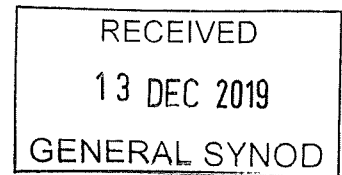


**SUBMISSIONS FROM THE DIOCESE OF NEWCASTLE IN RELATION TO THE APPELLATE TRIBUNAL MATTER - THE BLESSING OF PERSONS MARRIED ACCORDING TO THE MARRIAGE ACT 1961 REGULATIONS 2019 MADE BY THE SYNOD OF THE DIOCESE OF WANGARATTA**

13 December 2019



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**QUESTIONS**

**1. REFERENCE ONE – FROM THE PRIMATE**

The Primate has submitted the following questions

1.1. Whether the Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 (**Regulation**) 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.

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

**2. REFERENCE TWO – FROM 25 MEMBERS OF THE GENERAL SYNOD**

The Primate has referred the following questions put by 25 members of the General Synod

2.1. 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 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.

2.2. 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.

2.3. 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 (the Canon)*

**SUBMISSIONS**

a) The Diocese of Newcastle (**Newcastle**) adopts the submissions of the Diocese of Wangaratta (**Wangaratta**).

- b) Newcastle notes that it is not the role of the Tribunal to express any position on the merits of any ordinance or canon whose validity is in question (*Reference on the Affiliated Churches Ordinance 2004 of the Diocese of Sydney*).
- c) Newcastle notes the determination of Young, Horton, Bleby, Mason, and Herft in *Reference on the Legality of the Administration of Holy Communion by Deacons or Lay Persons* by the Appellate Tribunal in August 2010. They stated that it is the responsibility of “the bishops and this [Appellate] Tribunal to see that the rules of the church are upheld. This is not just a matter of legalism, but a matter of fairness and protection of the ordinary members of the church.”
- d) Newcastle notes the unanimous determination of the Tribunal in *Appeal of Keith Francis Slater*. The members stated - “Jurisdictional error may occur when a body or tribunal embarks upon a proceeding or imposes a particular remedy or sanction without authority to do so.”
- e) Newcastle proposes that the Appellate Tribunal lacks jurisdiction to determine questions 1.1 and 2.1 – 2.3.
- f) The General Synod in adopting the Canon provided the sole mechanism for determining a question concerning the reverence, edification and doctrine of any form of service authorised under the Canon. The General Synod determined that such jurisdiction rested with the bishop of the diocese. It is the responsibility of the bishop of the diocese in this matter to ensure that the rules of the church are upheld.
- g) The Canon does not make provision for the decision of the bishop of the diocese to be referred to the Appellate Tribunal.
- h) Newcastle submits that the Appellate Tribunal should decline to answer questions 1.1, 2.1 – 2.3 and instead refer the questions to the Bishop of Wangaratta.
- i) Newcastle makes no further submission relation to question 1.2.
- j) In order to assist the Tribunal, Newcastle advises that its Synod approved in principle a Bill for a regulation which is similar to the Regulation. It referred the Bill for further consideration to its Diocesan Council. The Diocesan Council has deferred further consideration of the Bill until the Appellate Tribunal makes its determination.
- k) The Bishop of Newcastle sought leave to make separate appearance on this reference but is not making any independent submission at this time.