commission:

"The celebrant, in his liturgical action, has a two-fold ministry: as an icon of Christ, acting in the name of Christ towards the community and also as a representative of the community expressing the priesthood of the faithful.'" (Para. 27)

It might finally be noted in this section that the Chicago-Lambeth Quadrilateral of 1886-88, adopted as the basis for ecumenical dialogue by the entire Anglican Communion, is committed to the legitimacy of a range of post-scriptural developments which included the fixed canon of scripture, the Apostles' and Nicene Creeds, a sacramental understanding of baptism and eucharist, and the three-fold orders of ministry. This is exactly what has been picked up in the Fundamental Declarations in Chapter 1 of our Constitution. The nature, character, role and function of a priest in this context is far too complex to be allowed to be exercised by a person who has not been "called, tried, examined, and admitted to this central role by episcopal ordination".

"MINISTERIAL PRIESTHOOD"

Professor R C Moberly in his classic volume *Ministerial Priesthood* (1897 - 2nd ed. 1910, reprinted SPCK, London, 1969) used St Paul's classic image of the Church as the Body of Christ. In seeking to understand the relation between the ordained ministry and the laity he pointed out that the ordained are "organs of the Body through which the life, inherent in the total body, expresses itself in particular functions of detail." (P 68).

In discussing the question "What is priesthood in the Church of Christ?" he makes many memorable statements. One or two are particularly apposite for our concern. In discussing the strong influence of Bucer upon Cranmer and the English reformers Moberly notes that in 1549 if Cranmer had been swayed by these opinions the Ordinal would have been quite different and that appointment to an office of bishop or priest would probably have been sufficient. (P 235). This gives some insight to the reasoning for Cranmer's continuance of the word 'priest' in the early Anglican books of Common Prayer. Moberly says:

"They are Priests because they are personally consecrated to be the representatives and active organs of the priesthood of the Church. And they represent it emphatically in both of its directions. In the ceremonial direction they represent it as divinely empowered to be themselves its leaders and instruments. And from this representative leadership in all external enactment of worship and sacrament - itself no mean privilege and responsibility - I apprehend that it follows also, on the inward and spiritual side, that those who outwardly represent the priesthood of the Church must no less specially represent it in its true inwardness. The priest is not a priest in the act of divine worship only. His personal relation to the priestliness of the Church is something which has been conferred on him once and for all, and which dominates everything that he does, or is." (PP 259-260)

He goes on:

"There are not only priestly functions, or priestly prerogatives: there is also a priestly spirit and a priestly heart - more vital to true reality of priesthood than any mere performance of priestly functions ... those who are ordained "priests" are bound to be eminently leaders and representatives of this priestliness of spirit, and they have assigned to them an external sphere and professional duties which constitute a special opportunity, and a charisma of

grace which constitutes a special call and a special capacity, for its exercise. ... Leadership in Eucharistic worship, truly understood, is its highest typical expression, the mystical combination of its executive privilege; but Eucharistic leadership, truly understood, evolves many corollaries of spirit and life - the bearing of the people on the heart before God; the earnest effort of intercessory entreating; the practical translation of intercession into pastoral life, and anxiety, and pain. Things like these are necessary elements in that inwardness of spirit which should correspond to and explain the outward dignity of executive function; and apart from which the outward dignity of executive function, even in its highest point of mystical reality, is as the shell or the shadow, the outward presentment and image, the technical enacting - not the true heart - of Christian priesthood.

It is necessary, then, to emphasise unreservedly the truth that the priesthood of ministry and of laity are not really antithetical or inconsistent, but rather correlative, complementary, nay mutually indispensable ideas." (PP 261-2)

Again, Moberly says:

"And what is it that the Anglican Ordinal does ? It fixes the eye, first and foremost, just as St Paul in the New Testament does, upon the thought of the self-dedication and surrender, the pastoral responsibility, the service of the flock, the cure of souls - the life-absorbing inner and spiritual relation - in which, and of which, 'administration of sacraments' comes in as the highest method, the culminating point of executive privilege and power."

EUCCHARISTIC PRESIDENCY (The 1997 Statement of the House of Bishops of the General Synod of the Church of England)

The recently produced theological statement by the House of Bishops of the General Synod of the Church of England, entitled "Eucharistic Presidency" (1997) is also very helpful in this area. It says,

"The impropriety of lay presidency at the eucharist was largely taken for granted during the period of the English Reformation and subsequently in the Church of England until the 1970s." (1.7)

It points out that the Anglican Consultative Council Meeting in 1987 declared that 'The Anglican tradition of priests presiding at the eucharist should continue to be upheld at this time.' (1.26)

The Lambeth Conference of 1988 noted the 'received tradition that the President at the Eucharist should be a Bishop or Presbyter'. (1.26)

Later the statement reads:

"It is clear that the ministry of leadership is not regarded as a human invention but a gift of God to his Church." (3.12).

Priesthood as God's gift to the Church

While it is clear as the statement says (3.21) "That ordination takes no-one 'out' of the laity" it is also true as the report 'The Priesthood of the Ordained Ministry' of the Faith and Order Advisory Group of the English General Synod stated in 1986:

"The special ministry is ordained to speak and act in the name of the whole community. It is also ordained to speak and act in the name of Christ in relation to the community. Its authority and function are therefore not to be understood as simply delegated to it by the community. Consequently, insofar as its ministry is priestly, its priesthood is not simply derived from the priestliness of the community. Rather the common priesthood of the community and the special priesthood of ordained ministry are both derived from the priesthood of Christ. Bishops and presbyters do not participate to a greater degree in the priesthood of Christ; they participate in a different way – not that is as individual believers, but in the exercise of their office. Thus theirs is not a magnified form of the common priesthood; the difference is this, that their ministry is an appointed means through which Christ makes his priesthood present and effective to his people." (Para 42)

Article XXVI reminds us that ministers of word and sacrament do so 'not ... in their own name, but in Christ's and ... by his commission and authority.'

The character of priesthood and the universal Church

In 3.29 the report says:

"Those who are ordained do not stand apart from the Church community; rather, those who are to be ordained are called from within the community, and are then returned to serve within that community, though standing in a new relationship to it. This is not to be understood simply in terms of the community of a particular locality. ... At ordination a minister is set in a distinctive relationship with the Church as a whole, and this is a permanent relationship, signified by the use of the traditional term *character*. He or she will also be licensed to exercise his or her ministry in a particular locality and within certain limits, thus giving expression in the local community to this ministerial relationship to the whole Church, but though this licensing is included in ordination, it is not itself ordination."

The priest as a leader and focus of unity

The report goes on to stress the responsibility of the ordained minister as leader in fostering the unity-in-diversity which we believe God seeks to bring about in his Church for the sake of the world. So to the leader is to be a focus of unity for the particular congregation(s). The leader speaks and acts in the name of Christ but also for the community. (3.32) The ordained ministers have clearly a responsibility to be 'a wholesome example of (and to) the flock of Christ.' The ordained person is to foster habits of lifestyle, prayer, penitence, self-criticism and self-awareness which

will open up ways for others to share more fully in God's holiness. (3.33) The ordained person carries the authority to act representatively not only for a particular community or communities but for the Church universal in the ways proper to that particular office. Thus God's call to ordination is testified and corroborated not only by the local congregation(s) but by the whole Church in the person of the bishop: those to be ordained are to be received by the Christian community of a locality and also by the bishop acting in the name of the universal Church.

The priest as teacher and missionary

Finally the ordained person represents the Apostolic nature of the Church in maintaining the teaching of the Apostolic Church under the guidance of the bishop.

Furthermore, the ordained have a particular responsibility to ensure that the Church is true to its missionary calling into and for the sake of the world as part of its Apostolic vocation. (3.35 and 3.37)

The president and sacrifice in the eucharist

In the section on The Eucharist, the Church and eucharistic presidency, the statement builds on the Trinitarian understanding of God and the Church developed earlier and develops the concept of Christ's true presence in the eucharist not only sharing his risen life with us but uniting us with himself and his offering to the Father, the one, full, perfect and sufficient sacrifice which he alone can offer and has offered once for all. It is this rich concept of sacrifice building upon our grateful response to Christ's sacrifice at Calvary and embracing our self-offering of ourselves which is truly the complex function at which the president presides. This is not only an expression of our corporate fellowship with one another but formative of it. As the report says: 'We can say that the eucharist makes the Church visible.' (4.10) The statement also says much about the role of the spirit. It says (4.12):

"In the eucharist, the spirit reconstitutes the Church: when we share this feast the spirit, anticipating the final communion of all things with the Triune God, repeatedly constitutes our communion with Christ and the Father and our communion with others who are one with Christ."

