

IN THE APPELLATE TRIBUNAL
ANGLICAN CHURCH OF AUSTRALIA

IN THE MATTER of the questions referred by the Primate under Section 63(1) of the
Constitution on 5 September 2019 and 21 October 2019

AND IN THE MATTER OF the *Blessing of Persons Married According to the Marriage Act 1961
Regulations 2019*

SUBMISSIONS BY EQUAL VOICES LTD (ABN 68 617 131 781)

Introduction

1. Equal Voices Ltd (**Equal Voices**) is a national not-for-profit organisation supporting LGBTIQA+ Christians and allies in seeking an 'equal place at the table' for LGBTIQA+ people in the Church and the world. This submission is made on behalf of Equal Voices Anglican, a network within the national Equal Voices organisation. Equal Voices Anglican represents, according to official Australian Government statistics, an estimated 300 000 LGBTIQA+ people in the Anglican Church of Australia.¹ Of this group of people a substantial number would directly benefit, now or in the future from new provisions such as the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* (**Regulations**).
2. Equal Voices seeks marriage equality for its members and believes this to be God's loving will and intention. The Regulations do present a positive step forward in this area, but they fail to offer marriage equality to LGBTIQA+ Anglicans. The Regulations do not offer ritual and sacramental provisions that are available to other Anglicans and they fail to affirm the civil relationships of sexually and gender diverse people as equal gifts from

¹ This is a conservative calculation, based on Anglican census figures (of more than 3 million Anglicans at the last census) and the findings of the Australian Federal Government's Human Rights Commission 'Face the Facts' research, which shows at least 11 in 100 Australians identifying as lesbian, gay, bisexual, transgender or intersex – see further: <https://www.humanrights.gov.au/our-work/education/face-facts-lesbian-gay-bisexual-trans-and-intersex-people>

God. Equal Voices acknowledges that the limited assistance the Regulations give to sexually and gender diverse people and others is a positive step forward. However, it is a highly restrained and conservative provision which does not adequately respond to the needs of the LGBTIQA+ Anglican community.

Summary of these submissions

3. Equal Voices supports the Primary Submissions made by the Synod of the Diocese of Wangaratta on 6 November 2019 in relation to the questions currently before the Appellate Tribunal. The questions before the Appellate Tribunal reflect wider debates on marriage doctrine which should not be confused with the limited and specific provisions of the Regulations.
4. Of the questions asked by the Primate on 5 September 2019:
 - 4.1 **Question 1** does not raise a matter under the Constitution and implies the Regulations could be a theological and ecclesiological change rather than addressing an urgent pastoral issue. In so far as it relates to the Fundamental Declarations and Ruling Principles, the answer is 'Yes'.
 - 4.2 **Question 2** raises a question regarding the legitimacy of the Regulations in relation to the *Canon Concerning Services 1992*. Given recent significant changes to civil marriage law, the Regulations should be welcomed as a constructive expression of the missional imperatives of the *Canon Concerning Services 1992*. Question 2 should be answered 'Yes'.
5. Of the questions asked by 25 members of General Synod on 21 October 2019:
 - 5.1 **Question 1** asks for the Appellate Tribunal to rule on the doctrinal legitimacy of marital relationships between people of the same gender. This is beyond the Appellate Tribunal's authority. If it is found to be within the Appellate Tribunal's

auspice the answer should be 'Yes'.

5.2 **Question 2** queries the doctrinal legitimacy of any liturgical services relating to marital relationships between people of the same gender. This is beyond the Appellate Tribunal's authority. If it is found to be within the Appellate Tribunal's auspice the answer should be 'Yes'.

5.3 **Question 3** repeats Question 2 asked by the Primate on 5 September 2019. In the light of Equal Voices' responses to Questions 1 and 2 it should be answered 'Yes'. Given recent significant changes to civil marriage law, the Regulations should be welcomed as a constructive expression of the missional imperatives of the *Canon Concerning Services 1992*.

