

TO: THE MOST REVEREND SIR FRANK WOODS, K.B.E., M.A., D.D.,
PRIMATE OF THE CHURCH OF ENGLAND IN AUSTRALIA



Constitution of the Church of England in Australia

Part 1

Chapter I. Fundamental Declarations. Chapter II Ruling Principles

REPORT OF THE PRESIDENT OF THE APPELLATE TRIBUNAL

HAVING RECEIVED YOUR REFERENCE bearing date the thirty-first day of August 1973 the questions numbered one to five appearing in the Schedule thereto and which are hereinafter set forth were referred for the opinion of the Appellate Tribunal duly appointed under the provisions of the Constitution and the printed copy of the Provisional Canon cited as "The Marriage of Divorced Persons Canon 1973" annexed to your Reference was read and considered by the members of the said Tribunal.

The said Tribunal was convened at Melbourne in the State of Victoria on the sixth and seventh days of February 1974 and it was resolved in accordance with Section 58 of the Constitution to obtain the opinions of the House of Bishops and of the Board of Assessors on certain matters and having received such opinions the said Tribunal was reconvened at Sydney in the State of New South Wales on the first day of August 1974 and the questions numbered one to four both inclusive were determined. The question numbered five remains unanswered.

NOW THEREFORE pursuant to the provisions of Rule XVIII under Section 63 of the Constitution I now forward in triplicate by certified mail the opinion of the said Tribunal on the said questions.

The questions and answers are set forth in two sections:

1. Questions answered.
2. Questions unanswered.

SECTION 1. QUESTIONS ANSWERED

The undermentioned questions numbered one and two in your Reference originated in a document in writing signed by thirty four members of the Fourth General Synod meeting at North Sydney in the State of New South Wales on the twenty-third day of May 1973 pursuant to the provisions of Section 31 of the said Constitution which provides:

31. If any question shall be raised as to the inconsistency of any Canon ... with the Fundamental Declarations or the Ruling Principles the Primate ... at the written request of twenty-five members of General Synod shall refer the question to the Appellate Tribunal ... whose opinion thereon shall be final.

The said Tribunal, by majority, the President, the Deputy President, the Archbishop of Adelaide and the Archbishop of Sydney expressed the opinion that the said questions be answered as follows (the Bishop of Gippsland, Mr. Justice Jenkyn and Mr. Justice Gillard dissenting):

Question 1. Are the provisions of the Provisional Canon (insofar as they purport to permit the solemnisation of the marriage of divorced persons notwithstanding that the other party to the present marriage is still living) inconsistent with the Fundamental Declarations and in particular with clause 3 of the Constitution?

Answer. The provisions of the Provisional Canon (insofar as they purport to permit the solemnisation of the marriage of divorced persons notwithstanding that the other party to the present marriage is still living) are inconsistent with the Fundamental Declarations and in particular with Clause Three of the Constitution because the Provisional Canon allows for marriage after divorce granted on grounds other than:

- (a) perneia, that is, adultery, or such sexual offences as the word perneia connotes; or
- (b) any other exception which is recognised in the New Testament.

Question 2. Are the said provisions of the Provisional Canon inconsistent with the Ruling Principles and in particular with Clause Four of the Constitution?

Answer. The provisions of the Provisional Canon are inconsistent with the Ruling Principles and in particular with Clause Four of the Constitution because the Provisional Canon allows for marriage after divorce granted on grounds other than

- (a) perneia, that is, adultery or such sexual offences as the word perneia connotes; or
- (b) any other exception which is recognised in the New Testament.

The undermentioned questions numbered three and four were contained in a request to refer same to the Appellate Tribunal addressed to you by certain members of the Commission on Marriage and Divorce established by Resolution of the Third General Synod held at Sydney aforesaid in the year 1969 and it being provided by Section 63 (1) of the Constitution that if provision is not otherwise made under the Constitution for the reference of such questions to the Appellate Tribunal you may refer such questions to the Appellate Tribunal which shall have jurisdiction and these questions were so referred by you to the said Tribunal.

The said Tribunal expressed the opinion that question numbered three be answered as follows:

Question 3. Has the General Synod of the Church of England in Australia power under the Constitution of the Church of England in Australia to enact legislation providing for the marriage of divorced persons in Church?

Answer. Yes, subject to the Fundamental Declarations and Ruling Principles of the Constitution.

The said Tribunal, by majority, the President, the Deputy President, the Archbishop of Adelaide and the Archbishop of Sydney expressed the opinion that question numbered four be answered as follows (the Bishop of Gippsland, Mr. Justice Jenkyn and Mr. Justice Gillard dissenting):

Question 4. Is the Provisional Canon contrary to the Constitution of the Church of England in Australia?

Answer. See answers to questions 1 and 2.

SECTION 2. QUESTION UNANSWERED.

Question 5. Does the Provisional Canon deal with, or is it concerned with ritual, ceremonial or discipline of the Church?

This question numbered 5 in your Reference was considered by the said Tribunal in light of Section 59 (1) of the Constitution. The said Section reads:

59 (1) In all ... references to the Appellate Tribunal in any matter involving any question of ... ritual, ceremonial or discipline, the concurrence of at least two Bishops and two laymen shall be necessary for the ... giving of an opinion upon a reference

and three Bishops and one layman being of opinion that the Provisional Canon deals with or is concerned with the discipline of the Church of England in Australia and three laymen being of the contrary opinion the said Tribunal expresses no opinion on this question which remains unanswered.


IN ACCORDANCE WITH SAID RULE XVIII

- (a) I have certified a copy of this report and filed same in the Registry of the Primate at Sydney.
- (b) A certified copy hereof must be sent from such Registry to each Diocesan Bishop and filed in his Registry and to such other person or body, corporate or incorporate as you may direct.

GIVEN under my hand at Sydney aforesaid this twenty-fifth day of September 1974.

Athol Richardson
The Hon. Mr. Justice Richardson.
President, Appellate Tribunal.

I hereby certify that the typewriting on this and the two preceding pages comprises the Report of the President of the Appellate Tribunal addressed to the Most Reverend the Primate on the 25th day of September, 1974 and is a true copy of the original Report.


PRESIDENT, APPELLATE TRIBUNAL