This is the ultimate and central act of Christian faith and worship.

Looking at history

While it is agreed that some degree of leadership in worship was necessary from the outset of the Christian community and that probably the leader of worship reflected something of the role of the ruler of the Synagogue there was undoubtedly a wide range of elders who took part in the leadership of worship. It was not, however, says the statement, open to anyone. 'All this would suggest that the presidency of the eucharist was not left to anyone; it is more likely it was undertaken by those who were the leaders of a particular gathering.' (4.23)

However, by the end of the first century, it was clear that the crystallisation process had set in and leadership in worship was already in some minds to be confined to bishops and presbyters, although Hippolytus (c.215) envisages bishops but also allows 'confessors'. It is likely, however, that the common thread was a link between oversight of the community and presidency of the eucharist. (4.25) Later

developments saw an increasing emphasis on the 'office' to which a particular person was appointed. The presidency of all liturgical assemblies was entirely taken over by the bishop and he became chief minister of word and sacrament. By the fourth century, the bishops began to delegate local pastoral functions and undoubtedly liturgical functions to local presbyters. This led to a clericalisation which the Reformation was designed (inter alia) to change.

For Luther the only distinction between priest and laity was that of 'office' or 'function' and the 'work' or 'responsibility' with which they were entrusted. Ordination is not about status or a change of 'being' (4.34) The Anglican Ordinals picked up much of this concern but retained the word 'priest' for the second order of ministry, 'partly out of respect for tradition, partly out of a concern to distinguish the second order of minister from the third, partly toward the implications of a Presbyterian form of government, and on the understanding that 'priest' was an equivalent term to the Greek *presbuteros* (presbyter). The use of the word 'priest' has been retained by the Anglican tradition in common with a larger part of Christendom.' (4.41)

The statement comes to some important conclusions 'If we take seriously the Eucharist as the feast at which the whole people of God are the celebrants, the president's role is not to do something instead of the people, but (as Cranmer was so keen to stress) *to ensure that the whole people together properly celebrate the sacrament.* The president's role is not simply to lead the service but to lead in the service – that is, to enable the people to fulfil their vocation on this occasion as Christ's body sharing in Christ's priesthood.' (4.43)

The president's role

This places an enormous responsibility upon the president. 'Accordingly, we would suggest that the *eucharistic president is to be a sign and focus of the unity, holiness, catholicity and apostolicity of the Church, and the one who has primary responsibility for ensuring that the Church's four marks are expressed, actualised and made visible in the eucharistic celebration.*' (4.45)

Hence it is obviously appropriate that presidency at the eucharist belongs to those with overall pastoral oversight of the community and has hence always been confined to the bishop or priest/presbyter. The president may well find himself standing over against the community as well as being part of it. This is reflected legally in the strong tradition of the parson's freehold in the Anglican Church. This requirement has also ensured that the local community of Christians is always connected with the Church universal; and that the president has received authority in the historical apostolic succession. Furthermore 'the presidency or a bishop or priest ordained for the service of the universal Church gives a clarity of focus which signifies that the Eucharist is an act of the one Christ in his Church, the feast of God to which we are invited, not a buffet from which we help ourselves.' (4.49)

The submissions of the House of Bishops and the Board of Assessors

Much of this material is by way of supplement to the material already presented to the Tribunal in the very helpful submissions from the House of Bishops and the Board of Assessors. I have pleasure in adopting the arguments in both these documents although some caution needs to be entered into in relation to statements like that of Dr Darwell Stone, 'There is no instance in the history of the undivided

Church of the consecration of the Eucharist by others than bishops or priests being authorised under any circumstances.' Were he to speak of the sub-apostolic age and thereon this may be accurate, but as we have seen scholarship of the last century indicates that it is difficult to make such a clear statement about the first century of the Christian era. In the same way the Board of Assessors presents a section of argument upon pastoral needs in emergencies or extreme circumstances. This does not help the present question and I am not prepared to adopt that section.

Summing up

The President cites Archbishop Habgood (speaking at the General Synod of the Church of England on 10th July, 1994): "Celebrating the Eucharist is not just a function ... it is basically about representing the whole church in this action in which this particular little bit of the church is engaged. Take that away and you take away the whole meaning of it as being part of the universal Church and expressing the mystery of the Church for those who are present in this place with Christ in this sacramental action."

It is important to remember what the Bishops point out in their conclusion, "it is Christ, not the minister, who acts in the sacrament to make it effectual. Ordination, which involves both the laying on of hands and a prayer for the gift of the Holy Spirit to the person being ordained a priest or a bishop, sets a person apart to act in the Christian congregation in the name of Christ." Some might argue that this being the case any appropriate person may preside at the Eucharist. It is not enough to say that the tradition has never allowed it. That argument was articulated very clearly during the debates in relation to the Ordination of Women. But there is a very big difference between the gender of the person who presides and the authorisation or source of power of the person who presides. If I interpret correctly the way in which the Constitution of the Anglican Church of Australia is couched, then it is clear that we have embraced a tradition which contemplates only a bishop or priest presiding at a service of Holy Communion. To enable any other to do so would require a complete dismantling of the Constitution.

It is not possible to give any brief definition of a role, character, function, persona, nature so complex as that of priesthood. I have attempted to demonstrate the extraordinary richness of what it means to be a priest in the Anglican tradition.

The Ordinal defines the orders of bishops, priests and deacons in terms not only of their function, but what might be the nature and character of their role or office (I am avoiding the word "status"). Therefore I accept the view of the Board of Assessors and the House of Bishops that the Constitution forbids this Church from altering the basic functions of bishops, priests or deacons.

With respect, I do not think that the Bishop of Bathurst's description of the essential nature of a priest (which is supported by Mr Justice Young) is adequately covered in the words "to be the leader of a community of Christians in word and sacrament". The priest is primarily God's person called and appointed by God to a representative, symbolic leadership and pastoral role. It may well be that the natural leaders of the community may be quite different people. But the essential nature and function of the priestly office remains.

Question Two

I accept the views of the learned Judges that the answer to question 2 must be "No".

Conclusion

I wish to express my appreciation to the members of the Tribunal for their helpful and stimulating opinions.

It is clear, if the rest of the Tribunal is in sympathy with the conclusion that I and others have reached, that we face a major pastoral, theological, constitutional and administrative problem in the Anglican Church of Australia about the administration of Holy Communion to rural and isolated communities. Perhaps the accumulated wrestling with the issues that the Tribunal has done in relation to the constitutional matters may put us in a position to make a very special contribution to finding ways through our current difficulties.

A solution to the dilemma is to change the Constitution (Chapter I) to give the Anglican Church of Australia more flexibility. It is hard to see how, in this particular area of concern, this could be done without dismantling key understandings of the nature of the three-fold ministry as they have come down to us.

+Ian George
Archbishop of Adelaide

December 1997

ANGLICAN CHURCH OF AUSTRALIA

APPELLATE TRIBUNAL

REFERENCE ON THE MATTER OF DEACONS AND LAY PERSONS
CELEBRATING THE HOLY COMMUNION

REASONS OF THE BISHOP OF ARMIDALE.

A. SUMMARY

Question 1

Is it consistent with the Constitution of the Anglican Church of Australia to permit or authorise, or otherwise make provision for

- a) deacons to preside at, administer or celebrate the Holy Communion;
or
- b) lay persons to preside at, administer or celebrate the Holy Communion?

Answer

- a) Yes
- b) Yes.

Question 2

If the whole or any part of the answer to Question 1 is YES, is it consistent with the Constitution of the Anglican Church of Australia for a Diocesan Synod, otherwise than under and in accordance with a Canon of General Synod, to permit, authorise or make provision as mentioned in Question 1?

Answer Yes.

B. SOME INTRODUCTORY COMMENTS

I. MY PERSONAL POSITION

It has been argued in some submissions to the Tribunal that I should not be involved in this reference because I have purportedly authorised "Diaconal Presidency". Because of this accusation I have in the first instance refrained from answering Question 1a.

At all times I have felt free to answer Question 1b because no such accusation has been made against me on the authorisation of "Lay Presidency". To refrain from answering this question on the basis of having made past public statements about the theological appropriateness of such a practice, would I believe, be abrogating my

responsibility and committing our Church to a situation where public statements on any matter concerning the Church would become a disqualification for membership of the Tribunal. I note that in the past all episcopal members of the Tribunal had taken up public positions on the ordination of women before the matter was referred to the Tribunal.