6. The issues relating to marriage equality and marriage doctrine in the Anglican Church of Australia are much wider conversations and are not impacted by the Regulations. These matters go well beyond the jurisdiction of the Appellate Tribunal. In so far as the Appellate Tribunal is able to rule on the legal validity of the Regulations, they should be found to be valid diocesan legislation.

Context

7. Equal Voices asks the Appellate Tribunal to deeply consider the difficult context in which it makes its decisions. In particular, Equal Voices notes the ongoing failure of the Anglican Church of Australia to listen to and honour LGBTIQA+ Anglicans as Gospel 'little ones' and 'weaker members' of the Body, in accordance with the teaching of Jesus and St. Paul's teaching in 1 Corinthians 12. Equal Voices requests that any deliberations on this matter are mindful of this and do not exacerbate a continuing ecclesiastical culture of shame, secrecy and silence experienced by LGBTIQA+ Anglicans, to which these Regulations offer some small redress.

8. Equal Voices refers the Appellate Tribunal to the *Open Letter of Anglican LGBTI+ Voices* for a fuller statement of this challenging context, its impact on LGBTIQA+ members of the

Church, and its invitation to a more positive living together in the Anglican Church of Australia. The text of which can be found at **Appendix A** of this submission and/or online at <https://www.equalvoicesanglican.org/open-letter.html>.

9. Additionally, Equal Voices notes the current social and political climate caused by the intense drive of some religious forces in Australian politics to legislate for ongoing discrimination against LGBTIQ+ people by religious groups. This has had a very real impact on the spiritual, emotional and physical wellbeing of LGBTIQ+ people. Especially those who are members of faith communities. Equal Voices asks the Appellate Tribunal to consider how through its deliberations it may avoid reinforcing this debilitating climate and protect and care for the wellbeing of the LGBTIQ+ members of the Anglican Church of Australia.

Question One asked by the Primate on 5 September 2019

Whether the regulation Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta is consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

10. Equal Voices affirms the key points made by the Synod of the Diocese of Wangaratta in its Primary Submissions, in particular:
 - 10.1 The questions referred to the Appellate Tribunal relate to the *Canon Concerning Services 1992* and do not require interpretation of the Constitution.
 - 10.2 Dioceses are empowered by their own constitutions to make regulations for their own good order and governance. Whether such regulations fulfil this purpose is a matter of judgement for the Synod of that diocese.

10.3 The Regulations are not inconsistent with the Constitution. There is nothing in the Regulations that contravenes the Ruling Principles.

10.4 The Constitution was deliberately written to accommodate the diversity of Anglican tradition in Australia. As such diversity of opinion is accepted and encouraged, excepting any matters essential to the nature and character of the Anglican Church as part of the One Holy Catholic and Apostolic Church.

10.5 There is no doctrine which prevents the use of a liturgy such as what is included in the Regulations. This is supported by the rulings of Handley QC and Young J made in relation to the ordination of women to the diaconate, especially Handley QC's observation:

*"Notwithstanding the importance of the issues before us, the strongly held views on all sides, and the fundamental nature of the theological and biblical arguments which have been raised, in my opinion the questions involved are not part of the Christian faith professed by the Church, they are not dealt with in the Creeds, and do not directly involve matters necessary for salvation. The question before us therefore does not involve any question of 'doctrine' as that expression is used in the Constitution."*²

10.6 There is a clear distinction between faith, doctrine and discipline which has been highlighted in previous Appellate Tribunal rulings on the ordination of women.

10.7 The ancient Creeds and the 1662 Book of Common Prayer do not expressly define marriage.

10.8 The 1662 Book of Common Prayer is a product of very different historical and cultural circumstances. It reflects culturally limited understandings of sex and gender which were drawn from the societal attitudes and legalities of the time.

² Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985 4 March 1987.

The Anglican Church of Australia faced a similar issue when deliberating on the doctrinal validity of the ordination of women.

10.9 The Appellate Tribunal previously found that a canon providing for the marriage of divorced persons, regardless of cause, would not contravene the Fundamental Declarations or Ruling Principles.³ The marriage service in the 1662 Book of Common Prayer is not a definitive and binding statement on what persons may be blessed, or otherwise regarded as worthy of God's favour.