In point of fact I do have some pragmatic reservations about "Lay Presidency".

At this point it has become necessary for me to answer Question 1a as well as Question 1b so that an opinion can be given under the rules governing the Tribunal.

I am comfortable in doing this because I see that in the Book of Common Prayer, Ordinal and Thirty-Nine Articles the diaconate is a practical stepping stone to the priesthood. I am aware that modern thinking is inclined to see the diaconate as a distinctive order in its own right. This is not necessarily wrong but in our formularies the order stands in a line between the laity and the presbyterate. Hence any role that can be devolved from presbyter to laity will devolve to the diaconate also.

II. LEGALITY AND CONSTITUTIONALITY

These are not to be equated. An action may be illegal because it is not currently sanctioned or is currently forbidden. It may nonetheless be consistent with the Constitution.

For instance, any proposed deviation from the already approved forms of common worship, if it fulfilled the doctrinal test of Section 4 of the Constitution, would be illegal but not unconstitutional, until the procedures set out in Section 4 had been carried to their conclusion.

Unconstitutional actions will be illegal; illegal actions will not be necessarily unconstitutional.

The prime question of this current reference is about constitutionality. It is not about the current legal status of a particular practice, nor about the desirability of particular practices, nor even primarily about the doctrine of a particular practice. Obviously doctrine does become involved in a secondary way because the Constitution refers to the doctrines of the Book of Common Prayer and the Thirty-Nine Articles.

III. DEFINITIONS OF DOCTRINE, PRINCIPLE, CEREMONIAL RITUAL & DISCIPLINE

The Constitution defines in some fashion each of the above except Principle. At the same time the Constitution is brief and in some cases circular. I state the definitions.

"Doctrine" - the teaching of this Church on any question of faith.

Seemingly doctrine does not include "practice" and certainly Clause 3 of the Constitution, which commits the Church to teach Christ's doctrine sees this as something distinct from His commands, His sacraments and His discipline.

"Ceremonial" includes the ceremonial according to the use of this Church, and also the obligation to abide by such use.

"Ritual" includes rites according to the use of this Church, and also the obligation to abide by such use.

"Discipline" includes the rules of this Church and the rules of good conduct.

The distinctions are not always easy, although for practical purposes I incline to the popular definitions.

Ritual is "what we do"

Ceremonial is "how we do it"

Discipline is "who does it"

"Principle" is an important term as Section 4 of the Constitution retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer together with the Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons and in the Articles of Religion sometimes called the Thirty-Nine Articles.

I am happy to adopt, as the Tribunal has in the past, the OED definition of "principle" viz "a fundamental truth or proposition on which many others depend".

As I look at the Book of Common Prayer and Thirty-Nine Articles three principles come readily to view. No doubt there are others.

1. That of "uniformity".
2. That of the possibility of change and difference.
3. That of clerical leading of services.

The Principle of Uniformity seems to me to be established by the fact of only one form of service and the express statement of the following

paragraph in "Concerning The Service of the Church" (B.C.P.) - "And whereas heretofore there hath been great diversity in saying and singing in Churches with this Realm now the whole Realm shall have but one use".

Then the "Principle of Possibility of Change and Difference" seems to be established by a number of references.

eg. The last sentences in "Of Ceremonies....."

"And in these our doings we condemn no other nations, nor prescribe any thing but to our own people only: for we think it convenient that every country should use such Ceremonies as they shall think best to the setting forth of God's honour and glory, and to the reducing of the people to a most perfect and godly living, without error or superstition; and that they should put away other things, which from time to time they perceive to be most abused, as in men's ordinances it often chanceth diversely in divers countries".

Article XX on the Authority of the Church gives power to decree Rites and Ceremonies.

"It is not necessary that traditions and ceremonies be in all places one and utterly like; for at all times they have been diverse and may be changed according to the diversities of countries, times and mens' manners". The article concludes - "Every particular or national Church has authority to change and abolish ceremonies or rites of the Church ordained only by man's authority, so that all things be done to edifying.

Then the Principle of Clerical leading of common worship finds its statement in the opening paragraph of the Preface to the Ordinal - viz

"It is evident unto all men diligently reading the holy Scripture and ancient Authors, that from the Apostle's time there have been these Orders of Ministers in Christ's Church; Bishops, Priests, and Deacons. Which offices were evermore had in such reverend Estimation, that no man might presume to execute any of them, except he were first called, tried, examined, and known to have such qualities as are requisite for the same; and also by public Prayer, with Imposition of Hands, were approved and admitted thereunto by lawful Authority. And therefore, to the intent that these Orders may be continued, and reverently used and esteemed, in the Church of England; no man shall be accounted or taken to be a lawful Bishop, Priest or Deacon, in the Church of England, or suffered to execute any of the said Functions, except he be called, tried, examined, and admitted thereunto, according to the Form hereafter following, or hath had formerly Episcopal Consecration, or Ordination"

and Article 23 viz

"Of Ministering in the Congregation

It is not lawful for any man to take upon him the office of publick preaching, or ministering the Sacraments in the Congregation, before he be lawfully called, and sent to execute the same. And those we ought to judge lawfully called and sent, which be chosen and called to this work by men who have publick authority given unto them in the Congregation, to call and send Ministers into the Lord's vineyard".

The expression of this Principle comes in the rubrical directions of the services.

I have gone into this at length because it appears to me that at times these principles have been in conflict with one another in the modern Church. The Anglican Church of Australia in its practice has chosen to set the "Principle of Possibility of Change and Difference" above the other two. This is not a criticism, but merely an observation which has a relevance to the present matter before the Tribunal.

C. REASONS

I. WITH RESPECT TO QUESTIONS 1(a) and 1(b)

I concur entirely with the argument and conclusions of the Bishop of Bathurst on this point. In it he argues that there is an authority within the Constitution to authorise Lay and Diaconal Presidency and that such an action (in the absence of the priest) is not contrary to the Constitution.

I add, from my discussion of "Principles" above, that there is a Principle of Possibility of Change and Difference in the Book of Common Prayer and Thirty-Nine Articles which the Church has chosen to put into practice over the last thirty years, and that this Principle has been placed ahead of those of Uniformity and Clergy Dominated Common Worship. In other words the Principle of the Possibility of Change and Difference has been seen as more basic or fundamental than the other two.

I see the authorisation of Lay and Diaconal Presidency as in accord with this Principle of the Book of Common Prayer and the Thirty Nine Articles.

II. WITH RESPECT TO QUESTION 2

The crux of this question is about the source of authority for certain actions within our Church. What can Diocesan Synods do?

I first set out the provisions of the Constitution which have a bearing on the matter.

Clause 4.

"This Church, being derived from the Church of England, retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer together with the Form and Manner of Making Ordaining and Consecrating of Bishops, Priests and Deacons and in the Articles of Religion sometimes called the Thirty-Nine Articles but has plenary authority at its own discretion to make statements as to the faith ritual ceremonial or discipline of this Church and to order its forms of worship and rules of discipline and to alter or revise such statements, forms and rules, provided that all such statements, forms, rules or alteration or revision thereof are consistent with the Fundamental Declarations contained herein and are made as prescribed by this Constitution. Provided, and it is hereby further declared, that the above-named Book of Common Prayer, together with the Thirty Nine Articles, be regarded as the authorised standard of worship and doctrine in this Church, and no alteration in or permitted variations from the services or Articles therein contained shall contravene any principle of doctrine or worship laid down in such standard."

Clause 5.

"Subject to the Fundamental Declarations and the provisions of this chapter this Church has plenary authority and power to make canons, ordinances and rules for the order and good government of the Church, and to administer the affairs thereof. Such authority and power may be exercised by the several synods and tribunals in accordance with the provisions of this Constitution.

Clause 26 - Of the Powers of General Synod.

"Subject to the terms of this Constitution Synod may make canons rules and resolutions relating to the order and good government of this Church including canons in respect of ritual, ceremonial and discipline and make statements as to the faith of this Church and declare its view on any matter affecting this Church or affecting spiritual, moral or social welfare, and may take such steps as may be necessary or expedient in furtherance of union with other Christian communions".

Clause 51

"Subject to this Constitution a diocesan synod may make ordinances for the order and good government of this Church within the diocese, in accordance with the powers in that behalf conferred upon it by the constitution of such diocese."

Clause 71 (1) Para. 3

"Nothing in this Constitution shall authorise the synod of a diocese or of a province to make any alteration in the ritual or ceremonial of this Church except in conformity with an alteration made by General Synod".

Having set out the relevant parts of the Constitution I make a number of points:

1. With certain provisos resident in the Book of Common Prayer and Thirty-Nine Articles the Church has plenary authority to:

- a) make statements as to faith ritual, ceremonial or discipline;
 - b) to order its forms of worship and rules of discipline;
 - c) to revise the statements, forms and rules referred to above.
2. The Church through its various Synods has plenary power . and authority to make Canons, ordinances and rules for the order and good government of the Church.
 3. I take it that in Clause 4, as in Clause 5, the Church is exercising its plenary power and authority through its various Synods. That is, neither of these clauses are giving or denying particular powers to particular Synods. They are general statements and we look for specific powers or lack of them elsewhere.
 4. Clause 26 describes the powers of General Synod which are all encompassing within the terms of Clauses 4 and 5, saving only that measures cannot be forced on Dioceses without the consent of the Diocese.
 5. Clause 51 gives the Diocesan Synod power, always subject to the Constitution, to make Ordinances for the order and good government of the Church within the Diocese.
 6. Clause 71(1) declares that the laws and determinations in force in a diocese at the time of the coming into operation of the Constitution, continue in force afterwards unless they are inconsistent with the Constitution.
 7. Then the statement is made that nothing in the Constitution confers power on a Diocesan Synod to make an alteration in ritual or ceremonial except in conformity with an alteration made by General Synod.

Changes in other matters, including discipline are allowed to Diocesan Synod.

8. Having arrived at a conclusion that the authorisation of Lay Presidency in the absence of a priest is consistent with the Constitution I am forced to the conclusion that such authorisation is a matter of discipline, not ritual or ceremonial, and therefore a matter for which a Diocesan Synod does have the power to permit, authorise or make provision otherwise than in accordance with a Canon of General Synod.
9. I reiterate that I am not making any comment as to the desirability or other-wise of such a power. I merely conclude that in my view, the diocese has a power to act independently of General Synod, in matters of discipline as opposed to ritual and ceremonial.

Armidale,
1st December, 1997

APPELLATE TRIBUNAL

REFERENCE TO DEACONS AND LAITY CELEBRATING THE HOLY COMMUNION

REASONS OF THE BISHOP OF BATHURST

Question 1.

Is it consistent with the Constitution of the Anglican Church of Australia to permit or authorise, or otherwise make provision for -

- (a) *deacons to preside at, administer or celebrate the Holy Communion; or*
- (b) *lay persons to preside at, administer or celebrate the Holy Communion?*

Answer:

- (a) Yes.
- (b) Yes.

Question 2.

If the whole or any part of the answer to Question 1 is YES, is it consistent with the Constitution of the Anglican Church of Australia for a diocesan synod, otherwise than under and in accordance with a Canon of General Synod, to permit, authorise or make provision as mentioned in Question 1?

Answer:

No.

Reasons

In the submissions made to the Tribunal there is general acceptance that the words 'preside', 'administer' and 'celebrate' are interchangeable and refer to the person with overall conduct of the Holy Communion, especially to such a central element as praying the prayer of consecration of the bread and wine. These words are not construed to refer to those who may assist with the service by reading lessons, leading intercessions or helping with the distribution of the consecrated bread and wine. I agree with this interpretation.

The submissions also recognise that historically and traditionally none but those who have been ordained priest may celebrate the Holy Communion. With the exception of the submission made by the Reverend John Woodhouse, the submissions made to the Tribunal argue that this restriction upon who may celebrate is not merely historical and traditional but legal and Constitutional too. I agree that the restriction is legal and Constitutional and with the reasoning of Mr. Justice Young on this issue. That is to say, at the present time it is not permissible in

the Anglican Church of Australia for a deacon or a lay person to celebrate Holy Communion, but only a person who has been ordained priest.

However, Question 1 refers to a wider matter than the current circumstance. It asks, effectively, are there any circumstances by which it would be consistent to permit or authorise a deacon or a lay person to celebrate or, in other words, is there any head of power that, Constitutionally, could alter the current law and allow such diaconal or lay celebration?

The unalterable Fundamental Declarations of the Constitution of the Anglican Church of Australia (Section 3) say 'This Church will ever ... preserve the three orders of bishops, priests and deacons in the sacred ministry.' A number of the submissions to the Tribunal argue that allowing deacons or laity to celebrate Holy Communion would destroy the functional differentiation between priest and deacon and between ordained and laity, thus, it is submitted, resulting in a failure to preserve the three orders of ministry and contravening the Fundamental Declarations of the Constitution. If this is so, then there is no head of power under our Constitution which could permit diaconal or lay celebration of the eucharist.

I agree with the 1985 majority opinion of this Tribunal that:

'For the orders to be preserved it is necessary to preserve more than their names. Their essential functions and their relationship with one another, also need to be preserved.'

However, this opinion leaves begging the question of what are those essential functions and relationships.

Section 4 of the Constitution says:

'This Church, being derived from the Church of England, retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer together with the Form and Manner of making Ordaining and Consecrating of Bishops, Priests and Deacons and in the Articles of Religion sometimes called the Thirty-nine articles but has plenary authority at its own discretion to make statements as to the faith ritual ceremonial or discipline of this Church and to order its forms of worship and rules of discipline and to alter or revise such statements, forms and rules, provided that all such statements, form, rules or alteration or revision thereof are consistent with the Fundamental Declarations contained herein and are made as prescribed by this Constitution. Provided, and it is hereby further declared, that the above-named Book of Common Prayer, together with the Thirty-nine Articles, be regarded as the authorised standard of worship and doctrine in this Church, and no alteration in or permitted variations from the services or Articles therein contained shall contravene any principle of doctrine or worship laid down in such standard.'

Unlike Section 3, which says 'This Church will ever ... preserve the three orders of bishops, priests and deacons in the sacred ministry', and which is unalterable,

Section 4 is open to alteration. However difficult alterations to this section may be in practice, there is a head of power here to both alter the statement

'This Church, being derived from the Church of England, retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer together with the Form and Manner of making Ordaining and Consecrating of Bishops, Priests and Deacons ...'

and the statement

'... it is hereby further declared, that the above-named Book of Common Prayer, together with the Thirty-nine Articles, be regarded as the authorised standard of worship and doctrine in this Church, and no alteration in or permitted variations from the services or Articles therein contained shall contravene any principle of doctrine or worship laid down in such standard.'

Use of this particular head of power would, nevertheless, have to accord with the preservation of the three orders of ministry described in the unalterable Section 3; otherwise an alteration would be unconstitutional. While ever Section 4 remains in its current form, though, what is meant by the three orders of ministry must be defined by the 'doctrine and principles of the Church of England embodied in the Book of Common Prayer' and 'any principle of doctrine or worship laid down' in the Book of Common Prayer together with the Thirty-nine Articles (Section 4). But otherwise, as Section 4 says, this Church '... has plenary authority at its own discretion to make statements as to the faith ritual ceremonial or discipline of this Church and to order its forms of worship and rules of discipline and to alter and revise such statements, forms and rules ...'. In other words, there is a head of power but its limits are carefully defined.

This tribunal is required by the Constitution 'in any matter involving doctrine upon which the members are not unanimous upon the point of doctrine', to obtain the opinion of the House of Bishops and a board of assessors (Section 58(1)). However, those bishops who are members of this tribunal are excluded from the House of Bishops when meeting for the purpose of forming such an opinion (58(2)).

The House of Bishops has submitted an opinion to the tribunal on which there is near unanimity and in which it says:

'It is our belief that an attempt to permit either deacons or lay persons to preside at, administer or celebrate the Holy Communion would be in breach of both the Fundamental Declarations and the ruling principles of our church';

and

'In requiring the retention of the three orders of bishop, priest and deacons the Fundamental Declarations in the Constitution of the Anglican Church of Australia express the determination to retain the historic pattern of ministry which this Church has received as part of the one holy catholic and apostolic church. This requires not only the retention of the three orders of ministry bearing these names, but that the orders continue to exercise the same functions as in the past and that

the same differentiation of function between them should continue. This rules out permission being given to deacons or lay persons to consecrate the sacrament of the Lord's Supper.'