11. Equal Voices affirms the points made by the Synod of the Diocese of Wangaratta regarding Scripture in relation to marriage including:

- 11.1 the complexity and ambiguity of biblical texts;
- 11.2 the ongoing profound debates over interpretation among scholars; and
- 11.3 the accepted divergence of opinions among Anglicans where it does not explicitly contravene the Fundamental Declarations.

12. Equal Voices additionally notes that in relation to the issue of relationships between people of the same gender and marriage doctrine there has not been adequate space or acknowledgement given to the people most affected by these debates. This was evidenced in the absence of any open and community connected LGBTIQ+ contributors to *Marriage, Same-Sex Marriage and the Anglican Church of Australia*. This was a document recommended by the Appellate Tribunal to participants of this current matter. Without such contributors a full understanding of these matters cannot be gained by any party.

13. Historically the Anglican Church has had an intimate and respectful relationship with civil authority. Throughout its relatively short existence, the Anglican Church of Australia has taken seriously the needs of wider society and political authority. This is reflected in the Ruling Principles, the Book of Common Prayer and the Thirty-Nine Articles (particularly

³ *Opinion of the Appellate Tribunal on the Marriage of Divorced Persons and admission of women to Holy Orders* 8 February 1980.

Articles XXXV-XXXIX and the prescribed Homilies). In light of recent changes to civil law, the Regulations are consistent with the Fundamental declarations and Ruling Principles of the Constitution.

14. The Fundamental Declarations and Ruling Principles of the Constitution speak to the purpose of the Anglican Church of Australia. The spirit and intent of these is to enable the Anglican Church of Australia to serve God and God's people, both doctrinally and pastorally. In Australia there has been a significant change in societal attitudes towards sexuality and gender in recent years which led to the passing of civil marriage equality legislation in 2017. This new affirmation and welcome of LGBTIQA+ people by wider society has not been reflected in the Anglican Church of Australia. The Regulations fall far short of such welcome and affirmation but do represent a legitimate step towards much needed engagement which does go to the spirit and intent of the Fundamental Declarations and Ruling Principles.
15. The Regulations offer some small level of acknowledgement and reception of fresh human realities. The Regulations continue to respect the current diversity of opinion in the Anglican Church of Australia without contravening the Constitution.
16. While the Regulations may be regarded as the first of their kind in Australia, they are not unique in the global Anglican Communion. Provinces in the United States of America, Scotland, New Zealand and Brazil have been able to legislate for the blessing or marriage of the relationships of people of the same gender. Compared to the work of some of these provinces the Regulations are limited and quite restrictive.
17. The Regulations touch on an issue that is currently impacting many people. There are many sexually and gender diverse people who are members of the Anglican Church of Australia. Often these same people have lived in flourishing relationships for decades. Some are now civilly married. To suggest that such a relationship contravenes the Fundamental Declarations and Ruling Principles is to suggest that such people are unable to be members of the Anglican Church of Australia. The Regulations before the Appellate

Tribunal make only a very small gesture of acknowledgement to these committed members of this Church.

Question Two asked by the Primate on 5 September 2019

Whether the regulation is validly made pursuant to the Canon Concerning Services 1992.

18. Equal Voices affirms the key points made in response to Question Two by the Synod of the Diocese of Wangaratta in its Primary Submissions, in particular:

18.1 The liturgy in the Regulations is clearly and unambiguously a service of blessing, not a marriage liturgy.

18.2 There is a long tradition of prayers and blessings within Anglican life and a liturgy of blessing for a civil marriage should not be held to a different standard than liturgies for blessing pets, meetings, people and the like.

18.3 The Book of Common Prayer does not restrict the range of blessings used to support people in flourishing life and faith.

19. The limited nature of the Regulations' recognition of committed LGBTIQ+ partnerships is highly disappointing to Equal Voices and its Anglican members. This measure is very conservative and does not meet the deep needs of LGBTIQ+ people for full affirmation and membership in the Anglican Church of Australia. It does respond to other pastoral needs and opens up an alternative pathway for many people, whether they of the opposite or same gender, to have their partnership acknowledged by their church community. As such, the Regulations are consistent with the intention of the *Canon Concerning Services 1992* and are validly made.