In his reasons Mr. Justice Bleby of this tribunal, whose draft I have had the privilege of reading, says, 'That opinion should be accepted by this Tribunal unless it is demonstrably incorrect.' Mr. Justice Young has commented on this view and I agree with his commentary. But I accept Mr. Justice Bleby's view to the extent that reasons should be given for not accepting the House of Bishops' opinion.

I agree with the opinion of the House of Bishops that the Fundamental Declarations require retention of the three orders of the ministry. But the additional requirement 'that the orders continue to exercise the same functions as in the past and that the same differentiation of function between them should continue' begs many questions. Which past? The pre-Reformation past? The pre-1995 Synod of the Anglican Church of Australia past? The pre-1992 past? The pre-1662 past?

There is an easily disproved assumption in the above statement of the House of Bishops that the functions and differentiations of the three orders have remained static over time.

Historically, it is quite clear that the Anglican Reformers were intent on preserving the continuity of the three-fold order of ministry of Bishop, Priest and Deacon. The Book of Common Prayer Preface to the Ordinal makes this point clearly:

'It is evident unto all men diligently reading holy Scripture and ancient Authors, that from the Apostle's time there have been these Orders of Ministers in Christ's Church; Bishops, Priests and Deacons.'

Although today almost no scholarly opinion would accept the assumption here that one can derive the three-fold order, as it developed, from the diligent reading of holy Scripture, it would be hard to contend that the three-fold order as such is inconsistent with holy Scripture.

It is just as clear from Section 3 of the Fundamental Declarations of its Constitution that the Anglican Church of Australia, too, is similarly intent on preserving the continuity of the three-fold order of ministry.

However, neither the Anglican Reformers nor the Anglican Church of Australia have equated continuity of the orders of ministry with exact and static continuity of function. Thus, simply by way of examples -

- the ordinals of the English Reformation removed from the ordinal, both in word and symbol, what was the highest and essential function of pre-Reformation priesthood, viz., the priest re-offering Christ's sacrifice to God on behalf of the congregation by virtue of his ontological status as a priest;
- the Authorised Lay Ministry Canon 1992 of the Anglican Church of Australia authorising non-ordained persons to preach sermons with

clear expansion of the meaning of Article 23 (this matter will be referred to in detail below);

- the ordinal of APBA which by virtue of ordination (not conditional licensing as in BCP) confers authority to preach upon all deacons ('You are to preach the word of God in the place to which you are licensed ...').

Clearly then to alter functions and differentiations as such does not breach the Fundamental Declarations by failing to preserve the three orders. Though just as clearly some functions and differentiations must be essential to the preservation or else, as the House of Bishops say, only the three names would be retained; which clearly is not the intent.

The House of Bishops' opinion gives much of its weight to what it calls 'The appeal to the early Church'. But the opening sentence of this part contains a false statement about the Fundamental Declarations; it says:

'The Fundamental Declarations of the Anglican Church follow Anglican practice in giving authority to the canonical scriptures and the faith and practice of the primitive church.'

Section 1 of the Constitution (part of the Fundamental Declarations) does say:

'The Anglican Church of Australia ... holds the Christian faith as professed by the Church of Christ from primitive times ...'

But there is no reference in the Fundamental Declarations to the 'practice', as distinct from the 'faith', of the primitive church. Given

- that practice is an all-encompassing term;
- that practice will vary from historic time and social setting to historic time and social setting;
- that Section 74(4) of the Constitution says 'any reference to faith shall extend to doctrine;

it is a highly dubious matter to contend that the Fundamental Declarations demand the retention of any particular practice of the primitive church, including any primitive practice of who may be permitted to preside at the eucharist. Clearly the intention of the Fundamental Declarations here, as a knowledge of our contentious Constitutional history will bear out, is simply to preserve Apostolic Faith and Doctrine. Nothing is said or intended about practice. This is not to say that primitive practice (or historic practice generally) is irrelevant to the questions being considered. It is only to say that the House of Bishops is wrong in assuming that it can depend for this part of its argument on the Fundamental Declarations.

In terms of generality, though, I concur with the House of Bishops' and the Board of Assessors' opinions that from primitive times (though it is impossible to fix an actual date) until now it became the practice of episcopal churches to restrict

presidency at the eucharist to bishops and priests and not to permit deacons or the laity to preside (That this practice was associated with an increasingly sacerdotal and ontologically exclusive notion of priesthood and may, therefore, lack adequate theological justification, is under serious question in the Roman Catholic Church presently, especially by such eminent theologians as Edward Schillebeeckx and Leonardo Boff). However, a long tradition of historic practice, whilst requiring great respect, does not by itself, as we have seen in the case of the ordination of women, give adequate theological or constitutional justification for a practice.

In terms of the Constitution of the Anglican Church of Australia, more critical than the appeal to the early Church is whether or not there is a doctrine or principle of the Book of Common Prayer, the Thirty-nine Articles and the ordinal which would exclude diaconal or lay presidency. In other words, does our inherited Anglican theology preclude a constitutional head of power which would exclude diaconal or lay presidency on the grounds that it would undermine the preservation of an Anglican understanding of the three orders of sacred ministry?

The House of Bishops' opinion pays little attention to this issue as such. Correctly, the opinion says that the Act of Uniformity (1662), which in England gave statutory authority to BCP, laid down that no person:

'... shall presume to consecrate and administer the holy sacrament of the Lord's Supper before such time as he shall be ordained a priest according to the form and manner by the said booke prescribed, unless he have formerly beene made a priest by episcopal ordination.'

However, it is by no means certain that the Act of Uniformity (1662) has any force under the Constitution of the Anglican Church of Australia. If it does, there is ample head of power under the Constitution for General Synod to repeal it (Section 71). There would be no such head of power, though, if the repeal violated the preservation of the three orders of sacred ministry (unless it were re-enacted in another form concurrently). A simple appeal to the Act of Uniformity does not, as the House of Bishops' opinion clearly intends to imply, settle the matter. Indeed as Mr. Justice Bleby says:

'It may be asked why s10 of the Act of Uniformity was necessary, if it had always been a fundamental truth of the Church that only ordained priests and bishops could celebrate the Holy Communion.'

The Act of Uniformity has been repealed in England but the fact that it has been replaced by a similar provision under Canon B12 of the English, Revised Canons Ecclesiastical casts at least a little doubt on Mr. Bleby's answer to the question which he raises about the 1662 statute, viz.:

'The answer must be that it was in order to correct error of doctrine that had crept in and to provide what at that time was a very substantial penalty for doing so ...'

No such answer applies in the case of the modern canon and so it might be asked: Why is Canon B12 necessary if it has always been a fundamental truth of the Church that only ordained priests and bishops can celebrate Holy Communion?

The House of Bishops' opinion says:

'The Book of Common Prayer is clear in restricting the recitation of the Prayer of Consecration to an ordained priest. However the argument has been put forward that the Prayer Book also restricts other prayers to a priest and that, since we now allow lay persons or deacons to lead these prayers, there is no reason to retain a restriction only in relation to the Prayer of Consecration. To argue in this way is to misunderstand the intention behind the Prayer Book and to ignore the context in which it was introduced.'

This is the point at which the Bishops' Opinion raises the provisions of the Act of Uniformity, discussed above, and then goes on to examine the BCP Ordinal and its distinctions of role between deacon and priest. The Bishop's Opinion says:

'In looking at the 1662 ordinal it is important to note that this document goes to considerable trouble to distinguish between priests and deacons.'

Indeed it does, but the Bishops' Opinion restricts itself to the functional differences of preaching and celebrating, ignoring the deeper issues of difference in the actual 'orders' or 'offices' themselves. In their recent theological statement on 'Eucharistic Presidency' the English House of Bishops - and I agree - says:

'... it is extremely unwise to try to define ordination to the presbyterate / priesthood by reference to those functions which are legally denied to others.'

In his commentary on Article 23 of the Thirty-Nine Articles E J Bicknell, too, warns of the danger of equating a particular function of the priesthood with the order *per se*. Bicknell says:

'... In the later Middle Ages the function of offering the Eucharistic sacrifice had assumed such undue prominence in the popular idea of the priesthood, that there was serious danger of forgetting the ministry of the Word and the pastoral work that belong essentially to the office. The Reformers rightly desired to recall men to a truer, fuller and better-proportioned view of the ministry. Accordingly, in the Ordinal the comparatively late addition of the 'porrectio instrumentorum' and the singling out of the sacrificial function of the priesthood were omitted. This did not mean that the Church of England in any sense intended to institute, as it were, a new order.'

Bicknell continues:

'...When we turn to Scripture we find no stress laid upon the authority given to ministers to celebrate the Eucharist. It is preposterous to suppose that our Lord chose or ordained the Apostles chiefly or primarily to offer the Eucharistic sacrifice. In St. Paul's address to the presbyter-bishops of Ephesus, the stress is laid on the faithful preaching of the Word and the care of the flock (Acts 20: 28-31). In the Pastoral Epistles, in the choice of presbyters the emphasis is laid on the

possession of qualities of character which are needed for pastoral supervision and teaching (1 Tim. 3: 1-7, 5: 17, Tit. 1: 7-9). So St. Peter places in the forefront of the duty of presbyters the general oversight of the flock (1 Pet. 5: 1-4). In such passages as these there is no explicit mention of the Eucharist. No one can doubt that it was the centre of Christian worship on every Lord's Day, nor that any one of the presbyter-bishops had authority, if need be, to preside. But when we compare the New Testament picture of the presbyters with the modern Roman idea of the priest, we feel the centre of gravity has shifted. So, too, in the early Church, the power to celebrate the Eucharist is not the predominant mark of the presbyter. It is not isolated from his other functions. It is not singled out for special mention in primitive ordinals. It was only during the Middle Ages and as the result of a one-sided view of the sacrifice of the Eucharist that an equally one-sided view of the office of the priesthood came to be held. At the Reformation the Church of England of set purpose returned to the primitive conception of the ministry.'

The Fundamental Declarations bind our Australian Anglican Church to preserve the three 'orders' of sacred ministry. In view of the changes in function over time, it is critical to understand what is meant by the 'orders' for only then can it be discerned whether a particular change of function fails to preserve it. The ordination of women throws no light on this issue for that matter concerned only the qualification of gender and neither the nature of the order of priest nor its functions.

Thus the crucial questions are:

- i) What is the relationship between an 'order' of ministry and its function?
- ii) What functions are essential to preserving the 'order'?
- iii) In what manner or form must the functions be preserved in order to preserve the 'order'?

The Preface to the BCP Ordinal uses the terms 'Orders of Ministers' and 'Offices' to refer to Bishops, Priests and Deacons and says:

... no man shall be accounted or taken to be a lawful Bishop, Priest or Deacon in the Church of England, *or suffered to execute any of the said Functions* (my emphasis), except he be called, tried, examined and admitted thereunto, according to the Form hereafter following ...

Thus the Preface distinguishes 'order' and 'office' from function.

The ordinal requires in both the case of deacons and of priests that the service of ordination itself shall include a Sermon or Exhortation declaring the 'Duty and Office' of deacon and of priest. It does not explain the difference between 'duty' and 'office' and nor does it define 'function', except that in the case of deacons it says:

It appertaineth to the Office of a Deacon, in the church where he shall be appointed to serve, to assist the Priest in Divine Service, and especially when he ministereth the holy communion and to help him in the distribution thereof, and to read Holy Scriptures and Homilies in the

Church; and to instruct the youth in the Catechism; in the absence of the Priest to baptise infants, and to preach, if he be admitted thereto by the Bishop. And furthermore, it is his Office, where provision is so made, to search for the sick, poor and impotent people of the Parish, to intimate their estates, names, and place where they dwell, unto the Curate, that by his exhortation they may be relieved with the alms of the Parishioners, or others.

Clearly the ordinal sees the order or office of a deacon as an assisting ministry to the priest both liturgically and pastorally. Certain 'assisting' functions, both liturgical and pastoral, are described. It is highly doubtful whether most modern deacons, as a consequence of changed social circumstances, perform some of the functions as described here, for example instructing the youth in the Catechism or reading the Homilies in the Church. Modern understanding of the functions of a deacon are not limited to this list but what is still preserved is the assisting (servant) ministry of the deacon: this is the core element of the order. In the case of baptisms, a minimum assumption is that the priest shall normally baptise. In the case of Holy Communion, a minimum assumption is that the deacon normally shall assist the priest but not preside.

The BCP service for the ordination of priests provides no similar concise statement of the office and function of a priest to that given for deacons. The essential nature of the order is assumed, but these assumptions are clearly reflected in the words of the liturgy.

In the Bishop's address to the people a clear distinction is again made between the order or office of priesthood and its functions:

'Good people, these are they whom we purpose, God willing, to receive this day unto the holy Office of Priesthood: For after due examination we find not to the contrary, but that they be lawfully called to their Function and Ministry ...'

The collect that follows speaks of 'divers Orders of Ministers in the Church' and refers to the priesthood as an Office. Clearly implied in this service is that the Office (or order) is that of a pastoral overseer. Both gospel readings refer to a shepherd of the sheep. In the Bishop's exhortation that follows, Christ's sheep are committed to the priest; the Lord's sheep are to be taught, fed and sought for - they are 'a treasure committed to your charge.' 'Committed to your charge' is twice repeated. As the Reverend John Woodhouse has submitted to the tribunal, the clear distinguishing mark of the Order of the priesthood / presbyterate is that of oversight; oversight of Christ's sheep in a ministry of Word and Sacrament. The priest is a presbyter or elder not a priest in the Old Testament sense.

In their submission the Board of Assessors express this same view when, under the heading 'The Meaning of Ordination', and after the submission has listed a number of functions, the Board says:

'Standing in the Anglican tradition, this Church understands ordination to the priesthood as that action by which the Church, under the guidance of the Spirit, publicly acknowledges the call of Christ to particular

persons, and confirms in them the requisite gifts and training to exercise leadership and oversight of these central, necessary and essential ministries within and on behalf of the community as a whole, and, in the name of Christ, commissions them to the task of exercising this oversight and leadership in the Church. In this Church, the Bishop takes responsibility for the proper ordering of the essential functions of ministry without which it cannot be this Church.'

As the Anglican Church of Australia is bound by its Fundamental Declarations to preserve the three orders of sacred ministry then it must be able to say what those orders consist in and how they are differentiated. The statement of the English House of Bishops, unlike the Australian House of Bishops' opinion, does address this issue clearly and its conclusion is almost identical to that of the Board of Assessors:

'The main purpose of ordination is not to provide eucharistic presidents but to provide publicly recognised oversight of a community. The primary form of this in an episcopal Church is the office of bishop, combining various aspects of pastoral oversight, preaching, teaching, and guardianship of the Church's doctrine, all often expressed through his liturgical role. The bishop shares the cure of souls in a particular place with presbyters, and thus eucharistic presidency as exercised by them is also a particularly concentrated and very apt form of pastoral oversight.'

No matter what the covering rhetoric, undoubtedly the driving impetus behind the so-called Local Ministry Model being developed here in Australia and in North America is in fact to provide eucharistic presidents. One of the main reasons this tribunal has before it the question of diaconal and lay presidency is the same impetus, viz. provision of eucharistic ministry in parts of Australia where a priest is no longer available or affordable. The critical issue before the tribunal is whether or not such diaconal or lay presidency would undermine the preservation of the three orders or be contrary to a doctrine or principle of BCP, the Ordinal or the Articles.

The submission of the Australian House of Bishops to this tribunal when distinguishing between the orders of deacon and priest tends to focus on function, and to view function as static through historical time. It does not address the nature of the offices or orders as such. At one point it makes a most curious ontological distinction between priest and deacon, saying:

'The Prayer Book also appears to teach that those being ordained as priests will be strengthened and equipped for their ministry by the Holy Spirit. "Receive the Holy Ghost for the office and work of a priest in the Church of God, now committed to thee by the imposition of our hands." (Interestingly there is no similar reference to the gift of the Holy Spirit in the words spoken at the ordination of a deacon, another pointer to the clear distinction the Prayer Book makes between the two orders.)'

The statement is curious in that it implies that the absence of similar words in the BCP service for the ordination of deacons means that deacons are not empowered by the Spirit for their office and work. It is even more curious when a reading of APBA

shows that reference to the Holy Spirit in that book is in exactly the same words for the ordination of a deacon and of a priest:

‘Send down the Holy Spirit upon your servant N,
whom we set apart by the laying on of our hands,
for the office and work of a deacon / priest in your Church.’

Such curiosities aside, the Order of Deacon and the Order of Priest will be properly preserved if the former is always an assisting ministry to the latter and the latter is exercising a ministry of Pastoral Oversight of Word and Sacrament. Thus the critical question is:

‘Would the delegation of diaconal or lay presidency at the eucharist undermine or destroy the distinctive ministry of oversight of a priest?’