20. The blessing of relationships, circumstances, people and living things has a long tradition in Anglicanism. Such blessing does not equate to acceptance and affirmation of every aspect of that relationship, circumstance, person or living thing. This can be seen when considering the difference between a service of thanksgiving and a baptism. A service of

thanksgiving may recognise the presence of God's grace, but it does not equate to baptism. Similarly, the Regulations do not represent an affirmation of every aspect of the people who have entered into civil marriage. Nor does it equate to sacramental marriage. Yet such a liturgy does offer an affirmation of the love between two people and recognises the presence of God's grace. In light of such precedents the Regulations are consistent with the intention of the *Canon Concerning Services 1992* and are validly made.

Question One asked by 25 members of General Synod on 21 October 2019

Whether the use of the form of service at Appendix A to the Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta to bless a civil marriage which involved other than between one man and one woman, is consistent with the doctrine of this Church and consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

21. This question asks the Appellate Tribunal to rule on the doctrinal legitimacy of the provided liturgy in blessing marital relationships between people of the same gender. Such a decision requires further doctrinal and synodical processes and is outside the jurisdiction of the Appellate Tribunal. In so far as the Appellate Tribunal is able to rule on this matter, the answer should be 'Yes'.
22. While this question specifically relates to a civil marriage between a couple of the same gender, the points made previously in this submission stand. The Creeds, the 1662 Book of Common Prayer and the Thirty-Nine Articles do not make reference to relationships between people of the same gender. The Scriptural references to such relationships are ambiguous and have been the subject of debate for centuries. When faced with similar difficulties in relation to divorce and the ordination of women, the Anglican Church of Australia has been able to come to a new understanding of doctrine.
23. Article XXXII of the Thirty-Nine Articles implies the gender of deacons, priests and bishops and permits them and "all other Christian men" to marry. When women's ordination was legislated for, there was no question on whether a female member of clergy was permitted to marry. The Anglican Church of Australia adapted the historical understanding of Article XXXII in light of new understandings. The Fundamental Declarations and Ruling Principles refer to principles of doctrine that were written in a

historical context very different to modern-day and this should be taken into consideration when answering this question.

24. The Regulations have been made in response to the ongoing revelation of the complexity and diversity of God's people and are supported by decades of affirming biblical scholarship and conversation. These Regulations speak to the missional work of the Anglican Church of Australia and continue a long tradition of constructive engagement with civil society and the civil magistracy. In the absence of any explicitly non-affirming doctrinal evidence, the Regulations neither challenge the doctrine of the Anglican Church of Australia nor are inconsistent with its Fundamental Declarations or Ruling Principles.

Question Two asked by 25 members of General Synod on 21 October 2019

Whether the use of any other form of service, purportedly made in accordance with section 5 of the Canon Concerning Services 1992, to bless a civil marriage which involved a union other than between one man and one woman is consistent with the doctrine of this Church and consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

25. This question asks the Appellate Tribunal to rule on the doctrinal legitimacy of any marital relationship between people of the same gender. Such a decision requires further doctrinal and synodical processes and is outside the jurisdiction of the Appellate Tribunal. In so far as the Appellate Tribunal is able to rule on this matter, the answer should be 'Yes'.
26. This question is extraordinarily broad and asks the Appellate Tribunal to imagine both a range of relationships and also to rule on other forms of service not yet in existence which goes well beyond the role of the Appellate Tribunal.
27. While the issue of sacramental marriage between two people of the same gender could be regarded as being open for debate, this question and the Regulations relate only to the blessing of a civil marriage between persons other than "one man and one woman". There is a long tradition within the Anglican Church of Australia of blessing. There is no doctrine within the Church which would be contravened by the blessing of a same gender

civil marriage.