The answer must be that if the priest were present ‘yes’; it would make no sense at all for the one who presides to play the role of being presided over. But if the priest was unavoidably absent or unavailable and, with the authority of the chief overseer (the Bishop), delegated presidency to a deacon or, if there was no deacon to a lay person, then the priest’s oversight is not undermined but exercised. Delegation of presidency *per se* does not undermine the distinctiveness of the order of priest / presbyter and therefore is not contrary to the requirements of the Fundamental Declarations that the three orders of sacred ministry shall be preserved by this Church. The submission of the House of Bishops fails to observe this because of its focus on function rather than office or order.

The Board of Assessors distinguished between order and function and they recognise that in principle delegation is possible, though they do not favour it as a regular practice. They say:

‘In emergencies when it is not possible to provide communities of faith with ordained leadership in the usual sense, some alternative form of episcopally authorised leadership of the liturgy, possibly including the Holy Communion, may be an option to be considered - but only so long as there is a genuine emergency. In the legal profession, for example, it is possible for an appropriately trained and practising lawyer to be made an ‘Acting Judge’ for a period, in order to deal with an emergency backlog of cases. To leave such cases unheard is to undermine the very nature of justice in the society which ‘judging’ is intended to serve ... It may be possible to think of authorising ‘acting priests’ where the lack of full ministry is gravely injurious to the life of the people of God and not to provide it is to undercut the mission and meaning of the church. In such cases, some special provision may be in order. The nature of the authorisation in such cases, and the qualifications required of those so authorised, would need to be carefully worked out. In even contemplating such a possible solution it must always be borne in mind that it is intended to cope precisely with grave emergency not normality ... A distinction should be made between temporary emergencies and ministry over a lengthy period to isolated areas.’

The Board of Assessors, the House of Bishops and the statement of the English House of Bishops are all agreed that the theological norm is that the one who has oversight should preside at the eucharist. I entirely agree with this view.

I disagree with the submission of the Reverend John Woodhouse that this Church might deploy eucharistic presidents in much the same way as it deploys lay preachers. To split eucharistic presidency from the order of pastoral oversight in that way, where any number of people might preside, or where a person might preside when the priest is present, would undermine liturgically and symbolically the order of the priesthood in an act of worship commanded by Christ himself which is thus central to a congregation or faith community. As the Reverend Charles Sherlock said in a report of the Doctrine Commission:

'It is one thing to consider the provision of ministers to preside at the Holy Communion when for clear reasons a priest is unable to be present (the issue in rural dioceses in particular). It is another to consider the idea of a non-ordained person taking the parts of the service, commonly performed by the priest, when that priest is present.'

The Board of Assessors have defined a situation where they envisage the authorisation of an 'acting priest' (non-ordained) as limited to extreme emergency. But they do not rule out the possibility theologically. In other words, exception to the norm of a priest presiding is possible. This is entirely consistent with my view that the function of presiding can be delegated without undermining the three orders. What constitutes an emergency is something that this Church would have to decide. The analogy which the Assessors make with the judicial system is much closer to the situation faced by country dioceses than the example they give of cases of 'eucharistic emergency', viz., a prison camp or a time of persecution (where a priest is not available). In considering the question of emergency this Church will need to balance departure from the theological norm by episcopal and priestly delegation of presidency to a non-priest with the danger of breaching not a function, as it would be in this case, but of breaching the actual order of priests by ordaining laity to the priesthood solely or chiefly to raise up eucharistic presidents (see English House of Bishops' statement on this above).

I agree with the submission of the Reverend John Woodhouse to this tribunal that delegation does not *per se* diminish oversight. But as the essential order of the priesthood is the exercise of pastoral oversight in the ministry of word and sacrament, then deacons and laity may only preach or preside within the delegated oversight of the priest, who is charged with preserving order and the Catholic Faith (see the ordinal) and only with the Bishop's licence ('publick authority' - see Article 23).

The centrality of eucharistic worship, by command as one of the two sacraments of Christ, must, theologically, determine that the one who exercises pastoral oversight of the ministry of word and sacrament should normally preside at the eucharist, and certainly preside if present or able to be present. I agree with all those submissions to this tribunal which interpret eucharistic presidency as a delegation by the worshipping community itself of the priesthood of the whole people of God to the presbyter / priest overseer. The one who has oversight represents the unity in Christ of the congregation / community itself. The priest presiding at the Holy

Communion as celebrant represents the normal ordering of priest, deacon and people. Celebration by a deacon or lay person would, thus, be abnormal but permissible where the priest was not available. Given the nature of the Diaconate as an ordering of a specifically assisting ministry to the priesthood, a deacon would receive delegation before a suitable lay person. If there was no deacon, then the lay person who received delegation would have to be the person who was the 'natural' leader of the congregation / community in the priest's absence.

The Board of Assessors, by limiting the possibility of diaconal or lay celebration to *in extremis* situations of the most narrow kind, elevates the function of presidency to the order of oversight itself and thus comes near to equating presidency at the eucharist with the office / order of priesthood itself.

Every Anglican priest and congregation will have a bishop and a priest exercising their respective oversight (shepherding). The unavoidable absence of the priest would in my view constitute sufficient reason to delegate (with the authority of the bishop) the priest's eucharistic presidency to a deacon or a lay person without any failure to preserve the threefold order of ministry.

But would the delegation of eucharistic presidency to a deacon or a lay person be in breach of Section 4 of the Constitution which, though in principle alterable, as it stands requires conformity with the doctrine and principles of BCP, the BCP ordinal and the 39 Articles?

The answer is 'no' because although there is a considerable difference theologically between the role and function of preaching as compared with the role and function of presidency in the congregation, in terms of the doctrine and principles as described in Section 4 of the Constitution there is a constitutional equivalence between preaching and presidency.

Article 23 of the Thirty-Nine Articles says:

'It is not lawful for any man to take upon him the office of publick preaching, or ministering the Sacraments in the Congregation, before he be lawfully called, and sent to execute the same. And those we ought to judge lawfully called and sent, which be chosen and called to this work by men who have publick authority given unto them in the Congregation, to call and send Minister into the Lord's vineyard.'

Until relatively modern times this Article was always interpreted as limiting preaching and ministering the sacraments to only those who were in Holy Orders. In more modern times, with the bishop's authority or licence ('publick authority'), laity have been permitted to assist with the ministering of the sacrament and to preach (see for example General Synod's 'Lay Assistants at Holy Communion Canon 1973' or 'Authorised Lay Ministry Canon 1992').

As Archbishop Donald Robinson says (correctly in my view) in a report of the General Synod Commission on Doctrine:

'All ministrations in the congregation referred to in the Prayer Book are performed by either bishops, priests or deacons, and there appears to be

no concept of any ministry by individual lay persons within the congregation. The Ordinal seems to be quite restrictive: 'No man shall be ... suffered to execute any of the said Function (sc. that of bishop, priest or deacon) except he be called tried, examined, and admitted thereto, according to the Form hereafter following ... that is, unless has been ordained (cf. Article 23).

'... The ministry of the church involves the office of both 'public preaching' and also 'ministering the sacraments in the Congregation' and Article 23 emphasises the unlawfulness of intrusion into these areas.'

The theological statement of the English House of Bishops shares the same view:

'The BCP envisaged no non-ordained Ministry of the Word or the Lord's Supper.'

There is no long tradition of the Church permitting lay preaching. In the Medieval Church there was, among the minor orders (*ordines minores*), an office designated as 'reader' or 'lector' whose duties were to read the lessons, to guard the Church books and bless the bread and new fruits. But a person holding this office, unless subsequently ordained to the three-fold order (*ordines majores*), was not authorised to preach. It is important not to confuse the Medieval Reader's functions, by virtue of the similarity of title, with the modern Lay Reader who can be, and has been, authorised to preach. It is also important not to confuse the private role of all laity bearing witness to their faith with public preaching in the congregation, which is part of the Church's Ministry of Word and Sacrament.

There is no tradition of lay preaching in the church which can justify, on historical grounds, the modern authorisation as such. I cannot agree with the view of Mr. Justice Bleby that such practice finds its theological roots in the minor medieval order of Reader. That Reader was not a preacher.