28. Equal Voices further notes that there is no unambiguous doctrine in the Anglican Church of Australia that explicitly denies sacramental marriage to people in a same gender relationship. Very little Scriptural evidence speaks against same gender relationships. Just six verses negatively reference such relationships. These are Genesis 19:4-11, Leviticus 18:22, Leviticus 20:13, Romans 1:26-27, 1 Corinthians 6:9-11 and 1 Timothy 1:8-10. All of these verses could be regarded as speaking against sexual abuse or against a specific sexual act, rather than the loving, respectful and faith filled marriage between two people of the same gender.

29. The Creeds and the Thirty-Nine Articles are silent on all forms of marriage and the 1662 Book of Common Prayer does not explicitly deny the availability of sacramental marriage between two people of the same gender. Historically and traditionally the doctrinal understanding of marriage and gender has continued to evolve, especially in Anglicanism. In a Church that has come to new doctrinal understandings of divorce and the ordination of women, a pathway is open for a new doctrinal understanding of marriage between people of the same gender. In circumstances where sacramental marriage is within the auspices of the Fundamental Declarations and Ruling Principles of the Constitution of the Anglican Church of Australia it is clear that the blessing of a civil marriage is doctrinally and constitutionally valid.

Question Three asked by 25 members of General Synod on 21 October 2019

Whether, in light of the determinations to be made in Questions 1 & 2, the Regulations are validly made pursuant to the Canon Concerning Services 1992.

30. In the light of the responses to Questions One and Two in this Submission, Question Three should be answered 'Yes'.

31. The Regulations were canonically produced and issued after more than adequate notice and consultation.

32. Equal Voices commends the Synod of the Diocese of Wangaratta for its work on these Regulations and its acknowledgement of the very real need for such legislation by LGBTIQA+ Anglicans.

Conclusion

The questions should therefore be answered as follows:

Question 1 – yes, in so far as the Appellate Tribunal can rule on this matter

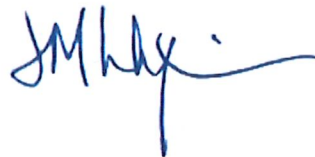
Question 2 – yes, in so far as the Appellate Tribunal can rule on this matter

Question 3 – yes, in so far as the Appellate Tribunal can rule on this matter

Question 4 – yes, in so far as the Appellate Tribunal can rule on this matter

Question 5 - yes

13 December 2019

A handwritten signature in blue ink, appearing to read 'JMcDonnell', with a long horizontal flourish extending to the right.

JOSEPHINE McDONNELL INKPIN
on behalf of Equal Voices

It's Time to Embrace Us

**OPEN LETTER TO
THE ANGLICAN CHURCH OF AUSTRALIA
from Anglican LGBTI+ Voices**

We speak out

We speak out today as deeply committed Anglicans who are also LGBTI+ (that is: Lesbian Gay, Bisexual, Transgender, Intersex and other sexually and gender diverse) people. We speak out as your siblings who have personally suffered shame and silence because of our sexuality and/or gender. We speak out on behalf of so many other similar Anglicans who are still unable to speak due to fear and pain. We speak out of sorrow at the mistreatment of sexually and gender diverse people by the Church we love, but with hope and an invitation to renewed vision and relationships. We speak out so that everyone may at last be embraced with the love that God in Jesus Christ has for all of us.

We grieve

For ***we grieve***. We grieve for the sins of homophobia and transphobia which continue to bedevil the Church, and in which we too, as members of it, are complicit. We grieve for so many lives which have been lost, hearts which have been broken, and precious souls which have been horribly marred. We grieve that the Church is adrift in the midst of today's sea-change in societal understanding and affirmation of sexually and gender diverse people. We grieve above all that the love of Christ is obscured by so much Christian hardness of heart and slowness to respond.

We protest

We protest the silencing, repression and denial of our religious and wider freedom. Some parts of the Anglican Church of Australia appear actively hostile. We therefore vigorously protest the exclusion of debate, and the resistance to the removal of religious privileges which impact on the health and welfare of LGBTI+ children, families, teachers and other church staff. We also protest the silence of so many other parts of our Church, the hesitant leadership that will not commit itself to us. Martin Luther King said that 'In the End, we will remember not the words of our enemies but the silence of our friends.' We feel this keenly. For whilst we give thanks to God for the wonderful examples of Australian Anglican inclusion – in the fine work of so many parishes, schools, welfare projects and individuals – we lament the profound corporate institutional inertia, and the pernicious silence and lack of empathy that persists towards us. 'Nothing about us without us' is a widely understood precept in our world today. Yet in our church 'almost everything about us without us' seems to be the rule. We therefore invite participation, the sharing of our experience and faith stories, and the development of affirming policies and education.

We respect difference

We profoundly respect difference, including the genuinely held views of other Anglicans who oppose us. We recognise that growth in theological understanding and change is

complex. We approach with humility our common scriptures, tradition and reason. Yet, just as we cannot speak from the experience of others, we ask that we are heard, and our own difference valued. We ask that decades of affirming biblical interpretation and enquiry be honoured and options provided for liturgical blessings and for the sacrament of marriage for LGBTI+ people. We ask for our place at the table and full opportunity to use our God-given gifts.

We demand address of spiritual abuse

Above all, we demand address for the spiritual abuse faced by sexually and gender diverse people. The appalling revelations of child abuse in which our churches have been complicit should surely teach us about the horrific consequences of silencing and ignoring vulnerable people, and the vital importance of listening, transparency and restorative justice. Typically however, LGBTI+ Anglicans are ignored or kept at arms length, even when issues of huge importance to us are discussed or determined. Due to overt hostility, covert disapproval and uncertainty, genuinely safe spaces are so often hard to find and many LGBTIQA Anglicans do not feel able to be themselves (the persons God loves so much) in church settings. Churches often talk about being 'welcoming' to us, but it is positive affirmation and empowerment - not mere toleration - at Christ's open table, that is required. For our sexualities and genders are not aspects of the Fall, but diverse expressions of the divine image and continuing divine creation and gifts to enlarge the life and freedom of all.

We speak out for our Faith

We speak out as faithful members of the Anglican Church of Australia. We speak out as Christians with different theological, ecclesiological and liturgical emphases, yet as one voice. We speak out with profound concern for the future of the Church whose credibility and mission are now at stake because of how it treats us and others on its margins. We believe the soul of Anglicanism is at stake in the way our lives and bodies are treated. For centuries, the best spirit of the Anglican tradition, being both Catholic and Reformed, has held profound differences in creative tension and approached new issues of human dignity (from the questioning of slavery to the emancipation of women) with attitudes of openness and reception. It is at the heart of the Anglican Reformation settlement that 'it is not necessary that Traditions and ceremonies be in all places one and utterly alike'. With such a spirit of generous love, the Anglican Communion has spread worldwide, taking different forms whilst holding to the essentials of faith. Today this is in jeopardy as a sectarian spirit of exclusion is among us, rejecting the fruitful developments of LGBTI+ affirmation in other parts of the Anglican Communion and leaving little or no place for differences among us in Australia. Like the Gentiles in the early Church, we wait in faith, hope and love for the recognition by others of God's equal calling to us, different in some aspects of lifestyle, but one in Christ. The Holy Spirit is doing great things among us and in the wider world through sexually and gender diverse people. We believe they can be as sources of renewal to a weary and defensive Church. Like the Gentiles in the early Church, we therefore call today's Peter and Paul to account, that we may all join as one in the transforming love of God. May those who have ears to hear, hear.

We call for repentance

We call for repentance by the Church for its part in the violence, abuse and lack of acceptance of LGBTIQA people. We call for a recognition of our full humanity and for equal participation in church and society. We call for a full gospel which embodies the good news Jesus brought to the poor and marginalised and which centres on God's grace, not narrow religious traditions of human law. We call for dignity, justice and renewal. May those who have ears to hear, hear.

Anglican LGBTI+ Voices is the confidential LGBTI+ network of Equal Voices Anglicans: a part of Equal Voices (the national movement of LGBTI+ Christians and allies)