I also reject the view that Section 15 of the Act of Uniformity represents any kind of theological precedent or justification for the modern practice of lay preaching in the congregation. Section 15 does permit a person designated 'lecturer' to preach sermons but only if,

... he be first approved and thereunto licensed by the archbishop of the province or bishop of the diocese ...

'Lecturers' were greatly learned men in an age when the vast majority of clergy were very poorly educated. Almost all lecturers were in fact in holy orders though it is true that a small percentage were laymen, invariably Puritans. Section 15 of the Act of Uniformity was an attempt to clean up the chaos of the Commonwealth period. Its intent was to put an end to the lay preaching, and the preaching of those who were non-episcopally ordained ministers, that was widespread in the Commonwealth period. By the eighteenth century the practice was dead, as it had been intended to be. To rely on this interim measure to justify a theological view of authorised lay preaching can carry no more weight than to try to justify a theological view about lay presidency on the grounds that during the Commonwealth period

non-episcopally ordained ministers celebrated the eucharist. In both the case of preaching and of presidency, the Act of Uniformity is addressing itself to particular historical circumstances, viz. the chaos of the Commonwealth period. Nothing, theologically, can be made of its use of the short, sharp blow in the case of presidency (Section 10) and a slightly more ameliorating 'gloved fist' in the case of preaching (which was, of course, dearer to the Puritan heart and, thus, likely to cause more trouble: Section 15).

By actual legislation the Anglican Church of Australia has clearly taken the view that no 'doctrine and principles of the Church of England embodied in the Book of Common Prayer together with the Form and Manner of Making Ordaining and Consecrating of Bishops, Priests and Deacons and in the Articles of Religion', or, 'any principle of doctrine or worship laid down' in BCP and the Articles, has been breached by permitting laity to assist in ministering Holy Communion or to preach sermons. In other words, although BCP and the Articles clearly limited the functions of ministering the sacraments and preaching to those in the threefold order of ministry this did not, constitutionally (Section 4), amount to a doctrine or a principle that the Anglican Church of Australia could not alter by way of its own 'plenary authority'.

Clearly, permitting the laity to assist with ministering the eucharist and to preach altered the previous functions and differentiations of the threefold order of sacred ministry but, in my opinion, it did not fail to preserve those orders in their essential nature as 'orders' or 'offices'. In other words, this Church, constitutionally, has a head of power to do these things and it exercised that head of power. To claim that the same head of power is not available to this Church constitutionally for the authorisation of diaconal or lay presidency at the eucharist requires sustained theological, logical and legal argument as to why it has been available in other cases but not his one. No submission to this tribunal has addressed this issue.

The issue that has been addressed by all submissions, and by members of this tribunal who have answered 'no', is the issue that argues that because the laity may now preach then logically they may preside (the Reverend John Woodhouse has submitted this kind of argument to the tribunal). For the reasons given in detail above (because theologically the role and function of preaching and presiding in the congregation are quite dissimilar) I do not accept this argument which I find simplistic.

The constitutional equivalence between preaching and presiding is an equivalence of a head of power in both cases by which this Church may permit the non-ordained to carry out functions previously limited to the ordained. If this Church has a head of power to act in the one case of the ministry of word and sacrament, namely preaching and assisting with the ministration of the sacraments, then it must in constitutional theory at least, have a head of power in the case of eucharistic 'celebration' or 'presidency' unless there is some overwhelming theological argument entirely restricting celebration or presidency to those who have been ordained priest.

The silence from those completely opposed to diaconal or lay presidency under any (or almost any) circumstances on this matter is curious. In England, where lay preaching has also been legislated for positively, the House of Bishops is acutely

aware of the problem this poses for the issue of lay presidency or celebration. In its recent statement, that House of Bishops acknowledges the weaker case of a simplistic parallel between preaching and presiding, and takes that case a little further by recognising the danger that by allowing laity to preach but not preside there may be a resultant, unjustified, exaltation of the sacrament over the word, but it does not address the critical issue of delegation:

‘The parity of word and sacrament would appear to weigh heavily in favour of some form of lay presidency. In its commonest form, the argument runs like this: if, as is now the case, a non-ordained person can be licensed or authorised to preach, then the same should apply to presiding at the Eucharist; the non-ordained are allowed to preach without all the training and gifts necessary for full-time pastoral oversight of the congregation; moreover, to refuse lay presidency but allow lay preaching is effectively to exalt the sacrament above the word, which as we have seen has no justification.’

The construction of this single-sentence paragraph is misleading because whilst, on the one hand, purporting to be a summary of the view of those advocating lay presidency, on the other hand, it also expresses the House’s own view that there can be no justification in exalting ‘sacrament’ above ‘word’. The ‘we’ in the last part of the sentence is the House of Bishops itself who earlier in their statement said:

‘Both the Ministry of the Word and the Ministry of the Sacrament have their actualisation in the active presence of the risen Christ, in whose life we participate. Moreover, as the Church of England has always maintained, word and sacrament cannot be driven apart, for it is the word of the Gospel, testified above all in Holy Scripture, which gives the sacrament its very meaning. The Eucharist, therefore, properly includes the reading of Scripture, its proclamation and its reception by the people in faith through the Spirit.’

Having clearly acknowledged

- a) that the ministry of word and sacrament must not be split,
and
- b) that in modern times the laity have been authorised to preach,
and
- c) that the essential order of priesthood is a ministry of pastoral oversight of word and sacrament,

the English House says:

‘It is undoubtedly true that, especially with the evolution of the office of Reader, there has been a persistent tendency to allow the ministry of word and sacrament to be separated, with a consequent danger that the Ministry of the Sacrament will not be undergirded by proper training. This is a matter which undoubtedly needs addressing. However, we need to be careful in drawing parallels too hastily between the ministry of word and sacrament. It needs to be recalled that teaching authority properly belongs to the ordained priest / presbyter as part of his / her

ordination to the ministry of word and sacrament. This may be delegated to a lay preacher who has received appropriate preparation and training, but responsibility for or oversight of the proclamation of the Gospel still belongs to the ordained minister of the congregation.'

At this point the question in any careful reader's mind is:

'Oversight authority of eucharistic presidency also belongs to the ordained priest / presbyter but can he / she delegate presiding at the eucharist in any or some special circumstance to a lay leader who has received appropriate preparation and training and if not, why?'

But the English House of Bishops' statement simply moves on to another issue, remaining stonily silent about the key issue it has raised. My reaction at first was that I must have slipped a page, they could not possibly have raised the question of parity or word and sacrament, with which they agree strongly, and the issue of lay preaching by delegated oversight without saying why presidency could not be delegated, was what I thought. But they did. Canon Peter Jensen, Principal of Moore College, had a similar response; in the Sydney magazine *Southern Cross* he said:

'... the reply is so weak that the reader is tempted to conclude that a paragraph has dropped out.'

Dr. Jensen is talking about a reply to the issue of parity between word and sacrament, but on the issue of delegated oversight in the case of presidency at the eucharist it is not a case of a weak reply, but of no reply at all.

If the priesthood as an ordering of ministry is defined as a ministry of oversight in word and sacrament (as the English House agrees and so does our own Board of Assessors) and Article 23 and the Ordinal may be interpreted to include delegation to laity of authority to preach then, unless word and sacrament are to be split, and thus the sacrament exalted above the word, it must in constitutional principle (Section 4) be possible for presidency to be delegated also. The alternative, it seems to me, is to conclude that the laity may not preach or assist in ministering the sacrament.

This is not to say that there is a simplistic parallel between preaching and presiding. Theologically the one who has oversight should normally preside but, as I have argued, both constitutionally and theologically, in certain special circumstances an appropriate lay person, suitably trained, may be permitted to preside at the eucharist by the delegated oversight of priest and bishop. However, as said above, and for the reasons given above, if there is a deacon then the deacon should receive such delegation.

Those who acknowledge that in modern times preaching and assisting in ministering the sacrament have been delegated to the laity contrariwise to a long tradition of exclusively ordained ministry, and who oppose lay or diaconal presidency under any circumstances, are bound to state their case theologically and constitutionally, and not draw chiefly or solely on a 'long tradition from primitive times' argument. Delegation of a function does not undermine the order of

priesthood. To insist that in no circumstances may eucharistic presidency be delegated to a lay person or a deacon is likely, in my view, to create a view of priesthood in which priesthood is equated with one of its functions and also to create a view of the eucharist that infers the eucharist belongs to the priests and not to the whole people of God.

In answering 'No' to Question 2 I agree with the reasons given by Mr. Justice Young and have nothing to add.